

**TO: ADULT SOCIAL CARE AND HOUSING OVERVIEW & SCRUTINY PANEL  
17 JUNE 2014**

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**UPDATE ON THE CARE ACT 2014 AND PLANS FOR IMPLEMENTATION  
Director of Adult Social Care, Health & Housing**

**1 PURPOSE OF REPORT**

- 1.1 To provide Overview and Scrutiny with an update on the changes outlined in the Care Act, and the likely impact on the Council.
- 1.2 To outline the plans for implementation of the Care Act in Bracknell Forest.

**2 RECOMMENDATION(S)**

- 2.1 **That the Panel notes the main elements of the changes to Adult Social Care arising from the Care Act.**
- 2.2 **That the Panel comments on the Director's proposed plans for managing the implementation of the Care Act.**

**3 REASONS FOR RECOMMENDATION(S)**

- 3.1 To ensure members of Overview and Scrutiny are informed of the reforms to the Adult Social Care system, and have an opportunity to comment on the Department's approach to managing the implementation.

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 No alternatives – the Council must plan to implement the reforms.

**5 SUPPORTING INFORMATION**

- 5.1 The Care Bill received Royal Assent on May 14<sup>th</sup> 2014, and has now passed into law as the Care Act 2014. The Act is effective for some elements from 1<sup>st</sup> April 2015, and for other elements from 1<sup>st</sup> April 2016.

- 5.2 A summary of the timetable of the changes is as follows:  
From April 2015:

- Duties on prevention and wellbeing
- Duties on information and advice
- Duty on market shaping
- National minimum threshold for eligibility
- Assessments including carers' assessments
- Personal budgets and care and support plans
- Safeguarding Boards
- Universal Deferred Payment agreements

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From April 2016:

- Extended means test
- Capped charging system
- Care accounts

Unclear:

- New complaints procedures

### **FROM APRIL 2015**

#### *Duty on Prevention and Well Being*

5.3 The Care Act makes clear that local authorities must arrange services that help prevent or delay people deteriorating such that they would need on-going care and support. This would lead to authorities reducing the level of need within their area, with an emphasis placed on providing advice and information for people who would potentially need support and their carers.

5.4 Local authorities will have to consider various factors:

- What service, facilities and resources are already available in the area
- Identifying people in the local area who might have care and support needs that are not being met
- Identifying carers in the local area who might have support needs that are not being met

#### *Duty on Information and Advice*

5.5 Local authorities will need to provide comprehensive information and advice about care and support services in their local area. This will help people to understand how care and support services work locally, the care and funding options available, and how people can access care and support services.

The Act clearly sets out that Councils must provide information on:

- what types of care and support are available – e.g. specialised dementia care, befriending services, re-ablement, personal assistance, residential care etc
- the range of care and support services available to local people, i.e. what local providers offer certain types of services
- what process local people need to use to get the care and support that is available
- where local people can find independent financial advice about care and support and help them to access it
- how people can raise concerns about the safety or wellbeing of someone who has care and support needs

#### *Duty on Market Shaping*

5.6 The Care Act requires Councils to support a diverse market providing a range of care and support services available to meet the needs of people living in the area. To assist authorities in taking on this new role, local authorities need to develop a market position statement, which identify care and support needs within the local authority area, and detailing how the Council intends to procure services in the future. This in

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turn gives information to current and potential future providers of care and support to help them shape the services they offer.

### *National minimum threshold for eligibility*

- 5.7 Access to care and support differs significantly across the country, so a national minimum eligibility threshold is to be introduced in April 2015. Local authorities will not be able to restrict eligibility further than the national minimum, but will be able to extend their eligibility beyond the minimum. Whilst an initial view was that this Council was unlikely to be impacted because the new minimum threshold was likely to be similar to the current “substantial” threshold in place, there has been considerable debate in the adult social care world as to whether the proposed minimum threshold does in fact mirror “substantial”, does not mirror “substantial”, or potentially would capture broadly the same number of people as now, but that people currently eligible for support would not be eligible in future, whilst those not currently eligible might become eligible.
- 5.8 Clearly, understanding in detail the new thresholds, and understanding whether there is a potentially significant impact is of great importance.

### *Assessments including carers’ assessments*

- 5.9 There will be a single right to an assessment for adults, and one for carers, based on the need for care and support. One of the key aims of this proposal is the removal of anomalies and differences resulting from the type of care or setting, and the provision of a single route through which consistent entitlements to care and support can be established. This duty is likely to increase the number of people requiring a carer’s assessment.
- 5.10 It is not known what the increased level of demand will be for assessments for carers. However, the latest Census indicated that there are 9,601 people in Bracknell who consider themselves carers, and in 2013-14 297 people had had a carers’ assessment (as at the end of February).

### *Personal budgets and care and support plans*

- 5.11 The Care Act sets out what must happen after the conclusion of an assessment. This covers the process of care and support planning to determine how needs should be met, and the requirements for on-going review of care and support plans. It also covers the requirement for a personal budget. This will, for the first time, be enshrined in legislation, both for the person needing care and for carers. A personal budget lays out the cost of meeting a person’s eligible needs, and the public funding available to them.
- 5.12 The Care Act makes it a requirement for authorities to assess anyone, regardless of their financial circumstances, but allows authorities to charge for support planning for self funders. The Council will need to consider whether it wishes to introduce such a charge, but will need to weigh this against the advantages of not charging. This will require a policy decision.

### *Safeguarding Boards*

- 5.13 There will be a new legal requirement for each local authority to set up a Safeguarding Adults Board (SAB), formalising the arrangements that Bracknell Forest Council already has. The Care Act gives responsibility to the SAB to

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formulate a safeguarding strategy, to arrange safeguarding adults' reviews to establish facts and ensure lessons can be learnt from any safeguarding incidents and to produce an annual safeguarding report.

- 5.14 The core membership of the SAB will include the local authority, the Police, and Health, with guidance setting out the board's obligations.

### *Universal Deferred Payment agreements*

- 5.15 From April 2015 there will be a new legal right for people to defer paying their care home costs, meaning they do not have to sell their homes during their lifetime. If a deferred payment arrangement is set up, the Council will pay the care home costs during this period, and then reclaim the costs incurred from the proceeds of the sale of the person's property.
- 5.16 The criteria for being able to have a deferred payment will be set nationally, whilst currently authorities have some discretion on their policy. Another change being introduced is that at present, authorities can only charge interest on the debt from 56 days after the person dies; in future authorities will have the power to charge interest on the outstanding loan for the duration of the loan.
- 5.17 There remains the possibility that Councils will have the discretion to allow deferred payments for domiciliary care, or other forms of non residential care. Whilst this has benefits for people, as it allows them to keep more of their disposable income in their lifetime, it could add to any additional costs from the proposal to introduce Universal Deferred Payments.
- 5.18 It is considered that there is little difference between the Universal Deferred Payments scheme, and the current scheme that the Council offers. However, wider publicity of the availability of Deferred Payments may have a potentially significant impact on uptake, and therefore cash flow costs, and debt recovery costs.

## **FROM APRIL 2016**

### *Extended Means Test*

- 5.19 Currently anyone with assets of more than £23,500 is considered to be a self funder, and must pay for their own care. The Care Act will see this threshold will increase, to £118,000 (or £27,000 if the person's home is not taken into account). Anyone with assets below £14,250 currently has those assets ignored in the means test that assesses how much people are required to pay towards the cost of their care.
- 5.20 If a person has assets between the upper and lower thresholds, then, operating on a sliding scale, that person is required to have some of their capital taken into account in the financial means test. The changing in the threshold limits will have an immediate financial impact on Councils. For example, someone with assets of £40,000 currently pays all their care costs. With effect from 1 April 2016 they will be eligible to have some of their costs met by the Council.
- 5.21 It will be possible to calculate the financial effect of this for the people the Council has carried out a financial assessment for. However, it is anticipated that there will be an increased demand for Council funding for people who have not approached the Council, and this can only be estimated in board terms. It is also anticipated that there will be a significant increase in the numbers of financial assessments that are required.

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- 5.22 Another change to the means test is that anyone who turns 18 needing social care support will not have to contribute to their care. This will, like the changes outlined in the paragraphs above, have a financial impact.

### *Care Accounts*

- 5.23 With effect from 1 April 2016, the maximum that a person will be required to contribute towards their care costs will be set at £72,000 – this is known as “the cap”. The Care Act will require councils to carry out a needs assessment where they believe a person has care and support needs. From 2016 the assessment will be the first stage of the process which establishes whether or not a person’s needs are eligible and therefore whether their care costs will count towards the cap. If they will count towards the cap the person will receive a record of the costs that will count towards their cap and a statement of progress towards the cap.
- 5.24 This will lead to a significant increase in the numbers of care assessments and financial assessments that the Council is required to carry out. National estimates are that perhaps 500,000 more people will require assessments – this implies for Bracknell somewhere between 500 and 1,000 more assessments.
- 5.25 The Government estimates that the average cost of an assessment is £450, and indicative funding allocations for Care Act Implementation indicate that Bracknell will receive £219k for conducting the initial assessments. Initial assessments will probably comprise all those people who are currently self funders, before the system settles down again to assessing people needing support for the first time.
- 5.26 The Council will be required to start conducting assessments and establish care accounts from October 2015, although progress towards the cap for individuals will only commence from April 2016. The Council will need to maintain the care account for everyone who has eligible needs, and provide an annual statement on progress towards that cap, which will require significant development of IT systems. Considerable thought and planning needs to go into designing the pathway for people through the new process. Some of the questions that are provoked are.

To what extent can the needs assessments be self assessments and what would be the approval process for agreeing an assessment? Would it be different for people who are self funding and progressing towards the cap compared to people whose support is funded by the Council?

To what extent can financial assessments be self assessments – for example, for people who have assets significantly above £118,000 and are clearly self funders, would any further financial information be required?

Is it legitimate to have separate targets for how quickly assessments should be completed for people whose support arrangements depend on having the assessment compared to those people for whom it simply determines the pace at which they progress to the cap.

Should people be given on-line access to their care account?

How can resources be managed in the most cost efficient way to minimise the additional costs that the increased numbers of assessments that will be required?

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### *Capped charging system*

- 5.27 As indicated above, the Care Act provides that people will never have to pay more than £72,000 towards their care costs. It is important to be clear about what this actually means.
- 5.28 The care costs that people will never have to pay more than £72,000 towards are their eligible care costs. For example, the Council might assess that an individual has eligible needs that could be met for £154.80 per week (the equivalent of 10 hours of home care on Council rates). The person could decide to purchase 20 hours of home care per week from an agency, not used by the Council, charging £20 per hour, a cost of £400 per week. What will count towards the cap is £154.80.
- 5.29 Equally, a person whose needs can best be met in residential care might choose to go into a residential care home that the Council does not use, because the rates charged are in excess of what the Council will pay – for example, £1,000 per week as compared to the Bracknell usual rate of £484.03. The Council would only consider the £484.03.
- 5.30 There is a further complication with residential (and nursing) care, which is that an element of the price is considered to be for Daily Living costs. This figure will be set nationally and indications are that this will be £230 per week. Daily Living costs are not considered to be costs of care under the Care Act, and are disregarded. Therefore someone paying £1,000 for residential care will see £254.03 per week as their progress towards the cap.

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#### *New complaints process*

- 5.31 The complexity of the reforms to adult social funding, the introduction of the cap, and the fact that this will bring into contact with local authority adult social departments people who would otherwise be self funders, means that the current complaints processes are considered as unlikely to be fit for purpose. For example, current complaints tend to argue about matters of fact, whereas it is considered that new complaints will be articulate, legally well-informed, and raise matters of law.
- 5.32 The Government's proposals hold out the possibility of an independent appeals board, akin to Schools Admission panels.
- 5.33 It is currently unclear what the new complaints process will be, or when Councils will know what the process will be, but it is worth noting that the proposal to have an independent panel opens up the possibility that the legitimate professional judgements of practitioners in Bracknell could be overturned by an appeals panel somewhere else, with implications for the ability to manage budgets.

### **NEXT STEPS**

- 5.34 A Programme Board has been set up, chaired by the Director of Adult Social Care, Health & Housing, and comprising senior managers within the department, along with the Borough Treasurer, and representatives from Legal Services. A full program of work, including timelines for different projects within the program of work, will need to be established. This will be developed by the summer.

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- 5.35 Officers from across the department will need to be involved in developing new practices, new policies, and the IT system. Market strategies will need developing, and potentially public consultation will be required for some proposals.
- 5.36 Lead officers for each of the different changes outlined in paragraphs 5.2 and 5.3 have been identified, as follows:

From April 2015:

- Duties on prevention and wellbeing – Head of Joint Commissioning
- Duties on information and advice – Head of Joint Commissioning
- Duty on market shaping – Head of Joint Commissioning
- National minimum threshold for eligibility – Head of Joint Commissioning
- Assessments including carers' assessments – Chief Officers: Adults & Joint Commissioning and Older People & Long Term Conditions
- Personal budgets and care and support plans – Chief Officers: Adults & Joint Commissioning and Older People & Long Term Conditions
- Safeguarding Boards – Head of Safeguarding & Practice Development
- Universal Deferred Payment agreements – Head of Performance & Resources

From April 2016:

- Extended means test – Head of Performance & Resources
- Capped charging system – Head of Performance & Resources
- Care accounts – Head of Performance & Resources

Unclear:

- New complaints procedures

- 5.37 This Board will consider whether additional capacity needs to be brought in to support the Council in implementing the reforms. A central government grant is being made available this year, which would be used to fund this.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The contents of this report are noted, but no legal issues arise at present. Other than it is important that we respond to the consultation as the matters subject to consultation are a major change which are likely to impact upon the Council's provision of these services for a long time to come.

### Borough Treasurer

- 6.2 There are no direct financial implications within this report, for the Council. However, the introduction of the reforms themselves may have significant financial implications, and as these become clearer, these will be outlined for CMT and members.
- 6.3 There are 3 streams of funding to support the implementation of the Care Act. Firstly, within the Better Care Fund, there is £135m nationally in 2014/15 which equates to £239k for Bracknell Forest; secondly there is New Burdens Funding, in

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2015/16, of £335m nationally, which has an indicative allocation for Bracknell Forest of £518k; and finally, there is one-off funding of £125k per Council in 2014/15.

- 6.4 Within these figures, there is money identified for each of the new responsibilities, or work required in order to be able to deliver the new responsibilities, and for Bracknell this breaks down as follows:

<b>2014/15: Care Bill implementation funding in the Better Care Fund (£135m nationally)</b>		
		<b>£000</b>
Personalisation	Create greater incentives for employment for disabled adults in residential care	5
Carers	Put carers on a par with users for assessment.	29
	Introduce a new duty to provide support for carers	59
Information advice and support	Link LA information portals to national portal	0
	Advice and support to access and plan care, including rights to advocacy	44
Quality	Provider quality profiles	9
Safe-guarding	Implement statutory Safeguarding Adults Boards	14
Assessment & eligibility	Set a national minimum eligibility threshold at substantial	71
	Ensure councils provide continuity of care for people moving into their areas until reassessment	8
	Clarify responsibility for assessment and provision of social care in prisons	12
Veterans	Disregard of armed forces GIPs from financial assessment	4
Law reform	Training social care staff in the new legal framework	8
	Savings from staff time and reduced complaints and litigation	-24
<b>Sub Total</b>		<b>239</b>
Plus	Care Bill Implementation Grant	125
	<b>Total Funds 2014/15</b>	<b>364</b>
<b>2015/16: Adult social care new burdens funding (£335m nationally) - Indicative</b>		
Assessment & eligibility	Funding for early assessments and reviews	219
IT	Capital investment funding including IT systems	88
Capacity	Funding for capacity building, including recruitment and training of staff	30
Deferred payments	Year 1 funding for the implementation of the universal deferred payment scheme	166
Information	Funding for a national information campaign	15
<b>Sub Total</b>		<b>518</b>
	Total Care Bill Funding	882

- 6.5 An initial assessment of the funding, and how it compares to potential costs is outlined below:

- The introduction of national minimum eligibility criteria – likely to be reasonably low. Within the Better Care Fund money is Care Act implementation funding, £135m nationally, and this allows for £71k additional money for Bracknell for the new eligibility criteria.

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- New duties placed on local authorities to provide information and advice to people – likely to be reasonably low. Within the Care Act implementation funding is £44k additional money for Bracknell for advice and support to access and plan care, including rights to advocacy.
- Separate carer assessments – has the potential to be significant. Within the Care Act implementation funding there is £29k additional money for Bracknell for carers' assessments, and £59k for carers' services. However, the real figure may be much higher.
- Costs arising from people being eligible for support much earlier due to changes in the capital thresholds. Costs from this may be significant, and it is unclear yet what funding will be made available from the Government.
- Costs resulting from the need for increased assessments. Money is to be made available as new burdens funding in 2015-16, £335m nationally, and within this there is an indicative amount for Bracknell of £219k. Initial estimates, based on national averages for the costs of assessments, suggest that the additional cost for Bracknell could be as high as £450k.
- Costs of developing IT systems to be ready for the changes. In the new burdens funding there is an indicative amount for Bracknell of £88k.
- Deferred Payments. Costs arising from this will be determined on the basis of how much demand there is. In the new burdens funding there is Year 1 funding, the indicative amount for Bracknell being £166k. It may be that take-up is less than this.
- Costs arising when people reach the cap. These costs are not likely to arrive until 2019-2020, and it is also unclear at this stage what additional funding Councils will have. The Association of Directors of Adult Social Services have made attempts to model the costs that arise from this, however the modelling is based on significant unknowns.
- Impact on market prices for care. The proposals in the Care Act are likely to have a significant impact on the prices paid for Residential and Nursing care by local authorities. Providers have long argued that self funders subsidise the prices paid by local authorities, and there will be considerable pressure for this to end. Costs from this could easily top £1m, and perhaps reach £1.5m.
- A new one off grant has been introduced this year of £125,000 per local authority to support the implementation of the reforms.

### Background Papers

Care Act 2014 - [http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga\\_20140023\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf)  
Bracknell Forest Council's response to the Consultation on the Care Bill:  
<http://boris.bracknell-forest.gov.uk/caring-for-our-future-consultation-response.pdf>

### Contact for further information

Neil Haddock, Adult Social Care, Health and Housing - 01344 351385  
neil.haddock@bracknell-forest.gov.uk