

<b>12<sup>th</sup> September 2013</b>	<b>ITEM: 9</b>
<b>Thurrock Health and Well-Being Board</b>	
<b>THE CARE BILL – OVERVIEW AND IMPLICATIONS</b>	
<b>Report of:</b> Ceri Armstrong, Strategy Officer, Thurrock Council	
<b>Accountable Director:</b> Roger Harris, Director of Adults, Health and Commissioning	
<b>This report is Public</b>	
<b>Purpose of Report:</b> To enable the Board to understand the implications of the Care Bill and the approach that the Council, in conjunction with its partners, is taking to prepare for the changes the Bill will bring when enacted.	

## **EXECUTIVE SUMMARY**

The provisions within the Care Bill if enacted will be introduced from April 2015 onwards. The Bill modernises and simplifies the legal framework for social care and introduces some far-reaching changes. This includes responding to the Dilnot Commission on social care funding – resulting in the introduction of a £72,000 care cap.

The Bill is split in to three parts, an in addition to modernising adult social care legislation, also responds to the Francis Report by strengthening the monitoring and inspection regime for health and social care provision.

To prepare for the changes that the Bill's implementation will bring and to understand its possible impact, the Council has undertaken a readiness assessment. This has enabled the Council to assess how prepared it is and what action it needs to take.

Although the Bill is predominantly concerned with Adult Social Care, it has implications for NHS partners and the whole system – particularly in terms of the focus on promoting integration, prevention and the changes to the legislative framework post mid-Staffordshire.

### **1. RECOMMENDATIONS:**

- 1.1 That the Board note this report.**
- 1.2 That the Board notes the steps being taken to prepare for the Bill's implementation.**

### **2. INTRODUCTION AND BACKGROUND:**

- 2.1 The Care Bill modernises and simplifies the legal framework for adult social care. It also provides a legal response to the recommendations made by the**

Dilnot Commission on social care funding and the Law Commission in to adult social care which examined how a social care system could be sustained given increased demand.

- 2.2 The Bill builds on the Draft Care and Support Bill that was published for consultation in 2012, and the White Paper ‘Caring for our future: reforming care and support’.
- 2.3 The Bill is split in to three distinct parts:
- Reform of care and support;
  - Response to the Francis Inquiry on failings at Mid-Staffordshire Hospital; and
  - Health Education England and the Health Research Authority.
- 2.4 Changes brought about by the Bill, if enacted, are expected to take place from April 2015.
- 2.5 This paper looks at implications for the Council and its partners related primarily to the first part of the Bill – reform of care and support. The paper summarises key points relating to the Bill’s other two parts.

### 3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

#### Summary of key points and implications

- 3.1 **Prevention** – The Bill reflects the shift towards prevention and early intervention. Local authorities will have a legal duty to prevent, delay and reduce the need for care. The Council is already focusing on preventing and delaying the need for care through its work with partners through the Building Positive Futures programme. The BPF programme is a key element of the Health and Wellbeing Strategy. The concern will be the amount of time prevention initiatives take to make a sizeable impact compare to ever increasing demand for health and social care services.
- 3.2 **Promoting Integration** – The Bill embeds in legislation the aim of integrating health and social care services by 2018. It establishes a duty on local authorities to carry out care and support functions with the aim of integrating services. It states that this applies in particular to the NHS, but also with ‘other’ health-related services – e.g. housing is specifically mentioned. To promote and assist the delivery of integration, as part of the recent Comprehensive Spending Review, the Government has recently announced an Integration Fund totally £3.8 billion – although much of the money will not be ‘new’ and exists currently in a range of funding streams. The Health and Wellbeing Board will be expected to sign off how the money is to be spent – against strict criteria. Work is continuing between the CCG and Council to outline how integration should develop in the future.
- 3.3 **Information and Advice** – The role of information and advice to prevent the need for care and to help people plan for the care they need is a key theme within the Bill. The Council will be given a specific duty to promote information

and advice in relation to care and support. The Council will also be expected to provide people with the information that will help them plan their finances. Current consultation material is clear that other organisations ‘such as NHS trusts, GPs and financial service providers’ may have a role too. Further guidance is expected.

- 3.4 **Assessing the need for care and support** – The focus of assessments will move from a ‘needs-based’ approach, to that of an ‘asset-based’ approach. This is a positive move and one in keeping with Building Positive Futures. Joint assessments are expected when the individual being assessed has both a health and social care need. Assessments will include looking at what support and assets are available within the community – not just what services are available. The role of information and advice will be key in identifying support and assets available within the community. Carers feature within the Bill – with local authorities obliged to carry out a carer’s assessment where it appears the carer has a need for support. The Council already carries out carer’s assessments.
- 3.5 **Eligibility** – The Bill will establish a national minimum eligibility threshold. The Department of Health are currently consulting on where the threshold should be set. The Council currently sets its threshold at ‘substantial’. Should the national minimum eligibility threshold be set any lower, the cost implications will be significant.
- 3.6 **Market Shaping** – Councils will be expected to promote diversity and quality in the provision of services – i.e. ‘market shaping’. The Council is in the process of developing a Market Position statement which will be brought to the Health and Wellbeing Board’s November meeting. The statement will have an impact on how and what the Council commissions – and may therefore have implications for how joint commissioning develops.
- 3.7 **Co-operation** – The Bill introduces a ‘duty to co-operate’ – in relation to councils co-operating with relevant partners in the exercise of social care functions; and also for ‘relevant partners’ to co-operate with councils in relation to ‘special cases’ – e.g. safeguarding. Partnership structures are already in place to enable this to take place – safeguarding boards, health and wellbeing board and executive, joint commissioning group etc.
- 3.8 **Safeguarding** – The Bill establishes the first every statutory framework for adult safeguarding – bringing it on a par with children’s safeguarding board arrangements. Thurrock’s Adult Safeguarding Board has been preparing for this change for some time, and the production of a three-year strategy will cover all aspects of implementation.
- 3.9 **Care planning, personal budgets and direct payments** – For the first time, people will have a legal entitlement to a personal budget. As health and social care move closer towards integration, joint personal budgets should be a consideration.

- 3.10 **Care and support funding reform** – The Bill responds to the Dilnot Commission’s recommendations. Specifically:
- £72k care cost for people of state pension age and over – from 2016 (people below state pension age will have a cap lower than £72k);
  - People who turn 18 will eligible needs will receive free care and support to meet those needs for the rest of their lives;
  - The total cost to the local authority of meeting a person’s eligible needs – which could be paid by the person, their local authority or a combination of the two – will count towards the cap, rather than the person’s financial contribution only;
  - People will be helped with care home costs if they have assets of up to £118k – currently £23,250;
  - Where the value of someone’s home is not counted, financial support with care costs will be provided to people who have up to around £27,000;
  - People in care homes will remain responsible for their living costs – of up to £12k per year (which will not count towards the £72k cap); and
  - A universal deferred payments scheme is to be introduced from April 2015 which will mean that people do not have to sell their homes in their lifetime to pay for residential care.

The concern for the Council is the potential increase in costs and reduced income from those currently paying for their care. We do not have an accurate picture of the number of self-funders in the borough and there are a number of people who choose not to declare their assets when being assessed. The emphasis on prevention and early intervention should, in time, reduce demand, but the increased number of people living longer and with more complex needs may continue to increase pressure on the whole system.

### **Part 2 – Care Standards**

- 3.11 The Bill provides the legislative framework for the Government’s response to failings in health and social care provision – Francis Report. The main measures are:
- Developing Ofsted-style ratings for health and care providers based on a system of performance review and assessment;
  - A single failure regime overseen by the CQC and Monitor with powers for the new Chief Inspector of Hospitals to instigate the failure regime more effectively;
  - A criminal offence for providers of NHS secondary care to supply or publish false or misleading information about aspects of provision;
  - Closing a loophole in CQC regulatory powers so that it is no longer possible for large providers to apply to change registration conditions once the CQC has commenced enforcement proceedings; and
  - The CQC to establish a unitary board to bring it in line with best practice.

### **Part 3 – Establishing non-departmental public bodies**

- 3.12 The Bill establishes the responsibilities of Health Education England and the Health Research Authority.

### **Next Steps**

3.13 The Council is taking a number of steps to prepare for the changes the Care Bill will bring. This includes involving partners as appropriate and relevant. We have already undertaken a 'readiness assessment' against the current Bill so we can identify where activity needs to take place. This is attached for information (appendix 1). The Care Bill is subject to change as it passes through Parliament, and further regulation and guidance will provide more detail. The readiness assessment will therefore need to be regularly updated.

3.14 Although the Care Bill's implications will be felt greatest by local authorities, some implications will undoubtedly be felt across the whole system – particularly as health and social care moves further towards integration and the shift towards prevention and early intervention becomes greater. Although this paper is for noting, it is recommended that further updates are received by the Board and the Executive Committee. This will also help to identify and address any whole-system impact and actions.

#### **4. REASONS FOR RECOMMENDATION:**

4.1 To ensure that the Board are aware of the key changes brought by the Care Bill, and the implications of the Bill on the Council and its partners.

#### **5. CONSULTATION (including Overview and Scrutiny, if applicable)**

5.1 N/A

#### **6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

6.1 Much of how the Council intends to prepare for the Care Bill's enactment is captured within the Health and Wellbeing Strategy – as part of the Building Positive Futures programme. In particular the priority 'Improve our response to the frail elderly and people with dementia'.

#### **7. IMPLICATIONS**

##### **7.1 Financial**

Implications verified by: **Mike Jones**  
 Telephone and email: **01375 652772**  
**mxjones@thurrock.gov.uk**

There are likely to be financial implications associated with the implementation of the Care Bill when enacted. The Government has allocated £335 million in 2015-16 to help local authorities prepare for changes, including funding to allow them to begin assessing needs six months before the cap is formally introduced. A financial assessment of the implications of the Care Bill is taking place as part of the Council's preparations. Many implications will be based on assumptions and scenario planning in lieu of final guidance.

## 7.2 **Legal**

Implications verified by: **Chris Pickering – Principal Solicitor**  
 Telephone and email: **0208 227 3774**  
[chris.pickering@bdtlegal.org.uk](mailto:chris.pickering@bdtlegal.org.uk)

This report highlights significant future legal implications including legal duties for prevention and early intervention and through to enforcement of funding issues. The Readiness Action Plan should be noted as obligations to the Council will come into force on day one with legal sanctions for non-compliance. Legal services will have to do significant preparation ahead of time with relevant departments (Adult Social Care in particular but Housing is also used as an example in the report). Enforcement of funding arrangements is another important consideration. The Council currently takes a robust approach to this, having hired a lawyer specifically to recoup care fees owed. The experience of this has shown that under-declaring or hiding of assets is common as is transferring property to family to avoid payment of such fees. Decisions will have to be made in the long term what the Council's approach to such matter should be.

The report is currently only for noting but the implications are significant and the Council needs significant forward planning across departments to be ready.

## 7.3 **Diversity and Equality**

Implications verified by: **Samson DeAlyn**  
 Telephone and email: **01375 652472**  
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No diversity and equality implications have been identified. The introduction of a care funding cap should encourage a greater number of people with care needs to access services when required. The Care Bill will be supported by an equality impact analysis.

The Council will need to ensure that where it has discretion about how it implements the changes brought about by the Care Bill it does not directly or indirectly discriminate any of the groups identified by the Equality Act 2010.

## 7.4 **Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental**

None.

**BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):**

- Care Bill 2013
- Department of Health Fact Sheets

- LGiU policy briefing papers - various

**APPENDICES TO THIS REPORT:**

- Appendix 1 - Readiness Assessment

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