

Meeting date: 15 June 2020
Report to: Health and Adult Social Care Scrutiny Board



Subject/report title: Care Act Easements

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Wards affected:

All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
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 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 To update Scrutiny Board members on the approach to utilising Care Act Easements and maintaining support for those who need it most during the impact of Covid-19.

2. Decision(s) recommended

2.1 Scrutiny Board members are asked to note and comment on the report contents.

3. What is the issue?

3.1 The Covid-19 pandemic has created unprecedented challenges for both health and social care and it is having a profound effect on people's lives, particularly in Solihull where the rate of Covid-19 per 100k population is higher than the England average.

- 3.2 The social care system has had to respond to these challenges swiftly whilst embracing new ways of working. This has included intensive support to care homes, supporting over 7000 people who are shielding, increased focus on timely hospital discharge, reduced staffing capacity, including internal and external providers, and operating increased working hours.
- 3.3 The decision to implement easements in Solihull was taken due to the unprecedented impact of Covid-19 on Solihull's social care system, and in order to mitigate some of the challenges brought by the pandemic. The decision to use Care Act easements was taken at the time when the infection was beginning to have a pronounced impact on our ability to meet care and support needs with rapidly reducing capacity and increased constraints upon service delivery. This meant that we were able to ensure the best possible level of provision of care taking account of the level of capacity available and whilst also recognising the council's role in protecting staff and managers who are responsible for delivering that care. We made the changes to ensure that local care and support delivery was maintained where possible and that those in most need received the vital care and support that they required. We recognised the importance of the duties and rights that the Care Act provides for people who need support and we also recognised the challenges of staff absence, retention and maintaining staff safety and morale across the social care sector. Our approach was informed by consideration of both elements and with the general principle of only utilising the easement arrangements at the minimum level needed and for the minimum time necessary. We aimed to minimise the impact of Covid-19 on the people we support, including disabled people.
- 3.4 The Coronavirus pandemic created additional demand for care and support services as a result of its impact on the people we support and because many staff were and remain unable to work. Our care providers are also experiencing continued pressure due to the pandemic. Working practices have had to change significantly as a result of these impacts. Social care staff in the borough have been working exceptionally hard through these changes, which have included the redeployment of staff, providing intensive support with hospital discharges, assisting with the critical work to support people who are shielding, extending working rotas for longer hours and responding to contacts from individuals and families who are anxious and concerned at this time and who need support and advice. The main impacts of implementing easements on direct support have changes to day opportunities access and changes to support for some people receiving low-level care and support. The internal day care centres were closed because of social distancing requirements under the social distancing regulations (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020). However, we have been unable to provide alternative day opportunities for everyone due to staffing capacity impacted by Covid-19. Activation of the easements took place at most appropriate time for their utilisation; just before the peak infection rate was emerging in the local area.

3.5 Approach to utilising the easements

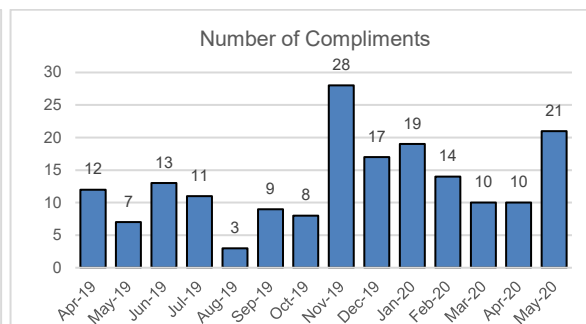
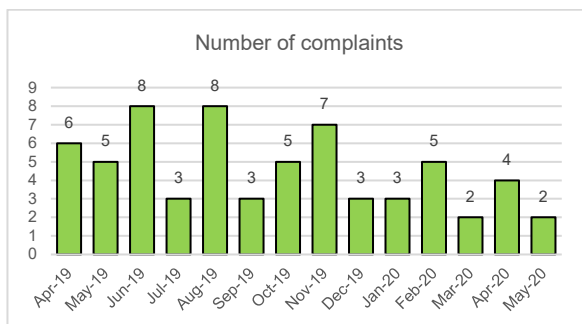
- 3.6 The Coronavirus Act 2020 introduced significant changes to local authority duties under the Care Act 2014. The powers in the Coronavirus Act came into force on the 31 March, enabling local authorities, working with providers, to streamline assessments, reviews and care planning, and to prioritise care and support so that the most urgent and acute needs can continue to be met. The changes have been termed

‘Care Act easements.’

- 3.7 The following Care Act duties remain unchanged by the easements:
 - 3.7.1 Duty to meet needs where failure to do so would breach an individual’s human rights under the European Convention on Human Rights
 - 3.7.2 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.
 - 3.7.3 Duties in the Mental Capacity Act 2005, including those relating to Deprivation of Liberty Safeguards (DoLS).
 - 3.7.4 Local Authorities’ duties relating to prevention and providing information and advice.
 - 3.7.5 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.
- 3.8 The decision paper for the Cabinet Portfolio Holder (CPH) for Adult Social Care and Health was published on the SMBC website. The paper was shared with opposition spokespeople for comment before the CPH decision which was on the 6 April. Opposition Spokespeople comments (where made) were published. The CPH decision papers were also shared with Health and Wellbeing Board members and local NHS leaders. Confirmation of the easements has also been circulated around Solihull Safeguarding Adult Board members. Although the Cabinet Portfolio Holder decision papers are quite technical in nature (they reference the national guidance heavily), they do set out the detail of the approach and are in the public domain as part of usual transparency arrangements.
- 3.9 Further to the Cabinet Portfolio Holder decision on 6 April 2020 supporting the approach to utilise the easements the Directorate Leadership Team, including the Director of Adult Care and Support, agreed to utilise the Care Act Easements at Stage 4 on 8 April 2020. The process followed the national guidance which is available here: <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>
- 3.10 In terms of communicating the changes, our approach was towards personalised, individual communication, again reflecting the ethos of the national guidance. Therefore in situations where there were service support changes, people were communicated with individually in advance, to talk through the situation, answer questions and to work with individuals and families on the provision of safe and sustainable alternatives. We have also been in contact with local organisations, including third and independent sector providers, and have used their constructive feedback in terms of maintaining an approach that is most helpful for the people we support and their carers and families.
- 3.11 In relation to general communication on the decision, we recognised the difficult balance of wanting to be transparent in our communications and yet we wished to avoid causing many people to worry, when we anticipated that most people would not

be directly affected by the easements.

- 3.12 To summarise some of the general communications relating to the changes; we put information relating to social care changes on our council website under the Coronavirus Frequently Asked Questions (FAQ). We did not call it 'Care Act easements' because we thought most people would prefer a simple explanation rather than 'technical' language and also some of the information available goes wider than the easement information. To support visibility of the Council's website information, the Council's twitter account (which has a high number of followers) has a pinned tweet which directs the reader to the Coronavirus 'latest news' pages, including the FAQ. We also shared and continue to share key information with providers via our regular bulletin 'Care in Solihull' and there were more detailed conversations with providers of services where care arrangements were changing. We recognise that online information is not accessible for everyone and so it is important to note *this is in addition to the individualised approach* we have taken with regard to people directly affected and represents examples of local activity.
- 3.13 Where changes to support have been needed, social care teams have been working compassionately with the people affected. We recognise the need for a personalised approach and have contacted them individually to discuss if alternative support was possible, for example where family members can help or using volunteers to help with tasks e.g., shopping or cleaning. As a significant element of our local challenge relates to provider workforce capacity, practitioners have also explored Direct Payment solutions with individuals where appropriate. If alternatives were not available, individual's current care remained in place. A number of people have chosen to cancel their care with us because family or friends are able to provide support and this is their preference.
- 3.14 We recognise that these are anxious times for the people we support and our social care teams remain in regular phone contact with them. Support for informal carers remains available from our local Carers' Trust and we continue to work with our care providers and advocacy organisation, supporting them to have conversations with those affected.
- 3.15 Although we are monitoring numbers of complaints closely we have not seen a rise in these to date, as outlined in the graphs below. We have had some very touching compliments recently about the kind and committed care which social care staff are continuing to provide.



- 3.16 Fortnightly officer review meetings have taken place to consider the easements that have taken place to date, to review whether the easements are still required, and at

what stage, and to make recommendations to the Director, and Assistant Directors as to the current position.

3.17 Implementing easements enabled us to co-ordinate resources to respond to those who needed support the most, especially at the peak of the pandemic in Solihull. This included reassigning our internal day opportunities staff to work within our learning disability small homes, and on home support for people in the community. This approach supported the national agenda of preventing unnecessary hospital admissions and protecting the NHS. The need to suspend typical day services was necessary to prevent infection risks for vulnerable groups, and the impact of the virus on the workforce created limited options to deliver alternatives. Activating the easements has also aided in avoiding challenge to the Council as a result of not providing day service alternatives. Activating Care Act easements at this time enabled us to be transparent about our capacity challenges, and to target support for those with greatest need and no alternative options for support. The use of easements enabled us to explain the context and rationale to people affected in an open way, helping them to understand and to explore with us how their needs could be met in other ways.

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

4.1 All decisions have been taken in line with the principles of the Covid-19 Ethical Framework for Adult Social Care, and processes have been overseen by the Principal Social Worker. Easements taken to date are as follows:

4.1.1 Non-urgent work such as planned reviews and non-urgent case management was reduced to allow for more urgent and high risk work to be carried out. Following the latest review meeting, this work has now resumed, due to improved staffing absence rates.

4.1.2 All people in receipt of community care were contacted to establish their risk level, which reflects the national guidance. Where appropriate, those people who were identified as low risk were contacted and, where suitable, their packages of care suspended or reduced. This released capacity within the home care sector to support more high risk cases. Decisions were taken on an individual basis and alternatives were explored with the person as set out previously. As care at home staffing absence levels have now improved, these people have now been offered resumption of their usual level of care to be reinstated. Some people have refused this, preferring the option of friends or family supporting them at this time.

4.1.3 SMBC day opportunities services have been mostly suspended, with some people still receiving a limited service for support where essential, as identified through individual risk assessments. Staff members from these teams have been deployed to support other areas within Adult Care and Support to manage other pressures. As at the latest review meeting, 3 June 2020, due to a much improved position, this is the only easement remaining in place. An action plan to address this and source alternative provision for people requiring this is currently underway.

4.1.4 Provisional financial assessments have been carried out remotely where possible, due to limitations around social distancing. Full assessments will be carried out as soon as

possible. The number of financial assessments outstanding over one month was noted as 4 at the last review meeting. There are also approximately 250 people who are in receipt of a non-chargeable hospital discharge or hospital avoidance service. These people will be charged at a future date following the completion of a financial assessment, in line with anticipated further government guidance. As there are no delays with completing provisional financial assessments, and people are being charged in line with charging regulations, this easement is no longer in place.

- 4.1.5 A proportionate assessment template was developed for use in urgent situations if needed, to replace the need for a full assessment to be carried out. This was not utilised by staff and use of the template has been suspended due to improved staffing levels and reduced demands.
- 4.1.6 'Step-down' beds were commissioned to support with hospital discharges without a Social Work assessment carried out prior to discharge, which is also within the national hospital discharge requirements guidelines. This is being followed up with a full Care Act assessment in the community.
- 4.1.7 Reablement Team capacity has been re-prioritised to deliver more capacity to deliver care at home. As at 3 June 2020, we are providing promoting independence services through occupational therapy and the Community Equipment service, and are due to re-start some reablement home support through the Reablement Team in the coming days.
- 4.1.8 Due to admission restrictions within an increasing number of care homes, people are experiencing limited choice with regards to accommodation and respite options. As at 3 June 2020, we are able to offer at least one care home placement without a top-up fee in line with choice of accommodation regulations.

4.2 Outcome of review meetings to date

- 4.2.1 Annex A of the national guidance sets out 'recommended governance' for Directors of Adult Social Services and Principal Social Workers in relation to use of the easements. This indicates the need for an officer review every two weeks and, as per the approach taken locally in Solihull, recognises that services should be restored as soon as is reasonably possible. Reviews have been held as required every two weeks since the easements were utilised. Due to ongoing additional pressures within the Directorate and provider market, the easements are still in place. However, the indications are that the overall situation is improving and so a careful approach will be taken to de-escalate from Stage 4 as soon as is reasonably possible. The steps we are taking to be able to reduce from Stage 4 are outlined below.
- 4.2.2 Everybody from the low risk group who had their care and support reduced or suspended has now been offered reinstatement of their usual level of care. Where people have declined to have their usual level of care reinstated, regular contact will be maintained and assurance obtained that appropriate and sustainable alternatives are in place.
- 4.2.3 Our Commissioning Team are pro-actively working to support the provider market specifically with regards to recruitment, testing, training and access to financial support.

- 4.2.4 Work is to commence to review our internal provision position, including Reablement, and contacting people whose day opportunities have been suspended to explore alternative options to meet their outcomes.
- 4.2.5 An easements appeals process led by the Principal Social Worker has been developed to support a timely response to any individual concerns. This appeals process is in addition to the usual complaint process. To date, we have not received any appeal requests.
- 4.2.6 Duties in the Care Act relating to safeguarding adults at risk continue to be discharged. Safeguarding activity is being prioritised to ensure that cases are investigated and resolved in a timely way proportionate to the severity of the concern. The Safeguarding Team Manager continues to oversee Safeguarding activity.

5. Reasons for recommending preferred option

- 5.1 This is not a decision paper as the purpose is to provide a status report for Scrutiny Board. The easements continue to be in place as a result of taking into account the current position for Adult Care and Support, particularly around the following areas:
- 5.2 Provider market: A continued key concern relates to the current provider market, particularly with homecare provider issues. Our two lead homecare providers are reporting an average 18% absence rate. This is, however, much improved compared to a previous 32% absence rate. Furthermore, some providers are reporting being unable to take on new support for some of those who are Covid positive and, this is having a subsequent impact on overall capacity. Maintaining adequate supplies of PPE remains a challenge for providers and although arrangements are in place to provide direct emergency provision where there are difficulties with usual supply routes, this remains a risk. During the initial period of easements, an increasing number of care homes within the Borough had residents who had tested positive for Covid-19 and coordinating support with respect to this area has meant that commissioning colleagues continue to work closely with providers, supporting with access to PPE, testing, and recruitment and this is an increased demand on the Commissioning function.
- 5.3 Adult Care and Support capacity: Approximately 13% of the workforce within SMBC Adult Care and Support remain absent from work, because of illness, shielding or the need to self-isolate, again this is a significantly improved position. The current guidelines around social distancing are also impacting on the level of face to face work that can be carried out. The easements have supported teams to prioritise workload and ensure that those most in need receive a timely response, and teams are now allocating some non-urgent work as a result of previous prioritisation due to easements.
- 5.3.1 The current ACS workforce demographic consists of a significant number of people who are socially distancing due to being within the 'clinically vulnerable' categories, or shielding due to being in the 'extremely clinically vulnerable' categories. There are also continued concerns from BAME groups from within ACS and the Provider workforce. These concerns relate to providing direct care when staff members may be at higher risk of the impact of Covid-19. We have been working closely with providers and internal provision to ensure that staff are supported with access to appropriate

Personal Protective Equipment (PPE) and infection control training and support. Internal provider staff receive regular one-to-one meetings with their line managers and have access to the Employee Assist Programme and Occupational Health Support. We are also considering whether we need to adjust our approach in line with the recently published (2 June 2020) Public Health England 'Disparities in the Risk and Outcomes of COVID-19' report.

- 5.3.2 There is increased pressure on staff due to the operation of an 8am-8pm rota, 7 days per week, within Commissioning and Operational Teams to support providers and members of the public. The additional weekend working is also impacting on the staffing capacity available at any one time.
- 5.3.3 ACS contacts from both existing and new people have increased in relation to both Covid and non Covid related queries. We are finding that the nature of a lot these contacts are complex and therefore requiring significant practitioner input.
- 5.4 PPE: Ensuring that adequate PPE is available when needed has been a key concern during this period. Due to PPE supply issues, there has been a requirement for additional staff to support the co-ordination and distribution of PPE.
- 5.5 Shielding: Shielding work continues to be a pressure with a significant increase in the numbers shielding since the start of Covid-19 impact and a recent need to respond to questions from those Shielding as a result of new national guidance.
- 5.6 Due to an improved position, outlined at the 3 June 2020 officer review meeting, we are hoping to de-escalate from Stage 4 easements shortly. The only easement that remains in place relates to day opportunities and an action plan is in place to address this, as outlined above.

6. Implications and Considerations

6.1 Delivery of key themes in the Council Plan:

How will the options/proposals in this report contribute to the delivery of the key themes in the Council Plan? *(select which themes apply and briefly state how the options / proposals in this report contribute to their delivery):*

- Improve Health and Wellbeing -
- Managed Growth -
- Build Stronger Communities -
- Deliver Value -

6.2 Implications for children and young people, vulnerable groups and particular communities:

6.2.1 See main report above for details.

6.3 Consultation and Scrutiny:

- 6.3.1 At the time of the first decision, the impact on protected groups was considered, and continues to be considered on an individual basis. People whose care was reduced or suspended were contacted on a regular basis- their individual circumstances and needs were taken into account, and care re-started where needed if their situation had changed.

The Cabinet Portfolio Holder for Health and Adult Social Care (CPH) was involved and briefed as part of the decision making process. This included the production of a Cabinet Portfolio Holder decision report. The report was shared with Opposition Spokespeople for comment before the CPH decision which was on the 6 April. Opposition Spokespeople comments (where made) were published.

The Health and Wellbeing Board was provided with information and this included the Cabinet Portfolio Holder Report and subsequently received updates.

Birmingham and Solihull CCG leadership were involved in the initial decision making process and subsequently received updates.

Questions and comments from local organisations, including Solihull Action Through Advocacy and the Alzheimer's Society, were considered and responded to and taken on board. As a result of this, our approach to how we communicated the easements and our approach to working with people with dementia were re-considered.

As per the updated national guidance, further communications will be shared with Local MPs.

6.4 Financial implications:

- 6.4.1 As set out in the main report above, the financial impacts related to charging are being actively monitored.

6.5 Legal implications:

- 6.5.1 See main report for details.

- 6.5.2 The Care Act easements national guidance, updated 20 May 2020, has been fully considered throughout the easements processes outlined in the main report. We are currently actioning the new requirement to inform MPs of the decision to operate under the Care Act Easements.

- 6.5.3 As outlined in the main report, we remain compliant with both the provisions of the Act and with the guidance issued by Central Government in continuing to operate the Easements.

6.6 Risk implications:

- 6.6.1 Risks associated with the Care Act Easements were considered using an individual risk rating approach and only those cases identified as low risk were considered for a change to care provision. This was an individualised approach. See the main report

for details on wider risk considerations and management, such as the appeals process outlined above.

6.7 Statutory Equality Duty:

- 6.7.1 Equality impacts were considered during the initial decision-making process. Decisions affecting individuals have been taken on an individual basis following a risk assessment to assess equality impacts and ensure there are no breaches of human rights. There is also an appeals process in place to ensure that concerns are considered and responded to in a timely manner.

7. **List of appendices referred to**

- 7.1 [Click here to enter text.](#)

8. **Background papers used to compile this report**

- 8.1 [Click here to enter text.](#)

9. **List of other relevant documents**

- 9.1 [Click here to enter text.](#)