

2 March 2014**Agenda Item: 7****REPORT OF THE SERVICE DIRECTOR, SOUTH NOTTINGHAMSHIRE****BRIEFING NOTE ON THE CARE ACT 2014 – KEY CHANGES TO THE
DUTIES AND RESPONSIBILITIES OF THE LOCAL AUTHORITY****Purpose of the Report**

1. This is a report to Committee on the key changes required to deliver the new legislative requirements of the Care Act 2014. These key changes cover:
 - A new statutory framework for adult safeguarding
 - A national minimum eligibility threshold for adults with care and support need and carers
 - A national assessment framework for adults and carers
 - New duties in relation to people who move in or out of Nottinghamshire
 - New duties to prisoners
 - New support entitlements for carers
2. The report also seeks approval for the Council to respond to the consultation the draft regulations and guidance on the implementation of the cap on care costs and proposals for a new appeals system for care and support, which are Part 2 of the Care Act and are due to come in to effect in April 2016. As the response is due by 30 March 2015, a delegation to the Corporate Director, Adult Social Care, Health and Public Protection in consultation with the Chairman of the Adult Social Care and Health Committee is proposed.

Information and Advice

3. The Care Act introduces a set of legislative reforms to the way that care and support for adults is provided and paid for. It is founded on the new statutory principle of 'promoting wellbeing' and must be delivered within the context of personalisation, prevention of social care needs and access to information and advice on support available in Nottinghamshire. Previous social care legislation and statutory guidance, including the Community Care Act, have been repealed, revoked or cancelled.
4. The Care Act is supported by the Human Rights Act 1998 and the Equality Act 2010 and must be delivered in the context of both.

5. Some legal duties, powers and responsibilities remain unchanged and other parts of the Act put into place ways of working that are already existing practice in Nottinghamshire, such as personal budgets. However, the Act also introduces a series of new duties, powers and responsibilities, such as a national minimum threshold for support. This briefing focuses on the new and changed requirements.
6. The Care Act is intended to work in partnership with the Children and Family Act 2014, which amends the Children Act 1989 and applies to 0 - 25 year old children and young people who have Special Educational Needs (SEN) and Disabilities. In combination, the two Acts enable the Council to prepare children and young people for adulthood from the earliest possible stage, including their transition to adult services.
7. The social care reforms within part one of the Care Act come into force on 1 April 2015.
8. The financial reforms, such as the introduction of a cap on the amount that a person will be required to pay for their care and support in their lifetime, will come into force in April 2016. The draft guidance on the financial reforms is expected to be published in February 2015 for a period of consultation.

Safeguarding

9. There are two sets of procedures in relation to safeguarding adults in Nottinghamshire:
 - i) a joint document with Nottingham City to inform those who need to make a safeguarding referral;
 - ii) a Nottinghamshire only document which describes the processes and procedures to be followed when a safeguarding referral is received into the local authority.
10. Both of these documents are managed and owned by all the partner agencies in Nottinghamshire under the auspices of the Nottinghamshire Safeguarding Adults Board (NSAB)
11. Despite significant work recently being undertaken to make the safeguarding procedures person centred, the following changes are required to be made across both documents to ensure that the local authority is compliant with the Care Act 2014:
 - a) Terminology requires updating, for example the term 'vulnerable adult' has changed to 'adult [at risk]' and the term 'abuse' is used instead of 'significant harm'
 - b) The scope of the document needs updating to ensure that those adults who meet the criteria defined in the Care Act are included, for example 'self-neglect' is a new category of abuse not previously included;
 - c) Ensure that procedures and guidance direct and support staff to work in a person centred way, focussing on outcomes for the adult at risk or abuse;
 - d) Ensure procedures and guidance direct and support staff to 'cause others to make enquiries' and provide the required feedback where this is relevant.

Next Steps

12. The minor changes to the joint Nottingham City and Nottinghamshire referrers' procedures have been agreed with the City's adult safeguarding board and will be submitted for approval by Nottinghamshire at the NSAB Quality Assurance Sub Group on 4 March 2015.
13. The broad change in approach to the Nottinghamshire only procedures, in particular enabling the local authority to 'cause others to make enquiries', were agreed by the Nottinghamshire Safeguarding Adults Board (NSAB) on 8 January 2015. A draft version of the procedures will be presented at the NSAB Quality Assurance Sub Group on 4 March 2015 and a final draft for approval at NSAB on 16 April 2015.

A national assessment framework for adults and the minimum threshold for eligibility

14. The Local Authority's duty to assess under the Care Act 2014 replaces the previous equivalent assessment duties under the NHS & Community Care Act 1990 for adults and under the Carers (Recognition and Services) Act 1995; Carers and Disabled Children Act 2000 and Carers Equal Opportunities Act 2004 for carers.
15. The Care Act 2014 is supported by mandatory Statutory Regulations and Statutory Guidance in relation to assessment and eligibility for adults in need of care and support and carers in need of support.
16. The Act sets out a shared national assessment framework and two separate national minimum eligibility thresholds for adults and carers. From 1 April 2015, Nottinghamshire County Council must adhere to the national assessment framework as well as the two new national minimum eligibility thresholds.
17. This replaces the current system where councils have the discretion to set the eligibility threshold based on the Fair Access to Care Standards criteria of 'low', 'moderate', 'substantial' and 'critical'.
18. The Government's intention is to set the national minimum eligibility threshold at the equivalent of 'substantial'. As Nottinghamshire's threshold is already set at 'substantial' under the current legislation, there is no intention to re-assess existing service users or carers under the new legislation, unless it appears that their needs have changed. The next planned review will then assess their needs against the minimum eligibility threshold.
19. The new eligibility threshold is based on the well-being principle and there is a duty to 'promote wellbeing' for both service users and carers.
20. For adults the eligibility decision will be based on a three stage test, which is:
 - a) The adult's needs are caused by a physical or mental impairment or illness
 - b) As a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in the regulations
 - c) And as a consequence there is, or is likely to be, a *significant impact* on the adult's wellbeing.
21. For carers, there are two ways by which they can be eligible for support:

- (a) in order to help them to maintain their caring role
- (b) if their caring is having a significant impact on their wellbeing and is having an adverse effect on their lives.

22. A local authority does not have to provide services to meet an adult's needs if those needs are being met by a carer.

23. The Care Act reaffirms the rights of adults with needs for care and support to have an assessment and to ensure eligible needs are met. The Care Act also reaffirms the rights of carers to have an assessment but for the first time puts carers on an equal statutory footing to the adults they provide care for by also placing a new duty on the Council to meet a carer's needs for support where they are assessed as having eligible needs

24. The requirement to carry out an assessment includes those who will be 'self-funders' (paying for their own care and support) who may not previously have come into contact with the Council. We have completed modelling on the number of self-funders in Nottinghamshire. It is estimated that there will be an additional 8,600 assessments in 2015/16.

25. There is a shift in emphasis under the Act from a duty to provide services, to a duty to meet need. The Act requires the assessment to consider the following:

- Establish how a person's needs impact on their daily life, their well-being and on their ability to achieve their identified outcomes.
- Consider the person's own strengths and capabilities and how to build on them, as well as their cultural and spiritual networks.
- Identify need, and support people to understand their situation and what they can do to reduce or delay the need for social care support.
- Identify needs that could be reduced, or delayed

26. This duty to meet needs is intended to be a broader duty than a requirement to just provide services. This is to encourage practitioners to consider more widely how a person's needs can be met through support planning, rather than by providing a particular service. There are a range of resources available to the practitioner to draw upon and this includes; informal support networks of support; support offered by the community and voluntary sector; additional support to informal carers; reablement services that could reduce, delay or avoid the long term need for social care; and support available from partner organisations, such as health or housing. This shift in approach is supported by the Adult Social Care Strategy. A personal budget should only be offered once other sources of support have been explored and fully considered.

27. The Act also introduces the concept of 'appropriate and proportionate' assessments. The guidance allows local authorities to conduct an assessment using a variety of methods to enable the Council to respond in a proportionate way to the request for assessment. In Nottinghamshire, the Council will make more use of different methods for assessment, including a supported self-assessment (where the person takes the lead) via post or on-line; telephone assessments; and clinic appointments. Where it is apparent that a person could not manage with an online or telephone based assessment, or the person requests it, a face to face assessment will be provided.

28. The Adult Social Care Strategy reinforces this change and staff will be expected to consider whether a person is able to take the lead and offer a supported self-assessment, or whether a telephone assessment will accurately identify a person's presenting needs, rather than routinely offering a face to face assessment at home, as is largely current practice.
29. The Care Act gives a new power for local authorities to delegate certain care and support functions to a third party, including assessment. Nottinghamshire needs to give further consideration to this new power and explore further the potential role of third party assessors, such as providers, partners (such as health and housing) and the voluntary and community sector to undertake assessments, support plans and reviews.
30. In Nottinghamshire, assessment tools have been changed to reflect the new changes. Local guidance is under development to support workers to provide a consistent approach to eligibility and assessment within the context of the Adult Social Care Strategy. Face to face training for all assessment and review social care workers and managers is planned from February 2015 onwards. This is supported by a range of local and national information available to staff on the intranet page. In addition, a bespoke e-learning package is under development that provides an overview of the Care Act to all Council staff and key messages on the local implementation within the context of the Adult Social Care Strategy and Redefining Your Council. For existing service users and carers, a letter will be sent from the Council making them aware of the national changes, what this means for them in Nottinghamshire and where to go for further information. This will include frequently asked questions on the Council's website. This will supplement the national media campaign, which commences at the beginning of February 2015 and includes a leaflet drop to the general public.

Continuity of Care

31. The Care Act places a duty upon local authorities to work together to ensure that there is no interruption to the person's care and support when they move. These procedures also apply to where the person's carer is receiving support and will continue to provide care for the person after the move. The Act refers to the local authority where the person is ordinarily resident as the 'first authority' and the local authority where the person is moving to as the 'second authority'. It is the second authority's responsibility to ensure the care and support required on the day of the move is in place.

Prisoners

32. Meeting the eligible needs of prisoners is a new duty. Prisoners will have the same rights as people living in the community including the right to have an assessment, social care support and advocacy. The only exclusions are access to direct payments and choosing where to live.
33. Modelling of numbers of prisoners has estimated that there are 50 prisoners in the County with long term care needs. Work is underway to develop a process to identify prisoners who may have social care needs and determine how the Council will provide care and support services to any prisoner with eligible needs.

Carers

34. It is the duty of the local authority to offer an assessment to carers. Carers are also no longer required to demonstrate that they provide 'regular and substantial care'. The Care Act Programme has completed modelling on the number of carers in Nottinghamshire who are likely to request an assessment. It is estimated there will be an additional 750 assessments in 2015/16.
35. The responsibility to carry out an assessment of an informal carer who appears to have needs rests with the local authority area in which the adult they care for is ordinarily resident.
36. Carers can be eligible for support whether or not the adult for whom they care has an assessment or eligible needs. Carers assessments must seek to establish the carer's needs for support and make a judgement as to whether the carer is willing and able to sustain their caring role. The carer's assessment must also consider the personal outcomes that the carer wants to achieve in their daily life; their activities beyond their caring responsibilities and the impact of caring on those activities.
37. If a person with care needs or a carer is deemed to have eligible needs, the local authority should prepare a 'support plan' for carers. For carers, the plan must help the carer decide how their needs should be met and which (if any) would be met by direct payment.
38. If there is more than one appropriate way to meet an eligible social care need, the Council can take this into account in its decision as to whether the proposed support arrangements are proportionate to need and cost-effective. For example, often the carer could be supported indirectly through support being directly provided to the adult in need of care and support.
39. In Nottinghamshire, the Council has reviewed existing facilities and services for carers to ensure they will be sufficient to meet demand and the new requirements from April 2015. There are a wide range of resources and services available to carers from preventative services, such as the Carers' Emergency Card Scheme (held by carers to alert people about the cared for person if a carer has an accident) through to respite care and short breaks or personal budgets for carers. The way the Council offers a personal budget to carers is under review to ensure it is fully compliant with the Act.
40. It is estimated there will be an additional 750 carers assessed assessments in 2015/16 and 550 provided with support to meet eligible needs. Work has been completed to ensure greater numbers of carers' assessments and reviews can be completed proportionately. This includes online contact assessments, telephone based assessments and the potential to use third party assessors via the Carers' Advice and Information Hub.

Consultation on draft regulations and guidance on funding reforms Part 2 of The Care Act

41. On 4th February, the Department of Health released the draft regulations and guidance on the implementation of the cap on care costs and proposals for a new appeals system for care and support, which are Part 2 of the Care Act and are due to come in to effect in April 2016. Upon releasing the draft regulations and guidance, the

Department of Health has been opened a period of consultation which ends on 30th March.

42. The funding reforms are expected to have a significant financial impact on local authorities and therefore it is proposed that the Council provides a comprehensive response to the consultation process. Given the tight timeframes for responding to the consultation, it is proposed that the Corporate Director, Adult Social Care, Health and Public Protection in consultation with the Chairman of the Adult Social Care and Health Committee, complete the response from the County Council.

Other Options Considered

43. The local authority needs to meet the new legal requirements to be Care Act compliant.

Reason/s for Recommendation/s

44. The recommendations are as a result of the Care Act 2014.

Statutory and Policy Implications

45. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and Disorder Implications

46. Adult abuse is often a crime and this proposal strengthens our approach to allegations of abuse.

Financial Implications

47. The financial implications of the Care Act for the additional staff required to meet the new requirements are in the report 'Organisational Redesign and Care Act Implementation', ASCH committee, February 2015.

Human Resources Implications

48. Guidance has been produced to support staff to use the revised guidance and procedures and training put in place.

Human Rights Implications

49. Adult abuse is an infringement of an individual's human rights. This proposal strengthens the Council's approach to allegations of abuse, ensuring that the person is always at the centre of all the work we do.

Public Sector Equality Duty implications

50. The changes arising from the Care Act will impact on all vulnerable groups of adults and children across Nottinghamshire's communities. An Equality Impact Assessment has been drafted to understand the impact of the changes on people with protected characteristics and this has informed the changes that will be required to local policies and procedures.

Safeguarding of Children and Vulnerable Adults Implications

51. By its very nature, the Act aims to reduce the risk to adults who are subject to abuse or neglect. It also makes reference to the safeguarding of children and informs staff of their duties in respect to this.

Implications for Service Users

52. The Care Act brings in new duties and responsibilities for the citizens of Nottinghamshire. The Act is founded on the new statutory principle of 'promoting wellbeing' and must be delivered within the context of personalisation, prevention of social care needs and access to information and advice on support available in Nottinghamshire.

RECOMMENDATION/S

The Adult Social Care and Health Committee are asked to:

- 1) Note progress on the implementation of the Care Act.
- 2) Authorise the Corporate Director, Adult Social Care, Health and Public Protection in consultation with the Chairman of the Adult Social Care and Health Committee, to complete the Council's response to the draft regulations and guidance on the implementation of the cap on care costs and proposals for a new appeals system for care and support.

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Constitutional Comments (LMcC 18/02/2015)

53. The Adult Social Care and Health Committee has delegated authority within the Constitution to approve the recommendations in the report.

Financial Comments (KAS 30/01/15)

54. The financial implications are contained within paragraph 49 of the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Electoral Division(s) and Member(s) Affected

- All