

Record of operational decision

Decision title:	To make a formal decision to implement Easements to the Care Act 2014, introduced by the Coronavirus Act 2020 and associated Regulations.
Date of decision:	4 May 2020
Decision maker:	Stephen Vickers, Directors of Adults and Communities
Authority for delegated decision:	Council constitution 3.7.9 all necessary decisions in the case of emergencies
Ward:	Countywide
Consultation:	<p>Heads of Service– Commissioning, Operations and Finance. Senior Social work managers and the Principal Social worker role. Engagement to Adults and Communities workforce through three workforce webex conferences. Verbal and written briefings to operational staff. Clinical Commissioning Group and Wye Valley Trust - Partners Health and Well Being Board Worcester Health and Care NHS Trust (Herefordshire Mental Health and Learning Disability services). Healthwatch Lead Member for Adults and Communities Councillor Crockett Chair of Safeguarding Adults Board Director of Children and Families Chris Baird</p>
Decision made:	<ol style="list-style-type: none"> 1. That under the Easement of the Care Act 2014 regulations, the council are at Stage 2 as set out in the Guidance and will move to Stages 3 and 4, when appropriate and necessary to do so in accordance with the Guidance: on the principles that the obligations of the previous stage have been met, and that in doing so will implement the following Care Act Easements, - <ol style="list-style-type: none"> a) Introduce the new streamline COVID-19 assessment process. b) Suspend routine Care Act reviews. c) Triage new referrals, and broker home care for high and medium risk individuals, with home care for low risk individuals to be deferred. d) Work with home care providers to triage existing home care packages, continue care for high and medium risk individuals, and suspend care for low risk individuals. e) Put in place a system of welfare checks for low risk individuals for whom home care has been deferred or suspended. 2. The DASS, or acting DASS, in consultation with the relevant Assistant Directors and Head of service, will take all necessary operational decisions and decide when to implement the easements (a) to (e) above in each particular service area. Prior to any decision being made the council will ensure that it continues to base decisions on the Ethical Framework and will assess need proportionately. 3. That the Council reviews the easements of its Care Act duties on a weekly basis and seeks to reinstate normal Care Act services as soon as possible.
Reasons for decision:	<u>Key considerations</u>

One of the Council's strategic objectives for the management of 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 and support wherever possible with planning and actions in the NHS. This is against a backdrop of increasing demand and reducing capacity due to staff absences as a result of sickness and self-isolation.

Clear decisions and recognition over the stage that the Council has reached, must be recorded. Under the guidance, it sets out the following: -

Stage 1	Pre Easement – continuation of all Care Act 2014 duties and responsibility
Stage 2	Post Easement – but a continuation by the Council to continue to meet <u>all</u> of its duties under the Care Act 2014 but with some degree of flexibility used
Stage 3	Post Easement – formal decision made by the Council that due to depleted staffing levels and/or demand increase, that it is no longer reasonably practicable to comply, and formal changes are made to the way services are provided, but will continue to meet duties where possible. Formal notification must be given to the Department of Health and Social Care
Stage 4	Post Easement – a further formal decision made that the Council is only able to prioritise individuals and will enact the full easement changes to the Care Act. Formal notification must be given to the Department of Health and Social Care

Regulation 6 to the Statutory Guidance provides the criteria for implementing the easement i.e. that the workforce must be significantly depleted or demands on social care has increased to such an extent that it is no longer reasonably practicable to comply with Care Act duties and to continue to try to do so is likely to result in urgent or acute needs not being met potentially risking life.

Where the current available evidence to the Council is that an increase in demand for social care has increased to such a point that it is no longer reasonably practicable to sustain compliance with its duties under the Care Act 2014 we will move to the next stage of the easement.

Attached at **Appendix 1** is an overview of Care Act Easement and the COVID 19 assessment framework processes that will be introduced. This will show how we as a Council will now operate.

Reason for decisions

With the increase in demand due to the Coronavirus COVID-19, the current greatest demand appears to relate to new care services for home care as well as the issues in providing Care Home choice. In addition there is increased reliance on the assessment workforce to provide earlier intervention on discharges which includes increased volumes due to meeting the discharge needs of self funders.

Home Care

If Home Care providers report significant reductions in capacity due to staff sickness absence and the system has difficulties arranging care packages which meet the needs of the most vulnerable the council will look to move to stages 3 and 4.

There is therefore a high risk that demand for new home care packages from the COVID-19, both hospital discharge and urgent community cases will exceed current available capacity and that this will delay acute hospital discharges and compromise the ability to avoid hospital and care home admissions.

The Council is seeking to mitigate this by redeploying staff into home care, and by recruiting additional home care workers through the promotion of care heroes campaign. However this is expected to offer only a partial mitigation and the also takes time to recruit and train the workforce.

The Council commissions directly just under 10,000 hours a week to just over 700 clients. The modelling currently predicts in the region of 1,500 hours to be commissioned in addition on a weekly basis, increasing by 1,500 hours week on week until the peak subsides.

The recommendation therefore is to generate additional capacity by prioritising use of home care and reserving it for high (Red) and medium (Amber) risk individuals as defined by the prioritisation tool in **Appendix 2**. Low risk individuals (Green) would be able to manage without regulated care during the coronavirus COVID-19 epidemic without detriment to their human rights as defined by the European Convention on Human Rights.

The Council has also written to all residents in the county with a helpline number through its Talk Community initiative, which has mobilised over 1200 volunteers to support the residents on things like shopping, medication pick ups etc.

Choice of Care Homes

In addition, the impact on Care Homes themselves with the likely increase in numbers of admissions (whether from Hospital or from within the Community) will have a direct effect on these care provisions. Demand for beds and limited availability will result in difficult choices being made to accommodate those in the greatest need. The choice and wishes of individuals will be considered, but will only be one factor amongst many that forms part of the decision making process.

It is necessary for the impact of Care Homes potentially refusing or unable to accept new residents, to be monitored and support provided to those Care Homes who are directly impacted and struggling to cope. The council has a contingency plan to provide additional short term capacity for beds should this be required.

Records of interim placements will be monitored with review and assessment plans in place to ensure interim placements are for the shortest periods possible.

Appendix 3 includes an Equality Impact Assessment, which demonstrates the expected impact and risk of the measures.

<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>The Council, under the Care Act 2014, are legally required to comply with a number of legal duties, for example the requirement to undertake an assessment of needs. Under the Coronavirus Act 2020, a Council, following a formal decision with the necessary evidence to support this decision, are no longer required to comply with their legal duties, subject to ensuring that an individual's human rights are not breached.</p> <p>The Care Act Easement guidance sets out a clear process that must be followed prior to commence of any easement away from the Care Act 2014. Failure to do so, can lead to Judicial review proceedings being commenced surrounding the Councils decision making processes</p> <p>The Easement Guidance, which has the full backing of the Secretary of State, must be adhered to at all relevant decision-making stages. Failure to follow the guidance can lead to the relevant Minister ordering that a Council must follow the guidance in full. As well as ensuring the Ethical framework is fully considered in decision making and actions following easement the Council needs to ensure that it continues to meet certain statutory obligations; specifically alongside duties to assess are duties to demonstrate full regard to the Human Rights Act, Safeguarding duties, and the Mental Capacity Act 2005</p> <p>By not undertaking Financial Assessments, there is a high risk that when Financial Assessments are resumed in the future, whilst the Council is able to seek backdated contributions towards the cost of care, there is a significant risk that the Council will not be able to recoup all care costs outlaid.</p> <p>For the duration of the Covid-19 emergency, in line with Government Guidance, all costs of social care placements made under the Covid-19 Hospital Discharge Service Requirements that are above the Council's planned spend, will be funded by the NHS. In addition to this, non-ring-fenced funding to meet other additional costs arising from Covid-19 has been provided by central government but this is not exclusively for social care costs and is unlikely to cover all expenditure</p> <p>All commissioned care packages within the covid emergency period are being recorded by the brokerage team within the Council's commissioning department to ensure all costs are appropriately captured. All individuals receiving packages of care where they have not been financially assessed and charged for as a result of the easements within the covid emergency must be made aware that when the emergency period comes to an end they will need to be assessed and potentially charged retrospectively for the service.</p> <p>Agreement between the Adult social care operational services and the CCG continuing health care leadership regarding agreed commissioning and funding pathways for complex health needs is in place.</p> <p>The Council will comply with Public Sector Equality Act duties under Equality Act 2010.</p>
<p>Details of any alternative options considered and rejected:</p>	<p>To continue to remain acting under the full duties set out by the Care Act 2014.</p> <p>To not follow guidance and implement own changes but these would be unlawful and outside of legal powers.</p>
<p>Details of any declarations of interest made:</p>	<p>None identified</p>