

Report to the Cabinet Member for Adult and Community Services
Report submitted by: Director of Adult Services
Date: 8 March 2016

Part I

Electoral Division affected:
All

Implementation of the Care Act – Approval of revised Adult Social Care Policies and Procedures incorporating the Wellbeing Principle, Eligibility, Ordinary Residence and Independent Advocacy
(Appendices 'A', 'B', 'C', 'D', 'E' and 'F' refers)

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Executive Summary

The Care Act 2014 modernises and consolidates legislation on adult social care in England into one statute and has been described as the biggest change to adult social care law in 60 years. This legislation has changed the financial, legal, commissioning and operational landscape for councils, their workforces, for citizens, social care providers and partners.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. The requirement to maintain and improve this framework is essential to the professional and high quality delivery of assessment, supports information and advice to our customers and to ensure legal compliance.

A comprehensive review of the County Council's adult social care policies, procedures and practice guidance has therefore been undertaken and key policy documents have been identified for review and revision as part of a phased programme.

This report sets out the impact and benefits from undertaking this review and clarifies the need to subject all new adult social care policies, procedures and practice guidance to robust governance arrangements.

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

Recommendation

The Cabinet Member for Adult and Community Services is recommended to:

- (i) approve the following revised Adult Social Care Policies:
 - a. Wellbeing Principle (Appendix 'C')
 - b. Eligibility (Appendix 'D')
 - c. Ordinary Residence (Appendix 'E')
 - d. Independent Advocacy (Appendix 'F')
- (ii) agree that any fundamental changes or new policies should be presented to the Cabinet Member for approval and to authorise the Director of Adult Services, in consultation with the Director of Governance, Finance and Public Services, to approve all other future revisions of adult social care policies.

Background and Advice

1) Introduction:

Many of the major provisions affecting social care policy and practice came into effect on 1st April 2015 and includes areas such as assessment, eligibility,

safeguarding, independent advocacy, support planning and review, market shaping and provider failure.

The Care Act clarifies the duties placed on local authorities, many of which are new, and in response, it is essential that the County Council's policy framework for adult social care is reviewed and where necessary revised and redrafted to ensure compliance. It is also important that the adult social care policies, procedures and practice guidance echo the vision, values and priorities within the County Council's Corporate Strategy with particular focus on support, prevention, intervention and protection of the most vulnerable members of our society.

This has already occurred in regard to several adult social care policies approved earlier this year including Lancashire's Deferred Payment Scheme, Lancashire's Safeguarding Policy and the policy for Undertaking Assessments and Providing Support for Carers in Lancashire.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. At a time when change is prevalent across the County Council, customers and stakeholders are seeking accurate information and the delivery of services through a consistent and equitable approach that is legally compliant. The needs and expectations of our customers will of course also remain firmly at the heart of everything we do.

In addition, the County Council has recently revised the Resource Allocation System and it is crucial that the County Council's policies and procedures are clearly explained and published to support the review activity that will occur over the next two years.

It is also worthy of note, that by 2017 the County Council is required to have plans in place with regard to greater integration of Social Care with Health, to be implemented by 2020. It will be important that both current arrangements and any new plans in respect of the integration of operational services, such as Social Work, Therapy Services etc. ensure that practice remains compliant with the approved policy framework and therefore the Care Act. Clearly there are aspirations to bring closer together the Health and Social Care system to ensure both legal and policy compliance and financial sustainability for the medium to long term given the challenges that both sectors are facing.

Given the accelerated rate at which Local Government funding is being reduced, meeting our minimum statutory duties will increasingly need to become the realistic aim in regard to both funding of services and their delivery. The adult social care policies, procedure and practice guidance will therefore need to align to this position.

2) New arrangements:

To support the development and effectiveness of the County Council's adult social care policies, procedures and practice guidance, work has been undertaken to frame an agreed definition of terms and these are attached at Appendix 'A'.

Working in partnership with other local authorities has enabled the County Council to develop a revised and more concise framework that incorporates the policies, procedures and practice guidance essential to deliver effective services. This new framework ensures that the County Council is legally compliant with the Care Act and other relevant legislation such as the Mental Capacity Act. The new framework is attached at Appendix 'B'.

Governance arrangements will be formally established following the conclusion of this review to ensure that all future revisions and/or new policy documents will be legally compliant, informed by practice and robust in the event of challenge. It is recommended that future revisions will be subject to final approval from the Director of Adult Services following operational and legal clearance, in consultation with the Director of Governance, Finance and Public Services.

Fundamental changes or new policies will however follow the full decision making pathway through to Cabinet Member approval.

3) Summary of revised Policies:

Wellbeing (Appendix 'C'):

The wellbeing principle applies equally to those who do not have eligible needs but come into contact with the health and social care agencies in some other way (for example, via an assessment that does not lead to ongoing care and support) as it does to those who go on to receive care and support, and have an ongoing relationship with the local authority.

The principle of wellbeing will inform the commissioning and delivery of universal services which are provided to all people in the local population, as well as being considered when meeting eligible needs.

The Cabinet Member is recommended to refer to Appendix 'C', point 2.1, page 5 as this offers a definition of 'wellbeing' as defined by the Care Act 2014.

Eligibility (Appendix 'D'):

The introduction of a national eligibility threshold provides greater transparency on the threshold of need for eligibility. Improved clarity supports authorities in deciding whether the prior provision of information and advice or preventative services would delay a person from developing needs which meet the eligibility criteria or whether longer-term care and support might be needed. It should also help the person needing care or their carer to think more broadly about what support might be available in the local community or through their support network to meet their needs and support the outcomes they want to achieve.

The Fair Access to Care Services (FACS) framework which was introduced in 2003 has therefore been repealed. However to ensure a smooth transition from old to new legislation with effect from 1st April 2015, individuals deemed eligible under the FACS criteria continue to be eligible until their next statutory review under the Care Act.

County Council's records note that 16,830 people were assessed as eligible for adult social care services following data collected between April and September 2015. This emphasises the need for clear and accurate policies to support practice.

Two case studies have been included within this policy as an aid to understanding the application of the eligibility criteria for Social Care Workers. The Cabinet Member is recommended to refer to Appendix 'D', page 11/13 Case Study 1 and 2.

Ordinary Residence (Appendix 'E'):

The understanding and framework for 'Ordinary residence' is crucial in deciding which local authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is 'ordinarily resident' in the area of the local authority is a key test in determining where responsibilities lie between local authorities for the funding and provision of care and support. A local authority is only required to meet needs in respect of an adult who is "ordinarily resident" in their area (or is present there but has no settled residence).

In 2014 the County Council was involved in over 20 challenges to Ordinary Residence decisions. The need to have a clear, transparent and legally compliant policy and procedures is therefore crucial to support the County Council's decision making and its ability to respond effectively to future challenges and complaints.

Independent Advocacy (Appendix 'F'):

The Care Act places a duty on a local authority to arrange an independent advocate for all applicable adults. Local authorities must involve people in decisions made about them and their care and support or where there is to be a safeguarding enquiry or Safeguarding Adults Review. People should be active partners in the key care and support processes of assessment, care and support and support planning, review and any enquiries in relation to abuse or neglect. No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options, and to make their own decisions.

The County Council currently contracts with four independent advocacy providers and it is essential that they are able to work in line with the County Council's policies and procedures. This new duty has therefore been recognised in a standalone policy specific to Independent Advocacy (Care Act) in acknowledgement of its place in legislation.

The Cabinet Member is recommended to refer to Appendix 'F', page 8 which details the referral process within a clear and easy to use flow chart.

4) Review and revision of Policies, in plan:

The following policies have been determined as high priority for review and revision and will be presented for Cabinet Member approval at a future date:

- a) Needs Assessment
- b) Care and Support Planning

c) Review of Care and Support Plans

In addition, the Cabinet Member is asked to note that work is currently being undertaken to review the County Council's response plans to Urgent Home Closures as part of its planned approach to provider failure. The County Council has been invited to participate in a joint programme of development with NHS England and the Response Plan and Policy documentation will be presented for approval following the completion of this project.

It is proposed that these documents will be presented for Cabinet Member approval in early 2016.

All remaining policy revisions will be presented as appropriate.

Consultations

Wider public consultation has not been undertaken as the documents in question are not new presentations but rather revisions to ensure they fully represent the new duties and requirements placed on the local authority under the Care Act.

Implications:

This item has the following implications, as indicated:

Workforce

The professional response and practice of the workforce in supporting citizens and customers is guided by the County Council's comprehensive range of adult social care policies, procedures and practice guidance. The accuracy and relevance of these documents is therefore essential to support practice and the delivery of high quality supports.

As the revision of documentation has in the main been as a result of new duties under the Care Act, a further process of awareness raising training in regard to the variations will also be undertaken across the social care workforce to ensure that the changes are embedded in practice.

A programme of training is already being delivered across the social care workforce and with key internal and external stakeholders to ensure understanding of legal responsibilities under the Care Act and to embed the new duties into practice. The workforce has been offered a range of awareness and business specific training via manager's briefings, e- learning, face to face training and learning circles. The training programme will continue through to March 2016.

Legal

The Care Act and supporting guidance places a series of new duties and responsibilities on the County Council in regard to the care and support for adults. All revised or new documents have been assessed and approved by legal before being presented to the Cabinet Member for final approval. All documents will be

publically accessible as part of this process with the aim of reducing legal challenge or complaints due to lack of understanding or transparency.

Equality and Diversity

The Care Act itself was subject to a wide range of consultation and its provisions were assessed for their equality impact.

Financial

In the lead up to the implementation of the Care Act 2014, a number of new funding allocations were made by Central Government. Whilst some funding was encompassed within the Better Care Fund the remainder was allocated as specific grants. A funding formula was engaged to determine the allocation and acknowledged a number of new areas within the Care Act that would generate increased demand, such as eligibility, social care assessment and support for prisoners etc. The County Council was to receive additional funding of £10.5m in 2015/16 (including a contribution from the Better Care Fund), however the allocation of the specific grant funding is currently under review by Central Government due to the announced delay of phase 2 of the Care Act.

Human Resources

The revisions have no new implications for Human Resources

Risk Management:

The County Council is already operating within the framework of the Care Act. However publishing a clear policy framework supports the County Council. If the recommendations are not taken forward, the County Council will not meet its statutory duties under the Care Act which will result in the County Council being highly exposed to legal challenge and reputational damage.

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Preparing for Implementation of the Care Act in Lancashire - http://mgintranet/ieDecisionDetails.aspx?ID=5721	10/09/2014	Heather Bryan Health & Care Systems Development 07876844624
Care Act 2014 – http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf		
Care and Support Statutory Guidance (October 2014) - https://www.gov.uk/government		

t/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

Implementing the Care Act 2014 - Approval of a new Policy for Safeguarding Adults in Lancashire 01/04/2015
<http://mgintranet/ieDecisionDetails.aspx?ID=6604>

Implementing the Care Act - Approval of a new Deferred Payment Policy 15/01/2015
<http://mgintranet/ieDecisionDetails.aspx?ID=6289>

Implementing the Care Act 2014 - Approval of a new Policy for Undertaking Assessments and Providing Support for Carers in Lancashire 15/01/2015
<http://mgintranet/ieDecisionDetails.aspx?ID=6292>

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
<http://mgintranet/ieDecisionDetails.aspx?ID=6293>

Adult Social Care – use of new resource Allocation System 06/01/2016
<http://mgintranet/ieDecisionDetails.aspx?ID=7598>

[Implementing the Care Act – Funding the County Council's New Responsibilities in 2015/16](#) 06/03/2015

Reason for inclusion in Part II, if appropriate

N/A