

Agenda Item 5

Open Report on behalf of Glen Garrod, Director of Adult Care

Report to:	Adults Scrutiny Committee
Date:	28 October 2015
Subject:	Care Act 2014 Update

Summary:

In May 2014, the Care Act completed its journey through Parliament, gaining Royal Assent and its provisions were effective from April 2015. Lincolnshire County Council Adult Care has undertaken a programme of work to implement the changes required by the Act. This report is an update on the progress to date.

Actions Required:

That the Adults Scrutiny Committee notes the contents of the report.

1. Background

The implementation of the Care Act 2014 has seen the single biggest change to social care legislation for a generation, and brings together a host of guidance and policy that has been implemented since the Community Care Act 1990.

The majority of legislation within the Care Act is putting on statute existing policy and good practice. However, there are also a small number of new duties being brought in through the Act.

The Act is divided into three main parts:

- Part One deals with the reform of adult social care and support legislation, and is structured around an individual's journey through the reformed system (be they someone in need of care, or their carer).
- Part Two of the Act seeks to improve care standards by putting people and their carers in control of their care and support. It also provides a legislative response to the Francis Inquiry by increasing transparency and openness. The intention is to enhance the quality of care.
- Part Three of the Act establishes Health Education England and the Health Research Authority.

This report and the implementation programme have focussed on Part 1 of the Act.

OVERVIEW OF THE CARE ACT 2014

The Care Act has been designed to reform the law relating to care and support for adults and for carers, updating and bringing together all relevant legislation into a single statute, in order to better offer improved support and wellbeing, with dignity, respect, independence and choice at the centre of the Act. The Care Act also promotes integration between adult social care, health and housing services. To this end, the Care Act sets out a programme of reform to the care and support system, at the centre of which is the concept of wellbeing, a focus on outcomes, and the role of users and carers as partners in care, being enabled to use their own resources and capacity in order to prevent and postpone the need for paid care and support.

A breakdown of Part 1 of the Care Act can be summarised below; to skip this detail please go to page 7 of the report:

- a) **Wellbeing principle:** Section 1 creates a new statutory principle which applies to all the functions under Part One of the Act (including care and support and safeguarding), and means that whenever a local authority makes a decision about an adult, they must promote that adult's wellbeing.
- b) **Prevention:** Section 2 requires local authorities to ensure the provision of preventative services - that is services which help prevent, delay or reduce the development of care and support needs (including carers' support needs).
- c) **Integration:** Section 3 places a duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services.
- d) **Information and advice:** Section 4 creates a duty on local authorities to provide an information and advice service which is available to all people in the local authority's area. This service must include information on how to access independent financial advice, regardless of whether or not a resident has eligible care needs.
- e) **Diversity and Quality of provision (Market Shaping):** Section 5 creates a general duty for local authorities to promote diversity and quality in the market of care and support providers for people in their local area.
- f) **Cooperation:** Sections 6-7 create a general duty to cooperate between the local authority and other organisations which have functions relevant to care and support. This includes a duty on the local authority itself to ensure cooperation between its adult care and support, housing, public health and children's services.
- g) **How to meet needs:** Section 8 gives examples of the ways in which a local authority may meet a person's needs under the Care Act. It relates to adults who need care and carers.
- h) **Assessment:** Sections 9-11 set out when a local authority must carry out an assessment of need and what the assessment should cover.

- i) **Assessment regulations:** Section 12, which also applies to carers, enables regulations to specify further detail about the assessment process, including requiring the assessment to be appropriate and proportionate.
- j) **Eligibility:** Section 13 requires local authorities to determine whether a person has eligible needs after they have carried out a needs assessment or a carer's assessment. It provides for regulations which will set out the eligibility criteria, including the national minimum level of eligibility at which local authorities must meet a person's care and support needs.
- k) **Charging:** Section 14 gives local authorities a general power to charge for certain types of care and support, at their discretion.
- l) **Cap on Care Costs:** Sections 15-16 allows for regulations to establish a limit on the amount that adults can be required to pay towards the costs of meeting their eligible needs over their lifetime and prevents local authorities from making a charge for meeting needs (other than for daily living costs) once an adult's care costs have reached that limit.
- m) **Financial assessment:** Section 17 requires a local authority to carry out a financial assessment if they have chosen to charge for a particular service under the power in Section 14.
- n) **Duty to meet needs:** Section 18 sets out the circumstances establishing an entitlement to public care and support for adults who need care (carers are covered in a separate section). It describes the conditions which must be met for there to be a duty on local authorities to meet their eligible needs. Section 18 creates a new duty on local authorities to arrange care and support if requested, when the adult would otherwise not be entitled, but could afford to pay for their care, or if the adult's accrued costs exceed the cap on care costs.
- o) **Power to meet needs:** Section 19 provides a broad power for the local authority to meet care and support needs in circumstances where the duty in Section 18 does not arise. It also allows for local authorities to temporarily bypass carrying out an assessment of needs, where care and support is needed urgently.
- p) **Duty and power to meet carers' needs:** Section 20 establishes a legal obligation to meet a carer's needs for support, on a similar basis to those needing care in Section 18. The key conditions for a carer's entitlement are that they have assessed eligible needs for support and that the person for whom they care is ordinarily resident in the local authority area (or present there but of no settled residence).
- q) **Exception for immigration:** Section 21 applies to adults who are subject to immigration control. The section provides that local authorities may not meet the care and support needs of such adults solely because they are 'destitute' or because of the physical effects or anticipated physical effects of being destitute. If their needs have arisen for other reasons (e.g. because of a disability, rather than solely because they are destitute), then the prohibition does not apply.
- r) **Exception for NHS:** Section 22 provides that in meeting an adult's needs for care and support, a local authority may not provide any healthcare services which are the responsibility of the NHS. However, a local authority may provide some healthcare services in certain circumstances, as long as the service provided is minor and it

accompanies some other care and support service which the local authority is permitted to provide.

s) **Exception for housing:** Section 23 provides that local authorities may not meet an adult's care and support needs by providing general housing, or anything else required under other legislation specified in regulations. It forms the boundary in law between adult social care and housing.

t) **Steps to take:** Section 24 sets out the steps local authorities must take after carrying out the needs assessment or carer's assessment (and the financial assessment where relevant). This includes the preparation of a care and support plan for the individual, confirmation to the individual of which needs will be met by direct payments and help to the individual to decide how needs will be met.

u) **Care and support plans:** Section 25 details requirements for inclusion in the care and support plans and carers' support plans.

v) **Personal Budgets:** Section 26 defines a personal budget as a statement of the cost of meeting an individual's needs and the amount the individual and the council must pay towards these costs. It also sets out the financial information to be included in the statement. The definition of the personal budget reflects current policy and practice.

w) **Review of care and support plan:** Section 27 requires local authorities to keep care and support plans and carers' support plans under review generally and to carry out an assessment where they are satisfied that the person's circumstances have changed. The adult can also make a reasonable request to have a review.

x) **Independent Personal Budget:** Section 28 establishes independent personal budgets for adults who have eligible needs, and who choose not to have those needs met by their local authority. The independent personal budget is a statement recording how much of the adult's spending on care will count towards the cap.

y) **Care account:** Section 29 requires local authorities to maintain a record ('care account') of an individual's progress toward the cap on the cost of care.

z) **Choice of accommodation:** Section 30 provides a framework and powers to set regulations regarding the choice of accommodation and other matters. Regulations will broadly maintain current practice. They will set out factors to be considered when it has been determined that an individual's needs would be best met through the provision of care and support in a care home or other type of accommodation and the adult expresses a preference for particular accommodation.

aa) **Direct payments:** Sections 31-33 consolidate the existing legislation on direct payments. People with capacity can request a direct payment and where they meet the conditions set out in this section the local authority must provide direct payments to meet their assessed eligible needs. It also places a duty on local authorities for adults who lack capacity. It requires local authorities to make a direct payment to an authorised person who requests one, provided five conditions set out in the section are met.

bb) **Deferred payments:** Sections 34-36 allows regulations to be made to state when a local authority may or must enter into a deferred payment agreement which will allow people to defer paying their care fees by taking out a loan from their council (secured

against their property) to pay for care and support. The loan will be repaid upon the sale of the person's home. Section 35 contains further provisions for deferred payment agreements to help local authorities recover the costs involved in their provision and to ensure adequate protections for residents and their families. It includes powers to set out what administration costs and interest payments local authorities can charge people and the information or other consumer protection measures that must be provided to the resident.

cc) **Continuity of care:** Section 37 sets out the duties that local authorities are under when an individual and potentially their carer, notifies them that they intend to move from one local authority area to another. Section 38 applies when the second receiving authority has not carried out the assessment before the person moves. It requires the second authority to provide services based on the care and support plan provided by the first authority. The second authority must continue to provide this care until it has undertaken its own assessment.

dd) **Ordinary residence:** Sections 39-41 help local authorities identify a person's ordinary residence (usually based on where they live) for the purposes of providing care and support. It also provides a mechanism for local authorities to reclaim money they have spent providing care and support to someone for whom they were not in fact responsible.

ee) **Adult safeguarding:** Sections 42-47/S2 set out the local authority's responsibility for adult safeguarding for the first time in primary legislation. This includes i) responsibility to ensure enquiries into cases of abuse and neglect ii) establishment of Safeguarding Adults Boards on a statutory footing and iii) information sharing.

ff) **Provider Failure:** Sections 48-52 set out the duty on English local authorities when providers fail. Authorities will be required to temporarily meet those of an adult's needs for care and support which are no longer being met as a result of the provider failing. This specific duty will apply to all individuals present in the authority's area whose needs the local authority is not already meeting, for example those who are self-funders, and those whose services are funded by another local authority.

gg) **Market Oversight:** Sections 53-57 set out duties on the Care Quality Commission (CQC).

hh) **Transition from childhood:** Sections 58-66 provide local authorities with a duty to assess a child, young carers or child's carer before they turn 18, in order to help them plan if they are likely to have needs once they (or the child they care for) turn 18 and if it will be of 'significant benefit'. It gives local authorities a power to meet the needs of an adult caring for a child with needs for care and support and allows regulations to be made in relation to the exercise of this power. The sections also include a power to make regulations about assessment for young carers. This is designed to provide continuity so that, where a young person is receiving children's services, those services will not stop abruptly when the person turns 18, but must continue until adult services have a plan in place.

ii) **Independent advocacy support:** Sections 67-68 place a duty on local authorities, in certain specified circumstances, to arrange an independent advocate to be available to facilitate the involvement of an adult or carer who is the subject of an assessment, care or support planning or review.

- jj) **Recovery of charges, Transfer of assets:** Sections 69-70 allow local authorities to recover debt incurred providing care services.
- kk) **Five-yearly review:** Section 71 requires the Secretary of State for Health to review how the capped cost system is operating every five years, the results of which can be used to inform decisions on whether to change the level of the cap, or other parameters, such as general living costs, in the system.
- ll) **Part 1 Appeals:** Section 72 allows for regulations to establish a process through which appeals may be made against decisions taken by a local authority in respect of individuals under Part 1 of the Act. Amongst other things, the regulations may specify the type of decision that may be appealed and the details of the process that must be followed. The regulations made under the section would provide for investigations to be carried out into things done or not done by the person or body with power to consider the appeal. This would enable overview of the appeals process itself and would, for example, enable the Secretary of State to provide for the involvement of the Local Government Ombudsman in the overall appeal process. The section also aims to establish a flexible and proportionate appeals system which will have an element of independence from local authority decision-making. The final form of regulations and guidance will be developed with stakeholders and consulted upon in late 2014 alongside other elements of the reforms that come into effect from April 2016.
- mm) **Human Right Act – application to provision of regulated care or support:** Section 73 makes it explicit that care providers regulated by the Care Quality Commission in England (or by equivalent bodies in the rest of the United Kingdom) are bound by the Human Rights Act when providing care and support.
- nn) **Delayed discharges:** Section 74/S3 re-enacts and updates the provisions which relate to delayed discharges from acute hospitals. They set out the process for notification of discharge when an adult has care needs, requirement for assessment and amends the mandatory system of fining (“reimbursement”), where the local authority has not carried out its duties by the day of discharge, to a discretionary one.
- oo) **Mental health after-care:** Section 75/S4 clarifies that after-care services provided under Section 117 of the Mental Health Act 1983 are to meet a need arising from or related to the mental disorder of the person concerned. They aim to reduce the likelihood of deterioration in the person’s mental disorder (and, accordingly, reducing their risk of requiring admission to hospital for treatment).
- pp) **Prisoners:** Section 76 sets out the responsibilities for provision of care and support for adult prisoners and people residing in approved premises. Where it appears that adults in prison or approved premises have needs for care and support, they should have their needs assessed by local authorities and where they meet eligibility criteria, have services provided by the local authority in question. Prisoners’ non-eligible needs will be met by the prison.
- qq) **Registers:** Section 77 requires local authorities to continue to establish and maintain a register of people living in their area who are sight impaired. It also enables local authorities to establish and maintain a similar register of people living in their area that need care and support or are likely to do so in the future.

rr) **Guidance:** Section 78 gives the Secretary of State a power to issue guidance to local authorities on how they exercise functions under the Act. Before issuing any such guidance the Secretary of State must consult such people as he or she considers appropriate.

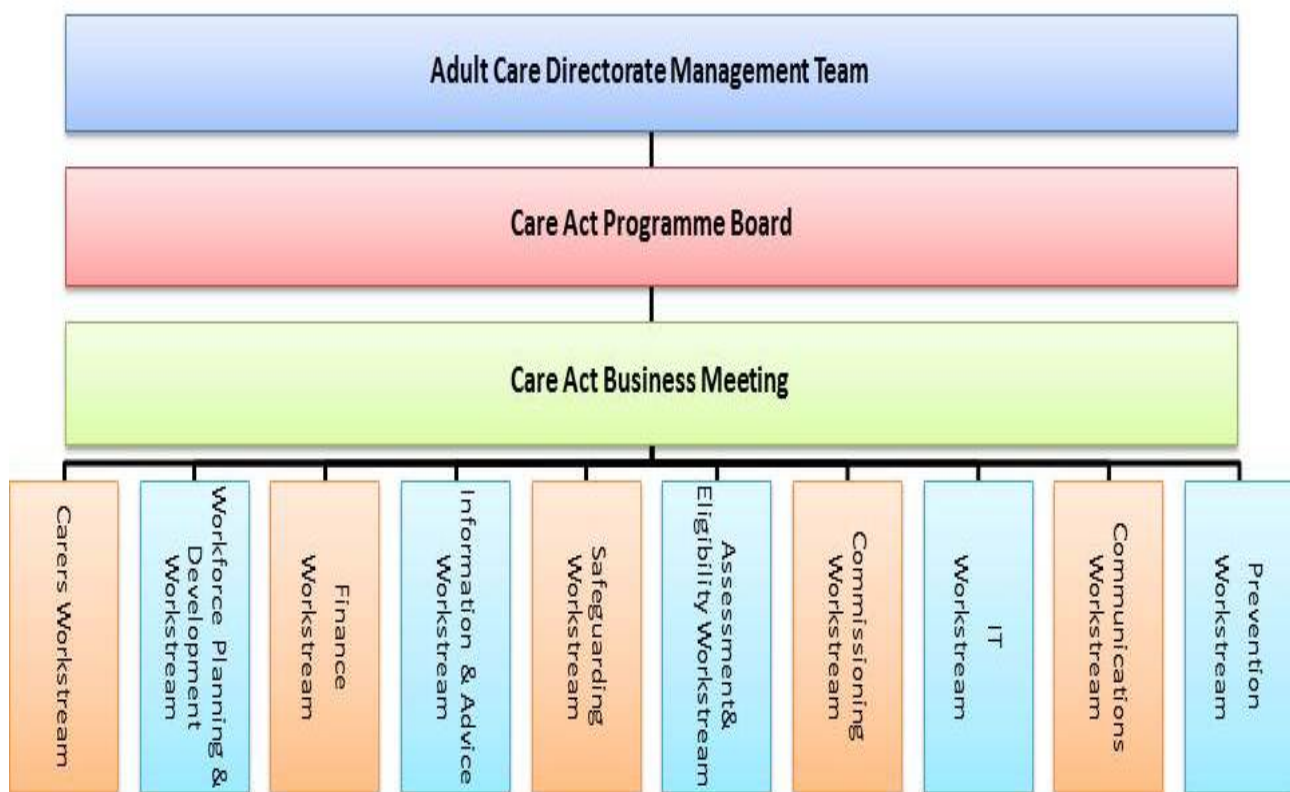
ss) **Delegation:** Section 79 provides for a new power for local authorities to delegate certain care and support functions to a third party. This is a new discretion for local authorities, to be determined locally.

tt) **Cross border placements:** Section S1 makes provision for a person ordinarily resident in England, who has care and support needs and requires residential accommodation to meet those needs, to be provided with that accommodation in another part of the UK. It also allows for such placements to be made in England for people who are ordinarily resident in Wales, or whose care and support is provided under the relevant Scottish or Northern Irish legislation.

LINCOLNSHIRE COUNTY COUNCILS APPROACH

To consider the work required, and coordinate this to ensure compliance with the Care Act, a Care Act Implementation Programme was formed. Figure 1 below lays out the governance structure and the delivery work streams that have reported to it. Named Leads were identified and assigned to each work stream, some of which used existing groups and structures to support delivery, while other groups were newly formed.

Figure 1



Implementation of the Care Act has been sponsored by Pete Sidgwick (Assistant Director for Adult Care) and overseen by the Care Act Implementation Programme Board with

representatives from Adult Care, finance, legal services and communications. The Board has met on a monthly basis to review progress, make key decisions and escalate actions where required.

In addition to our local implementation, and to ensure that we share good practice and understand how other local authorities are progressing the implementation, the Lincolnshire Programme is heavily involved in the regional and national networks. This has seen a 'Lincolnshire' model of financial modelling used nationally and officers taking a regional lead on specific aspects of the implementation.

SUMMARY OF PROGRESS

Below outlines the progress that we have made to date and gives us assurances that we are compliant with the Care Act. As with the previous legislation, it is difficult to unilaterally state compliance as there is some ambiguities in the law and statutory guidance, the real only test being legal challenge.

a) **Carers** - A carers assessment and eligibility process has been implemented and a combined assessment with the 'cared for person' will be provided where requested and consented by both parties. Recording will reflect a 'whole family approach' which recognises both the impact of care and support needs on the wider family, and on the opportunity for informal arrangements to be supported as a sustainable way of supporting people with care and support needs. Where required a support plan will be produced and shared with the carer. A new Carers service will be procured next year, which will further embed the principles of the Act.

b) **Safeguarding** - Lincolnshire County Council policies and procedures have been reviewed and updated to reflect Care Act requirements. The Lincolnshire Safeguarding Adults Board (LSAB) has reviewed and adjusted its membership, implemented a strategy for 2015-18 and produced a multi-agency policy. The Board will produce an annual report in April 2016.

c) **Prevention** - Public Health provides preventative services, including the Wellbeing Service, making every contact count (MECC) raising awareness of health and wellbeing, weight management services, smoking cessation, physical activity programmes, Community health champions across the county, sexual health services, Ante and post natal support, housing related support for the homeless, offenders, mental health and substance misuse, as well as the adult care services of reablement and the preventative services for carers.

d) **Information and Advice** - Our provision for information and advice is comprehensive; LCC Connects offers access to the Adult Care Manual and links to our micro site: MyChoiceMyCare which has been updated by the workstreams. Our advocacy service has been reviewed to ensure we are compliant with the requirements.

e) **Assessment, Care Planning and Eligibility** - National eligibility thresholds have been implemented. Assessments are proportionate and consider options other than the provision of care and support. The wellbeing and support for the person has been adopted into practice and standards. All needs are identified irrespective of whether the person is eligible. Interventions to prevention options will be promoted relating to the onset of eligible needs. The Adult Care Procedures Manual (Tri-X) and LCC connects have been updated to reflect Care Act changes.

There has been a member of staff in post for transitions since before the Care Act became law, and there is already good practice in place in Lincolnshire but to support this, a transitions protocol has been drafted and a memorandum of understanding between Children's and Adult Services is proposed.

Work commenced with the prison service prior to implementation and subsequently a dedicated post for prisons commenced in April 2015, the pen picture below outlines this area of work and the benefits:

Mr B is an older person who was referred to Adult Care by his probation officer, due to concerns about how he was managing at home. He was assessed by the Customer Service Centre team, and at that time he refused a home assessment. A few days later he was remanded into custody at HMP Lincoln, and due to the nature of concerns raised about his welfare and ability to manage activities of daily living, Adult Care was asked to complete an urgent adult care assessment.

The Prisons Social Worker visited Mr B and discussed the assessment process with him and he consented to an assessment, which was completed. As Mr B was on remand, we also gained his consent for a home assessment jointly with his probation officer at his own home when he was released; however he was remanded back into custody where we have continued to visit him.

While in custody, we have completed an assessment, and had a multi-disciplinary meeting at the prison involving the police, probation, prison safer custody staff, Adult Care and his daughter via telephone link.

Whilst at this time Mr B does not require services from Adult Care, the Prisons Social Worker will on his release continue the work that they have been completing with him, this will support his transition back into the community and he will receive support and further assessment as required.

f) **Commissioning and the Market** - Processes are in place regarding provider failure and the role of market development strengthened in the commercial team. Further work is on-going to ensure Care Act requirements are embedded in future procurement and commissioning exercises. A market position statement has been published and will be distributed to key partners and linked where possible to other bordering authorities' statements on our website.

g) **IT** - Once implemented Mosaic will ensure that Lincolnshire County Council continues to be Care Act compliant.

h) **Workforce** - The Social Care Institute for Excellence delivered assessment and eligibility training for front line staff, Lincolnshire Partnership Foundation Trust and via train the trainer model for trusted assessors and Customer Service Centre. Adult Care Workforce team published bulletins known as the 'Care Act Matters', each edition focusing on a specific area of the Care Act and providing additional links to helpful information and toolkits. Further work is now being planned to develop practice for 'a strength-based approach' to promote people's wellbeing and independence.

i) **Communication** - The programme support team has kept key people informed of national progress and developments on a regular basis. The communications team has provided key messages to partners and providers and supported the development of the Care Act web pages to complement national publicity campaign. A public awareness campaign was launched by the Department of Health including door drops to 2.5 million households, radio, national newspaper and magazine advertising.

APRIL 2016 FUNDING REFORMS

On 20 July 2015, Alistair Burt, Minister of State for Community and Social Care, announced that there had been a decision made to delay implementation of the funding reforms within the Care Act until 2020. This includes delaying the 'Cap on Care Costs', the extension to the 'Means Test Thresholds' and the 'Appeals System'. On this basis, the programme has not considered these funding reforms, and will await further announcements before considering them.

2. Conclusion

The Care Act has been successfully implemented by Adult Care in Lincolnshire.

The Department of Health, in conjunction with the Local Government Association and the Association of Directors of Adult Social Services, continue to undertake stock takes of progress, and are a check and balance of our belief that we are compliant with the Care Act.

In addition to this, there are plans to add Care Act related topics to the Adult Social Care Outcomes Framework (ASCOF), which will enable us to monitor the success of local interventions in improving outcomes and to identify future priorities for making improvements.

3. Consultation

a) Policy Proofing Actions Required

n/a

4. Appendices

n/a

5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Pete Sidgwick, who can be contacted on 01522 552211 or Emma Scarth on 01522 554224.