

Report to: **Adult Social Care and Community Safety Scrutiny**

Date: **4 September 2014**

By: **Director of Adult Social Care and Health**

Title of report: **Care Act 2014**

Purpose of report: **To outline the implications and particular risks for East Sussex associated with implementation of the Care Act 2014.**

RECOMMENDATIONS

Scrutiny is recommended to:

- 1. Note the key risks and impacts of the funding reforms and other changes being introduced through the Care Act 2014.**
 - 2. Consider potential scrutiny themes for further investigation**
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1. Financial Appraisal

1.1. The reforms set out in the Care Act will have a significant financial impact on the Council. The Act introduces a cap on care costs of £72,000 for people of pension age and above (lower for people below pension age) which will mean the Council will need to meet the care costs of people who have been previously been paying for (or contributing towards) their own care when they meet the cap. Means tested thresholds will increase from £23,250 to £27,000 for people receiving care in their own home and £118,000 for people receiving residential care. There will be a national deferred payment scheme that may be broader than the East Sussex scheme and increase the level of debt to the authority, currently at £3.1m.

1.2. We also anticipate increased costs and pressures from the increased volume of needs assessments and reviews of people who are paying for their own care required to establish eligibility and set up a care account, increased volume of financial assessments, systems development and administration. There is also a potential negative impact on the local care market and local authority negotiated nursing and care home fees.

1.3. The expected costs of implementation and additional ongoing costs arising from the funding reform changes have not yet been quantified however initial estimates of numbers show that:

- Of the estimated 4,517 residential and nursing care beds in East Sussex only 41% are occupied by Adult Social Care placements and an estimated 2,665 people are funding their own residential or nursing care (at a privately negotiated rate).
- National estimates are that around 19% of older people who receive community based (home) care are 'self-funders. In East Sussex this would equate to 1,060 people.
- Using these figures as guides, this means that 3,725 new clients and their carers could potentially come forward for an assessment of need, financial assessment and care account when the cap is introduced in April 2016.
- To put that in context, 7,418 adults and older people received an assessment in 2013/14 so meeting the new requirements expected under the Care Act would represent a 50% increase on current activity. This will be one-off activity but there will then be a need for on-going additional capacity to manage the throughput of cases.

1.4. There will also be resource implications as a result of the introduction of a national minimum eligibility threshold and the increased capacity and training likely to be required to meet new duties in areas such as advocacy, ordinary residence, young carers and administration.

1.5. The Department of Health is making £125,000 available to all local authorities. This has been identified as a new, non-recurrent grant for 2014/15 to support authorities with their change management programmes in preparing to implement the Care Act.

1.6. In addition, the Council has received £291,579 on behalf of the South East region identified as “funding to assist with the Care Bill Implementation for use in 2014/15”. This will fund a regional programme to support implementation.

1.7. The Department of Health has launched a consultation on the allocation of funding in 2015/16 to support specific new duties:

- Additional assessments for the cap on individuals’ lifetime eligible care costs (one off funding)
- Introduction of a universal deferred payment agreement (one off funding)
- Impact of social care obligations within prisons (on-going funding)

The maximum indicative total funding allocation to East Sussex contained within the consultation document is £4.5m. The consultation closes on 9 October 2014.

2. Background and Supporting Information

Introduction

2.1. The Care Bill has been through Parliament and received Royal Assent on 14 May. The majority of the provisions in the Care Act will come into force in April 2015 with the exception of the cap on care costs and new charging thresholds which will be introduced in April 2016. Appendix 1 provides a summary of key changes and risks.

2.2. Changes introduced through Part 1 of the Act:

General duties (2015)	<ul style="list-style-type: none"> • To promote wellbeing. • To prevent or delay development of care and support needs (or reduce), including carer’s support needs. • To cooperate with relevant partners.
Funding reform (2016)	<ul style="list-style-type: none"> • Duty to operate a cap on care costs (to be set at £72,000 for those at pension age and above) achieved through independent personal budgets and care accounts. • No contribution expected for young people entering adulthood with an eligible care need. • Lower cap for adults of working age (level to be determined). • New legal basis for charging. • Increase in the capital threshold at which people receive help with their residential care costs from £23,250 to £118,000.
Deferred payments (2015)	<ul style="list-style-type: none"> • National scheme that may extend beyond residential care. • Everyone in a care home who meets the eligibility criteria will be able to ask for a deferred payment regardless of whether or not the local authority pays for their care. • Councils will be able to charge interest on loans to ensure they run on a cost neutral basis.
Changes to eligibility and additional assessments (2015)	<ul style="list-style-type: none"> • National minimum eligibility threshold. • New requirements when an adult moves. • Duty to carry out assessments for all carers (regardless of client eligibility). • New duty to provide advice and information to service users and carers who do not meet the eligibility threshold. • Duty to assess young people, and carers of children, who are likely to have needs as an adult where it will be of significant benefit, to help

	<p>them plan for the adult care and support they may need, before they (or the child they care for) reach 18 years.</p> <ul style="list-style-type: none"> • New duties around young carers.
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Advice and information (2015)	<ul style="list-style-type: none"> • Councils will be required to provide comprehensive information and advice about care and support services in their area and what process people need to use to get the care and support that is available. • Duties to provide advice and information to clients and carers who do not meet the eligibility threshold. • Duty to tell people where they can get independent financial advice about how to fund their care and support. • Duty to provide independent advocates to support people who lack capacity
Commissioning (2015)	<ul style="list-style-type: none"> • Duty to join up care and support with health and housing where this delivers better care and promotes wellbeing. • Duty to ensure there is a wide range of care and support services available that enable local people to choose the care and support services they want. • New right to a personal budget and direct payment.

2.3. Part 2 of the Act covers Care Standards: Quality of services; Care Quality Commission; Increasing the independence of the Care Quality Commission; Performance ratings; False or misleading information and Regulated activities. Part 3 covers Health Education England, the Health Research Authority and Trust special administration.

2.4. The Department of Health has undertaken a consultation on the regulations and statutory guidance for Part 1 of the Care Act focusing on changes coming into effect from April 2015. This consultation closed on 15 August. The final documents won't be available until October 2014 at the earliest.

2.5. A further consultation on the reforms that come into effect from April 2016 - which include the cap on care costs - will commence in November 2014. Further information, regulation and guidance about the cap on care costs is not expected until 2015.

2.6. The timescales and lack of detailed information are extremely challenging for managing implementation of the new duties, together with the expectations of Government.

Internal audit and risks

2.7. An initial analysis was carried out to consider each clause in part 1 of the draft Care Bill against current practice and identify the key areas of risk and impact. From the information available, the key risk comes from the funding reform with additional risks resulting from the changes to the eligibility threshold, ordinary residence considerations, advocacy provision and new duties to carers including young carers. Further areas of impact may be identified when the Act and accompanying regulations and statutory guidance are published.

2.8. The corporate strategic risk register was recently updated to include the Care Act:

Risk:	Mitigating factors:
Implementation of the additional duties and demands arising from the Care Act, within reducing resources. The implications of the Act will fundamentally impact on how we deliver social care, including Safeguarding; social care funding; contributions to meet the cost of care (Dilnot report); increased duties in respect of carers and the provision of information and advice. The Act has direct implications for the whole social care	<ul style="list-style-type: none"> • Care Act governance arrangements established with CMT oversight and workstreams identified for each aspect of the Act. • Close working with ADASS to ensure, where possible, regional implementation solutions can be sought to minimise duplication and variation. Representation on ADASS workstreams and close working with the regional lead are being developed.

<p>system including independent providers and health partners, with the introduction of the Better Care Fund across health and social care forming a key part of the changes. The implementation timescales for some aspects of the Act, not least funding reform, have tight timescales for delivery. These changes have to be implemented whilst continuing to meet current statutory duties.</p>	<ul style="list-style-type: none"> • Joint working arrangements with East Sussex Clinical Commissioning Groups to develop the Better Care Fund are in place and implementation is on schedule. • Current programmes of work are cognisant of Care Act implications, where known, and are being planned and delivered accordingly e.g. social care information system; review of internet content; care pathway business process redesign; Better Together - health and social care integration programme.
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Governance

2.9. The changes introduced through the Care Act have implications for the whole council. In particular:

- **Adult Social Care:** changes that will affect all areas of operational practice, systems and workforce plus implications for market management caused by the disparity between fees negotiated by the local authority and fees charged to self-funders.
- **Children’s Services:** new legal duties to carry out transition assessments for a child, young carer or child's carer before they turn 18.
- **Business Services:** changes to financial assessment and thresholds, introduction of new care account information system, new audit requirements in relation to people who pay for their own care, personnel and training.
- **Governance Services:** communications strategy and legal work around deferred payments, recovery of debt, ordinary residence applications, appeals and general advice and guidance.

2.10. A Care Act Board has been established which oversees the workstreams established to implement the Act. The Board is also responsible for risk management, making decisions about the direction we take locally in relation to local interpretation and implementation options. The Board reports to the Corporate Management Team on a quarterly basis. An Implementation Group has also been established to discuss the detailed changes required and ensure coordination between the workstreams.

3. Conclusion and Reasons for Recommendation

3.1. The initial clause analysis has highlighted a number of areas of financial risk that will impact on the Council.

3.2. There are significant workforce capacity, training and development requirements that will have a cumulative impact. Assessment staff for example will need to manage a significant increase in the volume of assessments and reviews required while applying new eligibility criteria and assessment regulations and understanding new legislation that affects all areas of practice. This is within the context of continued delivery of RPP&R savings and progression of the Better Together programme.

3.3. Given the scale, complexity and risks associated with Care Act implementation, it is recommended that Scrutiny give consideration to any potential scrutiny themes for further investigation.

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Care Act 2014

The Care Act brings together existing care and support legislation into a new set of laws built around people's wellbeing, needs and goals. It represents the most significant reform of care and support in more than 60 years. For the first time, it puts carers on the same footing as those they care for and sets a limit on the amount people have to pay towards the cost of their care.

Key changes from April 2015:

- Duty to promote wellbeing and to prevent, reduce or delay development of care and support needs, including carer's support needs.
- New national minimum eligibility threshold and assessment regulations.
- Duty to carry out assessments for all carers (regardless of client eligibility).
- New requirements to ensure continuity of care when an adult moves.
- Duty to provide an independent advocate to help people take part in decisions about their care if they would otherwise have substantial difficulty in doing so.
- Duties to provide advice and information to the public including telling people where they can get independent financial advice about how to fund their care and support.
- Duty to join up care and support with health and housing where this delivers better care and promotes wellbeing.
- Duty to ensure there is a wide range of care and support services available that enable local people to choose the care and support services they want.
- New responsibilities on local authorities if a local care provider fails.
- A new national deferred payments scheme that is broader than the East Sussex scheme and will increase the level of debt to the authority currently at £3.1m.

From April 2016:

- Duty to operate a cap on care costs following recommendations from Sir Andrew Dilnot – set at £72,000 for people of pension age and older and lower for people of working age.
- New care account system to administer the cap.
- Independent personal budgets for self funders who meet the eligibility criteria and want a care account.
- Increase in means tested thresholds from £23,250 to £27,000 for people receiving care in their own home and £118,000 for people receiving residential care.

Key financial risks:

- Cost of higher means tested thresholds; paying for care packages when people meet the cap; and increased level of debt from operating the national deferred payment scheme.
- Workforce capacity and skills required to carry out assessments and reviews of people who are paying for their own care, including financial assessments under a new regime.
- Cost pressures from systems development, communications and greater administration.
- Potential negative impact on the local care market and local authority negotiated nursing and care home fees.

Implementation:

- National programme led by Department of Health, Local Government Association (LGA) and Association of Directors of Social Services (ADASS).
- Regional implementation programme with programme lead and funding
- ESCC Care Act Programme Board reporting to CMT
- Implementation Group and workstreams covering: change management, assessment, finance, customer relations and market management

