

<b>Committee</b>	<b>Dated:</b>
Community and Children's Services	13 February 2015
<b>Subject:</b> Care Act implementation	<b>Public</b>
<b>Report of:</b> Director of Community and Children's Services Comptroller and City Solicitor Chamberlain	<b>For Decision</b>

### Summary

This report updates Members on the implementation of reforms introduced by the Care Act (the Act).

The Act introduces a major set of reforms to the way that care for elderly people and other adults with care needs is provided and paid for. The Act will be implemented in two stages, the first of which places a number of new duties on the City of London from 1 April 2015. It is anticipated that the second stage of implementation will take place from 1 April 2016.

Many of the Act's reforms put into law ways of working that are already normal practice for the City of London or consolidate existing laws.

Where changes are required by the Act, the City will amend its policy and practice in order to comply. Where the Act offers the City local discretion to decide elements of the Act's implementation, and these elements are not already agreed City policy, Members are asked to consider the recommendations made.

### Recommendations

Members are asked to:

- agree to charging interest and costs in relation to deferred payment of care home fees
- agree that no charge is made for arranging the care and support of those who self fund their own non-residential care – and to review this decision at six and 12 months after implementation
- delegate authority to the Director, in consultation with the Chairman and Deputy Chairman, to approve further amendments or additions to policies and procedures required for when the Act comes into force on 1 April 2015.

## **Main Report**

### **Background**

1. This report updates Members on the progress made in implementing the reforms introduced by the Care Act 2014 (the “Act”). The Act seeks to change the way that care for elderly people and other adults with care needs is provided and paid for. It will be implemented in two stages, the first of which places a number of new duties on the City of London from 1 April 2015. These include:
  - a duty to promote people's wellbeing and to prevent the need for care and support
  - a duty to provide an information and advice service about care and support
  - a duty to facilitate a vibrant, diverse and sustainable market of care, and
  - to meet people's needs if a provider of care fails.
2. The City will also be required from this date to:
  - carry out an assessment of both individuals and carers wherever they have needs, including people who will be “self-funders” who meet their own care costs
  - provide an information and advice service about care and support
  - assess needs against a national minimum eligibility threshold for support, and
  - offer a universal "deferred payment" scheme, where people can set the costs of care and support against the value of a home they own.
3. The provisions of the Act which introduce a cap on the amount that anyone can be required to pay for their care and support in their lifetime will not come into force until April 2016. Payments for care made before April 2016 will not count towards the cap.
4. The Act introduces duties that are new in law and practice and duties that put into law ways of working that are existing practice for the City. It also consolidates and modernises a range of existing laws.

### **Implementation**

5. The implementation of these changes is being overseen by a multi-disciplinary group of senior officers. It is being further supported by four Members of this Committee who are acting as Care Act Champions.

### **Policy Implications**

6. The Act will require some amendments to policy and practice, and - for the requirement to provide information and advice - a change to service specification. The implications for policy and practice are summarised as:

#### ***Wellbeing and the prevention of needs for care and support***

7. The Act imposes a general duty on all local authorities to promote an individual's wellbeing. The Act defines "wellbeing" as relating to
  - personal dignity
  - physical, mental health and emotional wellbeing
  - protection from abuse and neglect
  - control by an individual over day-to-day life
  - social and economic wellbeing
  - participation in work, education and training
  - domestic, family and personal relationships
  - suitability of living accommodation, and
  - the individual's contribution to society.
8. When discharging its functions and duties in respect of the provision of care and support a local authority must have regard to the individual's views, wishes, feelings and beliefs.
9. Furthermore, local authorities are required to provide services, facilities and resources which are designed to reduce the need for care and support of adults in its area.
10. The City's existing practices and policies in relation to care and support are already compliant with these general duties and as such no further action is required to comply with the statutory requirements.

### ***Market provision***

11. Section 5 of the Act requires a local authority to promote the efficient and effective operation of a market in services for meeting care and support needs. This should seek to ensure a variety of high quality services and providers from which to choose. The local authority should also ensure that any person in its area has sufficient information in order to make an informed decision as to how their needs can be met.
12. A local authority, when performing this duty, must:
  - ensure that it makes available information about providers and the services on offer
  - be aware of current and future demand for services
  - support those in need of services and their carers to participate in work, education and training
  - ensure sustainability of the market whilst seeking continuous improvement in the quality of services and fostering a workforce whose members are able to ensure the delivery of high quality services, and
  - ensure that sufficient services are available for meeting the needs for care and support of adults in its area.
13. The City is in the process of producing a Market Position Statement to comply with this duty to promote diversity and quality of provision. The City already publishes an *Adult Social Care Services Directory* to support and inform service user choice.

### ***Assessment and assessment regulation***

14. The Act imposes a duty on local authorities to undertake a “needs assessment” in respect of adults who may have needs for care and support. Such an assessment will determine whether an adult has any needs and, if so, identify the needs and the level of care and support required. When undertaking a needs assessment the local authority must involve the adult, any carer and any person that the adult wishes to be involved. The City’s current practices and policies meet these requirements.

### ***Carers assessment***

15. The Act creates a duty to undertake a carers assessment on the basis of the apparent need for support (whether currently or in the future). The assessment must determine whether need for support exists (or will exist in the future) and identify the needs. It must include an assessment of the carer’s ability and willingness to continue to provide care to an adult along with the outcomes that the carer wishes to achieve in day-to-day life and whether the provision of support could contribute to those outcomes. Any assessment must involve the carer and any person the carer wishes to be involved.
16. This is a lower threshold for assessment than under current law. The Act gives local authorities a responsibility to assess a carer’s needs for support, where the carer appears to have such needs. This replaces the existing law, which says that the carer must be providing “a substantial amount of care on a regular basis” in order to qualify for an assessment. This will mean more carers are able to have an assessment, comparable to the right of the people they care for. The City’s current practices and policies meet these requirements.

### ***Eligibility***

17. The Act sets out in one place, local authorities’ duties in relation to assessing people’s needs and their eligibility for publicly funded care and support. Where a person’s assessed need meets the “eligibility criteria” introduced by the Act, that person will be entitled to social care support. The aim is to introduce a national minimum threshold to ensure access to support is based on need and not local eligibility criteria. The Care and Support (Eligibility Criteria) Regulations 2014 detail needs which meet the eligibility criteria for both adults and carers.
18. The City’s existing eligibility policy currently meets the new statutory criteria.

### ***Deferred Payment Agreements (DPAs)***

19. The Act introduces a universal deferral scheme designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. The City will offer deferred payment to anyone meeting the governing criteria set out by the Act and guidance. In implementing this policy the City must decide whether it charges interest and recoups costs associated with deferring fees (see below).

### ***Charging***

20. The Act consolidates existing law and as such the City's policy for charging is already compliant. The City makes a charge for the provision of care and support where an individual's financial resources are assessed to be above the financial limits that relate to residential or non-residential care.
21. The Act preserves the power for local authorities to charge for arranging care and support in some circumstances. Current City policy is not to levy charges (see below) for arranging care.

### ***Carers needs and support***

22. The Act replaces the existing discretionary power of local authorities to provide services to meet a carer's needs for support with a requirement to do so where the carer meets the eligibility criteria for support. The City's existing arrangements for carers comply with this requirement.

### ***Financial assessment***

23. Regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 provides that a local authority is not permitted to pay towards the cost of the provision of accommodation in a care home where the relevant adult's capital exceeds £23,250.
24. Where the relevant adult requires care and support in the home then the local authority may, but need not, pay towards the cost of that support where the relevant adult's capital exceeds £23,250. For the assessment of those receiving care in their home, the upper capital limit used by the City for financial assessment is £34,000.
25. From 2016/17 the upper capital limit will be raised to £118,000.

### **Proposals**

26. The Act offers the City local discretion to decide some elements of its implementation. Those elements that are not already agreed City policy are presented below for Members to consider.

### ***Deferred Payment Agreement – interest and costs:***

27. Section 34 of the Act defines a "deferred payment agreement" as being an agreement under which the local authority agrees not to require either the payment of monies due in respect of care and support made under the Act (or associated regulations), and/or the repayment of part of a loan made to enable care or support to be obtained, until a specified time in the future.

28. The government's guidance sets out the intention that the DPA scheme should be run on a cost-neutral basis, with local authorities able to recoup the costs associated with deferring fees by charging interest.
29. Regulation 9 of the Care and Support (Deferred Payments) Regulations 2014 permits a local authority to charge interest on the deferred amount provided that it informs the recipient of this intention before the agreement is entered into. The Act also allows for the City and other local authorities to choose not to charge interest or costs.
30. In line with the government's intention of cost neutrality, it is recommended that the City charges interest on deferred fees. It is proposed that interest will be set in line with the regulations, which base the rate on the cost of government borrowing and will change on 1 January and 1 July every year. This interest will be compounded on a monthly basis.
31. Regulation 10 permits local authorities to recoup the administrative costs associated with DPAs (including legal and ongoing running costs) via administration charges that can be passed on to the individual.
32. It is further proposed that an administration charge apply based on the costs incurred for:
- postage, printing and photocopying in relation to the agreement
  - staffing costs
  - overheads (e.g. computer equipment and utility charges)
  - valuation fees in respect of property put up as security
  - registering the charge against the property ("the security")
  - perfecting the security
  - discharging or redeeming the security
  - ensuring compliance with the terms and conditions of the DPA.
33. Before entering into a DPA, a local authority must provide an estimate of the costs to be levied in respect of preparing administering the DPA, outlining the relevant charges. Before seeking to recover any charges the local authority must provide a statement setting out the amount of any administrative charge and how it was incurred.
34. Costs incurred during and at the end of the agreement, including any costs associated with revaluing the property, providing statements, and removing a legal charge from the property will also be added.

### ***Charging***

35. The Act provides the City with the power to charge for arranging care and support in the homes for those who fund their own care. The City does not currently levy such a charge. The Act requires the City to assess the needs of self funders and to arrange their support if they request this help. The future demand for this support is unknown. Charging could add an administrative burden. It is recommended that the City continues not to levy a charge for arranging care and

support for self funders, but that this decision is reviewed at six and 12 months after implementation.

### ***Policy and procedures***

36. The implementation of the Act will require some amendments or addition to existing Adult Social Care policy and procedures before 1 April 2015. Where such changes support the delivery of required elements, as summarised in paragraphs 6 to 25, it is recommended that Members delegate authority to approve them to the Director, in consultation with the Chairman and Deputy Chairman.

### **Corporate & Strategic Implications**

37. The *City Together Strategy* seeks a world class City which supports vulnerable members of the community so that they can remain at home and maintain their independence and which gives support and recognition to the role of carers. It also aims to ensure that everyone can meet their full potential in every aspect of their daily lives by taking a preventative approach.

38. KPP4 of the *Corporate Plan* aims to maximise the opportunities and benefits afforded by the City of London's role in supporting London's communities.

39. Implementing the Care Act is an action of the Community and Children's Services *Departmental Business Plan*.

### **Implications**

40. There are no further legal, financial and HR implications. The demand on services arising from the changes the Act introduces from 1 April 2015 is not predicted to be significant, given the City's current practice. However, this will be closely monitored and significant implications reported to this Committee.

### **Conclusion**

41. The Care Act builds on recent Government reviews and reforms, replacing numerous previous laws, to provide a coherent approach to adult social care in England. It introduces a range of practice that already exists in the City. To that extent the Act serves to bring the practice of other local authorities in line with standards already in the City.

42. Where the Act has required change, a robust project management approach has been adopted to ensure its implementation in a timely and appropriate way.

### **Appendices**

- None

### **Background Papers**

Care Act and Better Care Fund Update report to CCS Committee, 12 September  
2014  
Care Act 2014 and associated regulations made thereunder

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