Report to the Deputy Leader of the County Council and Cabinet Member for Adult and Community Services
Report submitted by: Executive Director of Adult Services, Health and Wellbeing
Date: 6 March 2015

Part I

Electoral Divisions affected: All

Implementing the Care Act - Funding the County Council's New Responsibilities in 2015/16
(Appendix 'A' refers)

Contact for further information:
Khadija Saeed, (01772) 536195, Adult Services, Health and Wellbeing Directorate
khadija.saeed@lancashire.gov.uk
Tony Pounder, (01772) 536287, Adult Services, Health and Wellbeing Directorate
tony.pounder@lancashire.gov.uk

Executive Summary

The Care Act places a number of new responsibilities on upper tier local authorities in relation to their delivery of social care to adults. This will increase demand from Lancashire's population in a range of areas including for information and advice, for assessment and support planning, for financial assessments, for deferred payment agreements, and for personal budgets and direct service provision.

There is expected to be additional demand from carers, from individuals who are likely to fund their own care ('self-funders'), from prisoners and indeed from a much wider range of the public who will be encouraged by provisions contained in the Care Act to contact councils for advice on local services and the wider health and care system, and on how to improve their own well-being.

Care Act funding for 2015/16 has now been allocated to Councils to establish additional capacity to support implementation and ensure a programme of learning and development is delivered. This money includes funding contained within Lancashire's Better Care Fund and will need to be deployed in a variety of ways.

This report identifies the new funding that has been allocated to the County Council for Care Act implementation and makes recommendations for how it is to be allocated in 2015/16. Funding need will largely be driven by the demand for new offers, entitlements and services resulting from the Care Act, and indeed the effectiveness of the publicity, local and national, supporting these changes.

As such, predicting funding need is extremely difficult and scope for budget reprioritisation will be needed if actual demand in areas is materially different to those estimated. In all cases, opportunities will be rigorously explored for improving the efficiency of existing or new Care Act related business processes to see if the additional demand can be delivered within existing resources.

This report seeks approval for the allocation of the £10.5m of revenue funding, and £1.1m capital funding, made available to the County Council for Care Act implementation in 2015/16.

This is deemed to be a Key Decision and the provisions of Standing Order 25 have been complied with.

Recommendation

The Deputy Leader of the County Council and the Cabinet Member for Adult and Community Services are recommended to:

(i) Note the funding allocated to the County Council for Care Act implementation in 2015/16 and the Better Care Fund related commitments;
(ii) Approve the allocation of funding within the County Council as set out at Appendix A;
(iii) Authorise the Director of Adult Services, in conjunction with the Director of Financial Resources, to approve in-year budget redistribution between budget headings if the pattern of demand and pressures differ during 2015/16 from current estimates;
(iv) Approve the fees and charges applicable to the County Council's new Deferred Payment Policy, effective from 1 April 2015 as follows: £500 one-off legal/administration fee (excluding VAT) and 2.48% annual interest rate chargeable from the commencement of the agreement and compounded on a four-weekly basis;
(v) Authorise the approval of future updates to these fees and charges to the Director of Financial Resources;
(vi) Approve the allowable rental retention under the new Deferred Payment Policy as 10% of net rental income.

Background

The Care Act received Royal Assent in May 2014 and consolidates and modernises the framework of social care law.

It brings those funding their own care into the care system with obligations on local authorities relating to information and advice, deferred payments, universal services, assessments and market shaping. It also sets out a new model for individuals paying for care, putting in place a cap on the care costs which an individual is liable for. It also strengthens the rights and recognition of Carers in the social care system, including for the first time giving Carers a right to receive services.

The Care Act's provisions will come into force in stages over the next two years, with the first set of key changes implemented from April 2015.

The draft Care Act regulations and guidance for those changes to be implemented from April 2016 have also now been published for consultation with a deadline for responses by 30 March 2015.

Financial Impact on the County Council

With many of the detailed requirements still subject to national consultation, the areas of most significant financial concern over the next few years relating to the implementation of the Care Act for local authorities are considered to be as follows:

- A cap on the lifetime costs of care, with state support after the cap and the introduction of care accounts to monitor an individual's transition towards the cap. The implications of these changes are to be seen in 2015/16 as local authorities undertake early assessments and prepare the relevant infrastructure;

- Free support for those transitioning into adulthood with eligible social care needs;

- Extending the means test, with the upper limit changing from the current £23,250 to £118,000 in 2016/17 for those receiving residential care. There are changes to lower limits too, in addition to changes to the upper limits for non-residential care;

- Standardising national eligibility criteria for local authority supported care. The criteria are not expected to significantly increase the number of people assessed as having eligible care needs but there may be some cost implications as local authorities adapt their practice to be consistent with the outcomes-based language of the Care Act and eligibility criteria;

- Additional duties relating to carers, covering assessment, access to direct payments and support;

- The deferred payment scheme being extended to a universal entitlement and being nationally available from 2015/16;

- Additional duties for social care in prisons, to respond to the social care needs of prisoners; and

- The development and upgrade needed to core ICT systems and processes to deliver the requirements of the Act.

Funding Allocation 2015/16

The Government announced in December 2014 its final allocations for funding the implementation of the Care Act for 2015/16. The national quantum of funding in England is c. £481m, comprising:

- £285m from the Department of Communities and Local Government that is intended to provide for additional assessments for the cap, for deferred payments and services for Carers. For the County Council, this amounts to £3.454m as the Early Assessments revenue grant; £2.155m Deferred Payment Agreement revenue grant and a £1.276m Carers and Care Act Implementation revenue grant.

- £11.2m from the Department of Health for the delivery of social care in prisons, applying to those local authorities which have prisons in their area. For the County Council, this amounts to £0.492m as the Social Care in Prisons revenue grant.

- £135m revenue funding available as part of the Better Care Fund. The County Council has agreed with Clinical Commissioning Group (CCG) partners that £3.123m of the revenue funding within the new pooled fund will support the implementation of the Care Act.

- £50m capital funding available as part of the Better Care Fund. The County Council has agreed with CCG partners that £1.149m of the capital funding within the new pooled fund will support the implementation of the Care Act.

For Lancashire County Council, the total revenue funding available for Care Act implementation in 2015/16 therefore totals £10.5m and capital funding totals £1.1m.

2015/16 Operational Budgets

In response to the Care Act there is a need to augment existing or establish new operational budgets to allow budget holders to plan and finance specific programmes of implementation or respond to increased demand.

Key policy decisions have been made on the areas set out below. The operational budgets shown at Appendix 'A' are intended to accommodate these plans:

- Workforce Capacity and Learning and Development
- Carers Support Strategy
- Deferred Payment Policy
- Social Care in prisons delivery plan
- Information and Advice Strategy

Deferred Payment Policy: Fees & Charges

The Care Act 2014, sections 34-36 establish a requirement for a Deferred Payment Scheme which all relevant local authorities must have ready for implementation from 1 April 2015.

The establishment of the Deferred Payment Scheme will mean that people should not be forced to sell their home in their lifetime to pay for their residential and/or nursing care. By entering into a Deferred Payment Agreement (DPA), a person can ‘defer’ or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging or even a crisis point in their life as they make the transition into residential or nursing home care.

The care and support costs are deferred and not ‘written off’. These costs of provision of care and support will have to be repaid by the individual, or by a third party on their behalf, at a later date.

Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment. There has however been some discretion allowed on how the scheme will be implemented locally. Local schemes for deferred payments have been in operation for some time, but the Care Act 2014 now establishes the requirement for a universal deferred payment scheme and the expectation that all local authorities have a local policy for Deferred Payments.

In January 2015 the Cabinet Member for Adult and Community Services approved a new Deferred Payment Policy for 2015/16. However the Care Act regulations allow the Council the discretion to:

- Charge the client administration fees and interest;
- Set a rate of interest to be charged, subject to a national maximum interest rate;
- Determine the rate of the administration fees as long as it does not exceed the cost that the Council has incurred in arranging the deferred payment;
- Set an amount of rental income a person can retain if they decide to rent out their property.

These figures were not specified in the report approved by the Cabinet Member in January 2015 to give time for further consideration.

Based on initial estimates of the direct costs attributable to the operation of the new scheme, it is proposed that £500 (excluding VAT) will be charged to each new client under the scheme as a one-off fee to cover legal and administration costs, including placing a legal charge on the property, arranging an independent property valuation, administering the account over the life of the agreement and ensuring appropriate legal arrangements are in place for the Council.

Approval has previously been given, in principle, that the interest rate applicable under the new scheme will equal the County Council's average borrowing rate over the preceding financial year. The rate applicable from 1 April 2015 will be 2.48% (annual) which is equivalent to the Council's average borrowing rate in 2013/14 and this will be updated when the 2014/15 rate has been finalised following the production of the Council's final accounts for the year. The interest will be applied to client accounts compound, on a four-weekly basis to match the Council's pattern of paying providers.

The Care Act encourages Councils to support individuals who choose to rent out their properties whilst they are in residential care so that they can benefit from additional income from a property that may otherwise have remained empty. As such the guidance accompanying the legislation suggests local authorities may allow a proportion of this income to be disregarded for financial assessment purposes.

It is not expected that this will be a common scenario. It is therefore proposed that up to 10% of the net rental income is considered allowed income that does not form part of a person's financial assessment.

Funding from 2016/17 and onwards

The Regulations and Guidance for the Care Act's Financial reforms are due to be implemented from April 2016 and are now published for consultation.

The Department of Health has not yet announced funding allocations for 2016/17 and onward. Local authority allocations are not expected to be announced until late in 2015 after the incoming government has reviewed the findings from the consultation and considered its budget priorities.

Work is underway both internally and externally to model the impact of the Care Act funding reforms. The findings from that work alongside the consultation response from the County Council will be presented in a future report to the Cabinet Member later in 2015.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Financial

The approval of the recommendations in this report will allocate £10.5m of additional funding for the delivery of the required capacity needed to implement the regulations in 2015/16. This will be funded by the additional dedicated funding that has been allocated by the Government to local councils for implementation of the Care Act in 2015/16. The £10.5m will be allocated to spending as set out in Appendix 'A'. These allocations will be reflected within the Council's financial management framework to ensure effective budgetary control over the expenditure and resources.

Risk management

- **Legal**

The Care Act comes into force from April 2015 with further provisions due for implementation from April 2016. If a council fails to comply with the legislation then it will leave itself open to challenge by individual citizens or groups. Although new policy frameworks have or are being established, the resources to implement them successfully also need to be in place. The recommendations in this report will ensure that is the case.

- **Performance**

All Councils' implementation of the Care Act is subject to close support monitoring by a joint Programme Management Office set up by the Local Government Association (LGA), Association of Directors of Adult Social Services (ADASS) and Department of Health. Any suggestions that the County Council does not have approved plans to deal with the increased demand arising from the Care Act would be picked up in the quarterly stocktake returns to the Programme Office and would most likely lead to escalation of the issue until resolved. The recommendations in this report are likely to be noted with approval since they are broadly in line with the approach of other councils and the advice emerging from the Department of Health itself.

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Implementing the Care Act - Approval of a new Deferred Payment Policy	15/01/15	Khadija Saeed/Adult Services, Health and Wellbeing/(01772) 536195
Implementing the Care Act 2014 - Approval of a new Policy for Undertaking Assessments and Providing Support for Carers in	15/01/2015	Craig Frost/Adult Services, Health and Wellbeing/ (01772) 536287

Lancashire

Preparing for Implementation of the Care Act in Lancashire: http://council.lancashire.gov.uk/ieDecisionDetails.aspx?ID=5722	16/09/2014	Tony Pounder/Adult Services, Health and Wellbeing/(01772) 536287
Implementing the Care Act - Establishing Additional Workforce Capacity within the County Council	10/02/2015	Tony Pounder/Adult Services, Health and Wellbeing/(01772) 536287
Implementing the Care Act: Development of a s75 Partnership Agreement with Lancashire Care Foundation Trust for meeting the County Council's responsibilities for provision of Social Care in Prisons	15/01/2015	Julie Dockerty/Adult Services, Health and Wellbeing/(01772) 536146

Reason for inclusion in Part II, if appropriate

N/A