

CABINET – 24 FEBRUARY 2015

Proposed Adult Social Care Policy Framework

Report by Director of Adult Social Services

Purpose of this report

1. The purpose of this report is to agree the new policy framework for Adult Social Care.
2. The proposed policy framework has been developed to address changes relating to the Care Act 2014 alongside other relevant legislation, (including the Children and Families Act 2014 where appropriate), government directives and the council's Adult Social Care Business Strategy and commissioning strategies. The framework is informed by the expertise and the views of front line staff and people who have adult social care, their families, friends and carers.
3. Much of what is proposed consolidates the approach which is already being taken by the council, and as such the policy framework formalises existing good practice in Oxfordshire. It will also be important to ensure the framework is effectively implemented through operational guidance and staff training, reinforcing consistent high quality professional practice across teams.

The Care Act 2014

4. Adult social care includes supporting people with dressing, eating, getting in and out of bed and going to the toilet. It can involve psychological support and help with getting around. People may need this support because they are frail, have disabilities or are ill. The majority of older people will need personal care at some time in their life (67% men and 85% women).
5. The Care Act 2014 Act creates one main legal framework by replacing most of the existing Adult Social Care legislation and incorporating good practice into a single statute focused on individuals, families, their wellbeing and what they wish to achieve in their lives. The Act also gives local authorities more universal duties to their residents that build on existing practice, including making information and advice about social care widely available and partnership working with others such as the NHS.
6. From 1st April 2015 the Care Act requires implementation of the reforms in providing care and support. From 1st April 2016 the council will be required to implement financial reform and changes in relation to Complaints and

Appeals. A consultation on these elements has just been launched by the Department of Health and the council will be responding by the deadline on 31st March 2015.

7. The overall direction and values in the new legislation are a continuation of the way we have been developing adult social care in Oxfordshire for the past decade. The council has worked consistently towards making sure that people themselves can make decisions about their own support and care, and supporting them to be as independent and active as possible, as well as increasing the support available to people who care for their families, partners, friends and neighbours.
8. Each year there is a national survey of adults who have support and care through local authorities. Last year Oxfordshire's results showed that we had the ninth highest proportion of people in the country who agreed with the statement 'I have control over my own life'.
9. One of the most significant changes is that the Care Act puts carers, people who care for others and provide help in meeting their support and care needs, on the same legal footing as those they care for. This is important in recognising the vital role carers play for both the person they care for, and the value they bring to the local economy as a result.

The Policy Framework - Key Changes, Impacts and Decisions

10. The policy framework is composed of five high level policies which define the council's approach to Adult Social Care in Oxfordshire. These are:
 - Assessment and Review Policy (working out needs)
 - Support Planning Policy (planning to meet needs)
 - Contributions Policy (paying for support and care)
 - Complaints, Appeals and Compliments Policy
 - Safeguarding Policy
11. This section highlights where the policies propose changes in how Adult Social Care is provided in Oxfordshire. Most of these changes result from the Care Act so the council must enact them to be compliant with the legislation.
12. In some areas the Care Act allows discretion and the council can therefore decide the approach we can take. Proposed responses to these decisions are also highlighted here.

Policies

Assessment and Review Policy

13. This describes what will happen when a person first comes to the council for help. Overall it does not introduce significant changes from current good practice in Oxfordshire.

14. The Care Act gives the council a duty to offer a needs assessment to anyone who comes forward looking for support and care, regardless of their financial circumstances and what we think their needs might be, including people who care for others. Everyone must be treated equally regardless of their ability to pay.
15. Once a person's needs have been identified, the council then works out which of those needs are eligible for support arranged by us. This is not related to working out how much people will need to pay towards their care as this is worked out separately through a financial assessment.
16. The Care Act includes new national eligibility criteria based on whether or not a person can achieve the things they want to - for example washing, eating and sustaining relationships. Using the new criteria has been tested by adult social care teams and compared to using the current criteria. These tests suggest that the new criteria will lead to a similar proportion of people being assessed as eligible for services as currently.
17. The Care Act requires that people who have a support plan have this reviewed at least every 12 months, which reflects current practice. The council can authorise others (for example care home staff, other professionals or the person's own carer) to carry out reviews with people who have a support plan. This is not usual practice in Oxfordshire currently, although some reviews are delegated to appropriate professionals such as hospital or reablement staff while social workers retain responsibility if there are changes to the support plan.
18. It is, however, a practical way of making sure people have control of making sure they have the right support and care in place, alongside those closest to their care. It will also help the council to meet the pressures of additional demand for assessments and reviews anticipated as a result of increasing numbers of older people and people with a disability, and other changes in the Care Act.
19. The council would still be vigilant as regards safeguarding vulnerable people and would retain overall responsibility and formal sign off of all reviews.
20. **It is proposed that the council will authorise others to carry out reviews on its behalf when appropriate, whilst maintaining overall responsibility and oversight.**

Support Planning Policy

21. This policy describes how plans will be put in place to meet a person's eligible needs. As with Assessment and Review, the policy does not introduce significant change to current good practice in Oxfordshire.
22. The Care Act requires that people are closely involved in planning their support and that they have their plan expressed as a calculation of the cost of

meeting their needs - known as a Personal Budget. This is the way that support planning is already carried out in Oxfordshire: we are in the top 15% of local authorities in the country for numbers of people who have Personal Budgets.

23. The Act says that people should be able to receive this as a payment for them to spend as they choose to meet their needs, called a Direct Payment. Oxfordshire already has the fifth highest percentage of any English Local Authority of people receiving their care through Direct Payments.
24. Everyone with eligible needs will have a support plan which will be regularly reviewed.

There is no significant change in existing policy for support planning except in relation to overarching issues - carers' entitlements, independent advocacy and information and advice (outlined later in this report)

Contributions Policy

25. Most people who have social care through the council pay something towards the costs. The contributions policy sets out how this is worked out fairly, starting with a financial assessment to see what a person can afford. The Care Act introduces changes in this area, as well as a number of other areas where the council has discretion as to what approach to take. These are highlighted below.
26. Some changes in relation to charging do not become law until April 2016. These concern a cap on how much people will have to pay for their care and support over their lifetime. This is not included in the policy at this time, but the council will be responding to the current Department of Health consultation on this area that closes on 31st March 2015.

Deferred Payment Agreements

27. The Care Act makes Deferred Payment Agreements universally available. A Deferred Payment Agreement is a way of releasing financial resources held within a person's home to pay for care. The money is repaid either when the person sells their home or dies, and is a way to help people pay for care without having to sell their home. The council has offered people Deferred Payment Agreements for several years so there will be no change to current practice as a result of the Act.
28. As a result of the Care Act, the council now has the option to charge an arrangement fee to cover the costs to the council of setting up these agreements. These costs include legal and ongoing administrative costs.
29. **It is proposed that the council charges a single, flat arrangement fee for Deferred Payment Agreements of £680 and that people have the option to pay this up front and in full, or to add it to the loan in which case**

interest will also be charged at the level set for the deferred payment agreement.

30. This fee is based on the costs typically incurred to date by Legal Services in operating the council's existing, discretionary deferred payment agreement scheme, and benchmarking suggests this is at the lower end of the charges proposed by some other authorities.
31. This fee will cover:
 - (a) Costs of all typical legal disbursements including Land Registry copies, Land Charges search (bankruptcy search against the resident), Land Registry search (done before registration) and Registry lodgement fee.
 - (b) Costs of staff engaged in providing advice, legal services, financial assessment, contracting with the care provider and monitoring the accruing deferred debt.
 - (c) Costs of setting up documentation, maintenance invoicing and related documentation.
32. The Care Act also allows the council to charge interest in relation to Deferred Payment Agreements. The council has discretion to charge interest at a local rate or at the maximum level suggested by the Department of Health. This national rate will be reviewed and adjusted every six months.
33. **It is proposed that interest is charged at the maximum level set nationally (2.6% currently), and adjusted to reflect any changes in this level every six months.**
34. As part of arranging a deferred payment agreement, it is necessary to value the property. Current practice is to use a combination of internet based information and local knowledge supported by market pricing by the individuals' own agents in the majority of cases. This means the council incurs negligible costs.
35. In cases involving unusual properties or title holding or restricted equity available to support a deferred payment agreement, the council will itself commission formal valuations using its retained valuers, Carillion. Under the Care Act, the council is now able to pass on the full cost of this valuation to the individual.
36. **It is proposed that valuation costs are passed on to the person, and that they have the option to pay this up front and in full, or to add it to the loan in which case interest will also be charged at the level set for the deferred payment agreement.**

Arranging care for 'self-funders'

37. People who pay the full cost of their support and care will be able to come to the council to ask for help arranging and purchasing services if they have been assessed as having eligible needs. The council already provides this

help in some circumstances, such as when supporting someone to leave hospital in a timely way.

38. The Care Act means that there are likely to be more people who come forward to be assessed for the first time, and then for help in planning their support. If someone pays for their own care and support and has not previously had involvement from the council they are sometimes referred to as a 'self-funder'. It has been calculated that there are between 3000 and 3500 people who currently pay for their own support and care at home and have not been in contact with the council's adult social care services.
39. The council can now charge people for help in arranging and purchasing the care they need to remain at home or living independently in the community (domiciliary / home care), but only at a level to cover costs incurred by the council in doing so. This charge would cover assistance with purchasing and arranging care. The council cannot charge for carrying out assessments, preparing support plans and reviews of support.
40. The council cannot charge people for arranging care in a care home. It is proposed by the Department of Health that this will be introduced in April 2016, linked to funding reform. If the final regulations and guidance (currently expected in October 2016) allows this a decision will be brought forward at that time about introducing a charge.
41. **It is proposed that the council charges people who pay the full cost for their support and care other than in a care home a one-off fee for arranging this.** There will be two levels to this fee reflecting differing cost to the council incurred of simply negotiating a contract with a provider, or actively helping to manage the relationship between the provider and the individual:
 - (a) £150 where the council acts as a broker, negotiating and agreeing care with a provider or providers on behalf of the individual
 - (b) £500 where the council acts as a broker as above, and also manages the provision of the care and support on behalf of the individual (including paying the provider, quality and contract monitoring).

Backdating charges

42. At present, the council can **backdate charges** for people moving into a care home to the point they move in, even if a financial assessment had not taken place at that date. For people who have support and care at home, charges can only be backdated to the point at which people are made aware of the outcome of their financial assessment.
43. Under the Care Act, the council now has discretion to backdate charges for support and care at home as well as residential care to the point at which the person started receiving services, rather than the point at which they were informed of the outcome of their financial assessment.

44. The council is committed to carrying out financial assessments as soon as possible so that people know what they can expect to pay and there are no surprises or large bills at a later date. Work will continue to make sure processes allow for financial assessments to take place early and that people are informed of the outcome in a timely way.
45. **It is proposed that the council backdates charges to the point when services start even if a financial assessment had not yet taken place as from 1st April 2015, while remaining committed to assessing people as soon as possible once eligible needs have been identified.**

Higher rate Disability Living Allowance and Attendance Allowance

46. The Care Act now stipulates these benefits must be taken into account fully in financial assessments, whereas previously they had to be disregarded. This will slightly increase the contributions of some people, but as a legislative change the Council has to implement this.
47. For people going into residential care, it is likely to cost an additional £320 in total. This is because the Department of Work and Pensions should cease payment of the benefit no later than four weeks after that placement begins or sooner if the person has been in hospital previously. This will require two financial assessments to be undertaken however, to reflect contributions in the first four weeks and contributions thereafter.
48. For people receiving care and support at home, lower and mid-rate is already taken into account. Including higher rate is likely to increase people's contributions by around £20 a week.
49. The council is contacting all existing service users this will affect prior to April 2015.

Personal Injury Awards

50. The Care Act is explicit that local authorities cannot take personal injury awards that have been settled or are held in trust into account in financial assessments. This change in policy is likely to lead to a reduction in income for the council as previously it was possible to take this into account.
51. However, if the Council is involved in proceedings prior to settlement it may still be possible to build additional money into the settlement to cover the cost of care without reducing the amount of compensation paid directly to the individual. Although this will apply to a small number of cases, the council will continue to endeavour to be involved in proceedings as early as possible.
52. There will also be a small number of personal injury awards that are not held in trust. The Council cannot include them in a financial assessment for the first 52 weeks from when they are awarded, but can then take them into account.

Appeals, Complaints and Compliments Policy

53. The Department of Health is currently consulting on how the Care Act will implement change to the way that appeals and complaints about adult social care are managed from 1st April 2016 onwards. In the meantime complaints about adult social care must follow the statutory guidance (The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009). This, along with current practice in handling appeals and complaints is incorporated in the Appeals, Complaints and Compliments policy.
54. The council can decide whether to accept complaints from people paying for their own care, including through Direct Payments, whether or not they have been assessed as having eligible needs.
55. The first step in managing a complaint will always be to direct the person to the organisation providing care who will have their own complaints process. Where the council has a contract with the organisation to provide care then we will set up an investigation through our quality monitoring teams. Where the council has no contract with the organisation or care is being provided by a personal assistant the council will refer the complaint to the appropriate body to take action (for example the police, the Care Quality Commission or the Local Government Ombudsman).
56. However complaints are managed it is vitally important that the council hears from people when something goes wrong with their support and care, wherever they are receiving it. Hearing these messages means that the council has an overview of the whole picture for people who have support and care, where organisations are not working so well, and where systems and processes need to change or improve. Learning from both complaints and compliments is vital for letting the council know where things are good and where they need to improve.
57. **It is proposed that the council will accept complaints from people paying for their own care, including through Direct Payments, and will signpost to the appropriate body to investigate. This may be the organisation providing care and support, the Local Government Ombudsman, Care Quality Commission or others.**

Safeguarding Policy

58. The Care Act states that the council is responsible for making sure that enquiries are made when safeguarding concerns are raised, whether or not the person has eligible support needs and whether or not they are receiving care and support services arranged through the council.
59. The Act also makes it statutory that a partnership Board is established to help ensure that all relevant organisations are involved in overseeing safeguarding adults.

60. In Oxfordshire there is already an Adults Safeguarding Board, and safeguarding alerts are considered regardless of whether a person has eligible needs being met through the council. The Care Act guidance helps with definitions of what constitutes safeguarding and this is engendered in the policy.

There is no significant change in existing policy around safeguarding.

Universal Duties

61. The Care Act introduces duties which apply across all areas of policy and these are included within the framework.

Carers

62. Oxfordshire has made a strong commitment to supporting people who care for others in recognition of their essential and vital role both in caring and in keeping people as well and as independent of services as possible. This is estimated as saving local authorities £119 billion nationally, translating to an estimated £1.19 billion in Oxfordshire.
63. The Care Act puts carers (people providing necessary support and care for someone else other than as a worker either paid or unpaid) on the same legal footing as people who need support and care, whether or not the person they care for has needs which are eligible.
64. Carers will now be entitled to an assessment of their own need for support and their own eligibility will be assessed taking into account their caring role, their wellbeing and the outcomes they want to achieve. If a carer is eligible they will be entitled to a support plan and a calculation of the amount of money it would take to meet their needs (a Personal Budget). This can be transferred to them as a Direct Payment to spend as they wish to meet their needs.
65. It is anticipated that more carers will come forward for an assessment as a result of these changes. The Council is currently aware 16,095 carers, and modelling suggests this could increase by up to 5,000 in the first year and an additional 600 per year thereafter.
66. Currently carers' services are provided free of charge, supporting people in continuing to care. The council could choose to charge carers if they have eligible needs for care and support and are financially assessed as being able to contribute to the cost of this. This would generate some potential income for the council, although this would be at least partly offset by additional costs associated with means testing through a financial assessment. Such a policy change would also require full consultation.
67. Carers often find it difficult to come forward for help, and may not even define themselves as a carers but as 'a mother' 'a husband' or 'a friend'. Putting further barriers in the way (such as financial assessment) could lead to a

significant number of people not getting the support they need and therefore finding their caring role unsustainable. In the longer term this could significantly increase costs to the public purse across health and social care.

68. **It is proposed that the council continues to provide support for carers free of charge.**

Information, Advice and Guidance

69. The council must make sure that information, advice and guidance are available to people, whether or not they have needs for support and care. People should be able to find out how to arrange support and care themselves, where to get help with delaying or reducing any need for support, and where to find a range of independent financial advice to help make decisions about paying for care.
70. Work is underway to review our current provision of information and advice to make sure that it is comprehensive and that people know how to access it. By 1st April there will be an improved range of on-line information available on the council's website along with an updated version of a hard copy booklet about where to find support and care. These will include where to find independent financial advice. During the next year there will be a review of commissioning arrangements for information, advice and guidance.

This does not involve a change in policy.

Providing equipment and early help

71. The Care Act states that the council must make sure that people can access services such as equipment and assistive technology (for example emergency call out alarms, movement sensors or talking food labels) to help them remain independent for as long as possible. This is current practice in Oxfordshire where the council provides these as part of support plans as well as without full assessment. If equipment is provided to someone who has not been assessed as having eligible needs, then the person cannot be asked to contribute to the costs. It is estimated that 11,387 people will have received equipment this financial year, based on figures to date, at a cost of £4.07million.
72. It is anticipated that once the Care Act is implemented in April more people will come to the council to have their needs assessed and to ask for help arranging their care and support. Where these people are provided with simple equipment the cost is estimated at £150/person.
73. Timely early intervention, however, is expected to save the council money in the longer term by reducing or delaying people's need for more expensive services. There is a full review planned of the circumstances in which equipment is provided which will include examining and improving the processes for people to access their own equipment directly.

74. **It is proposed that the council continues to provide equipment and short term support at home free of charge and that a full review of providing equipment is carried out by the autumn. The outcome of the review may result in reviewing the policy framework.**

Independent Advocacy

75. An independent advocate is someone who supports a person in having their voice heard. They do not advise or put forward their own views but work with people to find out what their wishes are and then to decide how best to get them across to others.
76. The Care Act requires that unless the person has someone appropriate to help them, (which could, for example, be a family member, friend or neighbour), the council must arrange independent advocacy for anyone who has 'substantial difficulty' in taking part in their assessment, support planning or reviews, in understanding information and advice, or in taking part in a safeguarding investigation. This is whether or not they have been assessed as having mental capacity under the Mental Capacity Act 2005.
77. Currently the council does not involve independent advocates except in specific circumstances (for example in relation to the Mental Capacity Act or when someone is making a complaint). There is likely to be an increased demand for independent advocacy which is being addressed through commissioning of these services.
78. This involves a change from current practice. The council does not usually involve independent advocates except in specific circumstances (for example in relation to Mental Capacity). From 1st April 2015, when a person approaches the council for help with support and care we must consider independent advocacy during assessment, support planning, reviews and when offering information and advice.

Financial and Staff Implications

79. The policy framework has been developed working closely with operational teams in adult social care to ensure that staff implications have been taken into account. A programme of training and communications relating to the Care Act and changes in policy for staff both at the council and partners is underway. Operational guidance is being developed with front line staff and will be used for training as well as being available on the intranet. This will also form the basis of information for the public about what they can expect from the council.
80. There are some financial implications which will not be fully understood until after April 2015. However, the impact of more people coming to the council for care and support is being modelled, and guidance in policy implementation is being developed to ensure that as far as possible there are no unexpected increases in cost.

81. There is some national government funding available to support changes related to the Care Act (for example carers' eligibility). This will not all be allocated from 1st April to allow close monitoring of any increased or changed demand over the coming months, and allocation of funds to the areas where it is needed.

Unsecured debt

82. The Health and Social Services and Social Security Adjudications Act 1983 – Section 17 will be repealed with effect from April 2015. This could lead to an increase in unsecured debt as the Council will no longer be able to negotiate interim funding until a deferred payment agreement is put in place. This will be mitigated by changes in process to ensure financial assessments are completed as soon as possible.
83. There are some specific financial issues highlighted above in relation to **Personal Injury Awards** and **Higher rate Disability Living Allowance and Attendance Allowance** (paragraphs 46-52 above).

Equalities Implications

84. There has been a Service and Community Impact Assessment carried out for the implementation of the proposed framework. This is available on the public website as a background document to this report.
85. This assessment has identified that the majority of people will not be adversely affected by any changes. There are some positive impacts on groups who share protected characteristics under the Equality Act 2010, specifically those with disabilities and older people through further embedding the council's person-centred approach and focus on well-being and independence.
86. The assessment highlights impact on staff capacity (and therefore potentially service) especially in the Customer Service Centre, front line operational teams. This is being addressed through modelling any potential increase in workload and numbers of people coming forward, continued work to make processes as straightforward as possible, and will continue to be closely monitored after 1st April.
87. There is likely to be a positive impact on fair access to support for carers through assessing individual needs based on national eligibility criteria. There will be increased transparency about the way that social care is accessed for everyone.

RECOMMENDATION

88. Cabinet is RECOMMENDED to agree the proposed Adult Social Care policy framework, and in particular the specific recommendations outlined in this report:

- **Authorises others to carry out reviews when appropriate while retaining oversight and responsibility**
- **It is proposed that the council charges a single, flat arrangement fee for Deferred Payment Agreements of £680**
- **Charges interest in relation to Deferred Payment Agreements at the maximum national rate (2.6% currently) and this is adjusted to reflect any changes in this level every six months**
- **Passes property valuation costs to the individual in relation to setting up Deferred Payment Agreements and that they have the option to pay up front and in full or to add to the loan, in which case interest will be charged at the level set for the deferred payment agreement**
- **Charges people who pay the full cost for their support and care other than in a care home a one-off fee for arranging this.** There will be two levels to this fee reflecting differing cost to the council incurred of simply negotiating a contract with a provider, or actively helping to manage the relationship between the provider and the individual:
 - £150 where the council acts as a broker, negotiating and agreeing care with a provider or providers on behalf of the individual
 - £500 where the council acts as a broker as above, and also manages the provision of the care and support on behalf of the individual (including paying the provider, quality and contract monitoring)
- **From 1st April 2015, backdates charges for non-residential care as well as for residential care to the point at which the person started to have the support and care, while remaining committed to assessing people as soon as possible once eligible needs have been identified**
- **Accepts complaints from people paying for their own care and support including through a Direct Payment, accepting that this may involve asking organisations providing care to investigate or sign posting to an appropriate place to investigate (for example the Local Government Ombudsman)**

- **Does not charge carers a contribution to the cost of their support**
- **Continues to provide equipment free of charge before full assessment to aid independence and reduce or delay needs for care**

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Director of Adult Social Services

Annexes:

- Assessment and Review Policy (working out needs)
- Support Planning Policy (planning to meet needs)
- Contributions Policy (paying for support and care)
- Complaints, Appeals and Compliments Policy
- Safeguarding Policy

Background document;

Service and Community Impact Assessment – available on the web site and in the Members Resource Room

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