

Implementing the Care Act

Summary

The first wave of Care Act reforms is due to go live in April 2015 and central and local government are working on a range of activity to prepare for implementation.

At this stage in the preparations there are a number of risks and challenges to implementation, principally affordability and achievability in terms of the April 2015 deadline.

Members will hear the views of **David Pearson**, Director of Adult Social Care, Health and Public Protection, Nottinghamshire County Council, and President of the Association of Directors of Adult Social Services and **Emily Holzhausen** Director of Policy and Public Affairs, Carers UK on preparing for implementation.

Recommendations:

Members are asked to:

- a. Note this paper as background to the discussion with David Pearson and Emily Holzhausen;
- b. Offer their views on the following:
 - i. That the main risks for councils are affordability and achievability (leading to a potential inability to carry out statutory duties), and, for citizens, a potential loss of the very services and support that the reforms were intended to make provision for;
 - ii. The LGA's approach to on-going work to highlight and mitigate these risks, including working with the Department of Health; and
 - iii. Any other/wider points we should be making to the government?

Action:

LGA officers to progress activity in line with Members' comments.

Contact Officer: Matt Hibberd
Role: Senior Advisor
Phone No: 0207 664 3160
Email: matthew.hibberd@local.gov.uk

Implementing the Care Act 2014

Background

1. The Care Bill was first published in the House of Lords on 9 May 2013 following a period of pre-legislative scrutiny (December 2012 – March 2013). The legislation received Royal Assent on 14 May 2014, becoming the Care Act.
2. Preparations for implementing the Act are being coordinated by a joint Programme Management Office (PMO) comprising the LGA, ADASS and the Department of Health. The PMO was established in the last quarter of 2013 and formally launched in December 2013. The manner of collaboration between central and local government is seen as a unique approach to preparing for the implementation of legislation. The PMO is working with local authorities, and the wider care and support sector, to help prepare the ground for implementation in April 2015.
3. The Care Act delivers essential modernisation to the legal framework for adult social care and support and will go live in two stages. In April 2016 care accounts and the cap on care costs (often referred to as ‘the Dilnot funding reforms’) will go live. All other parts of the Care Act will go live in April 2015 and will either be: new in law and practice; new in law but not new in policy; or a consolidation / modernisation of existing law. The main elements that are new in law and practice are set out below:
 - 3.1 A new single duty for local authorities to undertake a **carer’s assessment** on the basis of a need for support. This removes the existing requirement that the carer must be providing a ‘substantial amount of care on a regular basis’, thus lowering the threshold for assessment;
 - 3.2 A legal duty on local authorities to meet a **carer’s support needs** on a similar basis to those needing care;
 - 3.3 A new **national minimum eligibility** threshold, which replaces the current system of councils having discretion to set the eligibility threshold as they see fit based on the Fair Access to Care Standards criteria of ‘low’, ‘moderate’, ‘substantial’ and ‘critical’;]
 - 3.4 A universal system of **deferred payment agreements**, which will allow people to have their care home costs paid by the local authority, with the costs being repaid upon the sale of the individual’s home; and
 - 3.5 A new duty on local authorities, in certain circumstances, to arrange **independent advocacy** to facilitate the involvement of an adult or carer who is the subject of an assessment or a care or support plan and review.
4. The reforms constitute a major and complex change programme, and one that also has links to other significant agendas, such as the Better Care Fund. Implementation is therefore not without its challenges and risks – both to local government and citizens – and these are set out below.

The wider funding context

Issues

5. The Care Act will go live at a time of real financial pressure on local government as a whole. Councils are facing a 40 per cent reduction in funding from central government over the course of this Parliament. The LGA's updated 'Future Funding Outlook for Councils' (July 2014) shows that councils have made savings of £10 billion, largely through finding efficiencies in existing services – but there is a limit to what can be achieved.
6. The LGA report also shows that the funding gap, created by a combination of funding cuts and spending pressures, is growing at an average of £2.1 billion a year, adding up to £12.4 billion by the end of the decade. Between March 2014 and the end of 2015/16 the funding gap will stand at £5.8 billion.
7. The impact of these cuts is inevitably being felt within adult social care. The LGA estimates that the funding gap by the end of 2015/16 for adult social care alone stands at £1.9 billion. Furthermore, the annual ADASS Budget Survey (July 2014) shows that an additional £850 million has come out of the system, leading to total reductions in the adult social care budget of £3.53 billion over the last four years. The ADASS survey also shows that councils are doing what they can to protect adult social care and that the service accounts for an increasing proportion of council spending; now 35 per cent in 2014/15 compared to 30 per cent in 2010/11.
8. Additionally, the recent Supreme Court ruling on Cheshire West and deprivation of liberty safeguards is likely to add a further significant cost pressure. An ADASS survey of 100 local authorities suggests that, for those councils, the implications of the ruling will cost around £40 million. Nationally we expect the figure would be closer to £90 million. This will be a recurring cost arising from increased assessment activity, training, and recruitment of Best Interest Assessors, and excludes legal costs.

Risks

9. Reforms to the care and support system, and their associated costs, will be overlaid onto a system that is itself under severe financial pressure. If the costs of implementation have been underestimated this will compound pressures on local government as a whole.
10. The ADASS Budget Survey points to further risks associated with the current overall pressures on funding. For example, most Directors agree that: fewer people will be able to access support (and councils will face increasing legal challenge); providers will face financial difficulty with increasing risk of failure; and the NHS will come under increasing, rather than reducing pressure.

The cost of the reforms

Issues

11. As noted above, the care and support reforms are due to go live in two stages. For the 'Dilnot funding reforms' that will take effect from April 2016 ADASS, with associate support from Cipfa, are working with a number of councils to model in detail the likely on-going costs of the changes to understand whether the government's cost estimates are accurate.

12. All other reforms will go live in April 2015 and the Government has calculated that these will cost £470 million. The costs will be met from:
 - 12.1 £335 million as announced in the June 2013 Spending Round; and
 - 12.2 £135 million that has to be met through local areas' BCF allocations.
13. As yet there is no comprehensive understanding of whether the money government has set aside for implementation in 2015/16 is likely to be sufficient. What evidence does exist on the likely costs of implementation in 2015 is set out in Table 1.
14. The evidence shows that there is a significant degree of concern about the available funding for implementing the reforms in 2015/16. Certain areas stand out as a particular concern to councils, including: carers' assessments and services; national eligibility; and workforce.
15. It is also worth noting that the recent Public Accounts Committee report on adult social care noted that: "The Care Act will introduce new duties on local authorities...as local authority budgets become increasingly constrained. The Departments neither understand the scale of some of these changes nor how much it will cost to implement the changes the Care Act will introduce". The PAC report also questioned the feasibility of local authorities to "implement all the proposed changes to the intended timetable", and recommended that: "The Departments should quantify the new burdens the Care Act will introduce for local authorities, establish a realistic timetable given the financial constraints, and acknowledge the limits on the sector's capacity to absorb the growing need for care with falling public funding".

Risks

16. They have stated that there is no extra funding (because the funding "envelope" was fixed in the Spending Review settlement) and that any risks will need to be mitigated by amending the scope of the reforms or the requirements around implementation.
17. This *may* work for policies such as establishing a national eligibility threshold for care, where associated costs can be controlled to an extent by regulations and guidance (i.e. by drafting the regulations and guidance in a way that limits the number of people who would meet the threshold). However it is harder to see how it could work for, for example, carers' assessments and services, where costs will be determined by the difficult-to-predict numbers who will present to their council.
18. The Government clearly expects implementation of the Care Act to be the priority in any spending decisions at the expense of the BCF. If the government's estimate of the costs of implementation in 2015/16 is too low then councils may be left exposed to the difference (adding further pressure on budgets) and unable to fulfil their statutory duties. Further, if amending the scope of the reforms is not successful in managing cost then citizens may be denied the services and support they expect from the reforms (for example, the aspiration to put carers on a par with users for assessment and services may be jeopardised).

Table 1: Available evidence on the likely costs of implementation in 2015

Source	Approach	Evidence
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Care Act stocktake	PMO stocktake of all councils with adult services responsibilities to map progress on preparing for implementation and identify support needs. The stocktake asked a specific set of questions about the estimated cost of implementing the Care Act in 2015/16	<ul style="list-style-type: none"> • 20 per cent of respondents have estimated the costs of implementing the Care Act in 2015/16 • 57 per cent of respondents are underway with estimating the costs of implementing the Care Act in 2015/16 • 23 per cent have not started any work to estimate the costs of implementing the Care Act in 2015/16 • Of that 23 per cent (35 respondents), 40 per cent said they would not have an estimate of likely costs for 2015/16 until January 2015 • The second most frequently selected 'risk associated with delivery' was 'total implementation costs' (selected by 89 per cent of respondents or 134 councils). NB: the most frequently selected risk was 'identifying the number of self-funders locally'. • When asked what the greatest 'risk associated with delivery' was, 'total implementation costs' received the most votes – 40 per cent, or 60 councils
Ready Reckoner	LGA tool that provides an illustrative allocation by council of the £470 million funding to implement the reforms in April 2015	<ul style="list-style-type: none"> • We have received only a limited number of returns to this as not many local areas have completed detailed modelling of costs in 2015/16. • Where figures are available there is significant variation between the Ready Reckoner illustrative allocations and councils' own analysis of what they think costs will be for: early assessments; capital investment in IT; funding for capacity building; carers assessments; carers services; national eligibility
ADASS budget survey	Annual survey of Directors of Adult Social Services on budgets. This year's survey asked a specific question about Directors' levels of confidence in their council's illustrative share of the £470 million as set out in the Ready Reckoner	<ul style="list-style-type: none"> • 33 per cent of 102 respondents have 'no confidence' in funding for early assessments • 43 per cent of 102 respondents have 'no confidence' in funding for workforce capacity • 43 per cent of 103 respondents have 'no confidence' in funding for carers assessments • 40 per cent of 101 respondents have 'no confidence' in funding for carers services • 38 per cent of 103 respondents have 'no confidence' in funding for a national eligibility threshold at 'substantial' • 60 per cent of 101 respondents have 'no confidence' in the assumptions that legal reform will lead to savings • 29 per cent of 100 respondents have 'full confidence' in funding for adult safeguarding boards

Other issues and risks

19. **Issue:** concerns about implementation costs are compounded by the recently announced change to the **Better Care Fund**. This will require part of the 'Pay for Performance' element of the BCF to be spent on NHS commissioned services when savings accrued from BCF activity are not sufficient to cover health's contribution to the BCF pot.
20. **Risk:** potential limit to the amount of BCF funding available locally, which has two key implications for social care. First, it reduces the resources available to protect social care (one of the founding aims of the BCF) and therefore compounds budgetary pressures. And second, it may make local negotiations on BCF funding for Care Act costs more difficult as the local pooled budget will be smaller. This will exacerbate the existing lack of clarity on exactly what elements of the Care Act reforms the BCF is meant to cover.
21. **Issue:** The **timetable** for implementing the Care Act is extremely challenging. To really understand the implications of the legislation and how it will work in practice councils have needed the detail provided in the regulations and guidance. However, this was only published in June and, at more than 700+ pages long, it is a considerable amount of material to work through.
22. **Risk:** The time needed to consider how the legislation will work is squeezed making it difficult to understand, for example, how additional assessments will be managed.
23. **Issue:** We know from anecdotal evidence that many councils are also concerned about the **workforce and capacity** required to plan for, and implement, the reforms.
24. **Risk:** Uncertainty about managing additional demand from self-funders and carers.

Positives

25. Despite the risks and challenges outlined above there are also reasons to be optimistic about implementation. For example, the stocktake shows that:
 - 25.1 Almost without exception councils are stating that they are 'on track' in terms of their progress in preparing to implement the Act;
 - 25.2 Almost nine in ten councils have governance arrangements in place to oversee and report on implementation;
 - 25.3 99 per cent of councils have a plan in place, or underway, to deliver the reforms; and
 - 25.4 7 per cent of councils have identified eligible self-funders in their area for 2015/16, and 98 per cent of those who have not expect to have a working estimate by April 2015.

Influencing the agenda

Engagement to date

26. The LGA, working closely with ADASS and other partners, has been raising the above points throughout the last year – both publicly when briefing on the then Care Bill (supported by accompanying media work), and behind the scenes with government Ministers and officials. Table 2 below sets out some of the main issues we have sought to influence and how the Government has responded:

Table 2. Key LGA issues and Government response

Issue	Government response
Concern that Care Act costs need to be fully and fairly costed and funded	<ul style="list-style-type: none"> • Ministerial commitment during Care Bill debates that there is sufficient money for the reforms • Clear line in the latest Impact Assessment that: “All the costs detailed fall on the Government and will be fully funded”
Concern that all Care Act costs need to be funded as new burdens (i.e. they should not be part-funded through the BCF)	<ul style="list-style-type: none"> • The Spending Round and the BCF provide the funding required to meet the costs of the Care Act in 2015/16 • It is appropriate for some Care Act costs to be funded through the BCF as there are links between both sets of ambitions and requirements in the former link to what must be achieved in the latter
Concern that the Government has underestimated the likely Care Act costs in 2015/16	<ul style="list-style-type: none"> • Department of Health have seconded two local authority social care finance officers to assist with new work with local government to get a better understanding of 2015/16 costs and risks • Some revisions to Impact Assessment, including additional money for carers’ assessments and services within the BCF. Note however that this is not new money, rather a reallocation of the £135 million

On-going engagement

27. The end game we are working towards is twofold:

- 27.1 A final set of regulations and guidance in the autumn, that fairly and accurately reflect local Government’s concerns with the practicalities of implementation; and
- 27.2 A final Impact Assessment that fairly and accurately reflects local government’s concerns with the costs of implementation.

28. At this stage of the process we believe we are broadly on track to achieve this. However, key risks clearly still remain and we continue to influence the agenda through the following work:
- 28.1 Consultation on draft regulations and guidance: the LGA and ADASS are analysing the consultation and will submit a joint response;
 - 28.2 Impact assessment: the LGA and ADASS are analysing the latest version of the Impact Assessment (particularly how and where it has changed from its previous iteration) and will provide further commentary on it to the Department of Health;
 - 28.3 Modelling 2015/16 costs: the LGA and ADASS, along with colleagues from London Councils, treasurers networks, and the County Councils Network are to support new Department of Health work to more accurately model the costs of the reforms in 2015/16. The Department of Health has seconded two local authority social care finance officers to support this work;
 - 28.4 Organising a meeting of CWB Board Lead Members with Jon Rouse, Director General of Social Care, Local Government and Care Partnerships at the Department of Health to provide an opportunity to put across the LGA's outstanding concerns with implementation.

Recommendations

29. The information set out above is intended as a snapshot of some of the current risks and challenges associated with Care Act implementation. As already stated, the timetable for implementation is tight and work continues at pace at both the national and local level to prepare for the reforms going live in April 2015.
30. Based on this information Members' views are sought on the following:
- 30.1 That the main risks for councils are affordability and achievability (leading to a potential inability to carry out statutory duties), and, for citizens, a potential loss of the very services and support that the reforms were intended to make provision for;
 - 30.2 The LGA's approach to on-going work to highlight and mitigate these risks, including working with the Department of Health; and
 - 30.3 Any other/wider points we should be making to the government?