

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker</b>	Cabinet
<b>Date:</b>	15 May 2020
<b>Title:</b>	Covid-19: temporary changes to the County Council's duties under the Care Act 2014
<b>Report From:</b>	Director of Adults' Health and Care

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#### Purpose of this Report

1. To describe, at a high level, the work underway in Hampshire County Council's Adults' Health and Care Department to protect vulnerable adults, strengthen the resilience of the adult social care workforce and create capacity in the social care market in the context of the Covid-19 pandemic. Whilst this pandemic is unprecedented, the Adults' Health and Care Department is working to prevent the need to make use of temporary changes to statutory duties under the Care Act 2014.
2. To outline the provisions of the Coronavirus Act 2020 relating to adult social care, the types of reasons why they might be used and the governance that will be in place to ensure that they are only used as a last resort and in line with the Government's guidance and updated Ethical Framework for adult social care. As this is important legislation involving one of the County Council's most significant service areas, Members should be briefed at an early stage on the extensive work that Adults' Health and Care is currently doing to manage the Covid-19 situation and the forward planning it is undertaking, should the situation become even more challenging than it currently is. This is in line with the Government's guidance and updated Ethical Framework for adult social care which stresses the ongoing importance of accountability, involvement and transparent, robust decision making.
3. To seek approval for delegated authority to the Director of Adults' Health and Care in consultation with the Executive Member and Principal Social Worker to implement if required the temporary changes to the County Council's Care Act duties. Any such decision would also involve engagement with the Chief Executive and Leader of the County Council.

4. The main areas that might trigger requirements for temporary changes to statutory duties under the Care Act 2014 include new or increased social care demand, inadequate numbers of social workers, inadequate numbers of direct care staff and/ or inadequate nursing or residential care capacity. Significant mitigation is already in place in these areas as are monitoring arrangements.
5. Even if required there would be no blanket implementation. We would adopt a tiered approach with reference to the guidance and escalation would be as part of a robust care governance process. It would only be in place for the minimum time necessary with the continued aim of returning to Care Act 2014 compliance as soon as possible.

### **Recommendations**

6. That Cabinet approve the use of the amendments to the County Council's duties under the Care Act 2014 if required.
7. That authority is delegated to the Director of Adults' Health and Care in consultation with the Executive Member for Adult Social Care and Health to implement, in line with Government guidance and as referenced in this report, all or any powers provided under Section 15 and Schedule 12 of the Coronavirus Act 2020 and to decide on timescales and manner of any implementation.

### **Executive Summary**

8. This report:
  - Outlines the extensive work already undertaken to meet the challenges of the current situation arising from the outbreak of Coronavirus
  - References the usual duties relating to adult social care under the Care Act 2014
  - Sets out the amendments to those duties under the Coronavirus Act 2020
  - Sets out the circumstances in which it may be necessary to use the amendments for a temporary period
  - Sets out the implications of using the amended duties with reference to the Human Rights Act, guidance from the Department of Health and Social Care and the ethical framework
  - Seeks approval for Cabinet to delegate authority to the Director of Adults' Health and Care in consultation with the Executive Member to implement the temporary changes to the County Council's duties under the Care Act 2014 if required.

### **Contextual information**

9. The coronavirus pandemic has had and will continue to have a pervasive impact on all aspects of life and upon Adult Social Care. The impact of the illness is causing distress for a larger proportion of the population than was known to Adults' Health and Care before the crisis. For example, social isolation and shielding have led to an increase in the number of vulnerable

people requiring support with items such as access to food, medication, and social contact.

10. There are new demands on the existing health and social care system. For example, increasing requirements around swift hospital discharge with a need for the creation of extra capacity in care homes and domiciliary care, and in some situations increased complexity of need for services to manage.
11. Necessary requirements around social distancing are leading to social isolation and this is especially challenging for those with dementia, learning disabilities, mental health problems or autism and is also very difficult for their carers. Some services, such as day opportunities, have had to be stopped in their current form, to comply with social distancing. In addition, family carers may become ill, or their loved one may become ill with Covid-19 and require more support.
12. There are challenges to the nursing and social care workforce impacting upon nursing and residential care homes, the provision of domiciliary care and social work capacity due to the impact of the illness itself, as well as the essential need to protect staff and other residents from infection.
13. Members will be aware that far reaching legislation has been enacted in response to the challenges arising from Coronavirus. The Government has also published a range of guidance to support this unprecedented situation.
14. The Coronavirus Act 2020 includes powers for local authorities with social care responsibilities to choose to temporarily suspend compliance with fundamental duties under the Care Act 2014. These are known as Care Act 2014 'easements'. The easements include not needing to: assess a person's needs, determine their eligibility for services, prepare or review care and support plans, or provide the usual range of services, or enable a choice of accommodation.
15. Were the easements to be implemented, the County Council would have a lower threshold duty to meet a person's needs for care and support if failure to do so would breach that person's rights under the European Convention on Human Rights (Rights are listed in Appendix 1).
16. The Department of Health and Social Care has published 'Responding to Covid-19: the ethical framework for adult social care' which is set out in full at Appendix 2, to assist Adults' Health and Care organisations and practitioners in making robust and ethical professional decisions about care and support during this emergency period.
17. Guidance issued by the Department of Health and Social Care sets out actions that should be taken before considering and when using the easements. In particular it is clear that use of the easements should be a last resort and that Care Act 2014 duties should continue to be met for as long as possible. This guidance is set out in full at Appendix 3.

18. Hampshire County Council Adults' Health and Care wishes to prevent the need to make use of temporary changes to statutory duties under the Care Act 2014 and has robust mitigations in place. However, given the volatility of the circumstances related to Covid-19 and its impacts, the County Council wishes to be transparent about the features of this legislation and carefully consider in advance the potential need to use it in the future should circumstances change.

### **The Care Act 2014**

19. The Care Act 2014 and associated Regulations set out the legal duties of local authorities responsible for adult social care. The duties are in relation to care and support for both individuals and their carers. They include the duties to carry out assessments of needs and the manner in which these are to be done, to determine whether needs meet the eligibility criteria for local authority care and support, to provide or arrange for care and support, to provide and review care and support or support plans and the circumstances in which a payment may be made to top up the amount the local authority is paying to enable the service user to choose a more expensive care home. The circumstances in which people can be required to make a financial contribution towards the cost of their care is also covered.
20. In addition to meeting the needs of vulnerable adults, local authorities need to comply with Care Act 2014 principles covering wellbeing and market oversight and separate legislation such as the Mental Capacity Act 2005 and Mental Health Act 1983.

### **Meeting the new needs of a wider vulnerable group**

21. Significant progress has been made in a very short time to coordinate support at local level to meet vulnerable people's urgent needs in response to Covid-19. The Director of Adults' Health and Care has chaired the welfare response hub for Hampshire across local authorities in the Hampshire area and in collaboration with Public Health, district councils, the voluntary and community sector and faith communities as part of the Coronavirus response (known as the Hampshire and Isle of Wight Local Resilience Forum). The Forum coordinates responses, disseminates learning, escalates issues and provides mutual aid when protecting the most vulnerable in response to Covid-19, including support for those who might struggle to access services, such as rough sleepers and the provision of support for all frail and vulnerable adults requiring help due to their vulnerability, because they are shielding or due to social isolation.
22. As part of the Hampshire County Council area response, a Helpline called Hantshelp4vulnerable has been established where advisers triage calls from vulnerable people who are seeking help. Callers are:
  - provided with information and signposting including, where appropriate, to the NHS;

- referred to 11 district based Local Response Centres where they are connected to local support to access food, prescription collection and other forms of support – provided by district councils in partnership with local voluntary sector organisations, groups and local councils, drawing on local volunteers;
  - referred to the County Council’s Adults’ Health and Care Welfare Team where more complex needs and personal care requirements are identified. They may also draw on voluntary support from the Local Response Centres in addition to other care and support. They would pick up any issues related to adult safeguarding or domestic abuse and any urgent issues.
23. Hampshire County Council Adults’ Health and Care has taken the responsibility of proactively contacting all residents identified as extremely clinically vulnerable by the Government who have not yet registered on line for the scheme, or who have registered and have requested support due to delays in provision through the Government scheme, or where the Government scheme does not meet their requirements. As of 4 May 2020, 30,223 residents in Hampshire have been identified by the NHS as extremely vulnerable and advised to shield or take special caution, in addition to universal social distancing measures during the outbreak.
24. The mental health and emotional wellbeing of the population during the pandemic is a widely reported issue and cause for concern. A range of initiatives have been implemented alongside other statutory and voluntary sector partners in view of social distancing measures and closure of key services. Hampshire Mental Health Well Being Centres are now remotely accessible and continue to offer a service to those in need. The Hantshelp4vulnerable helpline has been strengthened by a dedicated advice line staffed by Solent MIND assisting people including carers feeling anxious in isolation. Specialist mental health support has been set up to provide advice and guidance to homeless accommodation schemes.
25. Currently, feedback is that there is sufficient volunteer capacity to support vulnerable people in Hampshire with their essential needs and that the County Council has a robust plan in place for those who find it difficult to access support. However, this will be subject to continuous review and improvement through the Local Resilience Forum.

### **Maintaining resilience in the Adult Social Care workforce**

26. Hampshire County Council Adults’ Health and Care has a significant provider arm (HCC Care), reablement, as well as community and hospital social work teams and the Contact Assessment and Resolution Team (CART) working on the frontline. The guidance identifies the importance of monitoring staff attendance and of ensuring capacity in the workforce.
27. Staff within the Department are being deployed to ensure that essential services are maintained. Frontline Adults’ Health and Care are being

supported by other departments from within the County Council as part of the Staff Re-designation programme. To date limited use has been made of this potential resource, mainly within the HCC Care service. Overall attendance levels within our social work teams have mostly been good, but there are contingencies in place to try to ensure a sufficient social work workforce. Additional services within the Department are now operating as 7-day services.

28. Staff wellbeing is a priority for Adults' Health and Care and strategies are being employed to support health and resilience. There are a number of initiatives to support staff in HCC Care and a wellbeing site has been established pulling together wellbeing resources for all staff. In order to maintain social distancing and to minimise infection risk, the Department is taking advantage of the technology available such as Microsoft Teams as well as bolstering the capabilities and capacity of CART.
29. Whilst there remain high levels of risk around maintaining sufficient workforce capacity and supporting the wellbeing of staff, risks are mitigated sufficiently to maintain the functions of the Department. However, the Department will continue to closely monitor the situation and respond accordingly.

### **Supporting the NHS with hospital discharge, care homes and domiciliary capacity**

30. Hampshire County Council Adults' Health and Care has bolstered its specialist adult social care CART (telephone contact centre) resources, by redeploying practitioners from other parts of the Department with the necessary skills, so that there is more capacity to respond to people contacting the County Council with new or increased levels of need for social care and support.
31. Hampshire County Council Adults' Health and Care has also been working closely with the NHS across Hampshire on a new nationally mandated streamlined hospital discharge process, led by the NHS, which is ensuring that once patients are assessed as clinically safe they are supported to move from an acute hospital setting either back home or to a suitable alternative bed-based setting, thereby freeing up vital beds. This is currently working effectively, thanks to concerted efforts of our staff and NHS partners.
32. Hampshire County Council Adults' Health and Care in collaboration with the NHS has continued to support with reablement and provision of equipment by reorganisation of staff working patterns and operating hours to facilitate 7-day operations, with effective changes to working practices through embracing new technology to facilitate closer integrated multidisciplinary team (MDT) functions and by introducing a number of minor process changes for simplified approaches to operation, particularly for sourcing equipment following hospital discharge.

33. Hampshire County Council Adults' Health and Care has continued to support the market, with financial support to help meet increased costs and has systems in place to monitor provider resilience. Contingency plans maximising the benefit of available capacity across provider services are being formulated. Personal Protective Equipment (PPE) requirements are being addressed through a National Supply Disruption line, financial support package, and access to the Local Resilience Forum's PPE stocks when other options have been exhausted.
34. There are considerable challenges for all providers, including Hampshire County Council's own residential and nursing services, due to the pandemic. However, there are robust plans and actions in place to manage and mitigate the level of risk currently presented.

### **Supporting existing Adults' Health and Care service users living at home**

35. Hampshire County Council's Adults' Health and Care community teams have continued to support existing and new service users, proactively contacting people known to have high levels of vulnerability, with high frequency of contact for those who need it most. Community teams are responding to urgent need, maintaining all statutory functions such as Mental Health Act assessments and safeguarding work, carrying out functions remotely wherever possible.
36. Day opportunities and day services for people with learning disabilities have closed as a result of measures around social distancing. This includes both those services run in-house by Hampshire County Council and those run by the independent sector. The County Council has also closed its learning disability residential respite services for regular respite. Because of the importance that these services have in the lives of the people that use them and their carers, enabling them to continue living at home, a number of measures have been put in place to help keep people safe. Depending upon individual circumstances, the learning disability teams are contacting people weekly or sometimes daily to check on their wellbeing. In some cases of potential concern, staff who would usually work in day services are providing an outreach service to give support to those individuals or families. Additional support is also being made available to providers supporting individuals with more complex needs and challenging behaviours who may be experiencing difficulties in adapting to new social distancing measures.
37. The demand for Mental Health Act assessments continues to be met drawing upon the Approved Mental Health Professional (AMHP) workforce who operate alongside other critical services contributing to statutory process requirements relating to 'sectioning' individuals. Further statutory requirements under the Mental Health Act involving the social supervision of mentally disordered offenders continues with adaptation of risk management arrangements including regular reporting to the Ministry of Justice.

38. Whilst there are no issues with maintaining essential functions such as safeguarding and Mental Health Act assessments there are considerable challenges for family carers with regard to the cessation of some respite services and day opportunities and these issues are likely to grow over time. This situation will continue to be closely managed through using alternative models of support and careful work is going on to ensure that contingencies are in place. However, the situation will be carefully monitored going forward.

### **The Coronavirus Act 2020**

39. The provisions of the Coronavirus Act 2020 relating to adult social care as set out in Schedule 12 of this Act give local authorities power to decide not to comply with certain legal duties under the Care Act 2014 for the period in which the relevant new provisions are in force. For example local authorities can therefore decide not to carry out the usual assessments, not to determine usual eligibility, not to make usual provision to meet eligible needs, not to prepare care and support plans and not to agree to arrangements for top up payments. A summary of the main provisions of Schedule 12 is provided at Appendix 4.
40. For the relevant period if the local authority decides to use the easements, the Care Act 2014 duty to meet eligible needs is replaced by a duty to meet needs where a local authority considers it necessary for the purpose of avoiding a breach of a person's human rights.
41. The most relevant human rights in this context are the right to life and the right not to be tortured or treated in an inhuman or degrading way. Public authorities have a positive obligation to protect individuals. These rights are absolute rights. The right not to be deprived of liberty except where the law allows and the right to private and family life except where it can be justified to be in the interests of wider community or rights of others are qualified rights.
42. It is the intention of the County Council to maintain compliance with its duties under the Care Act 2014, and the outline above describes how risks are being actively mitigated. However, the risks relating to the provider market, demand, as well as the County Council's own workforce, mean that the situation requires ongoing monitoring. Governance structures are in place within both Adults' Health and Care and the wider County Council to do this. Should there be a requirement to implement any of the Care Act easements, then this would be done in line with the agreed governance processes. Communication of this would be done transparently and efficiently, both within the County Council and to providers, partners and other key stakeholders.
43. While a high level decision could be made to use the powers under the Coronavirus Act 2020, how that would be implemented at the individual level would need to take account of the individual's actual circumstances including those resulting from the current situation as it impacts on the particular individual. In practical terms this would mean ensuring the person was safe

and receiving necessary personal care for example washing, toileting and dressing.

44. If the decision were taken to enact the Care Act easements this would be done in line with the government's Ethical Framework and guidance. A detailed Equalities Impact Assessment (EIA) has been carried out to provide an overview of how this would impact upon individuals, particularly service users and their carers. A summary of this can be found in paragraph 52 of this paper, with the full assessment at the end of this report.
45. The Department of Health and Social Care has issued guidance to which local authorities must have regard in context of considering use of the easements. The guidance sets out a tiered approach to making changes to business as usual compliance with the Care Act 2014 duties prior to implementation of the easements moving from full compliance with the Care Act 2014 through proportionate assessment and planning to whole system prioritisation of care and support. The guidance also covers the factors such as increase in demand and reduction in available staff that would predicate the need to use the easements.

#### **Circumstances in which use of easements may be required**

46. It is anticipated that the main factors that will determine whether the County Council will need to implement all or any of the easements will be an increase in demand for services and/or a reduction in workforce availability due to Covid-19.
47. The guidance recognises that social care varies greatly across Local Authorities and the decision to operate the easements should be taken locally. The guidance stipulates that the Director of Adults' Health and Care and the Principal Social Worker would consult the Executive Member for Adult Social Care and Health as part of this decision-making process as well as informing the Health and Wellbeing Board. Any decision to implement the easements should also be fully informed by discussion with the local Clinical Commissioning Groups. Finally, the Department of Health and Social Care must be notified of the decision.
48. In line with the County Council's aim for transparency and robust decision making, the Director of Adults' Health and Care would also, prior to taking a decision to operate the easements, make every effort to hold discussions with senior elected members and officers. He would additionally seek to involve service user and carer groups, such as Hampshire's Personalisation Expert Panel and the Learning Disability Partnership Board.
49. The decision making would include a record of the evidence that was taken into account if possible including: The nature of the changes to demand or the workforce: The steps that have been taken to mitigate against the need for this to happen: The expected impact of the measures taken: How the changes will help to avoid breaches of people's human rights at a population level: The

individuals involved in the decision-making process: The points at which this decision will be reviewed again: This decision should be communicated to all providers, service users and carers. The accessibility of communication to service users and carers should be considered. It is anticipated that Adults' Health and Care, Care Governance Board, chaired by the Director of Adults' Health and Care, would then review the use of the easements on a regular basis to ensure the temporary measures in place were working effectively and were only being used for the shortest possible time period.

## **Consultation and Equalities**

50. For reasons of urgency, formal consultation has not taken place to date. However, should it become necessary for the Care Act easements to be used, the Director of Adults' Health and Care would engage with relevant senior members, officers, partners and (where possible) user/carer groups as set out in paragraphs 47 and 48 above. Communication would take place as appropriate to inform any affected service users and carers, providers, partners and the Hampshire Health and Wellbeing Board of the emergency decision and its short-term implications.
51. An equalities impact assessment (EIA) has been completed and is included as an appendix to this report.
52. The groups identified as 'high' impact in relation to Covid-19 are Age (older people), Disability and Poverty. A medium impact has also been identified in relation to Race and Rurality. Key impacts across all groups are in relation to:
- Increased isolation and reduced ability to access the full range of communication channels
  - Lack of contact with family and friends who provide informal support, and impact of not being able to visit people in care homes
  - Potential delays for assessment or review, depending on urgency and staff availability
  - Reduction in availability of some services, e.g. the possibility of reduced capacity in domiciliary and residential care because of staffing shortages, closure of day services and respite for service users and carers, reduced support to access the community. This means an increased pressure on informal carers
  - Reduction in face-to-face assessments, reviews and other social work interactions/increased reliance on communication by phone and other technology has greater impact on people with limited or no verbal communication (e.g. older people with advanced dementia) with social work practitioners needing to rely on third party information from carers or support providers
  - Informal carers may be inclined to take on more caring responsibilities themselves and for longer due to concerns about the risks of having paid carers visit the home
  - Increased likelihood of other long-term health conditions not being adequately managed during this period

- Difficulty in accessing food and other supplies, if there is no family/local support/lack of access to internet or knowledge about sources of assistance
- Reduction in choice of accommodation/types of support that can be provided because of capacity in the market/social distancing in the community
- Additional impact for some people who may be less able to understand and adapt to the Covid-19 situation, for example people with learning disability, autism, dementia or mental illness, or some people for whom English is not their first language.

**Additional impacts if the decision was taken to use the Care Act easements**

- People would have reduced choice in how their needs would be met, for example because of reduced market capacity/staff availability/reduced choice of accommodation for people who would otherwise choose to 'top up' accommodation costs
- Less detailed assessment may result in less clear care planning information for support providers, and consequent potential for poor targeting of support provision
- Increased pressure on carers, as staff would not be carrying out carer assessments
- A delay in completing financial assessments could lead to a build up of client contributions which some clients might find difficult to repay

**Mitigation measures are outlined in the EIA but in summary, include the following:**

- Community teams are prioritising proactive telephone contact with existing service users and carers who are known to be most vulnerable
- Staff resources are being used appropriately, including the redeployment of some staff, to keep essential and critical services running
- Operation of [hantshelp4vulnerable](#) telephone helpline to coordinate access to local volunteers, support with food supply and deliveries to vulnerable residents. Responses can be tailored to the needs of particular communities and groups, e.g. to support with particular cultural/dietary requirements
- Capacity at adult social care specialist CART (Contact Assessment and Resolution Team) has been bolstered to support more telephone-based work with service users
- Additional translation services are available to contact centre and hantshelp4vulnerable helpline, including specific British Sign Language (BSL) support via the Deaf Services Team

## **Current financial picture**

53. On 19 March 2020, the Government announced £1.6 billion of additional funding for local government to help them respond to Coronavirus pressures across all the services they deliver. This includes increasing support for the adult social care workforce and for services helping the most vulnerable, including homeless people. Hampshire County Council's allocation of this funding (across all its services) is £29,654,341. A further £1.6 billion was announced on 18 April, taking the total for the sector to £3.2 billion. Hampshire's share of this second tranche of funding has now been confirmed as £24,313,635.
54. Further details of the financial impact of Covid-19 are outlined and explored in the finance report to Cabinet.

## **Conclusions**

55. Hampshire County Council Adults' Health and Care is making a significant effort to maintain and sustain Care Act 2014 compliance through:
- Meeting the needs of a wider vulnerable group
  - Maintaining the resilience of the Adult Social Care workforce
  - Supporting the NHS with hospital discharge, care homes and domiciliary capacity
  - Supporting existing Adults' Health and Care service users living at home
56. The County Council is currently in a good position with robust arrangements in place. However, the risks relating to the provider market, demand for services as well as the County Council's own workforce and the unprecedented and fast-moving nature of the pandemic and its impacts mean that the situation requires ongoing monitoring.
57. Should there be a requirement to implement any of the Care Act easements, then this would be done in line with the agreed governance processes. Communication of this would be done transparently and efficiently, both within the County Council and to providers, partners and other key stakeholders.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	no
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	no
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

**Other Significant Links**

<b>Links to previous Member decisions:</b>	
<u>Title</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>	
<u>Title</u>	<u>Date</u>
<a href="#">Care Act 2014</a>	May 2014
<a href="#">Coronavirus Act 2020</a>	March 2020
<a href="#">Coronavirus Act 2020 Schedule 12</a>	March 2020
<a href="#">Responding to COVID-19: the ethical framework for adult social care</a>	March 2020
<a href="#">Care Act easements: guidance for local authorities</a>	April 2020
<a href="#">Coronavirus (COVID-19): hospital discharge service requirements</a>	March 2020

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

## EQUALITIES IMPACT ASSESSMENT:

### 1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### 2. Equalities Impact Assessment:

**Name of Project or Proposal (required):**

Covid-19: temporary changes to the County Council's duties under the Care Act 2014

**Is this a Transformation to 2021 project? (required):**  Yes  No

**Name of accountable officer (required):** Graham Allen

**Name of Assistant Director:** Jess Hutchinson

**Date:** 21/04/2020

**Department (required):** Adults' Health and Care

Is this a detailed or overview EIA (required): Detailed

Overview

**Description of Service/Policy:** (required)

The impact of Covid-19 has created new demands on adult social care, for example with increased requirements around swift hospital discharge and the need for additional capacity in care home places and domiciliary care. At the same time there are challenges around existing care home, domiciliary care and social work capacity due to the impact of the illness upon the social care workforce itself, and the need to protect staff and other residents from illness. Some services have had to be reduced due to the need for social distancing. Social isolation and shielding have also led to an increase in the number of vulnerable people requiring essential support.

This EIA summarises the key impacts on service users and carers with protected characteristics during the current period and the mitigation that Adults' Health and Care is already putting in place to alleviate disadvantage and difficulties faced by vulnerable groups.

The EIA also highlights the additional impacts likely to be felt if the County Council had to use 'last resort' emergency legislation, in the form of changes to the Care Act 2014, to deal with the emergency situation.

**Geographical impact** (required)

All Hampshire (if ticked do not tick any further boxes)

Basingstoke and Deane

East Hampshire

Eastleigh

Fareham

Gosport

Hart

Havant

New Forest

Rushmoor

Test Valley

Winchester.

**Describe the proposed change**

Under the Coronavirus Act 2020, and only as a last resort, a local authority has the power during the emergency period not to comply with a number of its statutory duties under the Care Act 2014. The main duties that can be 'eased' and that are most relevant to this EIA are:

- Duty to assess the needs of individuals and carers
- Duty to give written records of an assessment
- Duty to meet eligible needs
- Duty to provide care and support plans

- Duty to give people a choice of accommodation, assuming someone (usually a third party) is willing to 'top up' the amount if the preferred accommodation in a care home is more expensive than the council needs to pay

These duties would be replaced with a lower threshold duty to meet a person's needs for care and support if failure to do so would breach that person's rights under the European Convention on Human Rights. The most relevant Human Rights in this situation are:

- The right to life
- The right to freedom from inhuman and degrading treatment
- The right to private and family life

The situation in which the local authority would decide to use the Care Act easements has not yet been reached in Hampshire and it is hoped that this will not occur. However, it is important that plans are in place so that action can be taken swiftly if it is needed.

Essentially, the Care Act easements would only be used if the workforce were to become significantly depleted, or demand on social care increased to an extent that it would no longer be reasonably practicable to comply with the current Care Act duties (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so would be likely to result in urgent or acute needs not being met, potentially risking life.

The Cabinet report on this decision, which this EIA supports, asks Cabinet to delegate authority to the Director of Adults' Health and Care in consultation with the Executive Member to determine whether to implement the temporary changes to the County Council's duties under the Care Act 2014 if required. This is a precautionary measure which it is hoped will not be used.

**Who does this impact assessment cover?**

Service users      HCC staff (pick one)

**Has engagement or consultation been carried out?**

Yes      No      Planned (pick one)

**Describe the consultation or engagement you have performed or are intending to perform.**

For reasons of urgency, formal consultation has not taken place. However, should it become necessary for the Care Act easements to be used, the Director of Adults' Health and Care would act on the advice of the Principal Social Worker and would consult with the Executive Member for Adults' Health and Care before taking a final decision. The Director would also involve senior members, officers and if possible would engage with regular service user/carer groups with whom Adults' Health and Care regularly works, such as the Personalisation Expert Panel. Communication would take place as appropriate to inform affected service

users and carers, providers, partners and the Hampshire Health and Wellbeing Board of the emergency decision and its short-term implications.

**Statutory Considerations:**

**For all the below options, please indicate whether the proposed change is expected to have a Positive, Neutral or negative (Low, Medium or High) impact on people who can share the following characteristics. If Positive or Low, please describe what the impact will be. If Medium or High, please describe the impact and the planned mitigation for the impact.**

**Age Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Impact: Existing impacts during Covid-19**

- Increased isolation and reduced ability to access the full range of communication channels (eg web/social media/phone for people with hearing impairment etc)
- Lack of contact with family and friends who provide informal support, and restricted/no visits to care homes
- Potential delays for assessment or review, depending on urgency and staff availability
- Reduction in availability of some services, eg potentially reduced capacity in domiciliary and residential care because of staff shortages, closure of day services and regular respite for service users and carers, reduced support to access the community. This means an increased pressure on informal carers
- Increased likelihood of other long-term health conditions not being adequately managed during this period
- Difficulty in accessing food and other supplies, if there is no family/local support/lack of access to internet or knowledge about sources of assistance
- Reduction in choice of accommodation/types of support that can be provided because of lack of capacity in the market/social distancing in the community
- Reduction in face-to-face assessments, reviews and other social work interactions/increased reliance on communication by phone and other technology has greater impact on people with limited or no verbal communication (e.g. older people with advanced dementia) with social work practitioners needing to rely on third party information from carers or support providers
- Carers may be inclined to take on more caring responsibilities themselves and for longer due to concerns about the risks of having carers visit the home
- Impact of all the above is likely to be more severe for people who lack mental capacity to understand the situation and the reason for restrictions (e.g. older people with dementia), leading to increased levels of distress

### **Additional impact of using Care Act easements**

- People would have reduced choice on how their needs would be met, for example because of reduced market capacity/staff availability/reduced choice of accommodation for people who would otherwise choose to 'top up' accommodation costs. Some current service users might see their service reduced and new service users might only receive services to keep safe and to ensure their Human Rights were not breached
- Potential to not provide the right amount of care – either too little or too much – because people's needs will not have been systematically assessed or reviewed in the usual way
- Less detailed assessment may result in less clear care planning information for support providers, and consequent potential for poor targeting of support provision
- Increased pressure on carers, as staff would not be carrying out carer assessments
- People with less urgent/acute needs are less likely to have their needs assessed or receive services to meet needs until easements have been lifted, with potential for their situation to deteriorate in the interim
- If required, easements allow local authorities to make decisions to change support for people, e.g. by temporarily stopping support for one person in order to meet a more urgent need for care for someone else, creating likely increased pressure on carers
- A delay in completing financial assessments could lead to a build up of client contributions which some clients might find difficult to repay

### **Mitigation:**

- Community teams are prioritising proactive telephone contact with existing service users and carers who are known to be most vulnerable
- Staff resources are being used appropriately, including the redeployment of some staff, to keep essential and critical services running
- Operation of [hantshelp4vulnerable](#) telephone helpline to coordinate access to local volunteers, support with food supply and deliveries to vulnerable residents
- Capacity at adult social care specialist CART (Contact Assessment and Resolution Team) has been bolstered to support more telephone-based work with service users

### **Disability Impact Assessment:**

Positive     Neutral    Low Medium                      High

### **Impact: Existing impacts during Covid-19**

- Increased isolation and reduced ability to access the full range of communication channels (eg web/social media etc)
- Lack of contact with family and friends
- Disruption to established routines will particularly affect people with learning disability or autism or mental health conditions. Social distancing and the general anxiety about Covid-19 may disproportionately be

impacting on people with mental health problems, who may be delaying seeking help for longer than would otherwise be the case

- Particular impacts for people with direct payments – impacts on the PA market e.g. having to have reduced level of care/reorganise support if PA self-isolating/ill
- Potential delays for assessment or review, depending on urgency and staff availability
- Reduction in availability of some services, eg potentially reduced capacity in domiciliary and residential care because of staff shortages, closure of day services and regular respite for service users and carers, reduced support to access the community. This means an increased pressure on informal carers
- Increased likelihood of other long-term health conditions not being adequately managed during this period, as many disabled people will have reduced levels of support from their community and potentially healthcare will be harder to access
- Difficulty in accessing food and other supplies, if there is a lack of family/local support/lack of access to internet or knowledge about sources of assistance
- Reduction in choice of accommodation/types of support that can be provided because of capacity in the market/social distancing in the community
- Reduction in face-to-face assessments, reviews and other social work interactions/increased reliance on communication by phone and other technology has greater impact on people with limited or no verbal/written communication (e.g. people with learning disabilities) with social work practitioners needing to rely on third party information from carers or support providers
- Carers may be inclined to take on more caring responsibilities themselves and for longer due to concerns about the risks of having carers visit the home
- Impact of all the above is likely to be more severe for people with learning disability and or autism, who may have a reduced ability to understand the situation and the reason for restrictions, leading to increased levels of distress and challenging behaviour

#### **Additional impact of using Care Act easements**

- People would have reduced choice on how their needs would be met, for example because of reduced market capacity/staff availability/reduced choice of accommodation for people who would otherwise choose to 'top up' accommodation costs. Some current service users might see their service reduced and new service users might only receive services to keep safe and to ensure their Human Rights were not breached
- Potential to not provide the right amount of care – either too little or too much – because people's needs will not have been systematically assessed or reviewed in the usual way

- Less detailed assessment may result in less clear care planning information for support providers, and consequent potential for poor targeting of support provision
- Increased pressure on carers, as staff would not be carrying out carer assessments
- People with less urgent/acute needs are less likely to have their needs assessed or receive services to meet needs until easements have been lifted, with potential for their situation to deteriorate in the interim. This might particularly be an issue for some people with mental health problems
- If required, easements allow local authorities to make decisions to change support for people, e.g. by temporarily stopping support for one person in order to meet a more urgent need for care for someone else, creating likely increased pressure on carers.
- A delay in completing financial assessments could lead to a build up of client contributions which some clients might find difficult to repay

**Mitigation:**

- Community teams are prioritising proactive telephone contact with existing service users and carers who are known to be most vulnerable
- Staff resources are being used appropriately, including the redeployment of some staff, to keep essential and critical services running
- Operation of hantshelp4vulnerable telephone helpline to coordinate access to local volunteers, support with food supply and deliveries to vulnerable residents
- Capacity at adult social care specialist CART (contact centre team) has been bolstered to support more telephone-based work with service users
- Provision of online resources to help providers and families to support individuals with learning disabilities and or autism to manage changes in routines etc

**Sexual Orientation Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Race Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Impact: Existing impacts during Covid-19**

- Increased barriers to effective support and communication, particularly around language where English is not someone's first language
- Increased barriers to accessing services
- Lack of contact with family and friends
- Isolated people / people shielding may not receive culturally appropriate food

**Additional impact of using Care Act easements**

- Further restrictions on choice, potentially, because of reduced market capacity/staff availability

- Potential to not provide the right amount of care – either too little or too much – because people’s needs will not have been systematically assessed or reviewed in the usual way
- Increased pressure on carers, as staff would not be carrying out carer assessments

**Mitigation:**

- Additional translation services and British Sign Language support available to contact centre and to hantshelp4vulnerable helpline
- Local response centres have access to local community volunteers and access to appropriate foods and will be able to offer more tailored support in particular communities

**Religion or belief Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Gender reassignment Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Gender Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Marriage or Civil Partnership Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Pregnancy and maternity Impact Assessment:**

Positive     Neutral    Low Medium                      High

***Other policy considerations***

**Poverty Impact Assessment:**

Positive     Neutral    Low Medium                      High

**Impact: Existing impacts during Covid-19**

**Some Positive**

- Positive impact in that all people known to be sleeping rough in Hampshire have been offered temporary accommodation by their district council to allow them to social distance and self-isolate if needed, reducing very significantly the number sleeping rough

**However, overall Negative**

- People from lower income backgrounds are more likely to need to access adult social care services from the council, and will therefore be impacted more if service level is reduced
- Increased poverty linked to unemployment/loss of income/debt likely to lead to increase in mental and physical ill health
- Some individuals may no longer be able to afford contributions they were previously making to the care costs of others (eg topping up care costs for

a relative/friend staying in a more expensive care home than the council will fund)

**Additional impact of using Care Act easements**

- No specific additional impacts to highlight

**Mitigation:**

- Systems for identifying support for those in urgent need are in place via hantshelp4vulnerable and the 11 local response centres
- All social care support is means tested, so individuals on low incomes would still be able to access critical care and support services they needed to have put in place during the emergency

**Rurality Impact Assessment:**

Positive     Neutral    Low Medium    High

**Impact:**

- People in rural communities are likely to experience the same difficulties as other groups outlined above, in terms of reduced access to services and support and because of the impact of social distancing. The combined impact of rurality and disability or age would potentially compound disadvantage. Some rural communities may be coping relatively well, if there is good social capital and local sources of food supply/delivery, but other communities/rural households will be more isolated.

**Mitigation:**

- Mitigation same as for other groups, in terms of use of hantshelp4vulnerable, local response centres and use of volunteers and to support access to food supplies, medication etc.
- Community teams will prioritise those who are most vulnerable for more frequent contact or to put in place necessary support

**Additional information**

Another group not specifically covered by the above categories, but relevant in terms of the wider wellbeing responsibilities of Adults' Health and Care is people who are at increased risk of domestic abuse due to the lockdown.

Hampshire's Domestic Abuse Service is continuing to provide help to people experiencing domestic abuse via phone, email and online. A face to face support option is not available during this time but access to refuge, for those with urgent needs, will still be available on a 24/7 basis.

Please confirm that the accountable officer has agreed to the contents of this form (required):

Yes    No

**Human Rights Act 1998**

**List of Rights**

The Human Rights Act 1998 gives effect in the UK to the European Convention on Human Rights (Articles 1 and 13 are fulfilled by having enacted the Act)

Article 2 - the right to life

Article 3- freedom from torture and inhuman or degrading treatment

Article 4- freedom from slavery and forced labour

Article 5- right to liberty and security

Article 6- right to a fair trial

Article 7- no punishment without law

Article 8- respect for private and family life, home and correspondence

Article 9- freedom of thought, belief and religion

Article 10- freedom of expression

Article 11- freedom of assembly and association

Article 12 -right to marry and start a family

Article 14- protection from discrimination in respect of these rights and freedoms

Protocol 1 Article 1- right to peaceful enjoyment of property

Protocol 1 Article 2- right to education

Protocol 1 Article 3- right to participate in free elections

Protocol 13 Article 1- abolition of the death penalty

Further information on each right can be found in the link below

<https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

## Responding to COVID-19: the ethical framework for adult social care

Published 19 March 2020

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## Introduction

The current novel coronavirus (COVID-19) outbreak, which began in December 2019, will have major implications for health and care services in the UK.

As set out in the [coronavirus action plan](#), published on 3 March 2020, the UK's health and social care systems have planned extensively over the years for a pandemic and are well prepared to offer substantial protection to the public. Of course, the exact response to COVID-19 will be tailored to the nature, scale and location of the threat as our understanding of this develops.

Local authorities and the wider health and care workforce are faced with difficult decisions every day. However, planning for and responding to COVID-19 as it develops will undoubtedly require making difficult decisions under new and exceptional pressures with limited time, resources or information.

These decisions could be personal, relating to our families, carers and communities, or have wider impacts on the organisation and delivery of our health and care services. Decisions will need to be made in accordance with the law and official guidance issued and applicable at the time, and while meeting statutory duties and professional responsibilities.

This framework intends to provide support to ongoing response planning and decision-making to ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults.

Recognising increasing pressures and expected demand, it might become necessary to make challenging decisions on how to redirect resources where they are most needed and to prioritise individual care needs. This framework intends to serve as a guide for these types of decisions and reinforce that consideration of any potential harm that might be suffered, and the needs of all individuals, are always central to decision-making.

Equal concern and respect should be given to all individuals, their families and carers, and communities, as well as the professionals and volunteers that we will be relying on to ensure the delivery of our services and ambitions.

As the outbreak affects society as a whole, everyone will have their role to play to support the ongoing and future response. It is vital that professionals, organisations and public agencies work together at local and national level, and that planning and response activities at national, regional and local level are well-coordinated. Appropriate records must be kept of which decisions are taken and their justifications to both ensure accountability and to share learning with others during and as the outbreak develops.

This document has been adapted and refreshed from the Ethical Framework first developed by the Committee on Ethical Aspects of Pandemic Influenza in 2007, which was later revised by the Department of Health and Social Care (DHSC) in 2017.

## **How to use the framework**

This framework is aimed at planners and strategic policy makers at local, regional and national level to support response planning and organisation of adult social care during and as COVID-19 develops. It also aims to support the work of professionals and others in the health and social care workforce who are developing policies and responding to the outbreak, in line with their own professional codes of conduct and regulations.

These principles can also be applied more widely in the social care sector.

Social care is a locally led and delivered service built on a detailed understanding of individuals and their families, communities and cultures. Social workers, occupational therapists and nurses form the core professional group and have clear responsibilities and accountabilities to their own professional codes and guidelines.

Local professional leaders, such as principal social workers and principal occupational therapists, will be key in ensuring this framework is applied and understood. As such, the skills of these professionals should be used to help develop and review locally agreed processes.

Alongside ethical considerations, every decision will require consideration of individual wellbeing, overall public good and the resources that are available. The values and principles should serve as a starting point to guide decision-making, supported by the views of lead professionals, collaboration across disciplines and organisations, and the extent of information available in each particular circumstance.

The ethical values and principles are equally relevant to those in need of social care who may face increased vulnerability, those who may become in need of social care, and the health and social care workforce who may face new and unexpected burdens when making difficult decisions and providing care and support during and as COVID-19 develops.

It might be useful to use the framework as a checklist to ensure ethical considerations are taken in to account, however, the values and principles described in this document are not exhaustive. When implementing the ethical values and principles in urgent and uncertain circumstances, you may encounter tension between them which will require a judgement to be made on the extent that a particular value or principle can be applied in the context of each particular decision.

In all instances, respect and reasonableness should be used as the fundamental, underpinning principles which guide planning and support judgements.

## **The values and principles**

This section outlines each ethical value and principle and associated actions and best practice when considering and applying them. These should be considered alongside professional codes of conduct and the most recent official guidance and legislation where these apply.

The principles are numbered for ease of reference but are not ranked in order of significance or exhaustive. There are no absolute answers to making the correct or most ethical decisions.

Where resources are constrained and there are surges in demand, it may not be feasible to consider all the principles or the actions below them. Each principle must be considered to the extent possible in the context of each circumstance with appropriate risk management and considerations of individual wellbeing, overall public good and available information and resources.

### **1. Respect**

This principle is defined as recognising that every person and their human rights, personal choices, safety and dignity matters.

To ensure people are treated with respect, those making decisions should:

- provide people with the opportunity to express their views on matters that affect their care, support and treatment
- respect people's personal choices as much as possible, while considering and communicating implications for the present and future
- keep people as informed as possible of what is happening or what is expected to happen in any given circumstance
- where a person may lack capacity (as defined in the [Mental Capacity Act](#)), ensure that a person's best interests and support needs are considered by those who are responsible or have relevant legal authority to decide on their behalf
- strive to support people to get what they are entitled to, subject to available resources, ensuring that there is a fair judgement and clear justification for any decisions made on prioritisation

### **2. Reasonableness**

This principle is defined as ensuring that decisions are rational, fair, practical, and grounded in appropriate processes, available evidence and a clear justification.

When considering how reasonable a decision is, those making decisions should:

- ensure the decision made is practical with a reasonable chance of working

- base decisions on the evidence and information that is available at the time, being conscious of known risks and benefits that might be experienced
- consider alternative options and ways of thinking, being conscious of diverse views from cultures and communities
- use a clear, fair decision-making process which is appropriate for the time and context a decision must be made in, and allows for contributions to be considered seriously

This principle should be considered alongside relevant equalities-related legal and policy frameworks. Although resources may become stretched, it should be upheld that people with comparable needs should have the same opportunity to have those needs met.

### **3. Minimising harm**

This principle is defined as striving to reduce the amount of physical, psychological, social and economic harm that the outbreak might cause to individuals and communities. In turn, this involves ensuring that individual organisations and society as a whole cope with and recover from it to their best ability.

It's important that those responsible strive to:

- acknowledge and communicate that everyone has a role to play in minimising spread, for example by practising thorough hand-washing or social distancing
- minimise the risk of complications in the event that someone is unwell
- provide regular and accurate updates within communities and organisations
- share learning from local, national and global experiences about the best way to treat and respond to the outbreak as understanding of COVID-19 develops
- enable care workers and volunteers to make informed decisions which support vulnerable people

### **4. Inclusiveness**

This principle is defined as ensuring that people are given a fair opportunity to understand situations, be included in decisions that affect them, and offer their views and challenge. In turn, decisions and actions should aim to minimise inequalities as much as possible.

To ensure inclusiveness to the extent possible, those making decisions should:

- involve people in aspects of planning that affect them, their care and treatment, and their communities

- involve families and carers in aspects of planning that affect them and the individual who they care for
- ensure that no particular person or group is excluded from becoming involved
- consider any disproportionate impacts of a decision on particular people or groups
- provide appropriate communications to all involved, using the range of communication methods and formats needed to reach different people and communities
- be transparent and have a clear justification when it is decided to treat a person or group in a different manner than others, that which shows why it is fair to do so

Where appropriate, the above should be considered alongside relevant equalities-related legal and policy frameworks that will inform inclusive decision-making by ensuring that specific barriers to service use are minimised for those who may be or become disadvantaged as the outbreak develops.

## **5. Accountability**

This principle is defined as holding people, and ourselves, to account for how and which decisions are made. In turn, this requires being transparent about why decisions are made and who is responsible for making and communicating them.

Those responsible must be accountable for their decisions and actions by:

- acting on and delivering the outcomes required by their responsibilities and duties to individuals, their families and carers, and staff
- adhering to official guidance, statutory duties, and professional regulations at the time
- being transparent about how and which decisions need to be made and on what basis
- being prepared to justify which decisions are made and why, ensuring that appropriate records are being kept
- supporting others to take responsibility for their decisions and actions

Within organisations, this will also entail:

- continuing to carry out professional roles and responsibilities unless it is deemed reasonable not to do so
- providing an environment in which staff can work safely, effectively and collaboratively, which protects their health and wellbeing as the outbreak develops
- providing appropriate guidance and support to staff who may be asked to work outside of their normal area of expertise or be unable to carry out some of their daily activities

- having locally-agreed processes in place to handle ethical challenges during and in the aftermath of the outbreak

## **6. Flexibility**

This principle is defined as being responsive, able, and willing to adapt when faced with changed or new circumstances. It is vital that this principle is applied to the health and care workforce and wider sector, to facilitate agile and collaborative working.

To ensure flexibility, those making decisions should be prepared to:

- respond and adapt to changes as and when they occur, for example in the event of new information arising or changed levels of demand
- ensure that plans and policy have room for flexibility and innovation where necessary
- provide people with as much opportunity as possible to challenge decisions that affect them in the time that is available
- ensure that the health and care workforce is supported to work collaboratively across disciplines and organisations, as agile and resilient as possible
- review organisational practices, standard approaches and contractual arrangements that may obstruct these ambitions

## **7. Proportionality**

This principle is defined as providing support that is proportional to needs and abilities of people, communities and staff, and the benefits and risks that are identified through decision-making processes.

When considering proportionality, those responsible should:

- assist people with care and support needs to the extent possible
- act on statutory or special responsibilities, while noting any duties that might be amended as the outbreak develops
- provide support for those who have extra or new responsibilities to care for others
- provide support for those who are asked to take increased risks or face increased burdens, while attempting to minimise these as far as possible
- provide appropriate support and communications to staff who may experience unexpected or new pressures

## **8. Community**

This principle is defined as a commitment to get through the outbreak together by supporting one another and strengthening our communities to the best of our ability.

Everyone involved will have a role to play in the response to the outbreak and will be affected in one way or another, and therefore should:

- work with and support one another to plan for, respond to, and cope with the outbreak
- support our networks and communities to strengthen their response and meet needs that arise, for example by helping and caring for neighbours, friends and family
- be conscious of own behaviour and decisions, and how this may impact on others
- share learning from own experiences that may help others

## Care Act easements: guidance for local authorities

Updated 1 April 2020

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## **1. Introduction**

This guidance sets out how Local Authorities can use the new Care Act easements, created under the Coronavirus Act 2020, to ensure the best possible care for people in our society during this exceptional period.

## **2. Purpose of the easements**

Local Authorities and care providers are already facing rapidly growing pressures as more people need support because unpaid carers are unwell or unable to reach them, and as care workers are having to self-isolate or unable to work for other reasons. The Government has put in place a range of measures to help the care system manage these pressures. Local Authorities should do everything they can to continue meeting their existing duties prior to the Coronavirus Act provisions coming into force. In the event that they are unable to do so, it is essential that they are able to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met. The powers in the Act enable them to prioritise more effectively where necessary than would be possible under the Care Act 2014 prior to its amendment (referred to in this guidance as the Care Act). They are time-limited and are there to be used as narrowly as possible.

## **3. What the powers actually change**

The changes fall into four key categories, each applicable for the period the powers are in force:

1. Local Authorities will not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements. However, they will still be expected to respond as soon as possible (within a timeframe that would not jeopardise an individual's human rights) to requests for care and support, consider the needs and wishes of people needing care and their family and carers, and make an assessment of what care needs to be provided. Annex B of the guidance provides more information
2. Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will, however, have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment. This will ensure fairness between people already receiving care and support before this period, and people entering the care and support system during this period. Annex B of the guidance provides more information
3. Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They will however still be expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing

care and support, often at short notice. Where they choose to revise plans, they must also continue to involve users and carers in any such revision. Annex B of the guidance provides more information

4. The duties on Local Authorities to meet eligible care and support needs, or the support needs of a carer, are replaced with a power to meet needs. Local Authorities will still be expected to take all reasonable steps to continue to meet needs as now. In the event that they are unable to do so, the powers will enable them to prioritise the most pressing needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision. Annex C provides further guidance about the principles and approaches which should underpin this

#### **4. Protections and safeguards**

The overriding purpose of these easements is to ensure the best possible provision of care to people in these exceptional circumstances. In order to help ensure that they are applied in the best possible way, with the greatest regard towards the needs and wishes of care users and their carers, the following protections and safeguards will apply.

The easements took legal effect on 31 March 2020, but should only be exercised by Local Authorities where this is essential in order to maintain the highest possible level of services. They should comply with the pre-amendment Care Act provisions and related Care and Support Statutory Guidance for as long and as far as possible.

They are temporary. The Secretary of State will keep them under review and terminate them, on expert clinical and social care advice, as soon as possible.

All assessments and reviews that are delayed or not completed will be followed up and completed in full once the easements are terminated.

Local Authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights. These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8.

The CQC will continue to provide oversight of providers under existing legislation. Throughout this period the CQC will take a pragmatic approach to inspection and proportionate action as necessary while maintaining its overriding purpose of keeping people safe.

Other important duties on Local Authorities remain in place:

- Duties in the Care Act to promote wellbeing and duties relating to safeguarding adults at risk remain in place. Further guidance on safeguarding during this period is at Annex D

- Duties in the Mental Capacity Act 2005 relating to Deprivation of Liberty Safeguards (DoLS) remain in place. Guidance on the operation of DoLS during this period will be published separately
- Local Authorities' duties relating to prevention and providing information and advice also remain in place. The provision of information and advice for public reassurance will be particularly important during this period. To aid good communications, Local Authorities should continue to draw on their helpful relationships with trusted partners in the voluntary sector as well as on a full range of digital and other channels which help reach people with differing needs and in different circumstances during this period (for example to make up for the closure of libraries)
- Duties imposed under the Equality Act 2010 also remain, including duties to make reasonable adjustments, the Public Sector Equality Duty and duties towards people with protected characteristics. These should underpin any decisions made with regard to the care and support someone receives during this period

## 5. Principles to govern use of the powers

The Care Act embodies a principled, person-centred and values-based approach to all aspects of the provision of social care. It is essential that these principles and values are maintained during this period.

Local Authorities will be expected to observe the [Ethical Framework for Adult Social Care](#). This provides a structure for Local Authorities to measure their decisions against and reinforces that the needs and wellbeing of individuals should be central to decision-making. In particular it should underpin challenging decisions about the prioritisation of resources where they are most needed.

Alongside the framework Local Authorities should continue to respect the principles of personalization and co-production. These are embodied in the following statement produced with the support of Think Local, Act Personal (TLAP):

I am supported to make decisions by people who see things from my point of view, with concern for what matters to me, my wellbeing and health. [\(Making it Real\)](#)

We find ourselves in unprecedented times with citizens facing significant uncertainty. This is especially true for those of us who receive social care support and who care for people with support needs. However, the fundamental principles of personalisation and co-production underpinning the Care Act should not be removed as a result of emergency guidance and key statements set out in the Making it Real framework ought to be viewed as immovable.

Working together matters now more now than ever. Genuine co-production will ensure the best possible decision making and the best possible outcomes for both citizens and the workforce. This is critical if we are to save time and prevent costly

mistakes. This will require the Local Authority to respond flexibly in spite of pressure to respond - at pace and scale - to increasing demand.

We expect and trust that Local Authorities will adhere to the principle of co-production and continue to view those of us in receipt of support or carers providing support, as equal partners. We continue to be experts in our own care and support whatever the circumstances.

Now is the time to reinforce co-production, not dispense with it.

## **6. Steps Local Authorities should take before exercising the Care Act easements**

A Local Authority should only take a decision to begin exercising the Care Act easements when the workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life. Any change resulting from such a decision should be proportionate to the circumstances in a particular Local Authority.

Social care varies greatly across Local Authorities and the decision to operate the easements should be taken locally. It should be agreed by the Director of Adult Social Services in conjunction with or on the recommendation of the Principal Social Worker. The Director of Adult Social Services and the Principal Social Worker must ensure that their lead member has been involved and briefed as part of this decision-making process. The Health and Wellbeing Board should be kept informed. The decision should also be fully informed by discussion with the Local NHS CCG leadership.

Local Authorities should have a record of the decision with evidence that was taken into account. Where possible the record should include the following:

- The nature of the changes to demand or the workforce
- The steps that have been taken to mitigate against the need for this to happen
- The expected impact of the measures taken
- How the changes will help to avoid breaches of people's human rights at a population level
- The individuals involved in the decision-making process
- The points at which this decision will be reviewed again

This decision should be communicated to all providers, service users and carers. The accessibility of communication to service users and carers should be considered.

The decision should also be reported to the Department of Health and Social Care (the Department) when Local Authorities decide to start prioritising services under these easements, explaining why the decision has been taken and briefly providing any relevant detail. This should be communicated to [CareActEasements@dhsc.gov.uk](mailto:CareActEasements@dhsc.gov.uk).

## **7. Interaction with other changes**

This guidance is to be read alongside the [COVID-19 Hospital Discharge Service Requirements](#). This makes clear that Local Authorities do not have to undertake financial and eligibility assessments for people who are being discharged as part of the enhanced hospital discharge service.

The Government is fully funding the cost of new or extended out-of-hospital health and social care support packages for people being discharged from hospital or who would otherwise be admitted into it for a limited time, to enable quick and safe discharge and more generally reduce pressure on acute services. In addition, funding of £1.6bn for local government to meet additional costs arising from Covid-19 has been announced.

Provisions in the Coronavirus Act 2020 allow NHS bodies to postpone NHS CHC assessments until the end of the emergency period. Therefore, NHS CHC assessments for individuals on the acute hospital discharge pathway and in community settings will not be required until the end of the COVID-19 emergency period.

## **8. Oversight**

The Department will keep the content of this guidance and adherence to it under regular review, in discussion with Local Authorities, care providers, user and carer representative bodies, and the Care Quality Commission.

This guidance and the [Ethical Framework for Adult Social Care](#) fall under schedule 12 of the Coronavirus Act 2020. Schedule 12 to that Act gives the Secretary of State a power to direct Local Authorities to comply with this guidance and the Ethical Framework, and the Department will keep this under review.

## **Annex A: Local decision-making relating to the easements**

This Annex sets out recommended governance and decision-making for Directors of Adult Social Services and Principal Social Workers in relation to use of the Care Act easements.

### **Introduction**

During this period Local Authorities may need to take difficult decisions that impact on the way they respond to their responsibilities for care and support and their statutory functions. There should therefore be clear professional oversight and, where relevant, professional sign-off for such decisions as well as evidence that due consideration has been given to the possible consequences.

[The Coronavirus Act](#) does not give authority to block, restrict or withdraw whole services. It enables Local Authorities to make and apply person-centred decisions about who is most in need of care, and who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised.

Such decisions will in some cases be challenging, and therefore should always be made within the remit of the [DHSC Ethical Framework](#). Importantly, they should be taken only where demand pressures and availability of staff in the coming period mean that the full range of services under the Care Act can no longer be delivered. This should be differentiated from decisions that need to be made in response to the Government's guidance about social distancing. For example, it may be decided to close a service because it is no longer safe to keep people together in a building, however, this does not mean those people do not need the equivalent level of support at this time. In this example, staff might be asked to provide the equivalent level of support. The equivalent service might be an alternative, but it is to reduce the risk of breaching the social distancing guidance.

### **Assessments, Reviews and Changes to Care Packages**

The Care Act pre-amendment currently allows Local Authorities to prioritise and review in differing ways. Local Authorities should continue to be as flexible as possible, and ensure they stay within Government guidelines around [social distancing](#), [shielding](#) and [self-isolating](#).

Decisions about assessments or reviews, and decisions to either reduce or alter care packages will have an impact on the people being supported as well as their carers. Such decisions must also take account of risks both current and potential should the situation change for the person and/or their carers.

Where people decide to cancel or suspend their own care and support and manage alone or with support of their own family and community networks, this will mostly be for the person to decide themselves. However, where there are concerns that this may lead to unmanageable risk or safeguarding issues, practice oversight should be applied. This is not to undermine the views of the

individual making the decisions about their care, but to ensure that where necessary, the Local Authority in conjunction with the individual and their family have considered the possible consequences and the principles of safeguarding have been upheld.

Section 5.1 of the [COVID-19 Hospital Discharge Service Requirements](#) already allows for a proportionate approach to Care Act duties. However, it has not removed them and Local Authorities should therefore continue to comply with them.

### **Deciding to apply the easements**

It is important that any decisions made in relation to Care Act easements are informed by discussions with local partners, in particular local senior NHS leadership. Health and Wellbeing Boards should also be informed about a decision to start operating under the easements.

Recording by Local Authorities remains a priority and will them to ensure accountability and provide evidence for the thought processes behind the decisions they will be making.

The following table sets out decision making processes for Local Authorities. These decisions are not necessarily sequential but should follow a situation where there are increasing pressures on adult social care delivery. Key stages can be enacted together or separately over time so long as the decision to do so is evidenced and follows the guidance set out below.

### **Decision-making tables**

Operating under the pre-amendment Care Act

<b>Stage</b>	<b>Decision</b>	<b>Process</b>
Stage 1: Operating under the pre-amendment Care Act	Business as usual	To continue at this stage for as long as is feasible
Stage 2: Applying flexibilities under the pre-amendment Care Act	Decision for Individual service type to prioritise short term allocation of care and support using current flexibilities within the Care Act	Where COVID-19 related absence means service types need to be changed, delayed or cancelled short term within that service type, for example home care or supported living, the relevant Senior Manager / Assistant Director should consult the Principal Social Worker and should detail the: reason the decision needs to be taken; impact of the decision on the people who ordinarily use the service; impact

Stage	Decision	Process
		of the decision on families and carers of people who ordinarily use the service; and possible alternative sources of care and support and the likelihood of this being available.
		Where the Principal Social Worker is satisfied, this position can then be presented to the Director of Adult Social Services (or alternate locally agreed senior) for a final decision about moving into stage 2
		It is important to note that all other services may well continue to deliver their services as business as usual

Operating under the Care Act easements

Stage	Decision	Process
Stage 3: Streamlining services under Care Act easements	Decision to operate under Care Act easements as laid out by the Coronavirus Act	<p data-bbox="772 1032 1393 1317">The Care Act easements allow Local Authorities to cease formal Care Act assessments, applications of eligibility and reviews. However, there is an expectation in the Act that Local Authorities will do everything they can to continue to meet need as was originally set out in the Care Act.</p> <p data-bbox="772 1361 1393 1576">Where the impact of the pandemic is making this unachievable or untenable, Local Authorities will need to make the decision to cease carrying out those eased Care Act functions and move to a position of proportionate assessment and planning.</p> <p data-bbox="772 1621 1393 1906">The relevant Assistant Director / Senior Manager will need to consult the Principal Social Worker and be clear about the: reason the decision needs to be taken; impact of the decision on the people who ordinarily use the service; and impact of the decision on families and carers of people who ordinarily use the service.</p> <p data-bbox="772 1951 1393 2018">If the Principal Social Worker is satisfied that the Care Act easements need to be</p>

Stage	Decision	Process
Stage 4: Prioritisation under Care Act easements	Whole system prioritising care and support	<p>enacted, a meeting of the Senior Management Board should be called for a final decision. The decision should also consider and be informed by a conversation with the local NHS Leadership.</p>
		<p>The Director of Adult Social Services and the Principal Social Worker should ensure that their lead member has been involved and briefed as part of this decision-making process.</p>
		<p>DHSC should be notified Where Local Authorities need to make decisions about changing support for people, they should consider and allocate capacity across the whole of adult social care. This may mean allocating resource from some service types that may not be under pressure to support those that are.</p>
		<p>An example might be where a Local Authority is faced with a decision about reducing personal care for one person so that another gets the help they need to eat.</p>
		<p>In this situation, the relevant Assistant Director / Senior Manager should consult the Principal Social Worker. They should detail the: reason the decision needs to be taken; impact of the decision on the people who ordinarily use the service; impact of the decision on families and carers of people who ordinarily use the service; possible alternative sources of care and support and the likelihood of this being available.</p>
<p>If a Local Authority decides it may need to move into stage 4, the Principal Social Worker should call an Emergency Decision Meeting of the Director of Adult Social Services where a decision about whether and how to prioritise care across ASC will need to be made.</p>		

Stage	Decision	Process
		Sufficient care and support will have to remain in place at all times in order to ensure that the Convention rights of all those in need of care and support, and of carers, are respected.
		The Director of Adult Social Services and the Principal Social Worker must ensure that their lead member has been involved and briefed as part of this decision-making process.
		DHSC should be notified.
		Any decisions taken to prioritise or reduce support should be reviewed every two weeks with the Principal Social Worker. Full service should be restored as soon as is reasonably possible.

### **Business Continuity Planning**

Where provider services have submitted Business Continuity Plans that have implications for direct services for people with care and support needs, professional practice as well as business oversight will be needed. Accountability for all such decisions lies with the Local Authority and provider services should not be making decisions about restricting or removing care. Any such decisions should be made in accordance with the process laid out in the Prioritisation Decision Making table above.

## **Annex B: Guidance on streamlining assessments and reviews**

### **Needs and Carer Assessment**

During this period, Local Authorities will still be expected to consider people's needs and the easements will only apply when it is no longer possible for them to carry out their pre-amendment Care Act duties in full.

The points in this section apply equally to people likely to be in need of care and support and carers likely to be in need of support.

Local Authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights. These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8.

However, to ensure that Local Authorities are able to respond to increased pressures on the social care sector due to Covid-19, for the duration of the Coronavirus Act's provisions, Local Authorities may have to reduce the extent to which they would ordinarily do a needs or carers assessment, check that people's needs are eligible, or conduct a financial assessment.

Local Authorities should still assess people's social care and support needs throughout this period and should make a written record of this assessment. Principal Social Workers should ensure that proportionate professional recording is maintained and may consider a single alternate document for local use.

It is crucial that Local Authorities are able to evidence their decision, demonstrate their professional judgement apply the [Ethical Framework for Adult Social Care](#), and where necessary, record that they have considered the Convention Rights.

The easements also relieve Local Authorities of the duty to undertake assessments of children transitioning to adult social care under sections 58 and 59 of the Care Act.

It may not be possible or necessary for assessments themselves to be face-to-face. Local Authorities should therefore consider whether assessments could be delivered through other means, taking into consideration people's cognitive and communication needs and mental capacity, including:

- Use of a third party/allied professional to carry out needs assessments as trusted assessors. It would also be appropriate for adults in need of care and support, or carers who are being assessed, to ask the Local Authority to liaise with other persons or professionals to help complete the check. Paragraph 6.99 in the Care and Support statutory guidance provides more information.

- Supported self-assessments. In many cases, and assuming the assessment document is in an appropriately accessible format, people, perhaps with help from family members, could complete their own assessment form. Where existing online systems are available these should reflect any new assessment document options (see paragraphs 6.3 & 6.44 in the Care and Support statutory guidance).
- Assessments using the telephone or, if possible, other technology such as video calls, if available, if people are comfortable with this, and if they can be made available at the location where people are living (see paragraph 6.3 in the Care and Support statutory guidance). Further [guidance](#) on this is provided by NHSx.

The Local Authority should ensure that it is explained to people at the earliest opportunity that at some future point their needs may be assessed (or reassessed) and alternative services may be arranged. It should be explained that the current context is extremely unusual and that arrangements may be temporary and change when this period is over.

It will be important to explain to people that at a future point a view will be taken on whether their needs are eligible under the Care Act. This may mean that at a future date the Local Authority may no longer believe it is necessary to meet those needs, and that if this is the case, it will be necessary to agree alternative arrangements.

Local Authorities need to ensure that there is a clear and transparent pathway for people with care and support needs, carers and providers to quickly raise concerns should they believe either the decision or the care package is in breach of the European Convention on Human Rights.

Complaints and escalation procedures remain the same as under the Care Act. Under the Coronavirus Act, once the emergency period has ended, if Local Authorities do not comply with their duty to carry out a relevant assessment within a reasonable period, action can be taken in court.

### **Care planning and delivery by providers**

Care planning should be person-led, person-centred and proportionate to the complexity of individual need with paperwork, bureaucracy and process kept to a minimum, whilst ensuring adequate records are kept.

The easements relieve Local Authorities of the duty to prepare pre-amendment Care Act-compliant care and support plans.

However, Local Authorities should provide sufficient information to potential providers to allow them to make an informed decision as to whether to accept a referral. This decision should consider whether they can meet people's needs and comply with their own legal obligations. This will also help providers in drawing up their own plan for people's care and support. This information should be

evidenced within whatever form of assessment is completed and there is a clear expectation that this information is shared with individuals and families.

The Local Authority should ensure that providers receive enough information to develop a care plan with the person. This should give an overview of the person's wishes and feelings, and outcomes that need to be considered and achieved. Information on key aspects of daily living, personal care, nutrition and hydration needs as well as any other medical conditions should be shared. Specific care needs that the provider will need to consider are also important such as communication, mobility, and behavioural, cognitive and mental health needs. The assessment should also consider and share any safeguarding concerns and risk assessments. The assessment provided should enable the care provider to develop an appropriate care and support plan.

Local areas may choose to agree a minimum standard that Local Authorities and care providers should work towards and which reflects their local situation.

Decision-making about personal budgets, including direct payments, and care plans should be kept as close to the front line as possible with minimum restraints on flexibility and innovation in how needs can be met. Restrictive administrative practice should be avoided as much as possible.

The easements relieve Local Authorities of the duty to revise care and support plans under s27 of the Care Act during this period. However, subsection (2) and (3) remain in force, meaning that if Local Authorities choose to revise care and support plans during this period, they should continue to involve people who use services, and carers in decisions about revising their care package. This may include unscheduled reviews where needs have changed. Local Authorities will have to consider how they respond to reviews where need has significantly changed alongside the [Ethical Framework for Adult Social Care](#) and the prioritisation guidance (see Annex C below). These reviews may be more important than new assessments. However, Local Authorities should continue to comply with pre-amendment duties under s27 as far as it is reasonably practicable to do so. Reviews may need to be conducted in similar ways to assessments.

Local Authorities and providers should work together to agree the circumstances in which, and by how much the care package and Direct Payments can be varied without review to ease administrative burdens on the workforce. Further guidance on Direct Payments will be published.

### **Financial assessment easements and retrospective charging**

The easements enable Local Authorities to meet people's care and support needs without a financial assessment of their means. The legislation enables Local Authorities to conduct assessments at a later date and to retrospectively charge for meeting needs subject to those assessments, so long as the Local Authority informs people that there may be a charge at the time when the service is carried out, or before the service is carried out.

None of the fundamental principles underpinning the Care Act statutory guidance on charging and financial assessment (see paragraph 8.2 – 8.9 of the Care and Support statutory guidance) are removed or diluted. Therefore, if people are charged retrospectively, this should be on the basis of a financial assessment in line with the Care Act and on the basis that people should pay what they can afford, and any charges are clear and transparent.

Local Authorities should always ensure there is sufficient information and advice available in suitable formats to help people understand any financial contributions they are asked to make, including signposting to sources of independent financial information and advice. This will be especially important if easements are used and will be critical to helping people understand potential future costs, particularly when they may already be anxious and needing as much reassurance as possible.

Social workers, or others providing this information, should also consider what information can be given to illustrate estimated likely charges for different options of relevant and appropriate care so that people have a good initial understanding of the type and range of costs involved. This could take the form of a table, with tailored cost information based on illustrative averages, and form part of an upfront declaration or agreement.

Local Authorities are always expected, where appropriate, to consult and engage with family members and/or someone who has legal authority to make financial decisions on behalf of people who lack capacity. This consultation and engagement should still take place as part of the financial assessment, which may be deferred until after the emergency period. Where the financial assessment is deferred in this way, it will be important as a minimum, to make people aware that there may be costs associated with the care and support provided. Individuals should be assured that no charges will be made until after a financial assessment has been completed.

The existing statutory guidance (see 8.22 of the Care and Support statutory guidance) already notes that a Local Authority may 'choose to treat a person as if a financial assessment had been carried'. The Local Authority must satisfy itself on the basis of evidence that the person can afford, and will continue to be able to afford, any charges due. This is known as a 'light touch financial assessment' and Local Authorities may wish to conduct more of these types of financial assessment where doing so helps the prioritisation of timely care and support and mitigates capacity pressures. Where appropriate/helpful, Local Authorities can use Department of Work and Pensions data as a quick standard assessment and follow up at a later date to look into private pensions, capital or other finances.

The existing statutory guidance (see 8.50 of the Care and Support statutory guidance) makes it clear that Local Authorities are not required to charge carers for support and that, 'in many cases it would be a false economy to do so'. Carers already play a vital role in the care and support system and their contribution during this emergency period will be even more critical. In line with existing guidance, Local Authorities should therefore 'ensure that any charges do not

negatively impact on a carer's ability to look after their own health and wellbeing and to care effectively and safely'.

The emergency provisions do not change existing guidance on, for instance, complaints, deliberate deprivation of assets, administrative fees and top-ups.

Deferred payment agreements (DPAs) will still be made available for eligible people once the financial assessment is completed at a later date. DPAs do require some financial information to enable Local Authorities to be sure they are not taking on an unsecured risk and to place a legal charge on a person's property. DPAs should be raised as part of routine sharing of relevant information and advice.

## **Annex C: Prioritisation process**

### **Guidance on the prioritisation and timeliness of the delivery of adult social care under the Care Act Easements**

Local Authority adult social care (ASC) departments will be well practised in responding to emergencies, where there is an incident or provider failure that results in the need to provide rapid support. On occasion, they may have to prioritise the delivery of such support to ensure those most in need and at highest risk receive this support as a priority.

This guidance must be read in conjunction with the [Ethical Framework for Adult Social Care](#).

The current challenge that Local Authorities face with Covid-19 means that prioritisation may need to be considered over a longer period with rapidly changing scenarios.

This guide has been produced to provide a helpful tool for ASC when considering how to prioritise care and support should the Local Authority have decided that it needs to operate under the Care Act easements. It is vital that professional judgement and oversight is used, as this document will not provide answers about prioritization in all scenarios. It aims to help delivery of care and support in a risk informed way, ensuring everyone, where possible, gets the care and support they require, but that those most in need are prioritised first.

Social care is a locally delivered and led service developed on the detailed understanding of individuals and their families, communities and cultures. Social workers, occupational therapists, and nurses form the core professional group and therefore have clear professional responsibilities and accountabilities. Local professional leaders such as Principal Social Workers and Principal Occupational Therapists will be key in ensuring this guidance is applied and understood. The skill of these professionals should be used to help develop, agree, and review locally agreed processes that would be informed by this guidance.

### **Understanding local care needs and prioritisation**

#### **Base principle**

Most Local Authorities will have mapped all existing known packages for complexity and need and should where possible have also mapped the care and support needs of those that self-fund.

It is important that mapping at this stage considers the complexity, risk and level of need within the care package and not just the current delivery. This should allow for a better understanding of the risk should there be an impact on care delivery. This includes considering unpaid carers. This will ensure Local Authority knowledge of an individual informs any prioritisation work needed, should the situation require it.

Local Authorities may want to 'RAG-rate' their packages and have them split between High, Moderate and Low (or similar terminology). It is likely that many will have a mixed care package. They should note these but work on the most essential element of care for mapping purposes.

### **Prioritisation**

If operating under the Care Act easements, Local Authorities may need to prioritise packages of care and support. In the first instance Local Authorities would consider those care packages which are already mapped and noted as high and moderate. Prioritising individual care may be fluid, as risk and need levels may fluctuate. New information such as unpaid carer involvement or whether people have now become unwell with COVID-19 will need to be considered.

The Department does not propose to advise local areas on how to prioritise as methods of prioritisation will be unique to each area. The Department also recognises that there will already be well established methods of prioritising in most areas.

As set out in the guidance and [Ethical Framework for Adult Social Care](#), Local Authorities must retain an approach to working with individuals and carers in a personalised and effective way, ensuring they are engaged in this process as much as possible.

Local Authorities should take into account all elements of a person's life that may impact on their needs and their personal circumstances. These circumstances can include social issues such as domestic abuse, financial issues, and the vital support of unpaid carers which may not be appropriate or sustainable as a single support in this current climate.

Local Authorities should also understand what resources, assets/offers the person has at their disposal – including knowledge of and access to forms of community and neighbourhood support.

## **Annex D: Safeguarding Guidance**

Adult safeguarding is working with adults with care and support needs to support them to keep safe from abuse or neglect. It is an important part of what many public services do, and a statutory responsibility of Local Authorities.

Safeguarding adults remains a statutory duty of Local Authorities to keep everyone safe from abuse or neglect. The Coronavirus Act 2020 does not affect the safeguarding protections in the Care Act, particularly at Section 42 of the Care Act. It is vital that Local Authorities continue to offer the same level of safeguarding oversight and application of Section 42. However, it is also important that safeguarding teams are proportionate in their responses and mindful of the pressure social care providers are likely to be under.

The Government recognises that safeguarding concerns and referrals may increase during the Covid-19 outbreak, with more people receiving support and support needs changing, which may prompt concerns. Safeguarding is everyone's business, so it is important that we remain alert to possible abuse or neglect concerns. Local Authorities, social care providers, the health voluntary sector and our communities must continue work to prevent and reduce the risk of harm to people with care and support needs, including those affected by Covid-19.

The immediate safety of the adult at risk and their carers must always be prioritised but where decisions are taken to prioritise responses to safeguarding concerns, the Principal Social Worker/Safeguarding Lead will advise on any changes to the consideration of safeguarding types and referrals. Principal Social Workers must work with their safeguarding leads to review any local policies or procedures that may be unduly time consuming or place an undue burden on care providers during this time. For example, Local Authorities may make changes to those local processes and timescales that are not mandated by legislation. In addition, Principal Social Workers should reassure themselves that Section 42 decision making is proportionate and that safeguarding teams are actively communicating with partners. Any such decision will have been agreed by the Director of Adult Social Services.

The [Ethical Framework for Adult Social Care](#) provides support to ongoing response planning and decision-making to ensure that ample consideration is given to a core set of ethical values and principles when organising and delivering social care for adults, including for safeguarding.

All providers of adult social care or health care have a key role in safeguarding adults in their care, and all agencies have a duty to ensure adults with care and support needs are not placed at risk of abuse or neglect by delays in care and support planning.

Employers must ensure that staff, including volunteers, are trained in recognising the signs and symptoms of abuse or neglect, how to respond, and where to go for advice and assistance.

**Annex E: Link to the Coronavirus Act 2020 Explanatory Notes**

<https://publications.parliament.uk/pa/bills/lbill/58-01/110/5801110en.pdf>

**Coronavirus Act 2020**  
**Summary of main Provisions of Schedule 12 Part 1**  
**Including Easements to Care Act 2014 duties**

**Assessment and Documentation**

Paragraphs 2 and 11 gives local authorities the power not to carry out the following assessments, not to prepare certain documents and not to comply with associated provisions and Regulations.

Assessments of needs:

- An adult's needs for care and support
- A carer's needs for support
- A child's needs for care and support
- A child's carer's needs for support
- A young carer's needs for support

Providing documents

- Give a written record of assessments relating to an adult's or carer's needs assessments
- Prepare care and support plans for adults
- Prepare support plans for carers

The local authority does not have to comply with duties in respect of content of the plans nor to the review of plans.

**Determining Eligibility** (paragraph 2(2))

The local authority does not have to determine whether the assessed needs of an adult or a carer meet the eligibility criteria under the Care Act and does not have to comply with the associated Regulations.

**Financial Assessment** (paragraphs 3 and 10)

The local authority has power not to carry out a financial assessment but must carry out a financial assessment before it can charge a service user.

If the local authority informs service users that it will carry out an assessment at a later date and does so it can then charge retrospectively for the care provided. This includes both care it is continuing to provide and care that was provided but is no longer being provided.

**Service Provision** (paragraph 4)

The duty to meet an adult's or a carer's eligible needs is replaced by the duty to make provision so as not to breach the Human Rights of an individual ordinarily

resident in the local authority's area or of an individual who is of no fixed abode and is present in the local authority's area.

### **Top Up Arrangements** (paragraph 8)

A local authority does not have to comply with any duties under the Regulations that relate to an adult expressing a preference for particular accommodation that would involve putting in place a Top Up Agreement.

### **Continuity of care and support** (paragraphs 12 and 13)

A local authority does not have to comply with usual notices and assessments where a service user is moving to another area to different accommodation in the other area until after the period in which the easements have applied.

### **Other paragraphs**

#### **Duties arising before commencement** (paragraph 16)

This paragraph states that the provisions of Schedule 12 Part 1 apply to duties arising before the commencement of the provisions as well as on and after the commencement day.

#### **Period within which assessments may be carried out** (paragraph 17)

Once the period of the easements has come to an end the local authority will need to carry out assessments that have not been carried out during the period of the easements. Assessments in this context includes determination of eligibility under the Care Act. If a court is asked to decide whether a local authority has complied with its duty to carry out an assessment within a reasonable period the court must take into account the length of the period for which the easements had effect and the number of assessments which the local authority needs to carry out now that the period has ended.

#### **Secretary of State Guidance** (paragraph 18)

The Secretary of State may issue guidance about how a local authority exercises its functions under the Care Act 2014, S2 of the Chronically Sick and Disabled Person's Act 1970 and S17 of the Children Act 1989 in so far as they relate to the paragraphs of Schedule 12 Part 1 Coronavirus Act 2020. Local authorities must have regard to such guidance and must comply if directed to do so by the Secretary of State. Previous guidance may be disregarded in so far as it is inconsistent with guidance under paragraph 18 of Schedule 12 Part 1.

#### **Relating to other legislation** (paragraph 15)

A local authority does not have to comply with certain duties relating to the transition of children to adult care and support under the Chronically Sick and Disabled Person's Act 1970 and the Children Act 1989.