

Meeting date: 6 April 2020
Report to: Councillor Karen Grinsell, Cabinet Portfolio Holder for Adult Social Care and Health, and Deputy Leader



Subject/report title: Care Act Easements

Report from: Jenny Wood, **Director: Adult Care and Support**

Report author/lead contact officer: Lizzie Edwards, **Head of Service: Adult Care and Support**
Beth Hutchinson, **Principal Social Worker**
Sue Dale, **Assistant Director, Operations**
Karen Murphy, **Assistant Director, Commissioning**

Wards affected:

- All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith's Wood | St Alphege

Public/private report: Public

Exempt by virtue of paragraph: Select an Exemption paragraph from the Quick Parts drop-down list

1. Purpose of Report

- 1.1 The Coronavirus Act 2020 introduced significant changes to local authority duties under the Care Act 2014. The powers in the Coronavirus Act came into force on the 31 March, enable local authorities, working with providers, to streamline assessments, reviews and care planning, and to prioritise care and support so that the most urgent and acute needs are met during the coming, critical period.
- 1.2 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, and resource and capacity constraints may require prioritisation of care and support.
- 1.3 To gain approvals from the Cabinet Portfolio Holder for Adult Social Care and Health as set out in the recommendations below.

2. Decision(s) recommended

That the Cabinet Portfolio Holder for Adult Social Care and Health:

- 2.1 Endorses the approach and actions to be taken to respond to the impact of Covid-19 on adult social care services, in line with relevant legislation and associated national guidance
- 2.2 Approves the approach to determining the formal 'stage' of Care Act Easements applicable at any time during the period that the Covid-19 pandemic is having an impact in Solihull. This to be made in recognition that the decision on the 'stage' and changes to the 'stage' are made by the Director of Adult Social Services (DASS) as part of the statutory responsibilities of the role, in line with the recommended governance as set out in Appendix A of the national guidance (Care Act Easements: Guidance for Local Authorities).
- 2.3 Endorses the planned actions of the Director of Adult Social Services and the Adult Care and Support Senior Management Team to move to Stage 4 at the soonest reasonable point, following the governance laid out in the national guidance.
- 2.4 Notes that the approach includes a requirement to follow the national guidance with respect to reviewing the ongoing need to apply any stage of the Care Act Easements.

3. Matters for Consideration

- 3.1 The Coronavirus Act 2020 introduces changes to Care Act 2014 duties in order to ease pressure on Local Authorities. Full details are available in the national guidance which is available via this link and it is recommended that SMBC follows the approach set out therein: <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>
- 3.2 Important duties on Local Authorities remain in place as follows:
 - 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 of the national guidance.
 - 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). These considerations are relevant both to the Adult Care and Support Directorate and the Economy and Infrastructure Directorate (because it is the latter which has general responsibilities with respect to universal services, libraries and community support).
 - 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

- 3.3 The Coronavirus Act 2020 included a series of ‘easements’ of Care Act 2014 duties, to be activated by the Secretary of State for Health and Social Care when resources were depleted to the extent that services were struggling to meet their usual Care Act 2014 duties.
- 3.4 The Care Act Easements Guidance was published on 31 March 2020. This confirms that the Care Act duty changes introduced through the Coronavirus Act 2020 have now been activated and the Secretary of State has therefore activated these easements. However, as outlined in Section 6 of the Guidance, in order to exercise the easements, where services are struggling to meet their usual Care Act 2014 duties, Local Authorities should follow a decision-making process, record this decision, and involve and inform the relevant people and organisations, including Clinical Commissioning Group (CCG) leadership, the Lead Member, and the Department for Health and Social Care. See Annex A of the national guidance for more details. See Appendix A of this report for key legal considerations.
- 3.5 The changes fall into four key categories, each applicable for the period the powers are in force:
- 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
 - 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
 - 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
 - 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
- 3.6 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.

- 3.7 Annex A of the national guidance 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. It is recognised that during the period of the Covid-19 pandemic, 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. The guidance confirms 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.
- 3.8 The national guidance confirms that 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. The guidance notes that Local Authorities should continue to be as flexible as possible, and ensure they stay within Government guidelines around [social distancing](#), [shielding](#) and [self-isolating](#).
- 3.9 The prioritisation process for Local Authority decision making is summarised in the national guidance as set out in the following table. These decisions are not necessarily sequential but should follow a situation where there are increasing pressures on adult social care delivery. The national guidance confirms that 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.

3.9.1 Decision-making tables:

Table 1: Operating under the pre-amendment Care Act

Stage	Decision	Process
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 of the decision on families and carers of people who ordinarily use the service; and possible alternative sources of care and support and the

Stage	Decision	Process
		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

Table 2: 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	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.
		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.
		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.
		If the Principal Social Worker is satisfied that the Care Act easements need to be 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.
		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.
		DHSC should be notified

Stage

Decision

Process

Stage 4:
Prioritisation
under Care Act
easements

Whole system
prioritising care and
support

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.

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.

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.

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.

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.

4. What options have been considered and what is the evidence telling us about them?

4.1 The overriding purpose of these easements is to ensure the best possible provision of care to vulnerable people in these exceptional circumstances. The only reasonable option is to utilise the provisions enacted in the new legislation for this to be taken forward using the governance and processes set out in the aforementioned national guidance.

4.2 The decision of the Director of Adult Social Services (DASS) to move to Stage 4 and the recommendation to endorse planned action to move to this stage as soon as practicably possible is due to the existing evidence of pressure on services including, but not limited to:

- 90% of calls coming through the Adult Care and Support Front Door relate to Covid-19 impact. There is an increased demand to support people with issues that would not usually be the remit of Adult Care and Support. This has included having to signpost members of the public to Government guidance, accessing support through operation shield, enabling people to access essential supplies including money and food, and a large volume of queries relating to Personal Protective Equipment.
- There is significant additional work associated with shielding and protecting those who are deemed as extremely vulnerable to the impact of Covid-19 on medical grounds, which relates to those who are advised to rigorously follow shielding measures. For context, the most recent list sent through on 2nd April, 2020 contained over 3000 people.
- Along with increased demand, the Contact Centre has faced depletion of staff due to sick leave and self-isolation. Approximately 25% of the workforce and with potential for the situation to deteriorate.
- Adult Care and Support SMBC staff have experienced a depletion of staff, with approximately 25% on sick leave and 10% of people self-isolating due to potential Covid-19. Many of those self-isolating are able to work at home, but not undertake work outside of their home and this is not possible if their usual work relates to direct care/support provision.
- A number of Adult Care and Support Staff have experienced bereavement as a result of Covid-19, and are taking compassionate leave.
- The imposition of social distancing requirements has impacted on productivity as many elements take longer. SMBC's approach to supporting as many staff as possible working at home has been followed where possible. This includes different ways of undertaking social care work, such as conducting assessments over the phone and video call. These changes have therefore impacted on throughput and ability to conduct work, including Deprivation of Liberty Safeguards (DOLS) assessments. This is due to assessments taking approximately double the amount of time, due to issues with information gathering such as having to phone lots of different people for their views instead of one meeting.
- With the introduction of the Covid-19 Hospital Discharge Guidance, there is an

extended operating rota for some staff supporting hospital discharges (08:00-20:00, seven days per week). Staff have been brought in from community teams to support with this. We are also supporting self-funders to access the D2A pathway, which is an additional level of business compared to 'business as usual'. The extended working hours impact on usual service delivery as it spreads an already depleted workforce over longer hours of operational delivery.

- In line with the Care Act Easements Guidance, operational teams have been mapping all existing known community packages for complexity and need, and risk rating in order to establish the high priority cases for action, and potential low priority cases for potential easement of Care Act duties. This is part of the approach recommended in the national guidance, but has impacted on usual service delivery and added to the backlog of work to be completed.
- The provider market is also facing unprecedented challenges, including care homes having to put restrictions in place to limit the number of visitors and admissions of new residents to reduce the risk of Covid-19 spreading. Care Homes are reporting the need to employ additional staff to ensure safe and effective infection control measures to keep residents safe. Care home and care at home providers have reported significant levels of their staff on sick leave or self-isolating, and some staff resignations due to Covid-19 risks and the perception of inadequate PPE provision. There are also reports of more significant difficulties in recruiting new staff or accessing agency staff.
- Due to the increasing pressure on hospitals and the 'home first' approach, more complex cases will be discharged from hospital to free up their capacity. Home Care providers will have to care for people with more complex needs in the community, which is further impacted by current measures in place restricting movement and therefore families' ability to provide support to their relatives.
- There are increasing examples of significant supply chain issues with the accessibility of Personal Protective Equipment (PPE). Different levels are required for staff in different situations, but supply shortages have an impact on the level of care provision that can be delivered and so this needs consideration and prioritisation.
- Adult Care and Support have established a new seven day week Commissioning duty desk, working from 8am – 8pm. This is dealing with the brokerage function, linking people with care needs to available services, and supporting providers impacted by staff shortages, PPE shortfalls and obtaining infection control advice from Public Health. Over 85% of calls to the Commissioning Duty function relate to Covid-19 and this is new demand which is not normally present. There is increased demand to support providers with a range of issues directly related to Covid-19. The majority of queries relate to PPE.

5. Reasons for recommending preferred option

- 5.1 Easement of Care Act 2014 duties, utilising the governance and processes set out in the national guidance will enable Adult Care and Support to direct resources to the most vulnerable people in the Borough, and to reduce the risk of breaches to people's human rights. We will continue to operate with due regard to the recently published Ethical Framework for adult social care, referenced previously.

- 5.2 The national guidance will be followed, which notes that 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.
- 5.3 In addition to the review process required to determine whether to continue, change or cease the stages of the Care Act easements, it is also planned that in the longer term there will be an evaluation of the overall impact on adult social care and support with respect to Covid-19, which will inform the re-establishment of 'business as usual' arrangements and provide a learning opportunity and opportunity to debrief, for both managers and staff.

6. Implications and Considerations

6.1 How the proposals in this report contribute to the delivery of Council Plan priorities:

Priority:	Contribution:
Securing inclusive economic growth.	NA
Planning & delivery for Solihull's low carbon future (to include biodiversity implications).	NA
Managing demand and expectation for public services.	The decision to ease Care Act 2014 duties will be communicated as required by the National Guidance. We will ensure communication to Providers, Carers and Service Users as necessary.
Developing our approach to services for adults and children with complex needs.	As outlined above, easement of Care Act 2014 duties will enable Adult Care and Support to direct resources to the most vulnerable people in the Borough, and to reduce the risk of breaches to people's human rights. 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. We will link with Stronger Communities to ensure utilisation of voluntary support, information & advice, prevention and early intervention.
Making the best use of our people and physical assets.	Easement of Care Act 2014 duties will ensure that resources are directed to those most in need.

6.2 Consultation and Scrutiny:

6.2.1 Whilst there is no requirement for formal, public consultation with respect to the changes, the national guidance will be followed with respect to the process for communicating with and informing key stakeholders.

6.2.2 Evaluation of the impact of Covid-19 on people who receive social care is planned, along with understanding the impact on the associated services that they receive. This will be in the longer term and may be a matter that is of interest to Scrutiny.

6.3 Financial implications:

6.3.1 There are a range of financial implications which are anticipated to result from the impact of Covid-19 and the details will be the matter of specific financial reports. In the first instance additional financial pressures will be accommodated via the local allocation of the £1.6 billion of additional funding for local government to help them respond to coronavirus (COVID-19) pressures across all the services they deliver, unless they are related to increased hospital discharge activity, in which case they will be accommodated via the £1.3 billion of additional funding for health and social care systems for this.

6.4 Legal implications:

6.4.1 Legal services have advised on the decision-making process and provided advice for officers. The key legal considerations are summarised in Appendix A.

6.5 Risk implications:

Key considerations are outlined in the full report, with mitigating actions.

6.6 Equality implications:

6.6.1 The duties outlined in the Equality Act 2010 remain in place

7. List of appendices referred to

7.1 Appendix A: Coronavirus Act 2020 and Care Act Easements – Provisions Relating To Adult Social Care

8. Background papers used to compile this report

8.1 NA

9. List of other relevant documents

9.1 NA