

Implementation of Part 1 of the Care Act EqIA

Author: Jeremy Beake

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This is an Equality Impact Assessment to inform the implementation of Part 1 of the Care Act. Under equality legislation, the Council has a legal duty to pay ‘due regard’ to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups.

The duty to pay ‘due regard’ is required to be demonstrated in the decision making and the implementation process. Assessing the potential equality impact of proposed projects that are part of the programme is the means by which we show ‘due regard’.

1. Introduction

In large programmes such as the “Implementation of Part 1 of the Care Act”, the council has found it useful to have EqIA that outlines some of the key equality issues. The aim is to have a brief, useful document that spotlights relevant issues and the particular groups of people who will need particular regard.

2. People affected

These changes will affect all those who use care and support, carers and their families.

3. The relevant changes assessed

3.1 Consolidation and modernisation of the legal framework

3.1.1 One aim of the *Care Act* is to consolidate existing law and modernise the legal framework. Much of this modernisation matches the Council’s ambitions for personalised adult care and support, which have been the subject of other assessments in the past.

3.1.2 There are perception changes that will support the advancement of equality of opportunity. The Act will see:

- The Council work as a catalyst for social and community action, often working through different groups working alongside statutory services
- The importance of early intervention work leading to considerable proportion of care needs could be avoided, reduced or delayed as a result

- Carers - which are an equality group as they are people who with association to a protected characteristic – recognised as the first line of prevention, properly identified and offered personalised support.

3.1.3 There are policy changes that will support the advancement of equality of opportunity. The Act will see:

- More work to promote an individual's well-being when the council takes steps or makes decisions about them, reflecting current practice and dovetailing with the Public Sector Equality Duty
- Built on existing good practice, the promotion of integration of care and support will create a seamless journey, which will help those groups with multiple needs such as people with a disability
- The provision of information and advice on care and support services in their area, which again will build on existing work
- New market shaping which is expected to clarify existing practice
- Improved care and support planning which is designed to help overturn traditional approaches to disability, and implement a social model approach. This is underpinned by approaches which seek to place greater power in the hands of all service users, including disabled people. This is exemplified in setting out rights for everyone to have a personal budget, as well as consolidating the law around disabled people being able to access direct payments. This will give people greater control over the services they use
- Improved transition for children to adult care and support, which will allow adult social care services to assess these children and will help smooth the transition for children with disabilities into adulthood.

3.1.4 There is also a consolidation of other matters, these include:

- The Act includes a specific duty on the Council to maintain registers of deafblind people in their local area. The registers that we already maintain for the sight impaired are significantly more accurate than the registers maintained currently for disabled people and it is important not to lose this good practice. Moreover, there are benefits linked to being registered that does not apply to people who may be registered with other disabilities. For example, someone may be able to get a half-price TV License, help with NHS costs, help with Council Tax bill and tax allowances, leisure discounts and free public transport. However, the concession entitlement will depend on whether the person is registered as severely sight impaired or sight impaired.
- In addition to the sight registers, the Council may also continue to establish and/or maintain a register of people living in their area that have a disability. Maintaining registers for specific groups and categories of people with disabilities should lead to better and more accurate recording

according to local priorities compared to the generic registers that currently apply.

- Several of the proposals are likely to have positive implications for human rights, in particular proposals to improve the quality and availability of information about the support on offer and proposals to extend and improve personalised care and support to care users and carers.

- 3.1.5 The Department of Health published a separate equality analysis to support the Caring for our future White Paper and draft Care and Support Act. This equality analysis covered the areas of consolidation and modernisation of legislation proposed in the draft Act.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136452/2900021_Equalities-Assessment_acc2.pdf

3.2 Information and advice on care and support

- 3.2.1 This proposal is focused on maintaining the current, underpinning duty on the Council to provide information and advice on care and support services in their area. It involves a modernisation of the terminology and a more detailed explanation of what an information and advice service must cover, leaving sufficient leeway for the Council to vary their services based on the local needs of their population.
- 3.2.2 The Care Act and associated Statutory Guidance modernises and draws together the long outdated duty from the Chronically Sick and Disabled Persons Act and makes connections to the more recent duty in the Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012)
- 3.2.3 Existing Statutory Guidance published in March 2013 makes clear that the Joint Strategic Needs Assessment and Joint Health and Well-Being Strategies must be published, and have specific regard to “what health and social care information the community needs, including how they access it and what support they may need to understand it”.
- 3.2.4 Information will need to be provided in appropriate formats and in the language required by local people. The duty placed upon local authorities is to provide information that is sufficient for its local population.

3.3 Assessment, eligibility and continuity of care

- 3.3.1 The current system of assessment and eligibility can be confusing, unfair and unpopular with many care users and carers. The Council currently assesses users and carers and sets their eligibility criteria using guidance issued by the Department of Health.¹ Access to care and support varies from other local

¹ Department of Health, *Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care*, 2010.

authorities as all set different thresholds for eligibility and there are broad variations in how these thresholds are interpreted. The aim of the legislation is to provide across the country.

- 3.3.2 Milton Keynes Council uses a threshold placed between Substantial and Moderate on the list of ‘presenting needs’ within the eligibility criteria of Fair Access to Care Services (FACS) framework.² Nationally 82.5% of all Authorities use Substantial and 12.5% use Moderate. The new National Minimum Threshold sets eligibility around the “Substantial” according to the current guidance.
- 3.3.3 The Council can meet needs that are not eligible and does so to advance equality of opportunity. However more analysis should be completed to understand on what basis the council meets needs that are not eligible, under which strategy this is done and how fairly this is implemented.

3.4 Assessment and provision of support for carers

- 3.4.1 The changes simplify the legislation in respect of carers’ assessments and introduce a new duty on local authorities to meet eligible needs for support.
- 3.4.2 The government has noted:

“The extra numbers of carer assessments and carer support services that might result directly from these changes to legislation are inevitably uncertain. We believe that our estimates are plausible, but clearly there is a risk that they could prove to be under-estimates or over-estimates. If our estimates prove to be under-estimates, councils may need either to limit the amount of support that they offer to each carer or to change local priorities between support for carers and other services.”³
- 3.4.3 If there is an under-estimate the Council will need to assess how it limits support and carers and/or which services it prioritises. Due regard should be given to the impact assessment findings on Carer Charging in 2013, which found potential for indirect discrimination.
- 3.4.4 This assessment will also have to assess how the balance in council charges between the cost of support and the contribution that carers make in terms of value of care and the prevention of the need for long term nursing or residential care.

3.5 Access to independent advocacy

- 3.5.1 The aim in reforming the law is to support equality of access in the provision of independent advocacy services to support people to have full involvement in care and support processes conducted by the Council – including safeguarding enquiries, assessments of need, care and support planning, and reviews.

² <http://cmis.milton-keynes.gov.uk/CmisWebPublic/Binary.ashx?Document=7541>

³ Section 3.51 The Care Act: Impact Assessment 2014 23/05/2014

3.5.2 In 2013, some of these services were recommissioned the assessment at the time was this arrangement was sufficient to meet the access to services. However, further consideration of the range of services detailed in the regulations will inform an assessment of whether services meet the whole spectrum of processes.

3.6 Care and support for people in prison

- 3.6.1 The Act clarifies that responsibility for the assessment of prisoners' care and support lies with local authorities. It would also place a duty on prisons to cooperate with local authorities in the undertaking of assessment.
- 3.6.2 The Government in assessing the regulations revealed that it does not have a clear understanding of the number of prisoners with some form of disability who require an assessment and can only speak of "likely numbers" and "possible numbers". This means it is hard to have due regard to equality in provision of assessments and support, exact numbers and the influence of transfers with need to be established.

3.7 Safeguarding adults

- 3.7.1 The government regulation involves specifying in legislation a core membership for SABs of local authorities, NHS commissioners and the police, in line with the Law Commission's recommendations. Local authorities would be given powers to add to the membership as appropriate for the local situation.
- 3.7.2 This is unlikely to have further equality considerations and advance equality for those who suffer abuse by improving safeguarding.

3.8 Universal deferred payment scheme

- 3.8.1 The Act contains provisions for a Universal Deferred Payment Scheme. The Council will have a duty to offer deferred payments, with consistent rules for who is eligible and what fees they can defer. The Council will also have permissive powers to offer deferred payments in a wider set of circumstances, for example where an individual narrowly misses the eligibility criteria.
- 3.8.2 Deferred payment agreements will be subject to eligibility criteria, notably whether someone needs residential care and whether they have limited liquid assets. Beyond this, the scheme should not actively discriminate on the basis of equalities characteristics such as age, gender, sexual orientation, belief or socio-economic status. However, it is likely there will be a differential level of uptake of deferred payments across different population groups.
- 3.8.3 This provision is likely to be of benefit to those who have a disability, are older, and predominately women, due to the age profile of the older population.

- 3.8.4 It should be noted that the proportion of the minority ethnic population living in care homes is smaller than the white population living in care homes, and that older people from ethnic minorities are more likely to be living in larger households and a household with one or more carer; however this is likely to change over time.
- 3.8.5 Deferred Payment Agreements may be compared to a loan and payment of interest and charges on deferred payments may present a barrier to Muslim care users. This is because of the tenets of Sharia (Islamic) law, which prohibit the payment of interest. The Act recognises this in a new Section 36 to allow deferred payment agreements to be offered in a manner that would make them compliant with Sharia law. The Government has decided not to enact it for April 2015 and will keep this under review whether a Sharia compliant scheme may be needed in future. The council will need to collect information as to whether the belief of an individual was a barrier to them taking a deferred payment agreements.

3.9 Market Oversight

- 3.9.1 These changes are unlikely to be relevant to equality

4. Summary

The evidence considered in the development of the Act, as well as the extensive consultation and engagement work, has pointed to very substantial positive impacts of the Act, for a range of groups who have traditionally been disempowered.

The greatest benefits will be derived by older people requiring care, disabled adults, and carers. However, the Act includes areas, where the council is already providing excellent care and support, where little change may be occur.

This assessment recommends that:

- the council looks at the benefits of wider disability registers
- more analysis should be completed to understand on what basis the council meets needs that are not eligible, under which strategy this is done and how fairly this is implemented
- due to the potential for underestimation by central government of the needs arising from care assessments, the Council should be cautious and the potential for indirect discrimination avoided
- the council collects information as to whether the belief of an individual was a barrier to them taking a deferred payment agreements
- ensures that communication is provided in a clear and easy readable format