



## **CABINET**

**30 July 2014**

**Subject Heading:**

**Cabinet Member:**

**CMT Lead:**

**Report Author and contact details:**

**Policy context:**

**Financial summary:**

**Is this a Key Decision?**

### **THE CARE ACT 2014**

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**Joy Hollister**

The Care Act represents the most significant reform of Adult Social Care in more than 60 years.

It brings together into a single legislative framework (the Care Act) a range of previously disparate pieces of legislation relevant to Adult Social Care.

Whilst doing so it extends some current responsibilities, introduces new duties and statutory requirements whilst also placing a “cap” on the personal financial contribution an individual would make towards the cost of their care.

Consequentially the Act will require new policy and current policy adjustment, changes to the practice and organisation of social work, and an extension in the functionality of systems (IT).

However the most significant impact will be in the potential financial costs of implementation and sustained increased demand for service.

The Care Act has both immediate (implementation) and long-term financial implications.

The current and developing financial modelling undertaken suggests additional costs could be Significant, as detailed in the financial implications and risks section of this report. This is consistent with work undertaken nationally and in individual London authorities.

However modelling remains a work in progress, with ‘deep dives’ into key areas underway, and increased sensitivity analysis as firm data is identified locally, where previously only national or proxy figures have been utilised.

No

**When should this matter be reviewed?**

Review dates to be set

**Reviewing OSC:**

To be confirmed

**The subject matter of this report deals with the following Council Objectives**

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Valuing and enhancing the lives of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

**SUMMARY**

This briefing report outlines the key changes and impacts arising from the Care Act 2014, identifies the requirements at each of the two phases of its introduction, and makes links to the Children and Families Act 2014. (A major problem with the Act is the word 'adults'; many of its contents also have provisions relating to children i.e. young carers; disabled children and parent carers). These difficulties have been addressed via provisions in the Children and Families Act 2014).

Finally the briefing report describes the means and governance by which the authority is taking forward its preparation and implementation of the Act.

At this stage the report seeks to raise awareness of the requirements of the Act and the impact and risks associated with it. It is anticipated that regular reports, both on specifics and in general, will be submitted.

The initial focus will be upon further development of the financial modelling and the sensitivity analysis together with undertaking an analysis of the impact and requirements of the Guidance and Regulations (just issued) to the Act.

**RECOMMENDATIONS**

1. That Cabinet NOTE this report.
2. To receive further reports as preparation and implementation is further underway, and specifically on the financial and legal impacts of the introduction of the Act.

**REPORT DETAIL**

On the 14<sup>th</sup> May 2014 the Care Bill received Royal Assent and passed into law to become known as the Care Act 2014.

The key changes of the Care Act can be considered in two areas.

Phase 1: April 2015 – The Care Act consolidates best practice around personalisation, putting people's rights to a personal budget and direct payment on a statutory footing.

Some important changes include:

- National minimum eligibility criteria for service users and carers
- The right to an assessment, support plan and personal budget regardless of personal financial circumstances.
- Carers given the same rights as those they care for; this includes the right to an assessment, a care and support plan and a personal budget.
- A duty to provide information and advice (including financial advice) about care and support services to help people to make informed decisions about their care needs.
- A duty to work with care providers to ensure a diverse and high quality range of services is available locally.
- The right to an assessment before age 18 for children moving to adult services.
- Adult safeguarding put on a statutory footing.

Phase 2: April 2016 – For the first time a cap (set at £72,000 for people aged 65 and over) will be placed on the amount that an individual will have to pay towards care and support in their lifetime.

- Progress towards the cap will be monitored using a Care Account.
- The cap will be set at a lower rate for those who develop needs before reaching old age.
- An extended means test will be introduced, meaning that more people will be eligible for financial support.

Some examples of the building blocks of these changes are set out below:

**i. Deferred payments: implementation April 2015**

**Key principle**

People who face the risk of having to sell their home in their lifetime to pay for care home fees will have the option of a deferred payment.

**Important changes**

- Everyone in a care home who meets the eligibility criteria will be able to ask for a deferred payment regardless of whether or not the local authority pays for their care.
- Councils will be able to charge interest on loans to ensure they run on a cost neutral basis.

**ii. Additional assessments and changes to eligibility: implementation April 2015**

**Key principles**

- Early intervention and prevention: supporting people as early as possible to help maintain their wellbeing and independence.
- Eligibility to be set nationally based on risk to the individual's wellbeing (as opposed to risk to the individual's independence).
- Focus on outcomes and wellbeing.
- Assessment to take into account the needs of the whole family as well as of any carers.
- New arrangements for transition to adult care and support.

**Important changes**

- Councils will have a new duty to carry out a needs assessment for all carers (no longer dependent on the cared-for-person meeting the FACS eligibility criteria).
- New duty to provide advice and information to service users and carers who do not meet the eligibility threshold.
- Duty to assess young people, and carers of children, who are likely to have needs as an adult where it will be of significant benefit, to help them plan for the adult care and support they may need before they (or the child they care for) reach 18 years.
- Legal responsibility for local authorities to cooperate to ensure a smooth transition for people with care needs to adulthood.
- New national eligibility threshold.

**iii. Advice and information: April 2015**

**Key principles**

- Information should be available to all, regardless of how their care is paid for.
- Good quality, comprehensive and easily accessible information will help people to make good decisions about the care and support they need.
- Councils have a key role ensuring good quality advice is available locally and for sign posting people to independent financial advice.

**Important changes**

- Councils will be required to provide comprehensive information and advice about care and support services in their area and what process people need to use to get the care and support that is available.
- They will also need to tell people where they can get independent financial advice about how to fund their care and support.
- Councils will be required to provide independent advocates to support people to be involved in key processes such as assessment and care planning, where the person would be unable to be involved otherwise.

**iv. Commissioning: implementation April 2015**

**Key principles**

- A wide range of good quality care and support services will give people more control and choice and ensure better outcomes.
- Councils have an important role in developing the quality and range of services that local people will want and need.
- Integrated commissioning with key partners, including health and housing, is essential to ensure quality as well as value for money and improve user satisfaction.

**Important changes**

- Duty on councils to join up care and support with health and housing where this delivers better care and promotes wellbeing.
- Duty on councils to ensure there is a wide range of care and support services available that enable local people to choose the care and support services they want (market shaping).
- New right to a personal budget and direct payment.

**v. Funding reform (cap on costs): implementation April 2016**

**Key principles**

- Financial protection: everyone will know what they have to pay towards the cost of meeting their eligible needs for care and support.
- People will be protected from having to sell their home in their lifetime to pay for any care home costs.
- People will be helped to take responsibility for planning and preparing for their care needs in later life.

**Important changes**

- Introduction of a cap on costs of meeting eligible needs for care and support (to be set at £72,000 for those of state pension age and above when it is introduced) including independent personal budgets and care accounts. The cap will be adjusted annually, as will the amount people have accrued towards the cap.
- No contribution expected for young people entering adulthood with an eligible care need.
- Lower cap for adults of working age (level to be determined).
- Increase in capital thresholds/extension to the means test providing more support to people with modest wealth.
- New legal basis for charging covering both residential and non-residential care.
- Consistent approach towards calculating contribution towards living costs for people in residential care.
- New framework for eligibility with threshold to be set nationally (to be implemented in April 2015).

The impact of this range of requirements of the Care Act will be considerable, (putting aside the financial impact). The following are some examples:

1. The IT infrastructure and systems support necessary to respond to new functions i.e. care accounts and new processes.
2. Social work practice and the assessment of need, given the introduction of both the national eligibility threshold (redrafted) and the well-being principle running through the act.
3. The volume of assessments required as the new responsibilities vis self-funders and carers are implemented.
4. Managing increased demand more effectively by the provision of information, advice and the development of a more effective preventative sector.
5. Ensuring safety and quality are the hallmark of an increasingly diverse market i.e. local regulation and ensuring market knowledge is timely in order to prevent failure.

6. Ensuring the transition between adolescence and adulthood for those individuals with a significant disability is addressed in a timely manner and seamless.

In preparation for the implementation of the Act the Council has established a Programme Board, (Care Act and Better Care Fund) chaired by the Executive Director of Children/Adults and Housing, with a range of work streams underway for instance Carers, Self-Funders, Workforce Development, Systems amongst others. Central to this approach is the development of 'in-house' expertise to ensure a sustainable change programme.

Links are established through ADASS and the London Councils programme to ensure collaborative and consistent approaches are adopted together with a shared learning approach.

## REASONS AND OPTIONS

This report is for information only.

No other options are applicable

## IMPLICATIONS AND RISKS

### **Financial implications and risks:**

The Care Act is complex and far reaching and as such the financial implications and risks are significant. The main implications are expected to be:

- There will be a loss of Income from current clients because of the changes to the savings thresholds.
- Many people currently paying for their own care are expected to be eligible to receive public funding.
- When people have reached the cap for care costs, all their subsequent care will be provided at no charge.
- The National Eligibility Criteria may potentially be less restrictive than the Council's current criteria. This is largely due to the introduction of significant new well-being responsibilities, which could lead to more clients being eligible for care.

- There will be subsequent changes to commissioning and procurement strategy to ensure sustainability, as there will be new market shaping duties.
- Carers have new rights under the Act including the right to their own needs assessment and, if eligible, a care package.
- There are considerable new management and administrative responsibilities, including a large number of new assessments and subsequent reviews, the management of personal care accounts, and significant responsibilities to publicise information and make people more aware of the need to plan for care.
- Most of the cost impact will relate to older people. However, there will be cost implications for younger adults.

## **1 Cost Pressures Identified**

The Council has undertaken initial modelling on the additional costs of care and the costs of implementing the Act.

### *a. Implementation and Infrastructure Costs*

- The first and most immediate cost pressure will be the costs required for staffing and infrastructure required to implement the requirements of the Act. Initial estimates show additional costs could be between £2.5m and £3.9m, with the bulk of these costs falling in 2015/16. Assuming the lower figure, £1.7m is one off and £800k recurring. Costs are still being scoped.
- The largest cost pressures will arise because of the increased numbers of assessments/reviews and changes to IT systems.
- We are currently working on estimating the additional infrastructure costs associated with IT requirements, management of the national deferred payments' scheme, publicity, information and advice and case management, including the administration of the new care accounts. The Department of Health is currently consulting on regulations setting out the operational legislative requirements of the Act, and these will be taken into account in estimating the cost pressures.

### *b. Care Costs – Loss of income from current clients*

- Changes to thresholds for contributions towards care costs means that some clients will pay reduced or no contributions. This will affect "tariff Income" i.e. calculated by reference to assets and savings. Initial modelling shows a potential loss of up to £0.5m in 16/17, rising to £0.7m annual impact thereafter.



*c. Care Costs – Self-funding clients receive public funding*

- Threshold changes will mean more clients currently self-funding care will be entitled to free care. An estimated 40% of residential / nursing beds in Havering are occupied by self-funders. There is limited local data available on community self-funders, people who pay for their own care in their homes. This represents a potential significant risk.
- We have estimated that 25% of self-funders will be entitled to public funded care. This will lead to a potential full year cost pressure of £1m in 16/17 and £1.5m annual pressure from 17/18.
- Work is underway to obtain better information on numbers and wealth of self-funders.

*d. Care Costs – The Impact of the Care Cap*

- This is the most publicised area of the reforms but is likely to have the smallest financial impact in Havering.
- Only the identified care element of the residential fee will count towards the cap not the costs of accommodation, meals, cleaning etc. (known as hotel costs). Generally the average length of stay is below the weeks of paid care before reaching the cap. However, there are some high cost clients who could reach cap by the end of 16/17 or 17/18. It is estimated that the impact could be full year additional costs of some £0.5m from 17/18 (with a smaller impact of some £0.2m in 16/17).

*e. Market Shaping*

- There will be new duties for local authorities to facilitate and shape the market, underpinned by the principle of wellbeing. A sustainable, outcome focussed marketplace must be fostered, offering choice through co-production, facilitating quality personalised services. There will be financial implications arising which have not yet been quantified.

*f. Eligibility*

- We do not at this stage have sufficient data to make robust assumptions on the impact of the new eligibility criteria, and how this will compare to Havering's current eligibility criteria. We do however expect there will be implications arising.

*g. Care Costs – Carers*

- We do not know how many carers will come forward for an assessment but the Census 2011 shows 25,214 unpaid carers in Havering with 5,835 providing 50 or more hours per week.

There could potentially be an annual cost pressure depending on the number presenting for assessments and care packages provided. High level sensitivity analysis shows this could be in the region of £1m annually.

*h. Care Costs – Younger Adults*

- We are currently reviewing the younger adult caseload to assess the financial impact for the Council. However, we are still awaiting more details about how the care cap will operate in relation to younger adults. The cost impact will be less than for older people. Current estimates show an impact of £0.4m in 16/17 and £0.7m annual impact thereafter.

The costs listed above are summarised in the table below:

	2016-17	Ongoing annual cost
	£m	£m
<b>Care Act Related Costs - scenarios</b>		
<b>Older People:</b>		
Loss of Income From Current Clients	0.5	0.7
New Clients (Previous Self-Funders)	1.0	1.5
Care Cap	0.2	0.5
Carers eligible for Services	1.0	1.0
<b>Sub total</b>	<b>2.7</b>	<b>3.7</b>
Younger Adults Impact (TBC)	0.4	0.7
<b>Sub total</b>	<b>3.1</b>	<b>4.4</b>
Infrastructure costs	1.7	0.8
<b>Total</b>	<b>4.8</b>	<b>5.2</b>

Note all costs are at this stage indicative.

**2. Self Funders**

It should be noted that we have an abundance of care home capacity in the borough, and some 40% of capacity is believed to be occupied by self-funders. As such the potential for people to develop a need that will in the future be funded by the council is increased, as there will be people that we are not yet aware of who may become eligible for support once living in the borough. This demographic and capacity combination poses a local risk in terms of demand and resources to support care needs.

### **3. Funding**

- a. The Government has identified funding nationally of £335m for the set-up costs associated with the Care Act, of which Havering is expected to be allocated up to £1.4m in 15/16 as one off funding. There is also one off 14/15 funding of £125k.
- b. No firm funding has yet been identified for additional care costs. In February 2013 the Health Secretary announced that £1bn would be made available for the impact of the care cap. This would be funded by freezing the assets threshold at which families become liable to pay inheritance tax for three years from 2015, and increased employer national insurance contributions. However, this has not been included yet in the Government's spending review as it falls outside the period covered by the current review. Furthermore, the total level of funding needs to be considered within the context of overall reductions in funding for local government as a whole, and changes in the way resources will be allocated through the funding formula. A review of the formula is underway and at this stage the outcome of that review for individual authorities is unknown.

### **4. Better Care Fund**

- a. The Better Care Fund (BCF) is intended to be used to support implementation of the Care Act, build community resilience and sustainability, and support service redesign, thus promoting integrated service delivery, in line with our BCF submission.
- b. Havering's 15/16 BCF allocation is £16.884m of which £15.495m is revenue and £1.389m capital. Of the revenue stream £4.478m is potentially subject to pay for performance measures. Better Care Fund Plans were signed off and submitted by local Health and Well Being Boards in April. A resubmission process is currently being finalised that further considers the performance elements. Ministers also need to be assured that plans are ambitious enough, and robust enough, to ensure readiness for April 2015.
- c. There is a proposed pay for performance regime that governs £1bn of the £3.8bn total fund. The pay for performance element is expected to be linked solely to reducing total emergency admissions to hospitals in 15/16. Health and Wellbeing Boards will be invited to agree a target reduction in admissions from the level that would otherwise have been anticipated, and to agree the savings that would accrue from such a reduction.
- d. The resubmission may pose some risk to local authorities, the implications are currently being reviewed. The Council does need to consider local aspects, notably our aging population, increased acuity

and our acute trust position, alongside the implications of performance related elements of the BCF.

## 5. Funding Position

- a. Havering's funding allocations are significantly below those of similar authorities. The most reliable spending comparators are those in Havering's Nearest Statistical Neighbour Group as defined by CIPFA.

Havering's nearest statistical neighbours are;

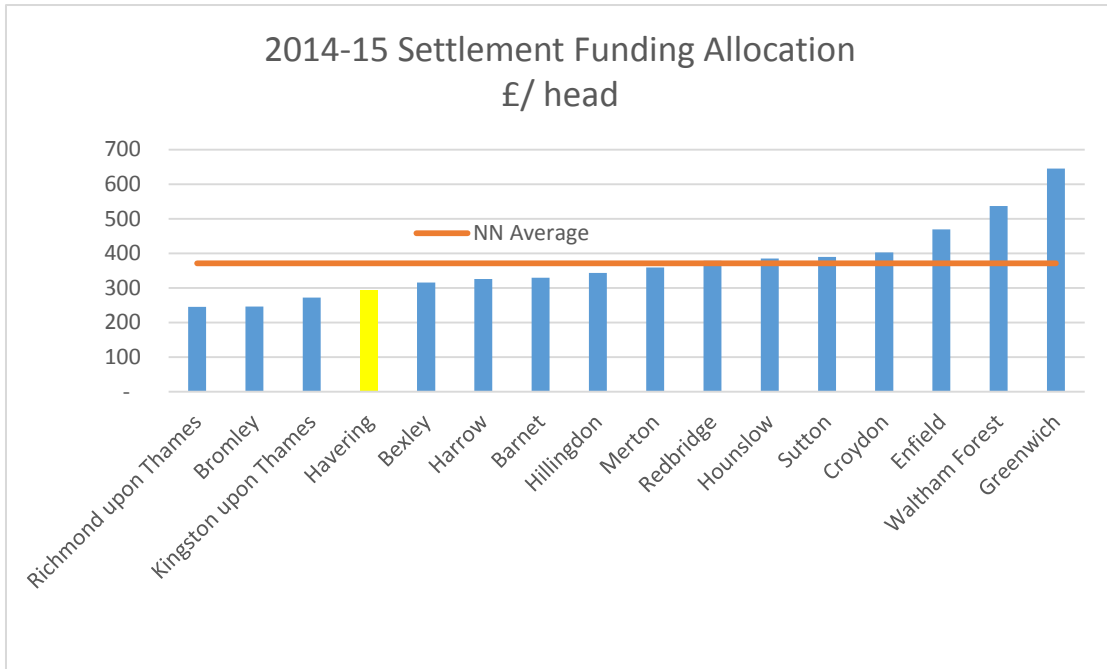
1	Bexley	9	Hounslow
2	Hillingdon	10	Merton
3	Bromley	11	Barnet
4	Enfield	12	Richmond upon Thames
5	Sutton	13	Waltham Forest
6	Redbridge	14	Kingston upon Thames
7	Harrow	15	Greenwich

<sup>1</sup> Cipfa's Nearest Statistical Neighbour groups the 15 authorities with most similar statistical characteristics to Havering in order of statistical nearness.

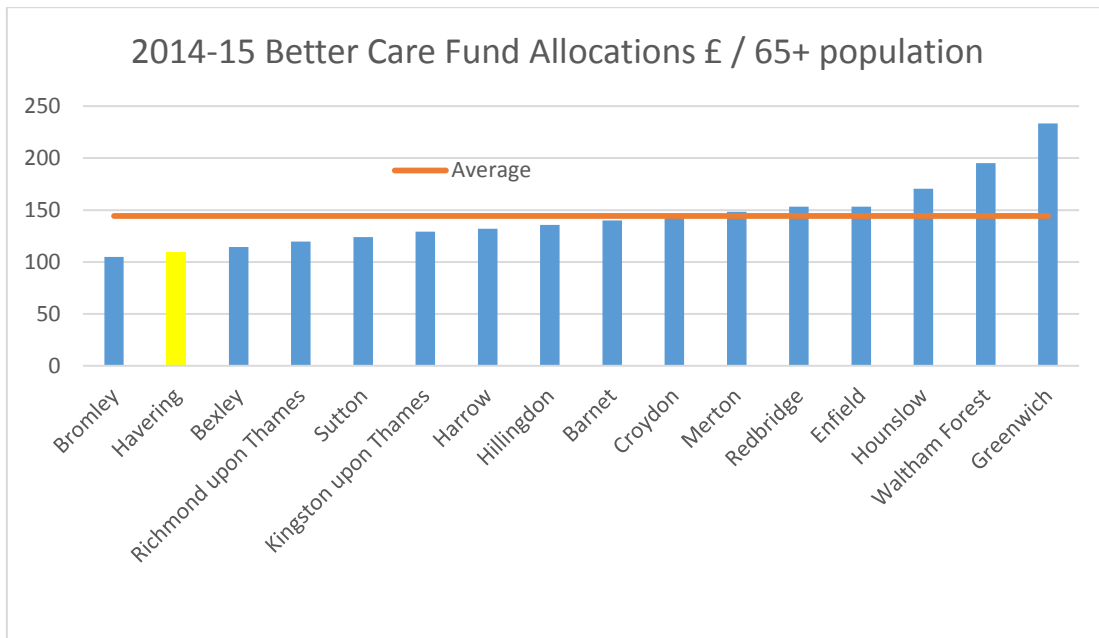
- b. Bexley is the nearest to Havering statistically followed by Hillingdon and so on.

The largest source of funding for the Council is the revenue support grant (RSG). Havering's 2014/15 RSG is £294 per head which is £78 below the average for the group. If Havering's RSG was at the nearest neighbour average it would receive an additional £18.4m of funding.

Havering has the fourth lowest allocation in the Group as is shown in the following chart;



c. Havering's 2014-15 Better Care Fund is also significantly below the group average as is shown in the following chart;



- d. Havering's allocation is £109 against a Nearest Neighbour average of £144. This implies a funding "shortfall" of £1.5m. A summary of East London funding allocations is presented below for comparison purposes:

Authority	2014/15 BCF (£m)	Population over 65 (1)	Grant per head
Tower Hamlets	6.714	15,570	431.24
Newham	6.730	20,593	326.82
Barking and Dagenham	4.185	19,321	216.60
Waltham Forest	4.990	25,566	195.17
Redbridge	5.115	33,385	153.21
Havering	4.609	42,277	109.03

## 7. Mitigation of Cost Pressures

- a. The Council will have to target resources and manage demand very effectively in order to be ready for the implications arising as a result of the reform. The potential pressures outlined above arise against a backdrop of reducing budgets, as detailed in separate Cabinet reports. Havering also has a large population of older people that is set to increase by 6% by 19/20, with large increases in the very old. This is expected to lead to an increased incidence of dementia and more complex levels of need. It is therefore essential that services are redesigned towards partnership based integrated locality models that build community capital. The service redesign will have to build in both tangible savings and cost avoidance measures.
- b. Given the huge and unprecedented risks the local authority is facing it is proposed that officers lobby Ministers, with the intention of raising awareness of the financial risks faced around adult social care provision. We will need to be ready for service demand increases, reducing budgets and Care Act implementation, in the context of our local demographic, our acute trust position, and considering risks around BCF. Although the adult social care RSG formula is being reviewed, we do not yet know the impact of this. If the budget position is such that we need to make hard decisions there is the risk that enabling and preventative measures could be compromised. Outcome focussed prevention is widely acknowledged as generating best value for money in terms of longer term sustainability and resilience. There is the real risk that we could end up with a more traditional "crises only" type service model if the financial position dictates this is the case. This would be against Government initiatives and would be flowing against the tide of BCF ambition.

**Legal implications and risks:**

There are no apparent legal implications in noting the content of the Report. Legal Advice will be provided throughout the preparatory work in readiness for the implementation of the Act and the regulations and guidance made under it.

**Human Resources implications and risks:**

The Care Act 2014 sets out key changes for Adult Social Care, the Council as a whole and other partners, which indicate at an early stage that there will be HR implications, particularly in terms of workforce development, ensuring that staff are able to deliver the new requirements from April 2015.

These changes will have significant implications for the adult social care workforce within the Council, and for those within the health economy, due to a greater emphasis on working in a more integrated way to better meet the needs of service users and contacts covered by the Care Act 2014.

Strategic work continues to be undertaken by senior management, key advisors and HR staff to identify and understand the direct of change indicated by this new Act, and to plan for any change programmes that may need to be put in place within the Council, which will be undertaken in line with Council HR policy.

**Equalities implications and risks:**

The report outlines key changes arising from the Care Act 2014 that are likely to have significant equality implications on individuals and groups with protected characteristics. Some of the legal provisions that are likely to have significant equality implications on people with protected characteristics, particularly the most vulnerable members of the community, are (non-exhaustive list):

- Council's duty to provide comprehensive information and advice about care, support services in their area and processes people need to follow.
- Council's duty to provide independent advocates to support people to be involved in key processes such as assessment and care planning, where the person would be unable to be involved otherwise.
- Council's responsibility to signpost people where they can get independent financial advice about how to fund their care and support.

It is therefore recommended that all equality related implications and risks are fully considered from both service user and workforce perspective (through, for example, the equality analysis process) and that appropriate arrangements are put in place, to ensure that any negative impacts are minimised and positive outcomes optimised.

The Council has already established a Programme Board supported by a range of work streams that must ensure that when implementing the different provisions of the Care Act 2010 due regard has been paid to the Council's duty to:

- eliminate unlawful discrimination, harassment, victimisation;
- advance equality of opportunity between those with a protected characteristic and others;
- foster good relations between these groups.

**BACKGROUND PAPERS**

None