

Care and Independence Overview and Scrutiny Committee

23rd April 2015

The Care Act 2014

1.0 Purpose of the Report

1.1 To provide the Committee with an update on the Care Act, including:

- the way that the impact will be monitored; and
- the response to the Department of Health Consultation on the proposals around the introduction from April 2016 of the Care Cap and Care Account, and a new Appeals system.

2.0 Background

2.1 The Care Act introduces major reforms to the legal framework for adult social care, the funding system and to the duties of local authorities and rights of those in need of social care. The potential impact on local authorities' finances and working practices is enormous. It consolidates more than a dozen different laws into a single modern framework for care and support and enshrines the principle of individual wellbeing as the driving force behind it.

2.2 The Act is introduced in two stages; reforms to social care took effect from 1st April 2015, with funding reforms and a new appeals system being introduced from April 2016.

3.0 Changes from April 2015

3.1 The main provisions of the Act that came into effect in April include:

- a broader care and support role for local authorities towards the local community, by providing information and advice to the whole population, and promoting physical, mental and emotional wellbeing in all decisions regarding an individual's care needs;
- more emphasis on prevention, to help reduce or delay someone developing care and support needs. This means moving to a system that focuses on people's strengths and capabilities, and supports them to live independently for as long as possible;
- a new national eligibility threshold - We have already changed our eligibility criteria in anticipation of these national changes so we do not need to review people specifically as part of the Care Act changes - we will apply the new framework as part of routine annual reviews or if people's needs change;
- Unpaid carers will have the same rights as those they care for, so may be able to get more help to carry on caring and look after themselves;
- A duty to provide advocacy for people who have "substantial difficulty" in being involved in discussions and decisions about meeting their social care needs
- Continuity of care when people move to another area; and
- Deferred payments, which North Yorkshire already offer, will become universal. This means people should not have to sell their home in their lifetime to pay for care.

- 3.2 There has been a national implementation programme overseeing preparation for, and implementation of, the Act, the Government has allocated implementation funding to local authorities to meet the additional duties, some of which has been allocated as part of our preparation for example commissioning additional capacity around carers and advocacy, whilst other elements will be used to meet on-going demands as the new duties are implemented. National and local modelling has indicated that the allocations are unlikely to meet the costs associated with the new duties.
- 3.3 The Association of Directors of Social Services (ADASS) has asked all local authorities to collect and report some key metrics which will help to understand whether the additional resources allocated to support Care Act Implementation are sufficient. This will be included as part of an existing quarterly stocktake on implementation of the Care Act that is completed by all authorities, and the results aggregated by the National Programme Management Office to identify key issues for Councils. The metrics will provide information to help understand whether the resources allocated for implementation of the Care Act are sufficient at a national level, as they will form part of the information used as part of negotiations with the Department of Health regarding the next spending review.
- 3.4 In addition to this information, we will collect some additional information to enable us to judge if we have allocated our resources within NYCC in the most effective way. As the new requirements of the Act are embedded in practice, we will review the metrics and the need for any additional ones. Due to the nature of some of the activities that will be recorded, it will take some time for some trends to become apparent. A further report outlining metric levels and a wider update on progress on implementation of the Act will be brought back to this Committee in the autumn. A copy of the metrics is attached at Appendix 1.

4.0 Proposed Changes from 2016

- 4.1 Reforms from April 2016 include the introduction of a cap on care costs and care account, and changes to the threshold at which people are eligible for support from local authorities, from the current £23,250 to £118,000. Given the large numbers of self-funders in North Yorkshire, this has considerable financial implications for us. The Government has recently finished a consultation on the details of how this will work, and arrangements are due to be finalised in late Autumn 2015. A copy of the County Council's response to the consultation is attached as Appendix 2.

5.0 Recommendation

- 5.1 It is recommended that the report be received.

Richard Webb
Corporate Director, Health and Adult Services

April 2015

Background Documents: None

Care Act Implementation - Metrics for Quarterly Collection

DASS metrics	Comment
Carers: Baseline - 14/15 – total number of people carers eligible for council support Total number of carers who are assessed Total number of carers eligible for services	This will include activities carried out within NYCC and by the Carers Resource Centre who will be carrying out some Carers assessments. Contract monitoring is will include those aspects of support including information and advice. Information will be gathered through existing HAS IT systems.
National eligibility framework Baseline - 14/15 – total number of people assessed as eligible for council funded adults social care Total number of people who are assessed for social care Total number of people eligible for services	This can be gathered through existing HAS IT systems.
Self-funders Total number of people who request an early assessment as a self-funder	This information will be recorded as part of a revised data log within CSC. From October, when early assessments of self-funders are due to start, this will be captured through existing HAS IT systems.
Deferred payments Total number of people who request a DPA Total number of people for whom a DPA is agreed	This will be collected through existing HAS IT systems
Prisons (for those councils with one or more prison within their boundary) Total number of prisoners assessed Total number of prisons eligible for services	Not applicable
Advocacy Total number of people for whom an advocate is arranged	This will be collected through existing HAS IT systems and as part of contract monitoring.
Safeguarding Total number of competed enquiries Number of enquiries made by others (enquiries that are caused to be made)	This will be collected through existing HAS IT systems
Proposed Local Metrics	
Number of contacts to CSC and percentage conversion of these into referrals to HAS	This is already collected and reported. It will monitor increased levels of demand and the effectiveness of our Information Advice and Guidance offer
Number of hits to web pages that contain Care Act information	This has been monitored since the start of the national information campaign and will inform our Communications Plan, which can be adapted in line with web activity
Carers Number of Carers Grants	Part of activity and financial monitoring of new duties.
Elearning Completion of mandatory modules by all HAS staff Take up of 2 “strongly recommended” sessions by Health and providers	This will be monitored through the elearning package and linked into supervision and contract monitoring.

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In responding to this document, we believe that the principles of the reforms are right and that the Care Act is a bold and brave change. However, successful implementation is reliant on the Government addressing a number of concerns. This is particularly important for an authority, such as North Yorkshire County Council, that has a large number of self-funders and people who will become eligible for local authority support with the extension of the financial threshold. We also believe that the Relative Needs Formula needs to take greater account of the transactional and delivery costs of providing care and support in remote rural areas. The reforms will need to be fully funded from new, not existing, funding to Local Government. This includes ongoing costs for future years and up-front investment and increased service costs associated with assessments and care accounts. We are already working with the Department of Health and other councils to help model these issues and we would welcome further clarity from the Government about how it intends to address them.

We would stress the need for the final Regulations and Guidance to be issued as soon as possible, as they are integral to successful implementation, particularly around upgrading of ICT systems and the arrangements that need to be made around the early assessments of self-funders from October 2015 onwards.

Cap on Care Costs

- 1. Do you agree that the draft regulations and guidance will provide a robust framework that will protect the 1 in 8 of us that will face catastrophic care costs? Please state yes or no along with any rationale.**

Whilst we consider that the introduction of a cap on care costs is a positive step forward that will give people more certainty and peace of mind in relation to care costs, we do not believe it provides a robust framework for the following reasons:

- Although the impact of the cap will be limited, the 1 in 8 figure is a national figure, and this will vary from authority to authority, depending on the demographics and wealth of the residents. The framework does not take into account local cost variations in house prices, daily living costs or fees, which will result in wide variations in the time that people with identical needs will take to reach the cap, and could still potentially result in “catastrophic” costs for people with houses in the lower value range.
- The calculation of the Indicative Personal Budget based on average costs for people with similar needs is not in line with a personalised approach to social care, and is potentially open to challenge.

Measuring what counts towards the cap

- 2. Do you agree that independent personal budgets should generally be set according to an average of personal budgets allocated to people with similar levels of need? Please state yes or no along with any rationale.**

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No, we do not believe that independent personal budgets should be set in the way as stated in the consultation for the following reasons:

- The proposals would add a level of complexity that is over and above the current way of operating through a RAS, and would be bureaucratic to administer.
- The proposed process is not in the spirit of Personalisation, taking no account of personal or community assets that people could use, or the outcomes they would like to achieve. Its lack of transparency could result in authorities being more vulnerable to challenge than a more personalised approach, and the rationale would be difficult to explain to people.
- It is unclear how, when calculating the costs of an average of personal budgets, the process will take account of the contribution of carers who are meeting eligible needs, thus lowering the cost of the Personal Budget.
- If this approach were adopted, there are real challenges to IT systems being able to build in the ability to calculate and update Independent Personal Budgets. This is of particular concern given that the final Regulations and Guidance and early assessments of self-funders are due in October, and implementation in April 2016.
- We do not consider that these proposals mirror the principle of transparency as set out in paragraph 4.21.
- We also believe that this move may lead to confusion for the public if their Personal Budget and consequent contribution to their care, changed only as a result of those with stated average similar needs subsequently changing.

3. Is the guidance sufficiently clear as to the principles for calculating independent personal budgets? Please state yes or no along with any rationale.

No, we do not believe that the guidance is sufficiently clear for the following reasons:

- It is unclear if, in a large county like North Yorkshire, there is the ability to vary costs within areas to reflect the difference in prices within the care market.
- The guidance does not address issues around people with Continuing Health Care (CHC) needs, and how these would be taken into account, particularly around timings of assessments.
- The guidance does not address the challenges around validating or auditing the process for self-assessment or provider assessment if we do not have a contractual relationship with a provider, or of establishing the actual cost to a self-funder of their care, compared to the independent personal budget level.

Care Accounts

4. Does the draft guidance provide sufficient clarity about the operation of care accounts to ensure consistency between local authorities and reduce the risk of challenge? Please state yes or no along with any rationale.

We consider that the guidance as it currently stands leaves too much to interpretation, which will result in a lack of consistency and potential for challenge. One way to

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improve consistency is for Guidance from Government to be more prescriptive. We would welcome clarity on the frequency of statements; paragraph 5.3 of the Guidance says they must be provided “at least annually” and para 6.1(b) of the Regulations say they should be “at intervals of no less than one year”.

5. Can more be done to ensure that the care account is a useful tool to support people in planning for care costs?

We consider that the care account is limited in its ability to support people in planning for care costs. This is largely because the point at which someone has a care account is often too late for meaningful planning to take place; it needs to start earlier. However, we do see that there are benefits to local authorities, particularly around the opportunity for us to engage with self-funders in a way that we have not previously been able to, and to use this information to inform future commissioning to help reduce or delay people’s need for formal support.

Cap on Care costs for working age adults

6. Do you agree that the preferred option best meets the principles and priorities identified? Please state yes or no along with any rationale.

We do not support the preferred option that people under the age of 25 should have a zero cap. This appears to be a discriminatory approach on the basis of age, that does not allow for any review of situations if circumstances change e.g. inheritances from parents. As we have previously commented in the consultation around charging, many people receive financial settlements that include an element of costs to meet social care needs, but this proposal would not allow these to be taken into account. This option will have implications for local authorities in terms of loss of income and, if the Government goes ahead with this option, it must ensure that the formula for the allocation of grants reflects the demographics of people under 25 with social care needs.

We agree with the proposals to bring together the age bands for MIG, and await further information on how this will be implemented.

7. What are your views on how people of working age can be supported further to enable them to save and plan?

Any support to enable people of working age to save and plan will need to be nationally developed and agreed, so that it is consistently applied. Transparency is a key issue, so that people are clear about what would, or would not, count towards the cap.

Daily Living Costs

8. Is there evidence to support further consideration of the level and/or approach to daily living costs? Please state yes or no along with any rationale and provide any evidence you may have to support the rationale.

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Yes, we strongly believe there is evidence to support further consideration of the approach to daily living costs:

- There are large variations in living costs across the country that will have a differential impact on the total level of costs people will need to meet.
- The current guidance does not reflect the lower financial costs of couples who share a room in residential care or other jointly delivered services.
- Clarity is needed on the application of daily living costs in support such as Supported Living or Shared Lives, as the contracting arrangements for these can contain elements that fall within the definition of daily living costs.
- The Guidance is not clear about how daily living costs are calculated in cases where costs are shared with Health; are the costs taken off at the start or after costs have been agreed between health and social care?
- Clarity is needed at a national level as to what is included in Daily Living Costs to help with cost of care exercises. Transparency will be crucial, as there needs to be clarity over the rates payable and the impact on providers, particularly if self-funders are coming through local authorities to arrange their support.
- Further information for the public to improve their awareness of what is included in the daily living costs is needed.

First Party top-up payments

9. Do you agree that the extension of the existing requirements for third party top-ups to cover first party top-ups will provide both the local authority and the person with the necessary clarity and protection? Please state yes or no along with any rationale.

- Whilst the extension will provide clarity and clearer ways of working, it will result in people's assets reducing more quickly, meaning they will require financial assistance from the Local Authority earlier. This increase in costs to the Local Authority should be reflected in funding provision.
- The Guidance needs to address issues around capacity/best interest decisions, which are not currently included.
- The Guidance needs to give consideration and more detail on the treatment of deprivation of assets.
- Because differences between the amounts the Local Authority will contribute towards those costs and the total cost of provision are more explicit, this could lead to downward pressure on the rates paid by self-funders, with a potentially significant destabilising impact on the care market or significant financial impact on LA budgets. This is a particular risk for those Local Authorities such as North Yorkshire County Council with high levels of self-funders.

Extension to means-tested support

- 10. Do you agree that the guidance is clear on how the extensions to the means test will work and that the draft regulations achieve their intended purpose? Please state yes or no along with any rationale.**

The Guidance is clear, however, the additional cost to local authorities needs to be fully recognised within funding allocations. This is a particular issue for authorities, such as North Yorkshire County Council, who have a large number of people who will become eligible for Local Authority funding as a result of the changes.

Appeals

- 11. Do you think there is a need to introduce a new appeals system to allow people to challenge care and support decisions? Please state yes or no along with any rationale.**

No. We consider the existing complaints process is appropriate and accessible. Current complaint regulations give local authorities the opportunity to carry out an appropriate and proportionate investigation into any issues raised. Local Authorities already endeavour to work with complainants to achieve a satisfactory outcome early in the process. Independent review of the Local Authority's actions is provided by the Local Government Ombudsman.

The underpinning rationale of the Care Act is about having a comprehensive, modern, customer-friendly approach: multiple appeals and complaints systems undermine that overall principle.

The current complaints system, with sufficient resources, already does and can continue to deal with people challenging care and support decisions, including those examples given on page 92. The proposals for an appeals system appears to be suggesting a return to pre 2009 three stage complaints handling, which was revised to make the process less bureaucratic and more easily accessible.

Introducing an appeals process would be likely to slow down how complaints and concerns are addressed and add significant costs for the Local Authority. Historical experience suggests that having a three stage approach did slow the redress process and did not significantly reduce the number of complainants approaching the Local Government Ombudsman, or reaching a more satisfactory outcome.

Consideration also needs to be given to how joint NHS/Local Authority complaints are handled. How would a situation be dealt with if the Local Authority part was being considered as an appeal and the NHS part as a complaint? How would the current "duty to co-operate" be amended?

If it is considered that the current complaints process is not effective and does not give sufficient independence, a view we would not support, consideration could be given to

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adding an “independent stage”. This could involve a local early resolution stage, independent investigation stage and then recourse to the Local Government Ombudsman. It would not make the process as bureaucratic as pre 2009, however, would still impact on the length of time taken to respond to a complaint and the added budgetary pressures on the local authority.

Consideration should also be given to the recently published Local Government Ombudsman focus report “Are we getting the best from children’s social care complaints?”, which comments on the three stage process used for handling children’s social care complaints.

12. Do you think that the appeals reforms are a priority for reforming care and support redress? Please state yes or no along with any rationale.

No. We do not believe that the case for reforming care and support redress by Local Authorities has been made. There appears too heavy reliance on negative aspects of complaint handling within the NHS. There should be some understanding that a different operating culture remains between NHS and Local Authority complaints handling, despite the 2009 Regulations covering both areas. We believe the current complaints system within Local Authorities operates to a high standard, with a positive, accessible culture.

13. Do you agree the areas identified should be within the scope of the appeals system? Are there any other areas under Part 1 of the Care Act 2014 that should be included?

All aspects identified can be dealt with through the proven existing complaints handling Regulations. Complaints/concerns around the areas given on page 92 are already dealt with by the existing complaints system. Complaints/concerns about independent personal budgets can be accommodated within the existing system.

14. Do you think that charging should be part of the adult social care appeals system? Please state yes or no along with any rationale.

No. We would support charging remaining part of the current complaints process. As outlined above, the existing process already handles complaints around charging issues. Introducing a 3 tier approach could slow down how quickly concerns are addressed. There would also be concerns over the ability to source independent persons with sufficient breadth of knowledge to handle such appeals.

15. Do you have suggestions as to the expertise, knowledge and person specification for the role of an Independent Reviewer?

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As above, we believe the introduction of Independent Reviewers would be a retrograde step, lengthening the time it takes to deal with a complaint/appeal and add significant costs for the local authority.

If Independent Reviewers were to be required, there would inevitably be training requirements, particularly around knowledge of the Care Act and ensuring the person had sufficient social care knowledge/experience to effectively review a decision. The recruitment, training and maintenance of people in this role would need to be reflected in any budget allocation.

16. Do you think the local authority or another body should be appointing the Independent Reviewer? If another body, please specify.

We consider that the relevant Local Authority should have responsibility for appointing its Independent Reviewers. However, in order to achieve best value for money, it may be possible for a consortia of Local Authorities to work together to have a 'pool' of Independent Reviewers available. We anticipate the Independent Reviewer role to be a more specialist role, which some Local Authorities may struggle to recruit to for geographical reasons, e.g. rurality. It may be appropriate for HealthWatch to be involved in this process to maximise the opportunities for independence.

17. Do you think a 3 year gap in the Independent Reviewer's employment from the local authority concerned is sufficient to provide independence, or should this period be longer, or should they never have been previously employed by the local authority concerned?

We consider that the gap should be a maximum of three years. We believe it is too prescriptive to state that an Independent Reviewer should never have been previously employed by the relevant Local Authority, as this may restrict the ability of Local Authorities to recruit suitably qualified and experienced people.

18. Do you agree that the Independent Reviewer's role should be to review decisions with reference to relevant regulations, guidance, facts and local policy to ensure the local authority's decision was reasonable?

We agree that the Independent Reviewer role should be able to review decisions and comment on whether the Local Authority's decision was reasonable and has followed the regulations, guidance, facts and local policy. It is not the role of the Independent Reviewer to question professional judgements of Social care staff. However, this relies upon suitably qualified and experienced persons being available to the Local Authority to recruit to the role.

19. How do you think we can promote consistency in decision making for care and support appeals?

We consider that there would need to be national framework/guidance/regulations and information for Local Authorities to follow. This should set out the expectations of the

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role, the expectations on the Local Authority to recruit and manage the role, format for reports, guidance on reaching decisions, next step, etc, (similar to guidance issued by the Department of Health in 2006 when the regulations for handling complaints changed). There needs to be a specific framework for all Local Authorities to work towards to ensure a consistency of approach. There should also be a national training regime created to ensure consistency.

20. Do you think the timescales proposed to process appeals are right? If not, which timescales would be more appropriate?

Due to their complexity, some appeals/complaints will inevitably fall outside of the required timescales. We consider that item d – five working days to consider the recommendation – is too short and should be a minimum of 15 working days. This is due to the requirement in paragraph 16.47 of involving senior agreement with legal advice where necessary. It is unlikely this could realistically be completed within five working days.

21. Do you feel that the Appeals system, as set out, will aid the early resolution of disputes and thus help avoid costs and delays associated with challenging decisions in the courts? Please state yes or no and any rationale.

No. Only by exception do cases end up in legal proceedings. Local Authorities have a good record of resolving complaints at the earliest opportunity. In our case, more than 90% of complaints are resolved at a local level. We do not experience significant legal challenge as the complaints process is able to respond and attempt to resolve concerns at the earliest opportunity. It is generally not necessary for people to embark on a legal challenge against the actions or decisions made by a Local Authority – they can make a complaint and have recourse to the Local Government Ombudsman.

22. In the accompanying Impact Assessment we have set out the costs to administer the Appeals system. We would welcome your comments on this and any evidence that you are able to provide.

We believe the estimates quoted in the Impact Assessment are too low. Working from the base of these low figures, we would still expect to see a significant increase in complaints/appeals activity within our Local Authority. Consideration should also be given to the budgetary implications this will have on the Local Authority to ensure it has sufficient staffing, Independent Reviewers, etc, to manage this increase. We would expect this to be funded under the new burdens principal. We would also want to repeat our wish to see recognition of the additional challenges and costs faced by individuals and councils in very remote rural areas.