
Report to: Overview and Scrutiny Committee (Health and Social Care) **Date of Meeting:** 3 March 2015

Subject: Care Act 2014 Update **Wards Affected:** Wards

Report of: Director of Older People

Is this a Key Decision? No **Is it included in the Forward Plan?** Yes
Exempt/Confidential No

Purpose/Summary

This report updates the Overview and Scrutiny Committee for Health and Social Care on the required changes associated with the Care Act 2014 and the progress towards implementation.

Recommendation(s)

- i. Note the content of the report
- ii. Receive further updates and scrutinise the work to implement the Act in Sefton

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	
4	Health and Well-Being	✓		
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

The Overview and Scrutiny Committee need to be aware of the Care Act 2014 in order to scrutinise work within this field effectively.

Alternative Options Considered and Rejected:

Maintaining the status quo is not an option due to new legislation and demographic and budgetary pressures.

What will it cost and how will it be financed?

(A) Revenue Costs

With regard to the Care Act the Council has received New Burdens funding of £1.969m in 2015/16 and this has been incorporated into the MTFP going forward. There is also a sum of £0.834m within the Better Care Fund associated with the Care Act implementation and this will be captured within the Section 75 Agreement currently being drafted with colleagues in Health. Funding for future years is not yet known.

(B) Capital Costs

As part of the new burdens funding the Council has been notified of an allocation of £0.307m in 2015/16 for capital costs associated with the implications of the Care Act 2014.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial	
There is a significant financial risk with potential additional cost for Care Act 2014 implementation and on going delivery.	
Legal	
The Children and Families Act 2014 and the Care Act 2014 and subordinate legislation and statutory guidance.	
Human Resources	
The implications in terms of Personnel practice and implications for the workforce are not clear yet. Regular consultation takes place with trade unions through recognised processes. Officers will continue to consult with trade unions and employees as necessary following these recognised processes.	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>
The Care Act will have a positive equalities impact with an outcome based needs assessment ensuring that individuals views, needs and wishes are placed at the centre.	

Impact of the Proposals on Service Delivery:

The Care Act represents the most significant change in Adult Social Care in recent years, with changes to underpinning legislation, eligibility criteria, funding, the status of Adult Safeguarding and a host of other associated areas which are likely to impact across the Council. The known impacts of the proposed changes are described in the report. Adult Social Care's day-to-day operational model will expand and change over the period of implementation.

Demographics indicate a growth in demand for Care and Support services. The Council's strategic commissioning intentions will support market development to meet the range of needs for the individuals of Sefton, offering choice as to how their needs are met. Market shaping activities will encourage the care market to expand, where possible supporting economic growth and access to jobs.

An underpinning principle of the Care Act 2014 is the promotion of health and wellbeing to prevent, reduce or delay the need for care and support focusing on keeping people as independent as possible through prevention and early intervention. Comprehensive information and advice will enable individuals to make early informed choices about their care and support; those entering the care system will do so through clear pathways and be able to choose how their care and support needs are met through a range of commissioned support or direct payment.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT can confirm that the Council has received £2.803m (as detailed above) in 2015/16 to support the costs of the implementation of the Care Act from April 2015. However there has been no announcement as to how much, if any, additional funding may be released to support any ongoing delivery of the Care Act in future years. Any required expenditure above this level is not contained within the current Medium Term Financial Plan (FD 3442/15)

The Head of Corporate Legal Services have been consulted and any comments have been incorporated into the report. (LD 2734/15)

Meetings have also taken place with key partners, such as Sefton CVS, Healthwatch and the Carers Centre, to share information and explore ideas. These continue to take place.

Implementation Date for the Decision

Immediately following the Committee meeting

Contact Officer: Lauren Sadler

Tel: 0151 934 4438

Email: lauren.sadler@sefton.gov.uk

Background Papers:

There are no background papers available for inspection

1. Introduction/Background

- 1.1 Implementing the changes associated with the Care Act is part of the Adult Social Care Change Programme. The overall aim of the programme of work is to develop a model for Sefton Council's Adult Social Care (ASC) that is sustainable, modern and flexible, delivering the four strategic priorities as set out in the ASC Strategic plan 2013-20. The strategic plan highlights the Council's commitment to safeguarding how the Council will focus resources on the **most** vulnerable, the need to work with our partners and the community, and the development of the market to deliver the required change. The scope of the programme also includes delivery of approved budget savings and designing the new model for Social Care.
- 1.2 To oversee the implementation of the Care Act in Sefton, the governance and work streams for the Adult Social Care Change Programme has been appropriately refreshed. The Programme Board oversees four distinct projects each working to their own implementation plan that includes working towards completion of reviewing relevant documents, policies, considering training and workforce development, charging and cost implications as well as understanding and identifying potential risks.
- 1.3 To support the implementation a grant of £125,000 has been provided and this has been used in the following three ways:
 - One full-time post in finance to support all financial implementation of the changes in the Care Act
 - £25K to support joint working with Liverpool City region.
 - Workforce development resources
 - One full-time post in ASC to support all administration around the implementation of the changes in the Care Act
- 1.4 In addition there are two regional groups that have been established and the Council is currently aligning its local work to ensure that there is no duplication.
 - North-West regional ADASS group – the Council has representation on this group and they are an excellent source of information, communication and sharing best practice. This has included carrying out local stocktakes and workforce readiness surveys.
 - Liverpool City Region group – this group is looking at a range of areas with each authority taking an overall lead for one subject, Sefton is leading on pre-paid cards – an efficient method to administer direct payments.
- 1.5 Updates from each of these regional groups are presented on a monthly basis to the ASC Change Programme Board. In addition the Council is working with the two regional groups to assess and analyse all of the upcoming National Guidance for implementation that will be produced and circulated.
- 1.6 As part of the initial implementation of the Care Act, Adult Social Care has completed three self-assessments to determine Council's readiness for the changes. The first self-assessment was completed in August and shows that the Council were on track at this point, this assessment was repeated in September and January and shows that the Council are again progressing well in the key areas.

- 1.7 The New Burdens monies identified by Government associated with implementing the Care Act and the Better Care Fund are not likely to meet the true cost to the Council of implementing such a significant change, especially given the financial challenge. The additional burdens settlement for 2015/16 is £1.969m. There is flexibility around the usage of the money and it will be allocated around the priorities for implementation of Care Act. There is also a sum of £0.834m contained within the Better Care Fund to support elements of the Care Act implementation from April 2015.
- 1.8 There is an on-going programme of workforce development alongside stakeholder and partner activity, for example, Voluntary, Community Faith sector. Officers have embarked on a series of focussed development workshops with Adult Social Care staff and corporate legal services to ensure readiness for the duties under the new act. This has been supplemented by wider workforce briefings to enable information sharing with areas that closely link to Adult Social Care.

2.0 The Care Act 2014

- 2.1 The Care Act 2014 is a comprehensive piece of legislation which combines some new initiatives with an overhaul of many and varied pieces of legislation that existed for adult social care. Such a major piece of legislation is inevitably supported by a range of secondary legislation (regulations) and government guidance, much of which has yet to be finalised or drafted by the government at this time. The overhaul means that there is one comprehensive source of legislation for adult social care and it codifies many of the Council's existing practices.
- 2.2 The Cabinet Member has been kept apprised of major departmental activity to prepare for the implementation of the legislation accordingly.
- 2.3 The new initiatives contained in the legislation include:
- the carers right to have an assessment in their own right (and not simply as part of the care package)
 - introduction of national eligibility of assessment criteria (removal of the FACS criteria)
 - financial cap on payment for care by an individual. This will be introduced in April 2016.
- 2.4 A number of policies will need to be reviewed in due course and if they have any budgetary implications these will need to be considered by the designated Cabinet Member.
- 2.5 Wellbeing and Prevention
Key developments and work streams:
- Advocacy: Sefton has collaborated with Liverpool City Council to jointly tender for independent advocacy to meet the new duties. This offers the Council value for money. The tender process is currently underway and the tender evaluation period commenced on the 18th February with a view to confirming the successful provider by the 16th March 2015.

- Market facilitation: refresh of early intervention and prevention strategy to support development of the market and information services, as well as working with colleagues in public health to ensure there is connectivity on various schemes and aligned to the BCF programme. The Care Act places a duty on Authorities to develop a market that delivers a wide range of sustainable high-quality care and support services that will be available to our communities. As Cabinet is aware the Market Position Statement details the future requirements for the community of Sefton. Building on this the Market Facilitation Strategy and plan will make this happen.
- Information services: there is a new statutory requirement to provide information services. Whilst we can utilise existing services to support this, the requirements to provide information are extensive and there is a duty to provide a range of materials to be made available. The Council is in a good position to meet these extended obligations.
- Provider failure - The Act makes it clear that Authorities have a temporary duty to ensure that the needs of service users continue to be met if a provider fails. The Council has a responsibility towards all people receiving care regardless of whether they pay for their care themselves or whether the Council pays for it. The Council must ensure that the person does not experience a gap in the care they need as a result of the provider failing. A market failure plan is being developed in conjunction with other Local Authorities to ensure a consistent approach. This will be ready for April 2015 and Cabinet Member for Older People & Health will be kept informed of progress.
- Prisoners and prisons – The Council is negotiating a Section 75 agreement with NHS England who will act as lead partner and commission the provision of social care services for Sefton’s prison and prisoners (HMP Kennet). This provision is anticipated to commence in June 2015 with temporary arrangements in place for April and May.

2.6 Charging and Financial assessment

Currently work is underway to assess all of the charging implications of the Care Act to ensure full implementation by April 2015. Key areas that are currently being considered and worked upon:

- Deferred payments process will change and will require additional work and resource. The Council is required to implement a new deferred payment scheme from the 1st April 2015 which includes elements of local discretion. People who face the risk of having to sell their home in their lifetime to pay for care home fees will have the option of a deferred payment. This means that 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 and an administration fee to ensure they run on a cost neutral basis. the Council’s financial regulations will be updated to include the changes as required in law and that the new policy and associated charges will be published on the Council website by April 2015.
- There are changes to the financial assessment for people who have a property; work is underway to estimate the numbers of people affected by this, also there will need to be changes to IT to accommodate the differences.

- Sefton information systems are being reconfigured in line with the Care Act and new elements will undergo significant testing by the ASC workforce and this will also lead to a refreshed guidance.

2.7 It has been estimated that there are circa 1,200 self-funders who will become the responsibility of the Council and circa 60 people who will require a deferred payment service. In addition to this the number of additional financial assessments is estimated to be circa 1,500.

2.8 Safeguarding

A comprehensive work plan has been developed to give support and guidance for the Adults Safeguarding Board in relation to the Care Act. The risk areas are:

1. Review the Sefton Safeguarding Adults Board Serious Case Review (Safeguarding Adult Review) Policy to ensure that it incorporates all relevant requirements from the Care Act and guidance
2. Develop and implement an engagement plan to ensure agencies are robustly engaged, supported and able to respond to their responsibilities to take part in Safeguarding Adult Reviews
3. Review the mechanism and effectiveness of agencies implementation of recommendations from Safeguarding Adult Review
4. Require all agencies that will have a statutory duty under the Care Act to report against their contribution to the Board and the delivery of the plan for the Annual Report
5. Develop and implement a multi-agency communications strategy in relation to safeguarding

2.9 Integration and partnership working

A stocktake in relation to integration and partnership working will need to take place. This stocktake will focus on the six key areas:

1. Integration, cooperation and partnerships
2. The boundary with the NHS
3. Delayed transfer of care
4. Working with housing authorities and providers
5. Working with employment and welfare services
6. Delegation of local authority functions.

2.10 The stocktake will be reported through the ASC Change Programme Board and any risk factors identified and reported. The Council will need to ensure this dovetails with the work on the BCF and wider issues within children services and public health.

2.11 Carers

The Council must implement new arrangements for carers from 1 April 2015, particularly in respect of carer's assessment. The Council is currently exploring delivery models that will support carers in achieving their outcomes and enable them to continue caring. As options for the delivery models are identified these will be progressed with the appropriate Cabinet Member.

In relation to the Council's obligations specifically relating to young carers the Care Act cannot be read without equal attention being given to the Children and Families Act 2014. Together the legislation clarifies the law in relation to young carers and reinforces the significance of a whole family approach.

The range of issues and challenges for the Council are:

- i. The identification of carers' at the earliest opportunity
- ii. The provision of information, advice and guidance, complimenting similar services as provided by Sefton Council and the CCGs
- iii. Signposting and referring carer's to the correct information, advice and support to ensure that they are not financially disadvantaged as a result of their caring role
- iv. Supporting carers' to have their voice heard in decisions that affect them, and where appropriate, advocate on their behalf
- v. Expanding and diversifying the provision of activities and peer support for carers'
- vi. Supporting carers' to take part in educational, training or work opportunities that they may feel excluded from because of their caring responsibilities
- vii. Providing a range of learning and development opportunities for carers', front line staff and the community
- viii. Through a variety of methodologies, gathering and reporting on carer experiences of using mainstream health and social care services; and supporting carers to participate in the planning, commissioning and quality assurance of health and social care services

2.12 This new statutory requirement will mean that all carers will be entitled to an assessment. Although it cannot be stated exactly how many people this will entail it has been estimated to be in the region of 2,500.

3.0 Focus on Assessment and Eligibility

3.1 There are a number of requirements for assessment and eligibility that need to be in place prior to full implementation in April 2015. There is a working group focusing on the assessment and are currently working through each of the areas to establish our current performance, areas of change and new processes within the Act. This project group is specifically working on the development of Policy, Procedures and Practice in the following areas:

- The total extent of current and future needs for care and support
- What need is eligible for both adults and carers and how these can be met subject to a financial assessment
- Care and support planning with active involvement from the service user
- Changes required in the reassessment process
- Processes in relation to transition to adult care and support for children, young carers and child's carers.

3.2 The new requirements to meet the prevention and wellbeing agenda mean this will generate significant numbers of new clients to assess. At this stage it is difficult to state exactly how many people will meet the criteria however we estimate it could be over 1,000. In addition there is a new statutory requirement for reviews within 12 months and this will generate significant additional pressures within the system.

3.3 We estimate that increased demand around assessment and eligibility will lead to additional costs to the Council in the region £292,000 plus the additional recruitment of ASC staff to assess both carers and the cared for.

- 3.4 One of the ways that the Council will meet this requirement is the implementation of a web-based 'Health & Social Care Portal' that will enable people to find information and advice about health and social care in Sefton, and allow self-assessments to be completed online where appropriate.

The advantages of self-assessment include:

- guiding people to sources of help and clarifying eligibility
- providing 24-hour access to assessment

- 3.5 The Council's Liquid Logic Adults' Social Care System is being developed to provide this functionality.

- 3.6 The Care Act 2014 introduces a national eligibility threshold, which consists of three criteria, all of which must be met for a person's needs to be eligible. The eligibility threshold is based on identifying:

- whether a person's needs are due to a physical or mental impairment or illness
- to what extent a person's needs affect their ability to achieve two or more specified outcomes
- and whether and to what extent this impacts on their wellbeing.

- 3.7 The National eligibility threshold

Assessments will be based on supporting people in achieving outcomes that support their wellbeing. A key focus of the Care Act is on prevention. Councils are responsible in that people are advised on how their needs can be met or how to prevent further needs from developing or increasing.

The Care Act emphasises that an assessment must always be appropriate and proportionate and this may come in different formats and be carried out in various ways.

In considering whether a person's needs are eligible for care and support, local authorities must consider whether the person's needs are due to a **physical or mental impairment or illness**. This includes conditions such as physical, mental, sensory, learning or cognitive disabilities or illnesses, brain injuries and substance misuse.

If they do have needs caused by physical or mental impairment or illness, the Council must consider whether the effect of the adult's needs is that they are unable to achieve two or more of the following specified **outcomes**:

- a) Managing and maintaining nutrition
- b) Maintaining personal hygiene
- c) Managing toilet needs
- d) Being appropriately clothed
- e) Being able to make use of the adult's home safely
- f) Maintaining a habitable home environment
- g) Developing and maintaining family or other personal relationships
- h) Accessing and engaging in work, training, education or volunteering

- i) Making use of necessary facilities or services in the local community including public transport and recreational facilities or services
- j) Carrying out any caring responsibilities the adult has for a child

The regulations provide that 'being **unable to achieve**' specified outcomes includes circumstances where the person:

- is unable to achieve the outcome without assistance. This includes where the person may need prompting, for example some adults may be physically able to wash but need reminding of the importance of personal hygiene.
- is able to achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety. For example, an elderly person with severe arthritis may be able to prepare a meal, but this leaves them in severe pain and unable to eat the meal;
- is able to achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others. For example, if the health or safety of another member of the family, including any child could be endangered when an adult attempts to complete a task or an activity without relevant support; or
- is able to achieve the outcome without assistance but takes significantly longer than would normally be expected. For example, a young adult with a physical disability is able to dress themselves in the morning, but it takes them a long time to do this and exhausted and taking the remainder of the morning to recover.

Finally, and crucially, Council must consider whether, as a consequence of the person being unable to achieve two or more of the specified outcomes there is, or is likely to be, a **significant impact** on the person's **wellbeing**. Council should determine whether:

- the adult's needs impact on an area of wellbeing in a significant way; or,
- the cumulative effect of the impact on a number of the areas of wellbeing mean that they have a significant impact on the adult's overall wellbeing.

To do this, Council should consider how the adult's needs impact on the following nine areas of wellbeing in particular (but note that there is no hierarchy of needs or of the constituent parts of wellbeing):

- personal dignity (including treatment of the individual with respect);
- physical and mental health and emotional wellbeing;
- protection from abuse and neglect;
- control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- participation in work, education, training or recreation;
- social and economic wellbeing;
- domestic, family and personal relationships;
- suitability of living accommodation;
- the individual's contribution to society.

In making this judgement, Council should look to understand the adult's needs in the context of what is important to him or her. The **impact** of needs may be **different** for different individuals, because **what is important for the individual's**

wellbeing may not be the same in all cases. Circumstances which create a significant impact on the wellbeing of one individual may not have the same effect on another.

3.8 The Committee will be guided through and explore case studies using the above eligibility criteria throughout the meeting to illustrate the potential impact for the Council.

3.9 Committee should note that good progress has been made in preparation for the Care Act 2014. There has been comprehensive work around the refreshing of procedures and guidelines for the ASC workforce coupled with an intensive training programme across the ASC and wider Council workforce. Additional capacity has been identified and significant planning and prioritising has taken place at local, sub regional and regional level to ensure consistency.

4.0 The Care Act key changes and new duties effective from April 2016:

a) There will be a cap on the maximum lifetime costs people will pay for their care, it is anticipated that this will be £72k for older people, with a lower cap for those of working age and zero for those people who have existing care needs at the point when they reach the age of 25 years.

b) A care account will be used to record accrued direct care costs calculated using the Local Authority's usual cost of care rate. General living costs and support costs not identified in the person's care plan will be excluded.

c) An increase in the financial assessment capital thresholds for those individuals with eligible needs.

d) Direct payments for individuals residing in long term care.

4.1 The Council can consider introducing a fee to those customers who have the means to pay for their own care privately, but who choose the Council to commission and manage their care services on their behalf. A flat rate fee is proposed which would contribute towards the costs the Council would incur in providing such services as well as managing care accounts from 2016. The Council will liaise with other Councils over this and will adapt proposals to be in line with other Local Authorities once the Care Act has been reviewed fully.

4.2 Implications for the changes to take effect from April 2016 are still being considered and consulted on by Department of Health and will be considered by Sefton later in the year.

5.0 Risks & Challenges

5.1 The Care Act 2014 needs 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 risks include the new duties to provide services to carers

and to people who fund their own care. The Council are aware that the New Burdens monies identified by Government associated with implementing the changes required is not likely to meet the true cost to the Council of implementing such a significant change.

5.2 The key risks include:-

- The costs of implementation and ongoing delivery of the Care Act could create significant budget pressures
- Capacity might not be sufficient to meet the increase in demand for care assessments and reviews through new duties to support self-funders, carers and prisoners within current resources.
- Changes to ICT
- Community expectation
- Provider failure

6.0 Policy Change, Communication, Consultation & Engagement

6.1 The Care Act 2014 makes considerable changes to the law and practice around Social Care, most notably introducing the national eligibility criteria. However, it is important to note that the care system is developing not changing, in the sense that the Care Act builds on current practice, adjusts it and embeds best practice in the law. The Council will review and update its policies and guidance in light of these changes in a way that will continue to meet assessed need.

6.2 The Council will need to develop new and a refreshed range of existing policies and practices, including but not limited to:-

- Prisons and approved premises policy
- Delayed Transfers and Pathways Policy
- Charging/Partnership for Care/Contributions Policy
- Mental Health Policy including that relating to Section 117
- Eligibility Policy
- Deferred Payments Policy
- Direct Payments and Personal Budgets Policy

6.3 The need for consultation and engagement will be dependent on each policy and the nature of any service change as a result. Therefore, where significant change is applicable an appropriate level of consultation with key stakeholders will be undertaken.

6.4 For some changes the Council will inform the community on proposed new ways of working. Communications will include references to improved information and advice around preparing for later life needs and costs.

6.5 New and refreshed policies will be subject to appropriate approvals.

6.6 The scope of this change requires a whole Council and partnership approach. In addition to a training programme covering all areas of the act primarily aimed at the Social Care workforce a number of briefing sessions have taken place with the wider workforce.

7.0 Equality Act 2010 Duty and Impact Assessments

7.1 As the Council puts actions into place to deliver the Care Act changes there is a need to be clear and precise about processes and impact assess any potential changes, identifying any risks and mitigating these as far as possible. The impact assessments, including any feedback from consultation or engagement where appropriate, will be made available in compliance with the Equality Act 2010.

8.0 Conclusion

8.1 With regard to delivering and implementing the Care Act 2014 the scale and pace of the change required cannot be underestimated. The Council will need to identify, develop and implement new models of care and the potential associated impact on the community will require appropriate capacity to deliver change. This is on top of increasingly demanding day-to-day-work, and against a backdrop of contraction over the last few years, means capacity will have to be created to enable the delivery of a programme to change and enable the Council to support those most vulnerable. It is important to note that this risk is likely to be mirrored by our partners and providers of services.

8.2 The combined impact of demographic, pressures, 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 require the Council to develop solutions that ensure people remain independent for as long as possible; support carers to continue caring; encourage people to plan in advance for their care needs; and promote wellbeing and independence and community inclusion. Only a strategic approach can mitigate the demand and financial pressures that will continue to be faced by Adult Social Care.