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Adult Social Care Bill – Update

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1. Summary

To provide an update on the sections of the Adult Social Care Bill relating to Continuity of Care when moving between areas. Protecting Adults from abuse or neglect, and the Law for Carers

The Care and Support Bill which will be in two stages introduces wide ranging changes to Adult Social Care Services effective April 2015 and April 2016. This is the third briefing paper for this committee on different aspects of the Adult Social Care Bill. This paper will also include information on national and regional developments, the work being undertaken locally and the proposed programme structure to implement the new legislation within Shropshire.

2. Background

2.1 The Adult Social Care Bill will be effective from April 2015 onwards. As has been previously reported this legislation is a significant change to Adult Social Care and has been compared to being similar to the Community Care Act in 1990. The Care Bill will replace a number of different pieces of legislation with a single modern law and a new legal framework that will have the wellbeing of individuals at the centre of care and support services.

2.2 This paper builds on the previous updates provided to HOSC which have included:

- Prevention, Information and Market Shaping,
- Entitlement to Public Care and Support
- Assessment and Eligibility
- The potential financial impact for Shropshire

3. Recommendations

Health Overview and Adult Social Care Scrutiny Committee are requested to:

- 3.1 Consider the impact of the proposed changes to adult social care as set out in this report.
- 3.2 Comment on the draft work programme approach to implementing the Care Bill in Shropshire.

REPORT

4. The Care and Support Bill - Continuity of care when moving between areas

- 4.1 Adults with care and support needs who may wish to move to a new area perhaps for employment or to be closer to family members should not experience any gap in their care and support. Currently the law does not provide for continuity of care for people who want to move to another area.

Continuity of care means ensuring that when an adult who is receiving care and support in one area of England and moves home that they will continue to receive care on the day of their arrival in their new area.

The new Care Bill describes the process to be followed when an individual moves from one area to another and what must happen to ensure that their care and support needs continue to be met in the new area.

- 4.2 The new legalisation will apply in a number of circumstances including:
 - When an adult is receiving care and support in one local authority area and wants to move to another
 - An adult is receiving care in a type of accommodation such as a care home which is organised by a different local authority to the one where the accommodation is located and the person wants to leave the care home but stay in the local authority area that it is located
 - An adult is making their own arrangements for care and support but has a care account because the cost of meeting eligible needs count towards the cap on care costs.

In these circumstances the adult or someone on their behalf must inform the authority of their intention to move to the new area (referred to as the second authority).

Once the second authority has received the notification of the intention to move and is satisfied that the intention is genuine then it must inform the Local Authority where the individual is currently living (the first authority).

When the first authority is informed of intention to move it must:

- provide a copy of the adults care and support plan,
- must provide a copy of the care account if there is one
- provide a copy of the independent personal budget as well as the most recent assessment of the adults needs if an adult has been arranging their own care and support
- provide any other information that the second authority requests.

If a carer is also planning to move with the adult to a new area the first authority must provide the second authority with a copy of the carers support plan.

When all of this is received the second authority must complete its own assessment of the adults needs for care and support. This also applies to the carer if the carer is moving with the adult as well.

- 4.3 Both assessments can take place before the adult and carer move to the second authority area. If the second authority finds any needs which are different to those as assessed by the first authority it must explain in writing why that is the case.

Should the assessments not occur before the move takes place or if the assessments have been undertaken but steps to put the care and support in place are delayed then the 'continuity duty' is triggered.

- 4.4 The 'continuity duty' requires the second authority to meet any of the needs that were being met by the first authority and that of the carer if the carer moves, from the day of arrival in the new area. The 'continuity duty' will continue until the second authority has completed the assessments.

This is a new requirement, and whilst local authorities do work closely currently the 'continuity duty' is a new aspect as is the 'portability' of assessments and care accounts.

5. **The Care and Support Bill - Protecting adults from abuse or neglect**

- 5.1 Adult safeguarding is the process of protecting adults with care and support needs from abuse or neglect. It is a key responsibility for local authorities. Adult safeguarding supports people with care and support needs who may be in vulnerable circumstances and at risk of abuse or neglect by others.

5.2 Local authorities have been responsible for adult safeguarding for a number of years however there has never been a clear set of laws or regulations to support this. The adult care bill creates a legal framework so that key organisations and individuals with responsibilities for safeguarding agree on how they will work together and the roles they must take to keep adults at risk safe.

5.3 The Care Bill will require Local Authorities to set up a Safeguarding Adults Board (SAB) and will give these boards a clear basis in law for the first time.

The Care Bill says that the Safeguarding Adult Board (SAB) must include the NHS and the police and that they must meet regularly to discuss and act upon local safeguarding issues.

The SAB must develop shared plans for safeguarding working with local people to determine how best to support adults in vulnerable situations.

The SAB must publish an annual safeguarding plan and report to the public annually on its progress.

The SAB will be chaired by an experienced chair and include representatives from the police, local authority and clinical commissioning groups.

The SAB will develop their own local procedures but will be subject to special guidance issued to them by the Secretary of State.

5.4 The Care Bill also requires local authorities to make enquiries and has a duty to investigate or ask others to investigate where there is reasonable cause to suspect that they think an adult with care and support needs may be at risk of abuse or neglect in their area and find out what if any action is required.

This will apply whether or not the authority is actually providing any care and support to that adult and will also include those people who fund their own care and those in placements in the local authority area placed and funded by other local authorities.

The local authority must make whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adults case and if so what and by whom.

5.5 The nature of abuse is considered in the current government guidance 'No Secrets' was published in 2000. For the first time the Care Bill confirms in law that abuse includes financial abuse.

- 5.6 The Care Bill does not give any new powers for local authorities to enter a person's property. There was an extensive consultation on this by the Government as to whether there should be a specific power of entry but it was decided that there was not a strong enough case to support a new law.
- 5.7 Additionally the Care Bill abolishes the Local Authorities power to remove persons in need of care from their own home which was previously set out under section 47 of the National Assistance Act 1948. This was a little used piece of legislation and it is considered that other legislation such as the Public Law Act, Environmental Health Act, Mental Capacity and Mental Health legislation will be used as interventions in these circumstances.
- 5.8 The Care Bill will also require the Safeguarding Adults Board to carry out a serious case review in certain circumstances for example if an adult with care and support needs dies as a result of abuse or neglect and there is a concern about how one of the members of the safeguarding board has acted or if the adult is alive and the adult has experienced serious abuse and neglect.

In Shropshire the Safeguarding Adults Board has undertaken serious case reviews so whilst this is a new requirement it is based on best practice and will require little change in the practice of the current SAB.

- 5.9 The Care Bill also gives the SAB the power to request information from an organisation or individual about an individual at risk of abuse or neglect. This can include statutory organisations such as hospitals, NHS Trusts as well as independent providers such as care homes and domiciliary care agencies. This is a new area and this power will link to serious case reviews
- 5.10 Finally the Local Authority must take reasonable steps to prevent or mitigate loss and damage to a person's property when being cared for away from home. The Local Authority may not exercise this power unless consent is obtained or when it is in the person's best interests.

The Client Property and Appointeeship team in Shropshire Council undertake this function and this aspect of the Bill will have no impact on current practice.

- 5.11 Shropshire currently has an Adult Safeguarding Board which is a joint board with Telford and Wrekin Council. The membership includes both Local Authorities, Police, NHS and Shropshire Partners in Care. It is currently chaired on an annual rotational basis by the Director of Adult Services in either Telford and Wrekin or Shropshire.

A workshop is scheduled for the end of June to review these arrangements in light of the Care Bill requirements and to consider if the current arrangements should continue or if each Local Authority should have its own independent board.

6. The Care and Support Bill – the Law for Carers

6.1 A carer is someone who helps another person usually a relative or friend in their day to day life. In Shropshire we often refer to these carers as ‘family carers’ to distinguish them from someone who provides care professionally or provides care through a voluntary organisation.

6.2 The Care Bill will for the first time, recognise in law, Carers in the same way that they recognise those that they care for.

6.3 The Care Bill relates mainly to adult carers, that is people over 18 caring for another adult. Young people under 18 who are young carers and adults who care for disabled children can be assessed and supported under current children’s legislation.

The Care Bill does though include looking at a families circumstances when assessing an adults needs for care and the bill also includes working with young carers or adult carers of disabled children to plan an effective and timely move into adult services.

6.4 The current carers’ legislation treats carers differently from the people they support. The current legislation has been developed over time and currently carers do not have a legal right to receive support although local authorities can provide support at their discretion resulting in inconsistency of support for carers between local authorities.

Currently the legislation states that a carer must be providing a substantial amount of care on a regular basis to qualify for an assessment.

6.5 This will be replaced by the new Care Bill which will give local authorities a responsibility to assess a carers own needs for support which will mean that more carers will be able to have an assessment,

In Shropshire we have adopted an open access approach to carer’s assessments and services, however we still anticipate an increase in requests for carer’s services.

6.6 The assessment will consider whether the carer has support needs and what those support needs may be. The assessment will also consider the impact of caring on the carer and include, as now, whether the carer wishes to maintain employment, continue caring and also any social and educational needs.

Once a carer's assessment has been completed the Local Authority will need to determine if the assessed needs are eligible for support by the local authority. This approach is similar to that used for the person that the carer supports.

The carer will be entitled to support if:

- they are assessed as having needs that meet the eligibility criteria. A new eligibility criteria set for carers is expected
- The person they care for lives in the local authority area (which means that their established home is in that local authority area)

6.7 There will be a need for support planning to meet the needs of the carer and the Local Authority and the carer will need to agree what will best help them to continue in a caring role. In some instances with the agreement of the person they care for services may be provided direct to the cared for person to enable the carer to take a break, for example

6.8 In most instances Local Authorities do not make a charge for services to carers, recognising the valuable contribution that they make to the local community and to the care of the individual. However the Local Authority can decide if they wish to make a charge and if they do will need to complete a financial assessment.

Shropshire has not decided on whether to make a charge or not, however the costs of completing a financial assessment will need to be considered in the context of the care that is provided.

6.9 Under the new Care Bill legislation Carers have the right to a personal budget including a direct payment. The personal budget should set out how much it will cost to meet their eligible needs as a Carer and how much public money is available to them. Carers will have the right to request that the local authority meets some or all of their assessed needs by giving them a direct payment.

In Shropshire we have developed an open access approach to Carers' assessments and have a range of carers' services available, some of which are chargeable, others which are free. The various Carers contracts we have all naturally end within the next 18 months and we are currently scoping re-commissioning options for carers services in Shropshire to ensure both compliance with the requirements of the Care Bill and to ensure that carers are supported appropriately.

7. National developments

7.1 Implementation stocktake reports

7.1.1 The Local Government Association (LGA), Department of Health (DH) and the Association of Directors of Adult Social Services (ADASS) have developed a stocktake document to monitor progress on the implementation of the Care Bill across all Local Authorities. Shropshire responded to the first stocktake in May and further submissions will be required in the Autumn of 2014 and January 2015.

7.1.2 ADASS West Midlands have commissioned regional support for local authorities in the region. Shropshire are fully engaged in this with wide attendance at two regional events on 19th June and 26 June.

7.1.3 The initial analysis of the West Midlands stocktake returns is summarised as:

- That the stocktake has provided a baseline assessment of progress against which future surveys can be compared as implementation progresses.
- Identifies common areas for support including the need for IT support and financial modelling tools.
- Provides a basis for targeting improvement activity through existing regional networks.
- Helps Councils to identify services of peer support within the region in areas where more advanced progress has been achieved.

7.2 Arrangements for Consultation on the Care Act Regulations and Guidance

7.2.1 Consultation has now started on the regulations and guidance for those parts of the Care Act which become law in April 2015. The consultation documents are extensive and comprise wide ranging questions across all the policy areas.

Consultation closes on 14th August with final documents due to be published at the beginning of October.

7.2.2 Arrangements are being put in place for ADASS to provide a coordinated response to the consultation. Councils will also be able to submit their own individual responses and the West Midlands as a region will contribute to the ADASS national response

The key policy areas that will be included in the ADASS response will include:

- Prevention – reducing and delaying needs
- Information and Advice
- Market shaping

- Managing Provider failure
- Eligibility
- Advocacy
- Deferred payment agreement
- Prisons
- Safeguarding

8. The Care and Support Bill – Implementation and progress in Shropshire

8.1 Implementation Programme

8.1.1 The Adult Services directorate has convened a group of officers to lead on the following work streams:

- Workforce capacity planning and training
- Information Technology and systems
- Finance modelling, systems and charging
- Market Management
- Carers
- Adult Safeguarding
- Prevention services
- Communications and engagement
- Information and advice
- Assessment & Eligibility

8.1.2 A dedicated project management post and small team will be appointed to manage the work streams. This will be funded through a non-recurring implementation grant of £125k.

8.2 Financial Modelling

8.2.1 The focus of the Finance modelling, systems and charging work stream will be to determine the financial pressures arising and funding available in relation to both:

- implementation and
- new burdens arising as a result of changes to legislation

Implementation tasks will include:

- Identifying the costs arising from scope of work in other work streams and
- Identifying the costs arising from financial work stream implementation work stream requirements e.g.
 - Changes to current deferred payment systems and processes

- Changes to assessment systems and processes
- Changes to overall finance systems and processes
- Identifying the costs arising from the establishment of a dedicated project management function
- Identify funding available to support overall implementation

New burdens:

Impact of changes to the care cost caps:

- Identify loss of income from people currently in the system who currently contribute to their care costs beyond the new care cost cap.
- Identify new cost pressure of people who are currently self-funding and whose care costs will breach the cap and when.
- Identify the potential administrative cost of monitoring the care spend of people who do not currently have a Local Authority care record and the need to track these costs across Local Authority borders.
- Identify the cost of completing a significant number of new care assessments in order to establish the care cost starting point for people who are not currently receiving Local Authority supported care.

Impact of changes to the capital threshold:

- Identify loss of income from people who currently contribute to their care because of changes in the capital thresholds
- Identify the cost of completing a significant number of new care assessments in order to establish eligibility under the new capital threshold.
- Identify the expected increase in the numbers of appeals and complaints as a result of the rise in assessments.

General:

- Identify the impact of changes in market forces on current purchasing arrangements
- Identify the potential impact on current informal care arrangements
- Identify funding available to support new burdens

8.2.2 The Modelling completed so far includes:

To date Shropshire has not modelled the financial impact of the Care Bill. We have attended ADASS West Midlands regional meetings who as a group reviewed the requirement to use the Surrey Model and who found it fraught with complications such as:

- Highly complex model taking considerable time to run
- The model did not address all areas of financial impact
- The model required input of data not readily available (self funders, care pathway data etc.)

- There was no clarity on parameters for data input and therefore the potential for inconsistency of results
- The output was not easily explained

We are currently awaiting direction from this group as to modelling now required, however we are keen to progress the modelling process independently.

8.2.3 We have commissioned a survey through Shropshire Partners in Care (SPiC) to determine the number of Care Home beds in each Care Home, how many are occupied by people who fund their own care and how many are Local Authority funded, health funded or funded by another Local Authority.

We have also asked the same question of domiciliary care providers as this is an area where we have less information and where we suspect increased additional demand will also come from.

We are unable to identify how much capital an individual may have in each care setting but have asked for an estimated average length of stay in each service area so that we can build up some modelling around a number of assumptions.

8.2.4 The deputy section 151 officers in the West Midlands are meeting regionally and Shropshire has posed a number of questions to this group as follows:

1. How prepared do other authorities feel they are for the changes arising?
2. How are other authorities planning to manage the change programme required?
3. What financial modelling, if any, have other authorities carried out to date?
4. What models, if any, have other authorities used and have they found them satisfactory?
5. What approach have other authorities taken to collecting 'new data' required for modelling such as assessment of current levels of self funders? (NB: Shropshire are liaising with Shropshire Partners in Care (SPiC), the body representative of care providers in Shropshire, to survey care providers but do not anticipate a full and complete response)
6. What do other authorities see as the major financial risks of the Care bill, other than those stated above?

7. What information portals do other authorities access for information on Care bill developments in particular for finance issues?
8. Are other authorities clear on the funding streams available to support implementation and new burdens (and how these interact with current funding and BCF arrangements)?
9. Would other authorities be prepared to share the names and contact details of the relevant finance leads for this area of work?

8.2.5 We envisage that the responses to these questions from across the region will help Shropshire to develop tools as well as share resources across areas of priority and focus and it is also an opportunity to share and learn from areas of good practice or more advanced progress by other Local Authorities.

9. Equality Implications

- 9.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves actively considered, the Council's statutory obligations in relation to equalities. This will include paying close attention to any equalities impact assessment produced by officers. An Equality Impact Needs Assessment (EINA) will be produced as further guidance is received.

10. Conclusion

- 10.1 This is the third of a number of briefings being provided to Health and Adult Social Care Scrutiny on the Impact of the Social Care Bill.
- 10.3 Shropshire Council is fully engaged in regional ADASS workshops on the Impact of the Care Bill and the learning from these workshops will inform the future actions that the Council will need to take.
- 10.4 Shropshire Council have completed the first stocktake.
- 10.5 Shropshire Council have a work programme in place for the implementation of the Care Bill.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Health Overview and Scrutiny Committee 9 December 2013 – The Care and Support Bill – Impact for Shropshire

Health Overview and Scrutiny Committee 24 March 2014 – Adult Social Care Bill – update

Cabinet Member (Portfolio Holder)

Cllr Lee Chapman, Portfolio Holder for Adult Services and Local Commissioning (South)

Local Member

All this is a Countywide matter

Appendices