


# Norfolk County Council

## Record of Individual Cabinet Member Decision – Urgent Decision

### COVID-19 Legislation implications for Norfolk Adult Social Services

<b>Responsible Cabinet Member: Councillor Borrett (Cabinet Member for Adult Social Services and Public Health)</b>	
<p><b>Background and Purpose:</b> The Coronavirus Act 2020 has potentially far-reaching implications for Adult Social Services. Alongside this, emergency discharge requirements published by the NHS introduces a common approach for ensuring swift flow through hospitals in order to free up capacity for the predicted additional number of people needing acute care.</p> <p>The legislation has provision for ‘easements’ to the Care Act, that is, temporary changes to ensure health and social care can continue to deliver care and support during a time of crisis. The paper sets out the clear process laid down for introducing such ‘easements’ and recommends following the national process. A national Ethical Framework will support and underpin good quality social work during the period. This paper recommends formal adoption of the framework.</p> <p>As well as following a new discharge model, Adult Social Services – with Norfolk and Waveney Clinical Commissioning Group – needs to commission additional ‘step-down’ capacity to support the expected high numbers of people discharged from hospital.</p> <p>This paper sets out the approach for this, and asks for delegated authority for the Executive Director of Adult Social Care to negotiate and finalise agreements with the CCG to establish and run additional facilities to meet need during the coming months.</p>	
<p><b>Decision:</b></p> <p>The decision is to delegate to the Executive Director of Adult Social Services, the authority to negotiate and agree a joint CCG and Norfolk County Council agreement to commission additional capacity to meet COVID-19 requirements.</p> <p>To agree to adopt the national guidance in relation to the provision for ‘easements’ of the Care Act, and to formally adopt the Ethical Framework to ensure a proportionate approach is taken in relation to any Care Act ‘easements’.</p>	
<b>Is it a key decision?</b>	<b>Yes</b>
<b>Is it subject to call in?</b> <b>If Yes – Deadline for Call in</b>	<b>No.</b> <b>Whilst this is a key decision, the issues in the paper cannot reasonably wait for the completion of the call-in process. Having discussed with the Chair of Scrutiny it is agreed that this will be an urgent decision and is not subject to call-in.</b>

<p><b>Impact of the Decision:</b> Taken together these decisions will put in place arrangements to allow Adult social Services to respond at pace to the expected rise in demand for health and social care as a result of the Coronavirus. It will ensure a clear, transparent process for any Care Act 'easements' and will facilitate the commissioning of additional capacity for 'step-down' beds.</p>	
<p><b>Evidence and reason for the decision:</b> National and local modelling provides an evidence base for additional capacity; the national legislation sets the evidence and framework for any actions required to amend usual Care Act operations.</p>	
<p><b>Alternative options considered and rejected:</b> No alternative options have been considered given the national context.</p>	
<p><b>Financial, Resource or other implications considered:</b> National funding has been made available to the NHS and local authorities to respond to the COVID-19 emergency; a joint financial agreement will be negotiated with Norfolk and Waveney CCG to ensure balanced risk share. Other implications relate to property, staffing and IT in relation to the establishment of new bedded capacity.</p>	
<p><b>Record of any conflict of interest:</b> None identified</p>	
<p><b>Background Documents:</b></p> <p><a href="#">Coronavirus Act 2020 legislation</a></p> <p><a href="#">COVID-19 hospital discharge service requirements</a></p> <p><a href="#">Care Act easements: guidance for local authorities</a></p> <p><a href="#">Responding to COVID-19: the ethical framework for adult social care</a></p> <p><a href="#">Coronavirus Bill – Summary of Impacts</a></p>	
<p><b>Date of Decision:</b></p>	<p><b>April 7<sup>th</sup> 2020</b></p>
<p><b>Publication date of decision:</b></p>	<p><b>8 April 2020</b></p>
<p><b>Signed by Cabinet member:</b></p> <p>I confirm that I have made the decision set out above, for the reasons also set out</p> <div style="text-align: center;">  </div> <p><b>Signed:</b></p> <p><b>Print name: Bill Borrett</b></p> <p><b>Date: April 7<sup>th</sup> 2020</b></p>	

<b>Accompanying Documents:</b> <ul style="list-style-type: none"><li>• COVID-19 Legislation implications for Norfolk Adult Social Services</li></ul>

Once you have completed your internal department clearance process and obtained agreement of the Cabinet Member, send your completed decision notice together with the report and green form to [committees@norfolk.gov.uk](mailto:committees@norfolk.gov.uk)

# Report to Cabinet Member

Item No.

<b>Report title:</b>	<b>COVID-19 Legislation implications for Norfolk Adult Social Services</b>
<b>Date of meeting:</b>	<b>Delegated decision</b>
<b>Responsible Cabinet Member:</b>	<b>Bill Borrett, Cabinet Member for Adult Social Care and Public Health.</b>
<b>Responsible Director:</b>	<b>James Bullion, Executive Director Adult Social Services</b>

## Executive Summary

The Coronavirus Act 2020 has potentially far-reaching implications for Norfolk Adult Social Services. Alongside this, emergency discharge requirements published by the NHS introduces a common approach for ensuring swift flow through hospitals in order to free up capacity for the predicted additional number of people needing acute care.

The legislation has provision for 'easements' to the Care Act, that is, temporary changes to ensure health and social care can continue to deliver care and support during a time of crisis. The paper sets out the clear process laid down for introducing such 'easements' and recommends following the national process. A national Ethical Framework will support and underpin good quality social work during the period. This paper recommends formal adoption of that framework.

As well as following a new discharge model, Adult Social Services, with Norfolk and Waveney Clinical Commissioning Group, needs to commission additional 'step-down' capacity to support the expected high numbers of people discharged from hospital.

This paper sets out the approach for this and asks for delegated authority for the Executive Director of Adult Social Services to negotiate and finalise agreements with the CCG to establish and run additional facilities to meet need during the coming months.

## Recommendations

**Members are asked to:**

- a) **Delegate to the Executive Director of Adult Social Services to negotiate and agree a joint CCG and Norfolk County Council (the Council) agreement to commission additional capacity to meet COVID-19 requirements. This to be funded through additional NHS monies**
- b) **To agree to adopt the national guidance in relation to the provision for 'easements' of the Care Act, as set out in section 5**
- c) **To formally adopt the Ethical Framework to ensure a proportionate approach is taken in relation to any Care Act 'easements'**

## 1. Background and Purpose

- 1.1. The Government has passed the Coronavirus Act 2020 on 27 March 2020. The relevant provisions for adult services came into effect on 30<sup>th</sup> March 2020 and has wide-ranging implications for public services. Included in the Act are provisions relating to the Care Act 2014 which allow for changes in certain specific circumstances to how Adult Social Care to maintain delivery in a time of crisis. Please see section 12. Background papers for the

- 1.2 Prior to the legislation, the Department of Health and Social Care published a process for discharge from acute hospitals to ensure smooth flow of activity through hospitals, and to free up as many beds as possible to deal with the expected increase in COVID-19 patients. Please see section 12. Background papers for the COVID-19 hospital discharge service requirements.
- 1.3 The purpose of this paper is to agree necessary actions to respond to both the new legislative framework and the emergency discharge requirements, and to delegate to the Executive Director of Adult Social Services decisions arising from the emergency situation.

## **2. Proposals**

### **2.1. Emergency discharge requirements**

- 2.1.1 This guidance, published on March 19<sup>th</sup> 2020, effectively mandates a Discharge to Assess process for health and social care. The over-riding aim of the guidance is to free up as much capacity in acute and community hospitals as possible in light of expected increased patients with COVID-19.
- 2.1.2 The expectation is that people medically fit for discharge, leave hospital and are then assessed by Adult Social Services out of hospital – either at home or in some other non-acute setting.
- 2.1.3 There is to be no distinction between self-funders and those who might be eligible for means tested social care. There will also be no assessment for Continuing Health Care (CHC). All care on hospital discharge will be paid for by the NHS out of the additional £1.4 billion announced by the Government.
- 2.1.4 The full detail of the revised discharge process is covered in the link in Section 12 Background papers, COVID-19 hospital discharge service requirements.

## **3. Discharge to Assess**

- 3.1 In response to this, a new discharge to assess process has been agreed between Norfolk's three acute hospitals, Norwich Community Health & Care, East Coast Community Health and Care and Norfolk Adult Social Services.
- 3.2 The discharge to assess model across all three acute hospitals require a three- hour discharge approach for medically optimised patients. No CHC process exists and multi-disciplinary discharge hubs have been created in the five localities to manage and assess all discharges. Discharge hubs have been created to operate from 08:00hrs to 20:00hrs seven days per week including bank holidays.
- 3.3 The local discharge to assess processes from the three acute hospitals will follow the current proportionate care act assessment protocols that existed within the hospitals prior. This ensures all appropriate discharges will have received a proportionate Care Act assessment and entry into the LAS system.
- 3.4 A full eligibility and associated Care Act assessment will occur within 28 days of a person being discharged either home with services, or into a residential or nursing home placement. It is intended financial assessment advice and support will be offered at this juncture.
- 3.5 The discharge to assess model highlights any placement is temporary. The leaflet that accompanies the patient on the discharge to assess pathway, confirms that charging for services is retrospective. It is envisaged a more in-depth Norfolk County Council leaflet is

provided to ensure clarity on charging, advice around choice and associated information in relation to on-going service provision.

- 3.6 The aim of using proportionate and full Care Act assessment and eligibility is to ensure eligible service users are identified both for local authority funding, self- funding and those who may require CHC or joint funding. Linked to this process is the offer of appropriate financial advice and support, given the current lack of clarity on funding and charging at a national level.

## **4. Sourcing additional capacity**

- 4.1 Joint commissioners from Norfolk and Waveney CCG and Adult Social Services need to identify and procure additional 'step down' beds and additional home support so that people discharged can be supported in non-acute settings.
- 4.2 Public health modelling, based on estimated numbers of people leaving hospital on Discharge to Assess pathways, will inform the number of additional beds or home care capacity which needs to be sourced. At the time of writing, planning and site identification is underway and with a pipeline of potential sites. All these will be assessed against a series of criteria which incorporate:
- a) Physical suitability
  - b) Location
  - c) Staffing requirements
  - d) CQC registration
  - e) Legal considerations
  - f) Primary care engagement
  - g) Lead provider
  - h) Transport considerations
  - i) Financial and contracting issues
  - j) Exit strategies post-COVID-19
- 4.3 Using expertise from both the Council and Norfolk and Waveney Clinical Commissioning Group, there is an ambition to prepare sites in readiness to receive patients within a 10 day window.
- 4.4 A formal agreement with Norfolk and Waveney CCG will provide a robust framework for commissioning the additional capacity. A Heads of Terms of Agreement has been drafted by the NCC contracts and legal team for discussions with the CCG. Based on NCC contracting advice, the services will be commissioned under the provisions for extreme urgency under the Public Contracts Regulations 2015, without competition.
- 4.5 Financial proposals are being developed that recommend capacity will be set up to prepare for potential need. Regardless of use, the expectation is that all costs will be recharged to NHS England/Improvement (NHSE/I). The majority of costs are expected to be incurred in the first instance by Norfolk County Council. All actual costs incurred in the creation, operating and decommissioning of this capacity will be recharged to the CCG, who will make a further recharge to NHSE/I. Any costs that remain unrecovered from NHSE/I following the decommissioning of the services will be shared equally between NCC and the CCG.

## **5. Legislation and amendments to the Care Act**

- 5.1 The full detail of changes to the Care Act can be found in Section 12. Background papers under Care Act easements: guidance for local authorities.
- 5.2 The legislation, sets out four stages of Care Act operation:

Stage one – business as usual

Stage two – applying flexibilities under the existing care act

Stage three – streamlining services through Care Act ‘easements’

Stage four – prioritisation under Care Act easements.

The full text of this can be found in Annexe A of the guidance in Section 12. Background papers under Care Act easements: guidance for local authorities.

5.3 **For stages two, three and four**, a consistent decision-making process is set which covers:

- a) Relevant Senior Manager / Assistant Director should consult the Principal Social Worker and should detail:
  - i. the reason the decision needs to be taken
  - ii. impact of the decision on the people who ordinarily use the service
  - iii. impact of the decision on families and carers of people who ordinarily use the service
  - iv. possible alternative sources of care and support and the likelihood of this being available.

Where the Principal Social Worker is satisfied, this position can then be presented to the Executive Director of Adult Social Services (or alternate locally agreed senior) for a final decision.

5.4 **For stages three and four**, there are further decision-making steps:

- a) **Stage three** - The decision should also consider and be informed by a conversation with the local NHS Leadership
- b) The Executive Director of Adult Social Services and the Principal Social Worker should ensure that their lead member has been briefed as part of this decision-making process
- c) DHSC should be notified

5.5 If a Local Authority decides it may need to move into **stage four**:

- a) the Principal Social Worker should call an Emergency Decision Meeting with the Executive Director of Adult Social Services where a decision about whether and how to prioritise care across ASC will need to be made
- b) Sufficient care and support will have to remain in place at all times in order to ensure that the human rights of all those in need of care and support, and of carers, are respected
- c) The Executive 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
- d) DHSC should be notified

5.6 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.

## 6. **Ethical Framework:**

6.1 A national ethical framework to support the process of Care Act easements has been published. The ethical process intended ensures that a proportionate approach is taken to decisions to remove or amend Care Act assessments, reviews, care planning or services provided, both at a service level and at an individual level. The approach is to ensure that any decision/s remains within the scope of the Human Rights Act and the limitations this

creates on actions in-regards to vulnerable people. The ethical framework is applicable both to the Executive Director of Adult Services (DASS) and the Principal Social Worker down to individual Social Workers and Occupational Therapists.

- 6.2 Social Workers and Occupational Therapists have been involved in the creation of a simplified ethical framework to assist individual decision making on services and individual package reductions and cessations. The process requires case records and professional rationale for each decision should any Care Act easements come into force. The process also requires the full involvement of service users and carers. The aim would be to ensure an equitable rationing of services should this be required, if circumstances dictated more demand for care services than supply.
- 6.3 If NCC has applied and had granted Care Act easements. Such easements and the resulting service and care reductions would be short term and require on-going assessment. This is to ensure no Human Rights Act issues had or were due to occur and issues of harm, mitigated.
- 6.4 A link to the full ethical framework is in Section 12. Background papers under Responding to COVID-19: the ethical framework for adult social care

## **7. Impact of the Proposal**

- 7.1 The potential actions set out in this paper have a significant – if temporary – impact on the way that Adult Social Services delivers care, particularly in relation to people being discharged from hospital.
- 7.2 The guidance accompanying the legislation provides a sound framework to ensure consistent, rational and transparent decision making, which is practice-led and based on prioritisation of needs and underpinned by the Human Rights act.
- 7.3 Recourse to easements set out above will be most carefully considered and used only when absolutely necessary. The default position will always be to continue to adhere at all times to the Care Act – albeit adjusting some processes so they support the expected pressure on the NHS.
- 7.4 Critical to the coming months will be effective tracking of people and speedy follow up to ensure that a full Care Act assessment takes place so that any temporary arrangements are addressed and reviewed as soon as possible.
- 7.5 This will be very important so that people are clear about any contribution they might need to make to their care, and from what point this contribution may be required.
- 7.6 Additional ‘bedded’ capacity is required in the community to support people leaving hospital during the COVID-19 epidemic, based on a forecast increase in the number of people requiring care in acute settings. Taken alongside increased capacity in existing care homes and other NHS community settings, the impact of new bedded capacity will contribute to the overall health and social care system response to dealing with COVID-19.

## **6. Evidence and Reasons for Decision**

- 6.1. The decisions in this paper are directly as a result of national legislation and national guidance in the face of the unprecedented pressure on health and social care systems.

## **7. Alternative Options**

- 7.1. There are no alternative options available, given the national and local context.



## 8. Financial Implications

- 8.1. The new guidance and easements will impact on the normal demand and funding flows for adult social services. Key impacts will be:
- a) Funding for additional cost of placements following discharge from hospital or due to admission avoidance will be via a recharge to the NHS. This will apply to all specialisms
  - b) This funding route will also apply to additional capacity that is put in place to support the expected peak for Norfolk
  - c) Whilst normal charging arrangement will apply to most people who are currently in receipt of adult social care or who come into adult social care outside of hospital discharge or admission avoidance, it is expected that financial assessments will not be able to be completed for everyone. In addition, we will lose income from service users who are currently not receiving services. The loss of income will be included in the estimated costs of the emergency reported to Corporate Board
  - d) The arrangements cease the continuing health care checks during this period, which may affect some income that we would normally receive from health against block contracts held by the Council
  - e) The redeployment of staff and the repurposing of current service provision will affect the savings programme planned for the service in 2020-21. For example, the use of accommodation based reablement for health use and redeployment of reablement staff
  - f) Costs, loss of income and loss of savings opportunities are being monitored and will be reported to Corporate Board on a weekly basis

## 9. Resource Implications

- 9.1. **Staff:** Staff across all aspects of Adult Social Services may be required to work differently as a result of the changes outlined in this paper. Changes for individuals are being carefully worked through, with robust advice and strong support from Human Resource colleagues. Recruitment of temporary staff will also be required.
- 9.2. **Property:** Property implications relating to new capacity will be overseen and led by the Council property team. Full evaluation and risk management associated with new properties will be undertaken. Any specific decisions required will be through the Cabinet Member for Property.
- 9.3. **IT:** Access to IT for new properties will be required.

## 10. Other Implications

### 10.1. Legal Implications:

- 10.1.1 nplaw have advised on the legislation and impact of implementing the revised powers under the amendments to the Care Act 2014.

### 10.2. Human Rights implications

- 10.2.1 As noted in the main body of the report, if the easements to the Care Act 2014 are exercised, we will need to ensure that the human rights of the service users are respected in any arrangement we make for their care.

### 10.3. Equality Impact Assessment (EqIA) (this must be included)

- 10.3.1 A specific EQIA for the Council in respect of the Care Act easements is underway and will be published separately. The framework for this will be the EQIA already undertaken for the Coronavirus Bill which can be accessed through the link in Section 12. Background papers called Coronavirus Bill – Summary of Impacts

## 11. Risk Implications

- 11.1. A full risk register associated with commissioning additional capacity is under preparation. Given the need to act with pace, there are a number of risks associated with this work. The main risks relate to staffing the additional capacity; having too much or too little capacity given the eventual need; property issues and sourcing appropriate equipment; the short timescale to turn around potential properties and ensure they are fit for purpose in time for the peak demand.
- 11.2. A number of financial issues are covered above. The main financial risks relate to the current lack of firm confirmation from the Government about how long national funding will be available to areas to support additional capacity. There is a risk that the funding available will end whilst on-going costs still have to be met.
- 11.3. There are also risks relating to not acting at this stage. Whilst there are many unknowns and many issues, the impact of not taking action could potentially cause significant harm to people affected by COVID-19 and add to the burden on the health and social care system.

## 12. Background Papers

- 12.1. [Coronavirus Act 2020 legislation](#)
- [COVID-19 hospital discharge service requirements](#)
- [Care Act easements: guidance for local authorities](#)
- [Responding to COVID-19: the ethical framework for adult social care](#)
- [Coronavirus Bill – Summary of Impacts](#)

### Officer Contact

If you have any questions about matters contained in this paper, please get in touch with:

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