



Adult Social Care Select Committee
5 September 2013

The Care Bill – Reforming Care and Support

Purpose of the report: Policy Development and Review

This report details the main changes to Adult Social Care in England outlined in the Care Bill, May 2013.

The Committee is asked to note the areas of impact and provide early input into implementation planning in Surrey.

Introduction:

1. The current law governing adult social care has evolved over a long period. This has led to a large number of separate statutes, regulations and guidance.
2. Since the National Assistance Act, 1948 which is still the basis of adult social care legislation, society and the way that adult social care supports people has changed.
3. In 2011 important recommendations were made for the reform of adult social care from the Law Commission and the Commission on the Funding of Care and Support, chaired by Andrew Dilnot.
4. The Bill draws on these recommendations and sets out how the Government intends to reform adult social care.
5. The aim of the changes is to address the main deficits in the current legislation by:
 - creating a consistent and streamlined legal framework that is clear and easy to navigate;
 - bringing the law up to date to reflect a focus on the outcomes that people want rather than their disabilities, and put the individual in control of their life; and
 - addressing areas of unfairness.

6. The majority of the changes are set to take place in April 2015, with the reform of funding to take effect from April 2016.

Main areas of change within the Bill

One Statute

7. A significant change is that the Bill is designed to be the one underpinning piece of legislation in relation to adult social care, rather than the approximate previous 30 Acts.

General Responsibilities

8. The first part of the Bill is dedicated to the general responsibilities that local authorities have towards all of their residents:
9. **Promoting individual wellbeing** – The Bill creates a new statutory principle that aims to make wellbeing the driving force behind care and support. Wellbeing is described in terms of the most important outcomes for people who use care and support and support for carers. It intends to establish what the Law Commission called ‘a single unifying purpose around which adult social care is organised’. Despite being defined within the Bill this is likely to be an area open to interpretation and could be a key test in any dispute over action or inaction by a local authority.
10. In Surrey – This is entirely consistent with the ethos of the Adult Social Care Directorate and the direction of the council, and we will be well placed to fulfil this duty. The early work of the Health and Wellbeing Board as well as the maturing partnerships across Surrey, particularly between Adult Social Care, Health and District & Borough councils, provide a firm platform for this.
11. **Prevention** – This requires local authorities to take action to prevent, reduce or delay the need for care and support. This applies to the whole local population and carers, as well as people who use services. It is not just about what the local authority does itself but also how it works with other organisations and helps people to use the resources and skills that they already have. There is likely to be further regulations to define this requirement and potentially allow for charging for these services. In Surrey, we are a long way to meeting this requirement already.
12. In Surrey – We have made really good progress in promoting access to and funding preventative services. Much of the work has involved partnerships and improving information access. Examples include:
 - Mainstreaming Telecare
 - Development of the Hubs
 - Improving Surrey Information Point
 - Wellbeing Centres
 - Dementia Friendly Communities
 - Ageing Well Programme

13. **Promoting Integration** – The Bill places a duty on local authorities to carry out their functions in a way that is ‘integrated’ with NHS and other health-related services. Integration means working together to improve services for people across organisations, not necessarily organisations joining together structurally.
14. In Surrey - We are working closely with our partners to generate better outcomes. Examples include:
 - Evening and weekend working in acute hospitals to improve discharge
 - Whole Systems Partnership Board – Oversight of joint funding with Clinical Commissioning Groups (CCGs) funding projects such as Virtual Ward, Risk Stratification Tool, Stroke Support, and Universal Benefits Service
15. **Providing Information and Advice** –The provision of good quality information and advice is a key plank of the reforms and will contribute to their success. People need to know how to access support across their community and across organisations, in order to be able to maximise their independence and reduce the need for more intensive services. This is even more important in light of the new funding regime that will bring in far more self-funders to the system than previously. An additional requirement to provide information on how to access independent financial advice is included in the Bill.
16. In Surrey – We currently have a substantial variety of information and advice on offer to people. We have published a range of leaflets providing information on how to access and pay for services, dedicated website pages and a bespoke website for information across the county and organisations called Surrey Information Point.
17. Our information Strategy will be refreshed to include the requirements of the Bill. It is linked to the development of our Self Funder Strategy and is scheduled to come to Select Committee for their input in March 2014.
18. Signposting to enable access to independent financial advice will need to be further developed.
19. **Promoting the quality and diversity of local services** – Local authorities will have a duty to ensure that there is a range of high quality providers in all areas that can meet the needs of residents and allow them choice.
20. In Surrey – Our commissioning function takes a lead strategic role in managing the market, working closely with providers across public, private and voluntary sectors. The work is based on evidence of current and future need compared with current provision.
21. We have a well developed relationship with Surrey Care Association, representing Surrey care providers. Involving people who use services in the commissioning process is fundamental and allows us to ensure quality and choice in the services in Surrey.

22. The Quality Assurance Team monitors and supports the improvement of Care Services and has strong links with the Care Quality Commission (CQC).

Assessment and Eligibility, Meeting Needs & Support Planning

23. The Bill describes a single duty to assess people who may need services. For the first time this duty is expanded to carers and this provision has been widely supported by carers groups, welcoming the assessment of carers needs being put on the same legal standing as that of people who use services.
24. Eligibility criteria will be set nationally for the first time, at a level equivalent to the current 'Substantial' level. The detail of the criteria will be in regulations currently being developed.
25. The first iteration of the eligibility regulations has been released for discussion and formal consultations will be launched later in the year.
26. The clauses of the Bill relating to meeting needs and support planning in large part pull together existing responsibilities and clarify who is entitled to have their care and support needs met, and how they should be met.
27. Key areas in 'meeting need' include the right to support for carers, as well as people who have eligible needs and fund their own care, to request local authority support.
28. Care and support planning describes an individual's right to a support plan, personal budget and direct payment. A new duty is created to review Independent Personal Budgets for self funders.
29. There are further new duties to provide information and advice to people not eligible for support. This aims to help people meet any needs they may have as well as providing preventative advice.
30. This section of the Bill also supports funding reform by requiring Independent Personal budgets for people who wish to arrange their own care, and 'Care Accounts' for all people with eligible needs so that the care costs that they incur can be used to calculate when they meet the cap.
31. In Surrey – We have supported the extended rights for carers in the Bill, which will enable us to consolidate the nationally praised work that has already been carried out.
32. 'Substantial' is the level at which the majority of local authorities, including Surrey, currently operate. Consequently, in theory this will not have significant impact on us. However, this will also depend on the detail of the regulations. Changes in the way that the eligibility criteria are applied, in accordance with the regulations, will determine who is eligible for support and will require training for our staff.

33. The Assistant Director for Policy and Strategy has been able to influence the drafting of the eligibility regulations in his secondment to the Department of Health. This will be of benefit, both in terms of our in-depth understanding of the regulations and also our ability to feedback issues and ideas.

Funding Reform

34. The funding of care is currently one of the most misunderstood areas of adult social care. Many people believe that care is free to access in much the same way as health services, and have not planned for what can be very high care costs over their lifetime. The way that contributions to the costs of care are calculated is also widely considered to be unfair, penalising people of moderate wealth. This is why the Government accepted the majority of the Dilnot Commission's recommendations and these are reflected in the Care Bill.
35. The Government is currently consulting on the implementation of the funding reforms. A summary of the consultation produced by the South East Strategic Leaders' Group can be found in Annex 1. The main elements of the reforms are highlighted below.
36. **Cap on care costs** - From April 2016 there will be a cap on the maximum amount that that people have to contribute to the cost of their care over their lifetime. This will initially be set at £72,000 for older people aged 65 and over. To count towards this maximum amount people will have to meet the eligibility criteria. In addition, the maximum figure will be calculated based on what the council would usually expect to pay for care that meets that persons needs. People might choose more expensive care than the council would expect to pay. In that case only the 'usual amount' will count toward the care cap, and not the full amount that they are paying.
37. People living in residential care will need to contribute to their 'hotel' costs – general living costs that are included in the overall cost of residential care. In April 2016 these will be approximately £12,000 per year and will **not** count towards the cap on care costs.
38. People under 65 who develop care needs will have a lower cap on care costs.
39. People who have care needs before the age of 18 will be entitled to have all of their care funded by the local authority without the need for financial assessment.
40. In Surrey – At approximately 80%, Surrey has one of the largest proportions of people funding their own care in the country, so this change will have a positive impact on the population, but will also increase the cost to the council.
41. Our early assessments of what impact this will have in Surrey suggests that few people will reach the cap (based on the average time spent in residential care and the impact of the average cost of care on an individual's assets). However, we expect that a large number of people

not previously in contact with adult social care will approach the council for an assessment, in order to start the calculation of their care costs towards the cap. This will enable us to give early information, advice and sign-posting helping people to make informed choices and plan for their future.

42. **Rise in the means test capital threshold for people in residential care**– Currently people with more than £23,250 in savings or capital do not qualify for financial help with their eligible care costs. From April 2016 this threshold will rise to £118,000 for people whose capital/savings includes property and £27,000 for people whose capital/savings do not. The lower threshold of £27,000 reflects that the value of a person’s home is not being considered as part of their assets.
43. In Surrey – The rise in the capital threshold will have a greater impact in Surrey than the cap. As well as ‘new people’ who may receive funding there will be some loss of income from people who currently contribute to their care costs, but will pay less under the new threshold level.
44. Assessing the full impact of this change is complex and longer term will need to take into account the level of people’s personal wealth across the county.
45. The potential costs of the proposals have been modelled taking into account estimated numbers of self-funders, extrapolating our knowledge of typical lengths of time in care and making assumptions about the pattern of wealth distribution among self-funders. We are liaising regionally and nationally to ensure that estimates of costs are as consistent and reliable as possible across all authorities. Nonetheless, uncertainties are likely to remain, even when all the regulations are known.
46. Our current estimate is that additional costs to Surrey will stabilise at around £50m per year. The Government states that additional costs will be fully funded. For Surrey, some risk remains as that depends on:
 - whether the national total is correct
 - whether the distribution of the national total is appropriate (Surrey’s costs will be well above average)
 - what effects there might be on the local social care market
47. **Universal Deferred Payments Scheme** – A deferred payment means that somebody can ‘defer’ their payment of residential care charges until after their death. This typically results in a charge being put on their property and care costs are paid to the local authority from their estate. The ability to offer deferred payments is currently a ‘power’ rather than a duty. The Bill would make it a requirement to offer a deferred payment option to people with particular needs and circumstances. Local authorities will also be able to charge interest and administration charges on deferred payments.
48. In Surrey - Surrey already operates an interest-free deferred payment scheme. We will need to consider the details of the new duty, including

the proposed requirement to charge interest. Following Cabinet approval, from 1 August 2013 £250 will be charged for any Deferred Payment Agreement, whether or not the matter proceeds to completion, plus the costs of any Land Registry fees it incurs on each transaction. The Council will also recover legal fees of £125 whenever it discharges a Legal Charge.

Moving between areas

49. There will be a new duty to ensure continuity of care when people move between areas. This includes sharing support plans, sharing relevant information and ensuring that the person's needs are met on day one of living in their new area. The duty is not to provide exactly the same support that a person received in their previous area, but it is to meet that person's assessed needs.
50. In Surrey – We currently endeavour to work closely with other local authorities when we are aware that somebody with care needs is moving into the area. This new duty will help with information sharing. We will need to ensure that the appropriate procedures and processes are in place.

Safeguarding

51. All areas will be required to establish a Safeguarding Adults Board (SAB – members to include the local authority, NHS and police).
52. The Boards are required to carry out safeguarding adults reviews where somebody experiencing abuse or neglect dies or there are concerns about how the local authority acted. Boards may also require information sharing from other partners. Boards are also required to have a work plan and publish an annual report.
53. There is a new duty to carry out enquiries (or ask others to do so) where it is suspected an adult is at risk of abuse or neglect.
54. In Surrey – We have a Safeguarding Adults Board in place and there is good multi-agency representation. The Board produces an annual report and has a strategic work plan.
55. In relation to enquiries we ask that the most relevant partner organisation conducts an investigation and the Board undertakes assessment work to support the investigation. The Board already commissions Serious Case Reviews and has a Serious Case Review process.

Market Failure and Oversight

56. There is a duty placed on the local authority to ensure that the market responds in ways that are suitable to people's needs.
57. In particular; it places a wider responsibility on the local authority to respond to provider failures – temporarily meeting people's needs if the provider supporting them has a business failure. Local authorities are

already responsible for ensuring continuity of care for people whose needs they are required to meet. The Bill extends this responsibility to include people whose needs they are not already required to meet – self funders receiving home based care.

58. In Surrey – We have developed a provider protocol in anticipation of this. There will also be national oversight of large providers' financial resilience, requiring them to report to the Care Quality Commission who will alert the local authority if there is a risk of failure.

Transition from Childhood

59. The Bill introduces a duty to ensure continuity of care around 'transition' and provides the power for local authorities to assess young people and young carers before they are 18, to ensure that their care needs continue to be met when they become adults. This is also extended to young people not receiving children's services but who may need services as adults. In addition there is a duty to assess the adult carers of disabled children.
60. **In Surrey** – The Transition Teams join Children's Services when reviewing young people in year 9 (13/14 years old) in order to make contact with the family as a whole and work towards a smooth transition at 18 years old.
61. Adult Social Care has joint post of Transition Development Manager. This promotes clear communication between the two Directorates and joint working.
62. Adult Social Care is also supporting Children's Services in their development of the Self Directed Support process for children with disabilities. This supports the transition to adult services and goes beyond the requirements of the Bill.

| |
|---------------------|
| Conclusions: |
|---------------------|

63. The Bill represents opportunities for significant improvement and change in adult social care. The new legal rights accorded to carers and the streamlining of the legislation is particularly welcome.
64. Surrey is advanced in its response to many areas proposed in the Bill, not least in relation to our support of carers which has been praised nationally, our information and advice, commissioning function and work on prevention.
65. The greatest challenge will be associated with the implementation of the new funding reforms which will bring in large numbers of 'new' people to the social care system.
66. Surrey will see a greater impact than most areas of the country because of the high percentage of people who currently fund their own care.

67. Although the changes will provide considerable benefits, they do not provide a solution to underlying increasing demand driven by an ageing population and the continued requirement for financial savings.

Financial and value for money implications

68. There will be significant financial implications on the local authority arising from these changes.
69. Areas to be considered regarding additional cost/resource will include:
- Implementation costs - System (I.T.), process, training, information
 - Additional assessment cost – time, staff, training
 - Cost of funding the care cost cap
 - Cost of funding the increase in the capital threshold
70. As stated in paragraph 38 above, it is estimated that the additional costs of the care cost cap and increase in the capital threshold will stabilise at around £50 m per annum.
71. The Government has stated that local authorities will be fully funded for the changes; however, details of this are awaited. The way in which the funding is allocated will be crucial to Surrey as it will need to take appropriate account of the additional requirements of the county due to the high level of self funders.
72. The current Medium Term Financial Plan includes contingency amounts in relation to the risks associated with Adult Social Care funding reform:
- £5 m 2015/16
 - £5 m 2016/17
 - £10 m 2017/18
73. In the June 2013 Spending Review it was announced that £335 million would be made available in 2015/16 for local authorities to prepare for implementation. The amount that each local authority will be allocated from this pot is awaited.

Equalities Implications

74. A full equalities impact assessment will be completed as the details of implementation requirements become clearer.
75. At this point it is anticipated that the changes will have a positive impact on Surrey residents and across people with protected characteristics.

Risk Management Implications

76. These will be scoped during implementation planning as part of project management systems.

Implications for the Council's Priorities or Community Strategy

77. The changes will support vulnerable people to live independently and have greater choice and control over their care and support.

Recommendations:

78. Select Committee Members are asked to note and consider the changes detailed within the Bill.
79. Select Committee Members are asked to recommend the following for implementation planning:
- Further Care Bill awareness events for staff across all localities
 - Care Bill implementation Group initiated
 - Updates on implementation progress to come to the Adult Select Committee

Next steps:

Nationally

- The Bill will travel through the required stages until it receives Royal Assent and becomes law. It is currently in Committee Stage of the House of Lords.
- During this period the Government will launch a series of consultations across the different areas of the Bill. This will contribute to the development of regulations and guidance. Following this process, details of the requirements will become clearer and more specific.
- The Government is currently consulting on funding reforms and has issued a discussion paper on the eligibility regulations.

Locally

- In response to the proposed Committee recommendations –
 - Monitor, consider, and act accordingly to the progression of the Bill, regulations and guidance.
 - Contribute to consultations and the development of regulations.
 - Develop a detailed project plan. Each clause of the Bill will be captured along with the policy and procedural development requirements arising from that clause, and how this will be implemented.
 - Future updates will be brought to the Adult Select Committee highlighting the progress made on implementation.

Report contact: John Woods, Assistant Director Policy and Strategy,
Adult Social Care

Contact details: Tel. 020 8541 7066, E-mail: john.woods@surreycc.gov.uk

Sources/background papers:

- [Adult Social Care Law Commission Report – May 2011](#)
- [Fairer Care Funding – Report of the Commission on Funding of Care and Support – July 2011](#)
- [Care Bill – May 2013](#)

This page is intentionally left blank