

## READING BOROUGH COUNCIL

### REPORT BY DIRECTOR OF EDUCATION, ADULT & CHILDREN'S SERVICES

TO:	ADULT SOCIAL CARE, CHILDREN'S SERVICES AND EDUCATION COMMITTEE/HEALTH & WELLBEING BOARD		
DATE:	7 NOVEMBER/13 DECEMBER 2013	AGENDA ITEM:	8
TITLE:	CARE BILL		
LEAD COUNCILLOR:	COUNCILLOR EDEN COUNCILLOR GAVIN COUNCILLOR HOSKIN	PORTFOLIO:	ADULT SOCIAL CARE
SERVICE:	ADULT CARE	WARDS:	BOROUGH WIDE
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#### 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report describes the main impact of the White Paper, Caring for our Future, and the draft Care & Support Bill, both published in July 2012; and of the policy statement on Care and Support Funding Reform, presented to Parliament on 11 February 2013. The Bill is now entering its final parliamentary stages. The report sets out the implications for Reading based on empirical data and modelling where possible.

#### 2. RECOMMENDED ACTION

- 2.1 Committee notes the implications of the Bill.
- 2.2 Committee agrees to the establishment of a senior officer Board, reporting to both ACE and the Health and Wellbeing Board (the terms of reference being appended at A).
- 2.3 Committee notes the financial risks to the Council and requests that these are modelled as soon as possible.
- 2.4 Committee endorses the principle of closer integrated working with health partners based on a vision of person centred care and support delivered at neighbourhood level, and utilising the skills and capacity within local communities.
- 2.5 Committee endorses the new duties placed on local Councils in respect of carers.
- 2.6 Committee notes the need to refresh the communications strategy to enable residents to understand what is on offer at local level.

### 3. POLICY CONTEXT

- 3.1 The current law governing Adult Social Care has evolved over a long period. This has led to a large number of separate statutes, regulations and guidance. Since the National Assistance Act, 1948 which is still the basis of Adult Social Care legislation, society and the way that Adult Social Care supports people has changed.
- 3.2 In 2011 important recommendations were made for the reform of Adult Social Care from the Law Commission and the Commission on the Funding of Care and Support, chaired by Andrew Dilnot. The Bill draws on these recommendations and sets out how the Government intends to reform Adult Social Care by:
- creating a consistent and streamlined legal framework that is clear and easy to navigate;
  - bringing the law up to date to reflect a focus on the outcomes that people want rather than their disabilities, and put the individual in control of their life; and
  - addressing areas of unfairness.
- 3.3. The majority of the changes are set to take place in April 2015, with the reform of funding to take effect from April 2016. The main areas of change within the Bill are set out below with an indication of how this will impact in Reading.

#### One Statute

A significant change is that the Bill is designed to be the one underpinning piece of legislation in relation to Adult Social Care, rather than the approximate previous 30 Acts.

#### General Responsibilities

The first part of the Bill is dedicated to the general responsibilities that local authorities have towards all of their residents.

**Promoting individual wellbeing** - The Bill creates a new statutory principle that aims to make wellbeing the driving force behind care and support. Wellbeing is described in terms of the most important outcomes for people who use care and support and support for carers. It intends to establish what the Law Commission called 'a single unifying purpose around which adult social care is organised'. Despite being defined within the Bill this is likely to be an area open to interpretation.

**In Reading** - This is entirely consistent with the ethos of the Adult Social Care Directorate and the direction of the council, and we will be well placed to fulfil this duty. The early work of the Health and Wellbeing Board as well as the maturing partnerships, particularly between Adult Social Care, Children's Social Care and Health provide a firm platform for this.

**Prevention** - This requires local authorities to take action to prevent, reduce or delay the need for care and support. This applies to the whole local population and carers, as well as people who use services. It is not just about what the local authority does itself but also how it works with other organisations and helps people to use the resources and skills that they already have. There is likely to be further regulations to define this requirement and potentially allow for charging for these services.

**In Reading** - we are a long way to meeting this requirement already and have made good progress in promoting access to and funding preventative services. One implication of the new wellbeing duty may be a greater focus on prevention when considering grants made to voluntary organisations. Much of the work has involved partnerships and improving information access. Examples include:

- promoting Telecare
- work of the Reablement Team
- support for carers
- clustering social care support around GP surgeries

**Promoting Integration** - The Bill places a duty on local authorities to carry out their functions in a way that is 'integrated' with NHS and other health-related services. Integration means working together to improve services for people across organisations, not necessarily organisations joining together structurally and the way in which this may happen is not prescribed.

**In Reading** - We are working closely with our partners to generate better outcomes. Examples include:

- working with the acute trusts to improve discharge rates
- joint commissioning of mental health services (with Clinical Commissioning Group partners)
- plans to develop a virtual ward (enabling care and support to be delivered in an individual's home)

**Providing Information and Advice** - The provision of good quality information and advice is a key plank of the reforms and will contribute to their success. People need to know how to access support across their community and across organisations, in order to be able to maximise their independence and reduce the need for more intensive services. This is even more important in light of the new funding regime that will bring in far more self-funders to the system than previously. An additional requirement to provide information on how to access independent financial advice is included in the Bill.

**In Reading** - We currently have a substantial variety of information and advice on offer to people. We have published a range of leaflets providing information on how to access and pay for services, and a dedicated Resource Directory. Our information Strategy will be refreshed to include the requirements of the Bill and will be linked to the development of a Self Funder Strategy which is scheduled to be debated by ACE in March 2014. Signposting to enable access to independent financial advice will need to be further developed.

**Promoting the quality and diversity of local services** - Local authorities will have a duty to ensure that there is a range of high quality providers in all areas that can meet the needs of residents and allow them choice.

**In Reading** - Our commissioning function takes a lead strategic role in managing the market, working closely with providers across public, private and voluntary sectors. The work is based on evidence of current and future need compared with current provision. Involving people who use services in the commissioning process is fundamental and allows us to ensure quality and choice in the services in the area. This also supports the Council's corporate strategy of 'Lets Talk'. Examples of this include the work undertaken by HealthWatch on the quality of home care services.

A new quality assurance framework is being developed across both Children's and Adults Services (arising out of the recent and positive OFSTED inspection). This will support a drive to improve the quality of services available locally.

### **Assessment and Eligibility, Meeting Needs and Support Planning**

The Bill describes a single duty to assess people who may need services. For the first time this duty is expanded to carers and this provision has been widely supported by carers groups, welcoming the assessment of carers needs being put on the same legal standing as that of people who use services. Eligibility criteria will be set nationally for the first time, at a level equivalent to the current 'Substantial' level. The detail of the criteria will be in regulations currently which are being developed.

**In Reading** - eligibility criteria are already set at 'substantial' and it is unlikely that the Council will need to consult on any further changes although this is subject to the detail of the regulations. Workforce training and awareness will need to be developed.

The clauses of the Bill relating to meeting needs and support planning in large part pulls together existing responsibilities and clarifies who is entitled to have their care and support needs met, and how they should be met. Key areas in 'meeting need' include the right to support for carers, as well as people who have eligible needs and fund their own care, to request local authority support.

Care and support planning describes an individual's right to a support plan, Personal Budget and Direct Payment. A new duty is created to review Independent Personal Budgets for self funders. There are further new duties to provide information and advice to people not eligible for support. This aims to help people meet any needs they may have as well as providing preventative advice.

This section of the Bill also supports funding reform by requiring Independent Personal Budgets for people who wish to arrange their own care, and 'Care Accounts' for all people with eligible needs so that the care costs that they incur can be used to calculate when they meet the cap.

### **Funding Reform**

The funding of care is currently one of the most misunderstood areas in Adult Social Care. Individuals are asked to consider and make decisions on complex issues at a time when they may be in crisis following illness, accident or loss of a loved one. Many people believe that care is free to access in much the same way as health services, and

have not planned for what can be very high care costs over their lifetime. The way that contributions to the costs of care are calculated is also widely considered to be unfair, penalising people of moderate wealth. This is why the Government accepted the majority of the Dilnot Commission's recommendations and these are reflected in the Care Bill.

The Government is currently developing regulations on the implementation of the funding reforms. The main elements of the reforms are highlighted below:

**Cap on care costs** - From April 2016 there will be a cap on the maximum amount that that people have to contribute to the cost of their care over their lifetime. This will initially be set at £72,000 for older people aged 65 and over. To count towards this maximum amount people will have to meet the eligibility criteria. In addition, the maximum figure will be calculated based on what the Council would usually expect to pay for care that meets that persons needs. People might choose more expensive care than the Council would expect to pay. In that case only the 'usual amount' will count toward the care cap, and not the full amount that they are paying.

People living in residential care will need to contribute to their 'hotel' costs - general living costs that are included in the overall cost of residential care. In April 2016 these will be approximately £12,000 per year and will not count towards the cap on care costs. People under 65 who develop care needs will have a lower cap on care costs.

People who have care needs before the age of 18 will be entitled to have all of their care funded by the local authority without the need for financial assessment.

**In Reading** - Compared to neighbouring councils, Reading is believed to have a lower number of self funders. However, this is an area of demographic demand that needs to be thoroughly modelled and does carry financial risk to the Council. Our early assessments of what impact this will have in Reading suggests that few people will reach the cap (based on the average time spent in residential care and the impact of the average cost of care on an individual's assets). However, we expect that a large number of people not previously in contact with Adult Social Care will approach the Council for an assessment, in order to start the calculation of their care costs towards the cap. This will enable us to give early information, advice and sign-posting helping people to make informed choices and plan for their future. It will also mean a significant rise in the number of assessments undertaken and a consequent risk to already stretched budgets.

**Rise in the means test capital threshold for people in residential care** - Currently people with more than £23,250 in savings or capital do not qualify for financial help with their eligible care costs. From April 2016 this threshold will rise to £118,000 for people whose capital/savings includes property and £27,000 for people whose capital/savings do not. The lower threshold of £27,000 reflects that the value of a person's home is not being considered as part of their assets.

**In Reading** - The rise in the capital threshold will have an impact. As well as 'new people' who may receive funding there will be some loss of income from people who currently contribute to their care costs, but will pay less under the new threshold level. Assessing the full impact of this change is complex and longer term will need to take into account the level of people's personal wealth across the Borough. The potential costs of the proposals will need to be modelled taking into account estimated

numbers of self-funders, extrapolating our knowledge of typical lengths of time in care and making assumptions about the pattern of wealth distribution among self-funders. We are liaising regionally and nationally to ensure that estimates of costs are as consistent and reliable as possible across all authorities. Nonetheless, uncertainties are likely to remain, even when all the regulations are known.

The Government states that additional costs will be fully funded but some risk remains as that depends on:

- whether the national total is correct
- whether the distribution of the national total is appropriate (Reading's costs may be above average)
- what effects there might be on the local social care market

**Universal Deferred Payments Scheme** - A deferred payment means that somebody can 'defer' their payment of residential care charges until after their death. This typically results in a charge being put on their property and care costs are paid to the local authority from their estate. The ability to offer deferred payments is currently a 'power' rather than a duty. The Bill would make it a requirement to offer a deferred payment option to people with particular needs and circumstances. Local authorities will also be able to charge interest and administration charges on deferred payments.

**In Reading** - we already operate a deferred payment scheme. We will need to consider the details of the new duty, including the proposed requirement to charge interest and how the Council might seek to recover ancillary costs such as Land Registry fees and legal costs.

### **Moving between areas**

There will be a new duty to ensure continuity of care when people move between areas. This includes sharing support plans, sharing relevant information and ensuring that the person's needs are met on day one of moving to their new area. The duty is not to provide exactly the same support that a person received in their previous area, but it is to meet that person's assessed needs.

**In Reading** - We currently endeavour to work closely with other local authorities when we are aware that somebody with care needs is moving into the area. This new duty will help with information sharing. We will need to ensure that the appropriate procedures and processes are in place.

### **Safeguarding**

All areas will be required to establish a Safeguarding Adults Board (SAB - members to include the local authority, NHS and Police). The Boards are required to carry out safeguarding adults reviews where somebody experiencing abuse or neglect dies or there are concerns about how the local authority acted. Boards may also require information sharing from other partners. Boards are also required to have a work plan and publish an annual report. There is a new duty to carry out enquiries (or ask others to do so) where it is suspected an adult is at risk of abuse or neglect.

**In Reading** - We have a Safeguarding Adults Board in place and there is good multi-agency representation. The Board produces an annual report and has a strategic work

plan. In relation to enquiries we ask that the most relevant partner organisation conducts an investigation and the Board undertakes assessment work to support the investigation. The Board already commissions Serious Case Reviews and has a Serious Case Review process. As a matter of good practice the Council also offers level1 safeguarding training to all Councillors.

## **Market Failure and Oversight**

There is a duty placed on the local authority to ensure that the market responds in ways that are suitable to people's needs. In particular; it places a wider responsibility on the local authority to respond to provider failures - temporarily meeting people's needs if the provider supporting them has a business failure. Local authorities are already responsible for ensuring continuity of care for people whose needs they are required to meet. The Bill extends this responsibility to include people whose needs they are not already required to meet - self funders receiving home based care for example.

**In Reading** - We will need to develop a protocol with local providers and will have a draft market position statement for member consideration in December. This is a new duty placed on the Council and carries significant risk as we currently contract with local, regional and national providers. There will be national oversight of large providers' financial resilience, requiring them to report to the Care Quality Commission who will alert the local authority if there is a risk of failure. However, if a significant provider were to fail this would cause major issues and could only be dealt with at sub-regional or regional level. Contingency planning at the point at which it was thought that Southern Cross would collapse indicates that this will be a difficult issue for the Council to manage.

## **Transition from Childhood**

The Bill introduces a duty to ensure continuity of care around 'transition' and provides the power for local authorities to assess young people and young carers before they are 18, to ensure that their care needs continue to be met when they become adults. This is also extended to young people not receiving Children's Services but who may need services as adults. In addition there is a duty to assess the adult carers of disabled children.

**In Reading** - transition planning already occurs from about the age of 14 in order to make contact with the family as a whole and work towards a smooth transition at 18 years old. One of the benefits of a joint Directorate is to make this planning a more seamless operation. Adult Social Care is also supporting Children's Services in their development of the Self Directed Support process for children with disabilities. This supports the transition to adult services and goes beyond the requirements of the Bill.

## **Conclusions**

The Bill represents opportunities for significant improvement and change in Adult Social Care. The new legal rights accorded to carers and the streamlining of the legislation is particularly welcome. In Reading we are well placed to respond to the Bill, not least in respect of our developing partnership with health. The greatest challenge will be associated with the implementation of the new funding reforms which will bring in large numbers of 'new' people to the social care system. It should be

noted that the reforms will require significant investment of officer time during a period of organisational 'reshape'.

Although the changes will provide considerable benefits, they do not provide a solution to underlying increasing demand driven by an ageing population and the continued requirement for financial savings.

## 5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 The response to the Care Bill will significantly contribute to the Council meeting its strategic aims in respect of *'promote equality, social inclusion and a safe and healthy environment for all'*.

## 6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 Community engagement and a clear communications strategy will be critical to the success of the implementation.

## 7. EQUALITY IMPACT ASSESSMENT

- 7.1 An equality impact assessment will be developed in respect of different work strands associated with the reform programme. At the time of writing it is anticipated that people with protected characteristics will benefit from the reforms.

## 8. LEGAL IMPLICATIONS

- 8.1 There are no specific legal implications arising in this report. Legal advice will be sought during the implementation phase of the programme.

## 9. FINANCIAL IMPLICATIONS

- 9.1 There will be significant financial implications on the local authority arising from these changes. Areas to be considered regarding additional cost/resource will include:

- Implementation costs - System (I.T.), process, training, information
- Additional assessment cost - time, staff, training
- Cost of funding the care cost cap
- Cost of funding the increase in the capital threshold

- 9.2 The Government has stated that local authorities will be fully funded for the changes; however, details of this are awaited. The June 2013 Spending Review it was announced that £335 million would be made available in 2015/16 for local authorities to prepare for implementation. The amount that each local authority will be allocated from this pot is awaited. An initial estimate suggests that Reading would receive about £1.3m. There is no contingency in the Medium Term Financial Plan to cover any additional costs.

- 9.3 The potential additional financial pressure on the authority as a result of these changes to social care are significant. Any shortfall in national funding would require the authority to re-prioritise resources from other areas, earmark additional business rate or Council Tax income or identify other measures to balance the budget.

## Risks

- 9.4 Whilst the overall direction set out in the White Paper is positive for users and carers, with an emphasis on choice, control, prevention and planning ahead, this report identifies some potential risks for the Council in implementing its requirements. These include the resource and financial implications of providing enhanced services to carers; also to people who fund their own care; the potential start up costs associated with the deferred payments scheme; and the demand implications of social care funding changes both in terms of direct care costs and social care staffing and infrastructure costs.
- 9.5 A number of new statutory requirements and duties are set out in the new policy and legislative framework and there would be risk for the Council in failing to meet these new statutory requirements. These changes need to be considered in the context of key financial and demand risk factors already known concerning social care. These are demographic growth, particularly among older people and younger adults with complex disabilities; and increasing complexity of need among Adult Social Care service users. Additional new risks include the new duties to provide services to carers and to people who fund their own care.
- 9.6 The Council is already addressing identified risk demand factors through the development of strategies, some of which are likely to be statutory responsibilities in the future. These include close working with public health to deliver a strong focus on prevention and early intervention, such as improved information and advice, increased use of Telecare and enablement; consideration of a wider range of housing options being available through the development of Extra Care Housing which supports independent living; and the development of integrated services between the NHS and Social Care.
- 9.7 However, even with an increased focus on demand management, the combined impact of demographic change and the new policy and statutory requirements present a significant challenge that will require a sustained and robust Council wide response with continued engagement with key partners. This will need to involve developing suitable accommodation that ensures people remain independent; supporting carers to continue caring; encouraging people to plan in advance for their care needs; and promoting well-being and independence and community inclusion. Only such a strategic approach can mitigate the demand and financial pressures that will continue to be faced by Adult Social Care.
- 9.8 The significant risk to the Council will be resource led, including the opportunity costs of successful implementation. Excellent programme management and engagement with Health partners will also help to mitigate these risks.

**10. BACKGROUND PAPERS**

**10.1 The Care Bill**