

Bath & North East Somerset Council

MEETING:	Wellbeing Policy Development & Scrutiny Panel
MEETING DATE:	28 November 2014
TITLE:	Care Act 2014 – Update and Options for Charging for Services
WARD:	All
AN OPEN PUBLIC ITEM	
List of attachments to this report: Appendix 1 – Charging for Services – The New Arrangements	

1 THE ISSUE

- 1.1 The Care Act received Royal Assent in May 2014 and draft guidance on implementation of the Care Act was published by the Department of Health was published in June 2014. Following a period of public consultation, to which the Council made a detailed response, final regulations (*“Final Affirmative Regulations Under Part 1 of the Care Act”*) were published 23rd October 2014.
- 1.2 The Care Act is the main response from the Government on the funding of Adult Social Care following the Wanless and Dilnott reports. These sought to re-set the balance in the funding of adult social care, particularly for older adults. The Act also brought the existing legislation relating to Adult Social Care into a consolidated Act, intending to reduce the number of legal challenges to authorities around the commissioning and delivery of care.
- 1.3 The role of the local authority has continued to develop with a greater emphasis now on councils providing people with appropriate support as they need it to find their own solutions for engaging their own care. The vision is for the council to act to ensure that local care markets are responsive to individual needs, but not to intervene at an individual level unless asked.
- 1.4 The Act will be implemented in phases starting in April 2015.
- 1.5 B&NES Implementation is overseen by a Care Act Implementation Board, with a number of key work streams, each headed up by a member of the Board, with involvement from key partner organisations (primarily Sirona Care & Health and Avon & Wiltshire Mental Health Partnership NHS Trust (AWP)). Implementation is supported by a dedicated Care Act Programme Manager.
- 1.6 This report summarises the key elements of the Care Act and, also, the associated resource implications for Bath & North East Somerset. It goes on to seek a view from the Panel on the Council’s policy response to new powers to

introduce charging for certain services as a way of mitigating some of the financial implications of the Council's new duties under the Care Act.

2 RECOMMENDATION

The Panel is asked to:

- 2.1 Note the general update on the Care Act; and
- 2.2 Express a view on the options for charging for services summarised in paragraphs 4.7 to 4.11 and detailed in Appendix 1.

3 FINANCIAL IMPLICATIONS

- 3.1 The new Local Authority duties and individual rights introduced by the Care Act and briefly summarised in paragraphs 4.1 and 4.2, are broadly welcome. In particular, local authorities' new duty to promote people's wellbeing will now apply not just to users of services, but also to carers. This principle resonates strongly with local priorities, including those set out in the Joint Health & Wellbeing Strategy. However, implementation of the Care Act does have significant resource implications for the Council and other partner organisations. However, the exact extent of the additional financial burden for the Council is, as yet, unknown.
- 3.2 Modelling of the local implications, using nationally recognised and recommended modelling tools, adjusted for local circumstances, has resulted in an estimate of the new financial burdens for the Council from 2015/16 in the region of £1 million. However, this estimate must be treated with caution.
- 3.3 Whilst every effort has been made to accurately model the financial implications, this modelling is constrained by a number of factors including:
 - availability and accuracy of information – particularly in relation to people who are currently privately funding their own care and support services;
 - the publication of the final guidance in November 2014;
 - the response of the market as the Care Act comes into force;
 - the establishment of case law in relation to the Care Act;
 - the behaviours of service users and carers; and
 - flaws in the modelling tool(s).
- 3.4 Also, modelling, using national tools, is typically based on the 'normal' distribution of a sample resulting in predictions of change over time. Local figures on the use of services commissioned by B&NES indicate that there is a higher than expected number of short-term care arrangements resulting in a different distribution pattern. It is believed that this is a direct result of initiatives by the Council to better manage the demand for care, but also makes predictive modelling very difficult to achieve accurately.

3.5 The requirement for the Universal Deferred Payment offer is also predicted to have a greater financial impact for the Council than is the case nationally. The relative wealth of the population and scale of those with the means to fund their own care is such that even a fifty per cent uptake by those entitled to have an individual Deferred Payment Agreement would result in a total loan facility of £10m after the first three years of implementation. Whilst individual loans are secured against an asset (the individual's home), any loan facility always has an element of non-collection, which in this case will impact on the amount of debt held by the Council.

4 THE REPORT

4.1 In April 2015 the following changes will be implemented

- New responsibilities for wellbeing, prevention, information and advice and market shaping
- Introduction of a National Eligibility Criteria
- New duty to make eligibility decisions more transparent
- Provision of support to carers becomes mandatory
- New duty to assess and support people funding their own care
- Safeguarding Adults Boards become a statutory body
- New local authority duty to investigate allegations of abuse of vulnerable adults
- New right to a Universal Deferred Payment Agreement for care costs

4.2 The second phase will involve the changes to the financial relationship that commences in April 2016:

- Introduction of Independent Personal Budgets, Care Accounts and the Care Cap
- A raised Capital Allowance from £23,500 to £118,000

4.3 Unlike health services, adult social care services are not “free at the point of delivery”. The principle of “charging” or applying a “means test” for adult social care is well-established. Whilst residential accommodation based social care has been covered by national regulation, non-residential social care services have been the subject of local decisions within a national framework. This has contributed to a lack of consistency and clarity in relation to both the services that will be charged for/subject to a means test and, also, the level of individual financial contribution.

4.4 In accordance with the recommendations arising from the Dilnott Review, the Care Act introduces a charging regime for adult social care that is based on a single approach but with an element of local flexibility about how charging for non-residential services is applied at a local level. The legislative framework is “permissive” in this respect rather than prescriptive.

4.5 The briefing attached as Appendix 1 to this report sets out the new arrangements for charging introduced by the Care Act. Paragraphs 4.8 - 4.10 below summarises those areas that are subject to local flexibility and makes proposals on which the Wellbeing PDS Panel's views are sought.

4.6 Principles for charging

The regulations set out key principles for charging:

- Ensure that people are not charged more than it is reasonably practicable for them to pay;
- Be comprehensive, to reduce variation in the way people are assessed and charged;
- Be clear and transparent, so people know what they will be charged;
- Promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
- Support carers to look after their own health and wellbeing and to care effectively and safely;
- Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs;
- Apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
- Encourage and enable those who wish to stay in or take up employment, education; and
- Be sustainable for local authorities in the long-term.

4.7 Care Management

Although the draft regulations suggested the possibility of charging for all care management services, the final regulations only allowed for charges to be made to cover the cost of contracting and managing an on-going care package for non-residential services. The nature of this is that the costs would be difficult to account for in isolation from the much larger volume of work undertaken for Council funded individuals. **Views of the Panel are sought on the application of a zero charge for managing self-funders individual contracts.**

4.8 Deferred Payment Agreements

The regulations make provision for two charges for statutory deferred payments for residential care. From April 2015 the Council can charge interest annually against the loan value and, also, a management charge that reflects the costs incurred in setting up and then managing the agreement.

The maximum interest rate is set as the Market Gilts Rate published by the Office of Budget Responsibility and is revised every six months. For 2015-16 the projection in March 2014 was 3.3% per annum. This is significantly lower than the market rates available to borrowers on the high street. It is also lower than the

borrowing rates available to the Council. It is proposed that this Council charges the maximum rate available as adjusted every six months.

Initially, the Government had indicated that there would be grant funding allocated to Local Authorities to meet some of the associated costs, however, the Government has now confirmed that no grant will be made on the basis that Local Authorities can decide to make a management charge. The cost to the Council for setting up a Deferred Payment is £560 (to include Legal Charge and Land Registry fees) with an annual review cost of £290. **Views of the Panel are sought on the application of the maximum interest rate available against the loan value and, also, a charge of £560 for setting up a Deferred Payment.**

4.8 Carers Charging

The Act provides for charging carers but places a number of tests for authorities seeking to charge. Charges should not have a negative impact on the carer's ability to continue providing care. Individuals need to be considered in their own right within the financial assessment, so it would not be appropriate to undertake a single assessment per household. However there is the opportunity to undertake a 'light-touch' assessment.

4.9 Within the Regulations there appear to be three options in terms of charging carers:

- Opt not to charge any carer for the support they receive because of the contribution that they make towards meeting the care and support needs of the cared for person
- Undertake a light-touch assessment for carers who are supporting someone with an existing care and support package and only seek to levy an additional charge if there are significant additional resources
- Undertake full assessments on all parties and maximise the income to the Local Authority derived from the associated charges

4.10 There is a risk that there will be a significant number of people seeking carer support who are not currently receiving services from the Council. The 2011 Census showed there were 17,585 people in B&NES consider themselves to be carers providing unpaid care and support. There are 1,462 carers currently receiving services from the Council. The entire cohort of 17,585 will be entitled to request an assessment with a proportion of these assessments resulting in a package of support. Modelling estimates that an additional 350 people a year in B&NES would be entitled to a package of support but it is difficult to predict before the Care Act comes into force the actual number of carers who will request an assessment or, indeed, then be entitled to a package of support.

4.11 In this context, **views of the Panel are sought on the adoption of a local policy that enables a charge to be made to Carers for the support they are receiving but set this charge at “£0” in the first instance, subject to review after the first 12-months of implementation** when the financial implications for the Council of this new duty become clearer.

5 RISK MANAGEMENT

- 5.1 A risk assessment on the implementation has been undertaken in line with the Council systems and processes. The Care Act Implementation Board reviews and updates the key risks and associated actions and mitigations on a monthly basis.

6 EQUALITIES

- 6.1 An Equalities Impact Assessment has not been completed at this stage.

7 CONSULTATION

- 7.1 Consultation on any proposed policy changes will be undertaken through targeted service user/public engagement events and presentations to relevant governing bodies and stakeholders as appropriate.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 *Social Inclusion; Customer Focus; Sustainability; Human Resources; Young People; Human Rights; Corporate; Other Legal Considerations.*

9 ADVICE SOUGHT

- 9.1 The Council's Section 151 Officer (Divisional Director - Finance) and Monitoring Officer have had the opportunity to input to this report and have cleared it for publication.

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Background papers	Report to Wellbeing PDS, 17 January 2014, " <i>Care Bill</i> "
Please contact the report author if you need to access this report in an alternative format	