

**REPORT TO:** Health Policy & Performance Board  
**DATE:** 4 March 2014  
**REPORTING OFFICER:** Strategic Director, Communities  
**PORTFOLIO:** Health & Wellbeing  
**SUBJECT:** Social Care Bill  
**WARD(S)** Borough-wide

**1.0 PURPOSE OF THE REPORT**

1.1 To note the proposed changes to the Council's Adult Social Care responsibilities arising from the Care Bill and agree on an outline approach to managing anticipated changes, opportunities and risks associated with the implementation of the Care Bill.

**2.0 RECOMMENDATION**

**That Members of the Health Policy & Performance Board:**

- i) note the contents of the report;**
- ii) receive further updates as the Bill progresses through Parliament.**

**3.0 SUPPORTING INFORMATION**

3.1 The Care Bill outlines the most significant change in Adult Social Care in decades with changes to underpinning legislation, eligibility criteria, funding, changes to the status of Adult Safeguarding and a host of other associated areas which are likely to impact across all Council Portfolios.

3.2 New requirements, duties and responsibilities will be implemented from April 2015 with full implementation planned for April 2016.

3.3 The Care Bill currently going through Parliament aims to establish a new legal framework for Adult Social Care, putting the wellbeing of individuals at the heart of care and support service. The Government believes that the Bill marks the biggest transformation to care and support law in over 60 years. It is intended to replace over a dozen separate pieces of legislation relating to Adult Social Care with a single modern law. It aims to put people more in control of their own lives and to reform the funding of care and support to ensure that: -

- Everyone receives the care they need and that more support goes to those in the greatest need.
- The unfairness and fear caused by unlimited care costs is ended.
- People are protected from having to sell their home in 'their lifetime' to pay for care.

3.4 Whilst a number of features of the proposed legislation are subject to consultation and provision of greater detail, the breadth and complexity of the associated issues and the proposed timescales for implementation indicate that the Council needs to begin to carefully consider the financial and other implications, opportunities and associated risks and begin to prepare to manage these in the context of reductions in funding for local Government services and a raft of other social care initiatives. Key elements of the Care Bill can be broken down into separate but related key areas with varying implications for the Council. Changes for each area are outlined below. A brief initial audit of the Council's position and key issues is attached in Appendix 1.

#### 3.4.1 **Prevention, information and market shaping**

The Care Bill describes the responsibilities which Local Authorities will have for all local people who live in their area. In summary, people will need to:

- Receive services that prevent their care needs from becoming more serious.
- Get information they need to make good decisions about care and support.
- Have a good range of providers to choose from.

Legislation will make it clear that Local Authorities **must** arrange services that help prevent or delay people deteriorating and provide comprehensive information and advice about care and support in their local areas.

The Bill clearly states that Local Authorities must provide information on: -

- What types of care and support are available.
- The range of care and support services available to local people.
- What process local people need to use to get care and support.
- Where people can find independent financial advice about care and support.
- How people can raise concerns about the safety and wellbeing of someone who has care and support needs.

Further the Bill requires Local Authorities to support a market for Adult Social Care that delivers a wide range of care and support services that will be available to their local communities.

The Government indicates that it will support Local Authorities to influence the development of various services through “market shaping”.

#### **3.4.2 Entitlement to Public Care and Support**

The Care Bill aims to clarify when people will be provided with care and support. The aim is to ensure that the law focuses on the needs of people rather than what is seen as the present legislative focus on providing particular services. A key aim is to ensure that the individual person is always at the centre of everything.

Another aim is to ensure that there is one route for determining entitlement which works for all groups of people in all circumstances. The Care Bill aims to create a single consistent route to establishing an entitlement to public care and support for adults with needs for care and support. It also creates the first ever entitlement for support to carers on a similar basis. (see section 3.4.8)

The Care Bill aims to be clear about the steps which must be allowed to follow to work out this entitlement including an assessment of need followed by a financial assessment. At the end of this a decision can be made about eligibility (see section 3.4.3). There will then be a legal duty for an adults “eligible needs” to be met by the Local Authority, subject to their financial circumstances. (Eligible needs are those that are determined after an assessment).

The Care Bill will aim to give more flexibility to focus on what the person needs and what they want to achieve to design a package of care and support that suits them. Adults with eligible social care needs who are “ordinarily resident” in the Local Authority area, will be entitled to have their needs met.

Adult Social Care will be provided free if either the person cannot afford to pay the full cost of their care and support, or the adult does not have mental capacity and there is no one else to arrange for them, or they have reached the cap on care fees, see section 3.4.6.

#### **3.4.3 Changes to assessments and eligibility**

As previously outlined the Care Bill identifies the Local Authorities responsibility to carry out an assessment, taking into account a person’s need and other circumstances. There will be increased focus on involving people and their carers in determining their care packages. The stated aim is to build a care and support system

around the individual.

The duties to carry out on these assessments will outline that: -

- Local Authorities must provide an assessment to all people, regardless of finances or whether the Local Authority thinks a person will be eligible.
- They must be of the adult's needs and the outcomes they want to achieve.
- They must consider that adults capabilities and whatever support is available.
- They must be carried out with the involvement of the adult and their carer.
- The assessment must be appropriate and proportionate and consider the needs of the family.

Regulations will set out a minimum eligibility framework to be applied across all parts of the country. A detailed consultation document (Draft Minimum Eligibility Threshold for Adult Care and Support, A Discussion Document June 2013, Department of Health) has been launched.

The introduction of revised eligibility threshold and new mechanisms for assessing and reviewing, contained in the Care Bill, will require significant activity and energy including: -

- A focus on ensuring that assessments meet new criteria with a focus on prevention and continuity.
- Reviewing the Council's eligibility levels for adult social care in the light of anticipated national minimum thresholds.
- Assessment of additional demand and resources necessary to manage demand arising from the change in policies and procedures and the financial modeling.
- Reviewing policies and procedures to ensure they fit with the new model.
- Establishing policies and procedures in relation to continuity of care between Local Authorities.
- Reviewing care and support planning processes to ensure they meet new requirements.

- Considering the implications for joint assessments and reviews.
- Developing carers assessments, reviews and services, making a decision in relation to charging and also supporting carers of young people in transition.
- Working with Children and Young Peoples Services to manage issues relating to young carers and young people and their families in transition.
- Considering how care and support will be arranged for service users who may not have previously accessed Council services in the past.
- Considering governance and oversight of new models of assessment/reviews.
- Implementing associated changes to support services necessary as a result amendments to review and assessment processes.

#### 3.4.4 **Personalising Care and Support Planning**

Local Authorities will be required to produce an individual support plan which clarifies how needs will be met. The Local Authority will need to develop a personal budget, working out the cost of the necessary care and the amount that the Local Authority is going to pay towards these costs.

The government intends to change the law to focus on the person and their needs, their choices and what they want to achieve. It aims to put people in control of their lives and the care and support they receive, whilst we are already familiar with this approach the Government intends to give Local Authorities a new legal responsibility to set out care and support in the form of a detailed plan (or a support plan in the case of a carer).

The Care Bill will provide people with a legal entitlement to a personal budget as one part of a care and support plan and strengthen the ability for the individual to ask for a direct payment to meet some or all of their needs. The adult and carer must be involved in developing the care and support plan.

The Care Bill will also outline that Local Authorities have a legal responsibility to review the plan and to make sure that the adult needs and outcome continues to be met.

#### 3.4.5 **Charging and Financial Assessments**

Care and support is not a free service like Health Services provided by the NHS. Local Authorities will continue to be required by the

Care Bill to carry out a financial assessment and where appropriate, charge people for services. This will consider the persons income and any assets they own. The Local Authority will then calculate how much the person can afford to pay towards their care and support costs. Local Authorities will not be able to charge for some types of services and this will be set out in regulations. Detailed financial assessment rules will also be set out in the regulations so that everyone will have their finances assessed in the same way.

#### 3.4.6 **Care and Support Funding Reform**

The Government have launched a consultation on reforming what and how people pay for their care and support. This is seen as a key element of the Care Bill. The aim is to protect people from unlimited costs and implement the findings of the Dilnot Commission from April 2016. At the present time, people with approximately £118,000 worth of assets (savings or property) will be protected and individuals will be responsible for their care costs up to a maximum of £72,000 if they can afford it.

This compares to the present situation where there is no cap on the amount of payments and £23,000 of assets are protected.

It is important to note that those people living in a care home will still be expected to pay around £12,000 a year towards their care costs (referred to as Hotel costs) if they can afford it. The Council will be required to fund this amount for those assessed as not being able to afford it.

In addition the Care Bill will make a requirement for deferred payment agreement so that people will not have to sell their home during their lifetime to pay care fees. The Local Authority will pay the care home cost during this time and Local Authorities will be able to charge interest on these payment arrangements.

This will be a key area with a need to ensure effective management of anticipated new demand, the complexity of the new system and the expectation of the public.

- Carefully monitoring position in relation to Local Government finance, in particular the impact on any potential reduction in income, increase in demand on services and implications for revenue support grant
- Finalising and regularly updating a market position statement including
- Understanding the full implications and new requirements relating to preventative services

- Working with partners to ensure a consistent approach in the Borough.
- Developing a relationship with the Financial Services Authority and understanding what the Local Authority can provide/ commission/support.
- Implementing changes to charging arrangements and policies and procedures
- Clarifying issues in relation to personal budgets and establishing mechanisms for new service users with clear and simple links to direct payments policies and procedures.
- Providing public information in relation to the cap on care fees and developing a comprehensive care account policy including arrangements for transfer between Local Authorities and different caps at different ages.
- Formalising deferred payment scheme and considering in patient payments.
- Working with care homes to understand the development of direct payments for care homes and also the range of implications likely to arise from the hotel cost issue.

#### 3.4.7 **Safeguarding Adults**

The Care Bill will establish a clear legal framework for how Local Authorities and other parts of the health and care system should protect vulnerable adults at risk of abuse. In effect, Adult Safeguarding will be placed on the same statutory footing as Children's Safeguarding and Local Authorities will be required to set up a Safeguarding Adult Board in their area with a clear basis in law.

A new requirement for Safeguarding Adults Reviews, which seem to be based on the same principles as Serious Case Reviews will be introduced.

In order to ensure effective implementation of new requirements in relation to adult safeguarding: -

- Policies, procedures and practice will need to be updated in the light of new regulations/guidance
- There will need to be analysis and management of the potential additional pressures put on safeguarding services by the extension of eligibility criteria and whether efficiencies / improvements can be delivered by closer integration with children's safeguarding.

- There will be a need to formalise existing practices such as the development of an annual plan and an annual report.
- Consideration will need to be given to any distinction between serious case reviews as they stand in present policies and procedures and safeguarding adults review.
- Issues in relation to information sharing will need to be clarified.

### 3.4.8 Carers Issues

A carer is someone who helps another person, usually a relative or friend in their day to day life. This is not the same as someone who provides care professionally or through an organisation. The Care Bill will give Local Authorities a responsibility to assess a carers own needs for support. This replaces the existing law which says that the carer must be providing a substantial amount of care on a regular basis in order to qualify for an assessment. This will mean that more carers are able to have an assessment in a way that is comparable to the legal rights of the person they care for.

If both the carer and the person they care for agree, a joint assessment of care can be made.

Once a positive assessment of eligibility is complete, the carer will be eligible for support from the Local Authority. The Local Authority and the carer will need to think about the type of support that they might benefit from. Facts sheets published to support the Care Bill include examples such as: -

- Help with housework or gardening
- Buying a lap top to keep in touch with family or friends
- Becoming a member of a gym so that the carer can look after their own health and wellbeing.

It may also be necessary to provide replacement care to allow the carer to take a break.

Local Authorities will need to determine whether they wish to levy a charge on carers services and also issue a personal budget to carers. Carers will have a right to request that the Local Authorities meets some or all of their needs by giving them a direct payment.

In addition, there will be a focus on the needs of young carers and there maybe a new requirement to include assessing what an adult needs to fulfil parental responsibilities for their children and to ensure that young people do not undertake caring responsibilities.

There will be provision in the Care Bill for an adult carer of a disabled child to ask for an assessment of their caring needs in advance of the child reaching 18. Similarly, the Care Bill will clarify that Adult Social Care Services need to be involved in planning what support of a young carer may need once they reach 18.

#### **3.4.9 Continuity of Care**

Due to the introduction of the cap on care costs, the Care Bill will intend to ensure a continuity of care when individuals move between Local Authority areas.

New requirements will be placed on the first Local Authority (ie the Council that the person is moving from) and the second Authority (ie the receiving local authority) in terms of what the Council will need to do when it receives someone new. A continuity duty will be placed on Local Authorities, so the second Authority (i.e, the receiving Authority) will need to provide those services put in place by the first Authority until it has carried out its own assessment processes.

#### **3.4.10 Market oversight of provider failure.**

The Care Bill introduces new requirements, some of them relating to the Care Quality Commission in relation to market oversight and the need to monitor providers effectively.

The Care Bill will also impose a clear legal responsibility on Local Authorities where a care provider fails, making it clear that Local Authorities will have a temporary duty to ensure that both residential care (care homes) and care provided in a person's own home continue if a provider fails.

The Local Authority will have a responsibility towards people receiving care, regardless of whether they pay for it themselves or whether the Local Authority pays for it.

#### **3.4.11 Transition for Children to Adult Care and Support Services**

The Care Bill gives young people and carers of children a legal right to request an assessment before they turn 18. The Council will need to undertake this assessment if there is 'significant benefit' in doing so. This is regardless of whether the person currently receives Children's Services.

The Care Bill also states that the Local Authority must assess the needs of a child's carer, where that child is already receiving support and can provide services to them.

The age of when someone can request an assessment is not clear

but the Local Authority must determine a 'significant benefit'. Again the principle of continuity will be enshrined in the Care Bill so that no one reaching the age of 18 who is already receiving support of some kind under the relevant legislation that relates to children, will suddenly find themselves without care and support.

#### **3.4.12 Single Failure Regime**

The Care Bill will aim to ensure a single failure regime to deliver a simple, clear, flexible process for tackling quality failures in NHS Trusts and Foundation Trusts. There will be 3 stages to the regime including identification, problem intervention and administration (administration will deal with both clinical and financial unsustainability).

#### **3.4.13 Health and Social Care Ratings**

The Care Bill will ensure that the CQC publish a rating for GP practices, hospitals, care homes and domiciliary care. CQC will have a duty to consult in relation to the setting up of the new system and will decide how services and providers will be rated.

#### **3.4.14 False or misleading information**

The Care Bill will make it a criminal offence for healthcare providers to give false and misleading information. Initially, regulations will limit the criminal offence to providers of NHS secondary care. The Council will need to monitor the situation carefully and consider any implications of its own services, provider services, services it contracts with and other health services.

#### **3.4.15 Health Education England and the Health Research Authority.**

The Care Bill will place both these special Health Authorities into non-departmental public bodies. Health Education England is responsible for planning and buying education and training for NHS and the public, and the Health research authority will have its research function extended to cover social care research.

### **4.0 ACTION PLAN**

4.1 In order to ensure effective implementation of the actions and the requirements arising from the Care Bill, it is proposed to develop a programme management approach with several underpinning themes which will cross all of the main work streams. The key issues in relation to underpinning themes will be: -

- Maintenance of day to day services.
- Maximising opportunities for integration with Health Partners

wherever this delivers better outcomes for service users/carers and value for money.

- Working closely with relevant portfolios to understand and manage wider implications.
- Ongoing implementation of the Council's budget strategy 2013 to 2016.
- A need in all areas to update policies, procedures and practice in order to ensure that resources are maximised and work as efficiently as possible, reducing duplication and confusion.

4.2 It is proposed that a task and finish group be established with representation from Adult Social Care, Corporate Finance and other representation may be required on an adhoc basis. Regular reports will be presented to the Portfolio Holder for Health & Wellbeing, Chief Officers, the Executive Board and the Health PPB.

## 5.0 **POLICY IMPLICATIONS**

5.1 These are highlighted within the report

## 6.0 **FINANCIAL IMPLICATIONS**

6.1 The Council has significant existing statutory responsibilities for Adult Social Care in the Borough and invests considerable resources in meeting these responsibilities.

6.2 The Government has indicated that there will be one off funding allocated to support implementation of these issues in 2015/16. It is estimated that Halton will receive an allocation of circa £1million. When there is greater understanding of some of the detailed implications, this will be utilised to ensure capacity is available for effective implementation of the care bill.

## 6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### 6.1 **Children & Young People in Halton**

These will be determined as the policies are developed.

### 6.2 **Employment, Learning & Skills in Halton**

These will be determined as the policies are developed.

### 6.3 **A Healthy Halton**

These will be determined as the policies are developed.

#### 6.4 **A Safer Halton**

These will be determined as the policies are developed.

#### 6.5 **Halton's Urban Renewal**

These will be determined as the policies are developed.

#### 7.0 **RISK ANALYSIS**

7.1 In the light of the timescale, breadth of changes and associated risks, it is important that all Council Portfolios begin to prepare for implementation in spite of a lack of clarity about some of the key features.

7.2 In addition to the complexity of implementing the range of new requirements it is important to note that these will need to be managed at a time when both the Coalition Government and Labour Party policy is focusing on increasing integration between Adult Social Care and Health Services and when the Council and Adult Social Care Portfolio is managing challenging savings targets necessitated by reduction in national funding.

7.4 There are a significant number of risks arising from the Care Bill although at this stage, due to a lack of clarity of guidance and regulations, it is not possible to identify all of the individual and operational risks, however, it is possible to highlight some high level risks.

7.5 There appear to be significant financial risks arising from the proposals although the Government has indicated that Local Authorities will not be disadvantaged. It is possible to anticipate that there will be potential risks arising from: -

- A loss of income from government arising from consultation about how money for adult social care is to be allocated in the future and/or the potential for funding to be provided via a specific grant which impacts on the RSG.
- Increased demand for services.
- A loss of income from service users.
- Costs of additional statutory duties, e.g. to provide support for carers, develop preventative services, assess and review self funders.

A need to invest in costly support services necessary to implement change.

- 7.6 There is a risk that the proposals in the Bill and an interpretation of some of the associated guidance may lead to some people attempting to inappropriately use public funds. With the introduction of a cap on care costs, it is possible to anticipate that some service users and/or their carers may seek to include activities that have previously been undertaken by family members or friends as a normal part of community care and family responsibilities, into their care fees in order that they reach the cap as soon as possible in order that the Council pays for their care.
- 7.7 The guidance gives some examples of ways of support to individuals that the Council would not presently fund. The Council has responsibility for funding services to all eligible members of the public, care will need to be taken to ensure that funding is maximised for those who need it most and that all spend is appropriate to meeting eligible social care needs rather than associated aspirations.
- 7.8 The Council will need to ensure that audit and governance processes are robust to avoid any inappropriate use of public funds.
- 7.9 The way that the Care Bill is written and in associated publicity, there are some risks that it will increase expectations of service users, carers and partners in relation to what they are able to utilise care funding for. There is likely to be an increased risk of challenge if the Council needs to restrict the use of funding in order to ensure effective use of public money and management of resources.
- 7.10 There is a risk that the workforce may not be suitably skilled or sufficient to meet the needs of the new services and processes required by the legislation.

## 8.0 **EQUALITY AND DIVERSITY ISSUES**

- 8.1 These will be developed before implementation of the new policies.

## 9.0 **LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

None under the meaning of the Act.