

Urgent Officer Key Decision

Date: Thursday, 9 April 2020

Time: 5.00 pm

Venue: Online

Decision Maker – Nigel Minns, Strategic Director for Public Health (DASS)

Items on the agenda: -

1. Coronavirus COVID-19: Care Act Easements

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An urgent decision made by the Strategic Director for People (Director of Adult Social Services) for the immediate implementation of Regulations under the Coronavirus Act 2020.


Monica Fogarty
Chief Executive
Warwickshire County Council

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Officer Key Decision made under the Council's Urgency Procedure by the Strategic Director for People (Director of Adult Social Services – DASS) on 9 April 2020

Coronavirus COVID-19: Care Act Easements

Lead Officer	Nigel Minns – Strategic Director for People (DASS)
Date of decision	9 April 2020
	<p>Signed</p> 

Decisions

1. That the Council implements the Care Act easements and control measures under the Coronavirus Act 2020.
2. That the Council continues to take reasonable steps to meet needs but the Strategic Director for People be authorised to temporarily delay some care and support where he considers it necessary to prioritise the most pressing needs.
3. That our assessment, support planning and review processes are changed to focus only on what the Strategic Director for People considers to be sufficient to identify and arrange necessary support.
4. That our decision-making remains person specific and we do not withdraw types of service en bloc.
5. That to reduce the risk of spreading the disease, we only undertake face to face contact where there is no reasonable alternative.
6. That the arrangements are reviewed on a fortnightly basis and that we seek to reinstate normal Care Act operations as soon as is practical.

Reasons for decisions

An urgent decision is required of the Strategic Director for People (Director of Adult Social Services) for the immediate implementation of Regulations under the Coronavirus Act 2020.

1.0 & 2.0 Background information

Background

On 31st March the Government made Regulations under the Coronavirus Act 2020 which mean that local authorities do not have to comply with certain duties under the Care Act 2014. Guidance has also been issued which sets out a series of Care Act 'easements' to enable local authorities to streamline assessment and care and support arrangements and prioritise care to ensure that the most urgent and acute needs are met. The full guidance is available here:

<https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014>

The easements are summarised below:

'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.'

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.

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.

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.'

Other important duties remain in place:

- Safeguarding adults - Duties in the Care Act relating to safeguarding adults at risk will continue to be discharged. Safeguarding activity will be prioritised to ensure that cases are investigated and resolved in a timely way proportionate to the severity of the concern. The Principle Social Worker will continue to oversee Safeguarding activity.
- Promotion of wellbeing
- Prevention, and providing information and advice
- Equality Act 2010 duties including the Public Sector Equality Duty and duties toward people with protected characteristics.

The Guidance also defines the steps which local authorities should take before using the Care Act easements, and makes it clear that these should only be exercised when the workforce is significantly depleted, or demand increased to an extent that it is no longer reasonably practicable to comply with Care Act duties, and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life.

The decision to implement Care Act easements 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.

Key Issues

One of the Council's strategic objectives for management of the immediate impact of the coronavirus COVID-19 epidemic is to: ensure sustainability of adult social care during the coronavirus COVID-19 epidemic, and that planning and actions to sustain adult social care link with planning and actions in the NHS. This is against a backdrop of increasing demand and reducing capacity due to staff absence (both within the local authority and in its commissioned care providers) as a result of sickness and self-isolation.

The Guidance sets out how local authorities should decide on using the easements and record what evidence they have taken into account.

The recommended areas for consideration are:

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; and
The points at which this decision will be reviewed.

Proposed use of easements

The Guidance sets out 4 stages of local authority operations during this time: business as usual under the pre-amended Care Act continuing for as long as possible and the use of existing Care Act flexibilities (stages 1 and 2 respectively); operating under the Care Act easements by streamlining services (stage 3) and prioritising care and support (stage 4). These are not necessarily sequential stages, and they can be enacted together or separately according to the pressures.

Given levels of staff absence within the Council, NHS partners and WCC commissioned services, it is necessary start operating easements at stages 3 and 4 immediately.

1. Reduced (COVID-19) assessment process and suspension of reviews

There is insufficient capacity to maintain normal Care Act assessments and reviews across all teams at the current time due to:

Staff absence – currently around one quarter of staff are absent through sickness, self-isolation or other reasons and this is projected to rise;

Home working, the need to protect staff with underlying conditions and restrictions on visits have further reduced the capacity of the workforce:

A requirement to support the Coronavirus COVID-19 hospital discharge pathway has led to a significant rise in demand with further increases predicted;

The NHS, private providers and all other agencies having reduced capacity which further impacts on our work; and

The Council will also need to maintain the usual contact and triage arrangements for people in the community.

Therefore, in enacting the easement we will introduce a COVID-19 assessment process.

The COVID-19 assessment process would involve a short assessment, which would capture just enough information, based on the Care Act domains, to make a decision about the individual's care and support needs and the most appropriate response. This

would avoid introducing delays into the COVID-19 hospital discharge pathway and allow best use to be made of social work capacity. The majority of assessments would be completed remotely in order to reduce the risk of spreading infection and would consider the needs and wishes of customers and their families and carers wherever possible.

Planned Care Act reviews would be suspended, whilst unplanned reviews, would be treated as new assessments using the COVID-19 assessment pathway.

Support plans would include the minimum level of detail so that providers can safely provide the commissioned care.

Individuals who require new packages of care and support would be referred to brokerage in the usual way, along with a brief care and support plan that would include sufficient information for providers to understand the care required. A Care Act compliant assessment and support plan along with a financial assessment would be completed at the first opportunity following the conclusion of the coronavirus COVID-19 epidemic.

People will be notified that the care and support they receive at the current time may not be provided in the future or may be provided in a different way. They will also be given information about care charges and advised that they will receive a financial assessment further down the line and, based on the outcome of that, may be charged retrospectively for the care and support they receive during this period.

2. Prioritising care and support for those with most pressing needs

As noted above, there has been a substantial increase in hospital discharge work and the timescales for securing discharge support are measured in hours. Maintaining flow through our acute hospitals is a vital contribution to the wider health and care system.

Since 19th March the NHS has had additional responsibilities to commission care and support during the epidemic and these have placed additional demands on providers of home care and residential care, most of whom also have contracts with the Council to provide social care and support.

Domiciliary care providers are also facing very significant pressures due to staff absence. They are all using business continuity processes. Our commissioning section is clear that the market is unable to deliver the level of care that they are normally commissioned to do. They therefore need the ability to triage and refocus the capacity they have, and adult social care staff need to be able to commission support targeted on those most in need.

With the levels of absence predicted to rise in the next few weeks it is essential that we maintain support for those most in need and can respond rapidly and flexibly to maintain their safety.

Self-isolation has led to significant shifts in the care and support available to customers. For some there has been an increased level of support available as they spend time with

their families, whereas for others their informal support is being prevented. This requires a corresponding redistribution of the formal care and support that we commission.

Even with the mitigation in place, the increased levels of demand combined with the reduction in staff capacity available mean it is not possible to continue to meet the needs of all existing and new customers in line with normal practice under the Care Act.

Individuals who are assessed as being able to manage without formal care and support using the easements allowed during the COVID-19 epidemic would be referred for support from the voluntary and community sector. They would be contacted at the at the first available opportunity following the conclusion of the coronavirus COVID-19 epidemic to determine whether they would wish to proceed to a Care Act compliant assessment.

New and existing customers, who can manage without regulated care for a short period, may be referred for support from the voluntary and community sector. They would be contacted at the at the first opportunity following the conclusion of the coronavirus COVID-19 epidemic to determine whether they still wish to proceed to a Care Act compliant assessment.

Matters considered before applying the Care Act easements

Steps taken to date to mitigate the impact prior to implementing Care Act easements

The following steps have been taken:

- Social care staff have been redeployed to support the coronavirus COVID-19 hospital discharge pathway - social workers working on behalf of the Council have been deployed to multi-disciplinary teams in acute hospitals to support decision making to determine the most appropriate route for patient discharge
- There are daily Directorate Leadership Team meetings and Service Area meetings with the Assistant Director Adult Social Care and their managers
- Service Managers are reviewing demand and staffing levels daily, to enable resource to be reallocated on a daily basis
- Council staff providing non-critical roles have been redeployed to support social care and other critical areas
- Work has been rearranged, and technology solutions implemented, to enable staff to complete work at home
- Annual Leave is being managed
- Seven-day working has been introduced within Learning Disability, Older People and Physical Disability services in order to maintain flow
- All project work related to performance and change has been ceased

- Strategy and Commissioning are supporting the care market through a range of measures providing financial stability, co-ordination and advice and support
- Providers are working collaboratively and will look to cover each other to meet essential needs
- The wider Council and partner agencies have comprehensive responses in place to support vulnerable people which will be used to support customers with lower level needs should we need to reduce their formal support

Additional Mitigation

- We will link customers and their support networks to voluntary and community resources so that their low-level needs can be met.
- Our Reablement Service will provide cover where it is able to
- Contingency plans are being developed to redeploy further staff if necessary

Expected Impact of the Measures

The main impact associated with the use of easements will be to secure the safety of those most at risk should care and support not be available.

It is essential that, during the epidemic, hospitals can continue to discharge people rapidly and safely and without the ability to focus the available Adult Social Care staff time and the formal community support, there is a risk that the system will fail.

If we cannot realise both of these benefits, then there is a real risk that people may have significant health problems and also potential for deaths to result.

The use of the easements will of course have a negative impact on some customers. This will be for the shortest period possible, but the length of the epidemic cannot at this stage be predicted.

People will not have social inclusion and similar needs considered until the end of this period. Assessments will be person specific to ensure their health and safety will but not person centred in terms of meeting wider social and life outcomes. For most people currently though, these outcomes are curtailed by the social isolation.

Where we have to divert care to those most in need, some people will have some elements of their support withdrawn and their choices will be limited.

Equality Impact Assessment

The approach to implementation of the easements will take account of the equality impacts.

Governance

The recommendations have already been discussed with local NHS leadership including the Clinical Commissioning Groups. Clearly the NHS has already taken significant decisions regarding cancelling normal business. They have endorsed the use of the easements.

Ian Redfern, the Adult Principal Social Worker is fully supportive of the easements being used and will monitor their use. Once stage 4 easements start to be implemented, decisions to prioritise or reduce support will be reviewed every two weeks.

Councillor Caborn, Portfolio Holder for Adult Social Care and Health and Chair of the Health and Wellbeing Board has been briefed and he supports the recommendations in this report.

The Department of Health and Social Care will be informed.

3.0 Financial implications

3.1 N/A

4.0 Environmental implications

4.1 N/A

5.0 Timescales Associated with the Decision and Next Steps

Several of the easements will be implemented with immediate effect, whilst others will be considered as the situation unfolds.

Monthly review by the Director of Adult Social Services (DASS), the portfolio holder for Adult Social Care and the Principal Social Worker (Adults). Two weekly reviews once prioritisation starts.

The Appendix includes an assessment of the recommendations against the COVID-19 Ethical Framework for Adult Social Care.

Report Author	Pete Sidgewick
Assistant Director	Pete Sidgewick
Lead Director	Nigel Minns
Lead Member	Councillor Les Caborn

Urgent matter?	Yes
Confidential or exempt?	No
Is the decision contrary to the budget and policy framework?	No

Lists of reports considered
Not applicable
List of background papers
None

Members and officers consulted and informed
Portfolio Holder – Councillor Les Caborn
Corporate Board – N/A
Legal – Alison Hallworth]
Finance – N/A
Equality – EIA
Democratic Services – Paul Williams
Councillors –
Councillor Wallace Redford (For consent to urgency)
Councillor Les Caborn
Opposition Leaders

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Appendix: analysis of recommendations against the COVID-19 Ethical Framework for Adult Social Care

	COVID-19 assessment process	Prioritising home care
Respect	<ul style="list-style-type: none"> The assessment process will continue to provide people with the opportunity to express their views and preferences, however the ability for the Council to continue to meet choice may be restricted. Where a person may lack capacity the COVID-19 assessment process will continue to ensure that a person's best interests and support needs are considered by those who have relevant legal authority to decide on their behalf or those who should be involved in a best interests decision. The Council will communicate that a full assessment will be available at the end of the crisis. 	<ul style="list-style-type: none"> The ability to meet a person's choice of home care may be restricted due to the available resource. Following the end of the coronavirus COVID-19 epidemic all COVID-19 assessments will be reviewed, together with the care and support plans of any customers whose care and support has been reduced in order to make care and support available for others. Advocacy will continue
Reasonableness	<ul style="list-style-type: none"> The Council has considered the impact of its decision to implement the COVID-19 Assessment form. It would not be reasonable to continue to operate the normal Care Act assessment process in the current climate as the Council has insufficient resource to deliver this function at the pace required to ensure that people receive the care and support they need. 	<ul style="list-style-type: none"> It would not be reasonable for people at low risk to continue to receive home care whilst new people at high and medium risk were unable to access home care. This would also delay hospital discharges leading to significant risks to health and life if people cannot be admitted
Minimising harm	<ul style="list-style-type: none"> The use of COVID-19 assessment process enables people to receive assessments without the need to see people face-to-face therefore supports social distancing. 	<ul style="list-style-type: none"> The prioritisation of home care will minimise the risk of harm to people at high and medium risk due to insufficient resources to meet their needs
Inclusiveness	<ul style="list-style-type: none"> The COVID-19 assessment process will apply for all care groups and will ensure people continue to be involved in their assessment process. 	<ul style="list-style-type: none"> Individuals and families will be notified individually of the changes to their care and given an opportunity to raise any concerns via the Complaints procedure.

Accountability	<ul style="list-style-type: none"> • SLT, Cabinet and NHS partners have been consulted on this decision, and a CIA has been completed. • Guidance has been completed for staff to enable them to work in the new arrangements. • What about recording of decision-making? 	<ul style="list-style-type: none"> • The Directors of Adult Social Services, Lead Member, Principal Social Worker and Adult Social Care Senior Management Team have been involved in the decision • NHS partners have been informed • As specific measures are introduced guidance will be in place to support staff
Flexibility	<ul style="list-style-type: none"> • The arrangements are being monitored daily and will continue to evolve to respond to the changing circumstances. 	<ul style="list-style-type: none"> • The available home care is being monitored daily to ensure that we can meet the needs of people at high and medium risk • Not all of the measures will be used, and the Departmental Management Team will review what is necessary and make changes accordingly
Proportionality	<ul style="list-style-type: none"> • The COVID-19 assessment enables the Council to assist people with care and support needs within the resource available. 	<ul style="list-style-type: none"> • The prioritisation of home care enables the Council to ensure the health and safety of the most vulnerable customers with care and support needs within the resource available
Community	<ul style="list-style-type: none"> • The COVID-19 assessment process utilises the role of voluntary and community sector (for example referring people for the delivery of food parcels). 	<ul style="list-style-type: none"> • Individuals who can manage without regulated care for a short period may be referred for support from the voluntary and community sector • A system of welfare checks will be put in place for low risk individuals for whom home care has been deferred or suspended