

## **TRAFFORD COUNCIL**

**Report to:** The Leader of the Council  
**Date:** 7 January 2022  
**Report for:** Decision  
**Decision Report of:** Corporate Director of Adult Social Care

### **Report Title**

**Urgent Measures in relation to the Council's duties under the Care Act 2014**

### **Summary**

**This report provides a summary of the Council's obligations in respect of the Care Act in the light of the significant pressures across the social care system arising by virtue of the impact of the Covid 19 pandemic.**

**The current and anticipated future pressures are such that the Council needs to be in a position where it has in place an approved contingency plan which would then enable it to reach speedy decisions around the implementation of agreed urgent measures if the situation reaches a critical point. Those measures would enable the Council to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met and would put into place responsive plans to manage current and future demands.**

**The report sets out details of the proposed contingency plan which would assist the Council in managing the pressures detailed in the report.**

**It also seeks approval to delegate authority to the Corporate Director of Adult Social Care in consultation with the Corporate Director for Governance and Community Strategy and the Executive Member for Adult Social Care to implement the urgent measures set out in that contingency plan. It sets out the details of a robust and transparent framework to support decisions made in accordance with that delegated authority; defines what would constitute the critical circumstances which would require consideration to be given to the implementation of urgent measures; details what those urgent measures would entail; and also provides that any decisions made in accordance with that delegated authority must be reported to the Executive and to the Scrutiny Committee.**

**Recommendation(s)**

**It is recommended that the Leader of the Council approves:**

- 1. the adoption of the decision making framework and associated criteria, as set out in the report and in Appendix B, to be used to determine future decisions on the implementation of urgent measures;**
- 2. in principle, the potential urgent measures as detailed in the report; and**
- 3. delegates authority to the Corporate Director of Adult Social Care, in consultation with the Corporate Director for Governance and Community Strategy and the Executive Member for Adults Social Care, to determine, in accordance with the said decision making framework and criteria, those cases where there is a strategic or an operational need to implement any or all of the urgent measures; and**
- 4. notes that the Executive Member for Adult Social Care will make a report to the Executive and to the Scrutiny Committee detailing any decisions made to implement the urgent measures; and**
- 5. notes that the approvals in points 1, 2 and 3 of this decision will apply for a period of one month from the date of the decision and may be extended beyond that period if formally approved following a review based on an assessment of need; review and a decision to extend the provision beyond ; and**
- 6. notes the urgency provisions in respect of this decision as detailed in the report; and**
- 7. based on the urgency provisions, detailed in the report that this decision shall not be subject to the call in process.**

Contact person for access to background papers and further information:

Name: Diane Eaton

Background Papers: N/A

<p>Relationship to Policy Framework/Corporate Priorities</p>	<p><b>Services focused on the most vulnerable people:</b> Residential and nursing care and homecare are targeted services provided to the most vulnerable people, following a social care assessment and ensures their safety at some of the most critical times of their lives, e.g. following hospital discharge. <b>Trafford Together Plan and the Integrated Care System:</b> We are working towards an integrated commissioning system for Trafford and as part of this continue to discuss how we might further integrate commissioning activity within the new ICS.</p>
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Relationship to GM Policy or Strategy Framework	The following policies describe our approach: Greater Manchester Population Health Plan 2017-2021: Age Well Priority Greater Manchester Health and Care Board Urgent and Emergency Care Improvement and Transformation Plan Greater Manchester Live Well at Home Strategy Housing Strategy and Ageing Well Commissioning Strategy and Market Position Principles These continue to provide the strategic framework for how we support people with social care needs in Trafford.
Financial	The measures will have a budgetary impact, particularly in respect of the levels of client contributions. Until Care Act assessments are undertaken clients cannot be charged. This impact will be reviewed and reported as part of budget monitoring.
Legal Implications:	The legal implications are detailed in the report.
Equality/Diversity Implications	Individual assessments, decision making and service provision will take into account the cultural and gender preferences of the individual but it may no longer be possible to meet these because of the limited resources.
Sustainability Implications	N/A
Carbon Reduction	N/A
Resource Implications e.g. Staffing / ICT / Assets	The rationale behind the proposed measures is to enable the Council to manage risk through the prioritisation of available resources, in particular staffing shortages through the current crisis. The risks arising by virtue of a decision being taken to implement the urgent measures proposed is detailed in the report
Risk Management Implications	The rationale behind the proposed measures is to enable the Council to manage risk through the prioritisation of resources through the current crisis. The risks arising by virtue of a decision being taken to implement the urgent measures proposed is detailed in the report
Health & Wellbeing Implications	Individual health and wellbeing considerations will be form part of any assessment and decision making process
Health and Safety Implications	N/A

## 1.0 Background

- 1.1 In accordance with the Care Act 2014, the Local Authority has a statutory obligation to meet needs for care and support. The Local Authority has an obligation to provide care in accordance with the relevant level of need, as determined by an assessment.
- 1.2 Throughout the pandemic Local authorities and care providers continue to face rapidly growing pressures as more people need support because unpaid carers are unwell or unable to reach them, and as care workers are having to self-isolate or are unable to work for other reasons.
- 1.2 The government previously recognised the growing pressures and as a result put in place a range of measures to help the care system manage these pressures.

- 1.3 The Coronavirus Act 2020, was a key piece of legislation which introduced a series of powers (“Easements”) to enable the Local Authority to ensure that they were able to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs were met.
- 1.4 The powers contained in the Coronavirus Act enabled Local Authorities to prioritise more effectively where necessary than would be possible under the Care Act 2014 prior to its amendment. The Easements were however seen as measures of last resort and were not activated in previous stages of the pandemic in Trafford.
- 1.5 The Coronavirus Act is no longer applicable and therefore, the Local Authority can no longer use the Easements as a mechanism to realign arrangements relating to Care Act obligations.
- 1.6 However, the impact of the pandemic at this point in time, due largely to the vastly more infectious nature of the Omicron variant, has significantly increased the pressures on the Council to such an extent that it is affecting the Council’s ability to deliver care to all those who are entitled to receive it.
- 1.7 The current and anticipated future pressures are such that the Council needs to be in a position where it has in place an approved contingency plan which would then enable it to reach speedy decisions around the implementation of agreed urgent measures if the situation reaches a critical point. Those measures would enable the Council to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met and would put into place responsive plans to manage current and future demands
- 1.8 The Council is therefore seeking to establish a contingency plan to assist in dealing with the pressures detailed in the report by:
- agreeing a robust and transparent framework to support future decisions on the implementation of urgent measures;
  - agreeing potential urgent measures; and
  - proposing the use of urgent measures in accordance with the decision framework.
- 1.9 This report provides details of the proposed urgent measures to enable the Council to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met.
- 1.10 Under the proposals authority would be delegated to the Corporate Director of Adult Social Care in consultation with the Corporate Director for Governance and Community Strategy and the Executive Member for Adult Social Care to implement the urgent measures set out in that contingency plan.

## **2.0 The Care Act 2014**

- 2.1 The Care Act 2014 introduced a national framework to determine whether a person has eligible needs, and the duties and powers of the local authority to meet those needs. Local authorities *must* promote a person’s wellbeing when making any decision about that person. This means that the local authority must consider the impact of any decision they make on the individual’s wellbeing. This is the driving force behind the Care Act and it applies equally to adults in need of care and support, and their adult carers.
- 2.2 Sections 18 and 20 of the Care Act set out when a local authority must meet a person’s eligible needs. They place duties on the local authority. If the circumstances described in

the sections apply and the needs are eligible, the local authority must meet the needs in question.

- 2.3 Section 19 of the Care Act gives local authorities a power to act to meet needs, but it does not require that authorities must act. Whether or not to act is a decision for the authority itself. In particular, section 19(3) permits a local authority to meet needs which appear to it to be urgent. In this context, 'urgent' takes its everyday meaning, subject to interpretation by the courts. This is likely to be the case in many situations where services are interrupted but business failure is not the cause. The power in section 19(3) can be exercised in order to meet urgent needs without having first conducted a needs assessment, financial assessment or eligibility criteria determination.

### **3.0 Coronavirus Act 2020: Easements**

- 3.1 The Coronavirus Act 2020, was a key piece of legislation which introduced a series of powers ("Easements") to enable the Local Authority to ensure that they were able to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met.
- 3.2 The Coronavirus Act did not give authority to block, restrict or withdraw whole services, instead it enabled local authorities to make and apply person-centred decisions about who was most in need of care, and who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need were prioritised.
- 3.3 The overriding purpose of these easements was to ensure the best possible provision of care to people in exceptional circumstances.
- 3.4 The Easements took legal effect on 31 March 2020, but were only to be exercised by local authorities where this was essential in order to maintain the highest possible level of services.
- 3.5 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.
  - Local authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements.
  - Local authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions.
  - 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.
- 3.6 In exercising the Easements, Local Authorities were still required 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,;
  - make an assessment of what care needs to be provided;
  - carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing care and support, often at short notice;
  - 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;

- fulfil its duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights (ECHR).

3.7 The Easements were temporary and time limited and as such, have now expired.

3.8 The decision making framework for the use of Easements is set out at Appendix A.

#### **4.0 Proposed Potential Urgent Measures**

4.1 The current pressures on the Council are extensive and the impact of those pressures is causing concern around the ability of the Council to discharge its statutory duties. Against a context of chronic and significant challenges in recruitment and retention across the adult social care sector, the Omicron variant has overwhelmed an already depleted workforce.

4.2 Since August 2020, nationally the social care sector has experienced significant issues in recruitment and retention, as unqualified staff left the sector due to exhaustion, retirement or to move to a different sector. The Council, together with local care providers, have experienced difficulties recruiting and retaining qualified social care staff. In particular the staffing shortage has impacted disproportionately on the homecare sector at a time when the volume of referrals from hospitals to homecare exponentially increased across the North West.

4.3 The situation in terms of a lack of social care capacity is significantly worse than at the height of the first pandemic. Omicron has devastated an already stretched adult social care sector. Whilst Omicron has been recognised as a less "serious" variant in terms of the impact on life expectancy, it has also been recognised as an incredibly contagious variant and the resulting requirement to self-isolate for a minimum of a week has led to a further decreased workforce across the sector.

4.4 Care homes are attempting to maximise capacity through care staff working extended shifts, and utilising office and ancillary staff however, agency staff availability is extremely limited. Homecare agencies are doing the same, but because of their severely depleted workforce are also frequently having to prioritise daily care availability across their service users.

4.5 The current situation is such that because of the reducing and fluctuating capacity of the workforce, most care homes have closed to new admissions either because of outbreaks, infections or staff shortages and homecare agencies have begun processes to transfer care packages back to the Council. There are very limited options to secure alternative provision in home care for the delivery those care packages which are being returned to the Council.

4.6 The Council are also under pressure to continue supporting people who are ready to be discharged from hospital, so that hospitals have bed availability to treat those people with acute needs. With limited options to facilitate the transfer, this task is becoming increasingly impossible.

4.7 Additionally, the Council's ability to undertake statutory assessments in accordance with the Care Act, is becoming increasingly difficult due to the capacity of workforce who are responsible for assessing needs of care. Whilst we continue to monitor this on a daily basis, it is anticipated that the Council's capacity to both undertake assessments and to deliver full care packages is likely to be further limited and to remain seriously affected over the coming months.

- 4.8 Further, should the Council's workforce be unable to manage the demand from its residents and its partners, this understandably creates significant concerns in relation to both Safeguarding and quality concern matters which would ordinarily be identified very early on in the persons care journey.
- 4.9 The Coronavirus Act is no longer applicable and therefore, the Council can no longer use the Easements as a mechanism to deal with pressures across the social care market.
- 4.10 The situation presented by the pandemic is unpredictable and it is moving quickly. The Council has no option but to consider what steps it must take to manage the current pressures and mitigate further risks going forward.
- 4.11 Having undertaken a risk assessment it is proposed that a series of urgent measures are approved in principle to enable the Council to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met.
- 4.12 The proposed measures will enable the Council to work with providers to make difficult decisions around the prioritisation of care across the whole system and also to give providers the authority to prioritise the most urgent and necessary care tasks on a daily and immediate basis in order to deliver care to the most needy and vulnerable of our service users throughout periods of high demand and risk.
- 4.13 The proposed measures are reflective of the approach previously adopted by the Government with the introduction of easements. The Council has also reflected the previous decision making framework for using easements (see Appendix A) in decisions linked to the proposed measures.
- 4.14 The rationale for the proposed urgent measures and the process which will be followed and the criteria which must be considered prior to each measures being implemented is set out at Appendix B.
- 4.15 Use of the proposed measures will be based around continuing to prioritise those in the greatest need including those who may be at risk of harm or abuse. The Council's Ethical Care Framework will also be used to achieve this objective prior to each measure being implemented.
- 4.16 It is proposed that the measures detailed in the report will be implemented in practice by the Corporate Director of Adults Social Care in consultation with the Executive Member for Adults Social Care and the Director of Governance and Community Strategy under delegated authority:
- 4.16.1 the proposed measures shall only be implemented where essential and in all cases, will be utilised subject to the decision frameworks and governance arrangements detailed in this report;
- 4.16.2 operational decisions will be considered and approved by the Corporate Director of Adults Social Care subject to the process detailed in Appendix B being completed and the criteria detailed in Appendix B being satisfied;
- 4.16.3 in making decision regarding the implementation of any of the proposed measures, the Corporate Director of Adults Social Care shall also ensure that all decisions are made in accordance with: the delegated authorisation, consultation requirements and reporting requirements detailed in the report;

- 4.16.4 in making decision regarding the implementation of any of the proposed measures, the Corporate Director of Adults Social Care shall also have regard to the following relevant policy, process and/or guidance:
- i. the DHSC Ethical Framework for adult social care;
  - ii. the Unique Operating procedure;
  - iii. The Homecare Prioritisation Process;
  - iv. Principles of Personalisation and Co-production;
  - v. the Council's Ethical Care Framework;
  - vi. Hospital Discharge Service: Policy and Operating Model
  - vii. any other relevant guidance or practice direction which is aimed at fostering reasonable decision making

- 4.17 Implementation and the use of any of the proposed measures will be recorded and will be reported by the Corporate Director of Adults Social Care to the Executive and to Scrutiny Committee.

## **5.0 Risks and Mitigation**

- 5.1 At this stage, only the approval of the urgent measures and the decision making framework and associated criteria to be used to determine the decision to use of some or all of the urgent measures is being sought.
- 5.2 A decision whether to implement some or all of the urgent measures will be taken on a case by case basis and in accordance with the decision framework and associated criteria detail in the report and only where such a need arises.
- 5.3 The urgent measures that are proposed are both reasonable and proportionate in these unprecedented circumstances and will be supported by a robust and clearly defined decision making process which takes into account all those matters indicated above and weighs the risks of any decision to implement the urgent measures. However, it has to be acknowledged that should the proposed measures detailed in this report be approved, the Council would streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met as a priority. As a consequence, this does mean that in some cases the statutory duties under the Care Act will not be met as the Council or its providers will not be able to meet some or all of the needs which have been assessed where those needs are considered to be less urgent or acute.
- 5.4 There are predominantly three areas of concern:
- 5.4.1 The proposed measures replicate the Government's use of Easements to the Care Act 2014. The use of Easements ended in July 2021 and as such, there is no legal basis to underpin the Council's proposal to take similar steps at this time; and
- 5.4.2 There is no facility under the Care Act 2014 to exercise discretion in relation to the meeting of assessed needs. Consequently there is no lawful statutory basis to use the measures as proposed to reduce one person's care to prioritise care provision elsewhere; and
- 5.4.3 Local authorities are also under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights (ECHR). These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8.



- 5.5 In the context of section 19(3) of the Care Act, the statutory guidance provides that any service interruption should be considered on its facts and assessed by the local authority through a process of risk assessment. It is for the local authority to decide if it will act to meet a person's needs for care and support which appear to it to be urgent. In exercising this judgement the local authority must act lawfully, including taking decisions that are reasonable.
- 5.6 In terms of the risk of legal challenge, this will be very specific to the facts of any particular circumstances. If an adult with eligible needs has a pre-existing care and support plan then the local authority is obliged to meet those needs as assessed. Without a reassessment of need compliant with the provisions of the Care Act, there is no lawful basis to reduce one person's care to ensure that another has the care that they need.
- 5.7 In the event that the care provided to an adult is reduced and that adult passes away, the local authority is vulnerable to scrutiny from the Coroner's court.
- 5.8 Other avenues of challenge are Judicial Review and potential claims under the Human Rights Act 1998.
- 5.9 The consequence of such legal claims if they are successfully brought could be both financial and damaging to the reputation of the local authority.
- 5.10 The situation presented by the pandemic is unpredictable and it is moving quickly. There are very clear risks which would arise if the Council did not take steps to implement the urgent measures if it reaches the point where resources are so stretched that it is unable to assess and provide for any new cases or to maintain service provision and meet existing needs for its existing service users. The risks inherent in such a position have been considered and it is on that basis that the urgent measures proposed would be implemented in order to enable the Council to manage those risks by prioritising service provision across the service as a whole. The reality of the pressures across the social care sector dictates that the local authority has no choice but to implement the measures provided for in this report to manage the pressures.
- 5.11 The potential risk of a challenge as detailed in the report cannot be avoided but the Council can strengthen its defence by ensuring that it is able to justify the steps it is proposing and any subsequent use of proposed measures, the Council must ensure that it can evidence clear, robust decisions which have been determined using a rational, reasonable and proportionate approach.

## **6.0 Other Options**

- 6.1 The Council has no option but to agree a plan to help manage the known risks associated with insufficient resources to consistently continue delivering the commissioned care packages or to meet new and emerging demand.

## **7.0 Consultation**

- 7.1 None

## **8.0 Urgency**

- 8.1 The report is submitted to the Leader of the Council on an urgent basis.

- 8.2 A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.
- 8.3 This report should be considered as 'urgent business' and the decision exempted from the 'call-in' process for the following reason(s):-
- 8.3.1 Due to the critical position reached in regards to the Council's ability to fulfil its statutory obligations in respect of the Care Act as detailed in the report.
- 8.4 The report and urgency of the key decision have been reviewed by the Chair of the Scrutiny Committee on 7 January 2022 and has the Chair has agreed that the decision should not be delayed until the next meeting of the Executive and not subject to call-in.
- 8.6 It is proposed therefore, that the decision contained in this report is therefore deemed to be urgent and cannot be reasonably deferred. It is also proposed that the decision, based on urgency provisions, is not subject to call-in to allow the Council to administer discretionary scheme funds without any delay.

**Finance Officer Clearance** GB

**Legal Officer Clearance** JLF

#### **CORPORATE DIRECTOR'S SIGNATURE**

DIANE EATON

To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

### **Appendix A**

#### **Local Authority use of Care Act easements**

##### **Coronavirus Act 2020**

#### **Governance Framework**

The Coronavirus Act did not give authority to block, restrict or withdraw whole services. It enabled local authorities to make and apply person-centred decisions about who is most in need of care, and who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised.

It was important that any decisions made in relation to Care Act easements are informed by discussions with local partners, in particular local senior NHS leadership. It was also recommended that Health and wellbeing boards should also be informed about a decision to start operating under the easements.

Recording by local authorities was a priority to ensure accountability and provide evidence for the thought processes behind the decisions they will be making.

#### **DHSC Ethical Framework for adult social care**

Structure of decision making had to be based on the Ethical Framework for adult social care.

The Ethical Framework 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.

- **Values and Principles**

- Respect: recognising that every person and their human rights, personal choices, safety and dignity matters.
- Reasonableness: ensuring that decisions are rational, fair, practical, and grounded in appropriate processes, available evidence and a clear justification
- Minimising Harm: striving to reduce the amount of physical, psychological, social and economic harm that the outbreak might cause to individuals and communities. In turn, this involves ensuring that individual organisations and society as a whole cope with and recover from it to their best ability.
- Inclusiveness: ensuring that people are given a fair opportunity to understand situations, be included in decisions that affect them, and offer their views and challenge. In turn, decisions and actions should aim to minimise inequalities as much as possible
- Accountability: holding people, and ourselves, to account for how and which decisions are made. In turn, this requires being transparent about why decisions are made and who is responsible for making and communicating them.
- Flexibility: being responsive, able, and willing to adapt when faced with changed or new circumstances. It is vital that this principle is applied to the health and care workforce and wider sector, to facilitate agile and collaborative working.
- Proportionality: providing support that is proportional to needs and abilities of people, communities and staff, and the benefits and risks that are identified through decision-making processes.
- Community: commitment to get through the outbreak together by supporting one another and strengthening our communities to the best of our ability.

### **Principles of Personalisation and Co-production**

Alongside the framework, local authorities were advised to continue to respect the principles of personalisation and co-production in their decision making.

These principles are embodied in the following statement produced with the support of Think Local, Act Personal (TLAP):

- *I am supported to make decisions by people who see things from my point of view, with concern for what matters to me, my wellbeing and health. (Making it Real)*
- *We find ourselves in unprecedented times with citizens facing significant uncertainty. This is especially true for those of us who receive social care support and who care for people with support needs. However, the fundamental principles of personalisation and co-production underpinning the Care Act should not be removed as a result of emergency guidance and key statements set out in the Making it Real framework ought to be viewed as immovable.*
- *Working together matters now more now than ever. Genuine co-production will ensure the best possible decision-making and the best possible outcomes for both citizens and the workforce. This is critical if we are to save time and prevent costly mistakes. This will require the local authority to respond flexibly in spite of pressure to respond – at pace and scale – to increasing demand.*
- *We expect and trust that local authorities will adhere to the principle of co-production and continue to view those of us in receipt of support, or carers providing support, as equal partners. We continue to be experts in our own care and support whatever the circumstances.*
- *Now is the time to reinforce co-production, not dispense with it.*

### **Hospital Discharge Service: Policy and Operating Model**

It was advised that the use of easements should be considered alongside the policy and operating model. This makes clear that local authorities should make provision for Care Act assessments of need, financial assessments and longer-term care planning if necessary.

### **Steps before exercising the Care Act easements**

Before a Local Authority took a decision to begin exercising the Care Act easements, it was required to satisfy itself of the following:

- workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties; and
- the decision is differentiated from decisions that need to be made in response to government's guidance about social distancing; and
- to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life; and
- change resulting from such a decision should be proportionate to the circumstances in a particular local authority.

### **Decision to use easements:**

It was acknowledged that social care varies greatly across local authorities and therefore decisions to operate the easements had to be taken locally.

### **Decision making process:**

- The director of adult social services and the PSW were required to ensure that their lead member has been involved and briefed as part of this decision-making process;
- The decision had to be fully informed by discussion with the local NHS clinical commissioning group leadership; and
- The Health and Wellbeing Board had to be kept informed.

### **Decision maker:**

The Decision required the agreement of the director of adult social services in conjunction with or on the recommendation of the principal social worker (PSW).

### **Record of Decision:**

A record of the decision with evidence that was taken into account was required. It was recommended that, where possible, the record should include the following:

- 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
- the points at which this decision will be reviewed again

### **Post Decision Requirements:**

- The decision had to be communicated to all providers, service users, carers and local MPs. The accessibility of communication to service users and carers should have been considered; and
- Local authorities were required to notify the Department of Health and Social Care (DHSC) using the Care Act Easements Notification Form when:
  - they decide to start streamlining assessments and/or prioritising services under these easements
  - the use of easements changes
  - they resume full Care Act duties

This form needed to be completed and sent on each occasion to [CareActEasements@dhsc.gov.uk](mailto:CareActEasements@dhsc.gov.uk).

Information received was held and shared with CQC, the Association of Directors of Adult Social Services (ADASS), the Local Government Association (LGA) and other relevant parties.

## Decision Making Table

The use of a decision making table was advised. The table was intended to set out the decision-making processes for local authorities.

## APPENDIX B

### URGENT MEASURES DECISION MAKING FRAMEWORK

The following decision making table is based on a template previously recommended in respect of the Easements. The table below will be used to determine process requirements and document decisions made in respect of the use of some or all of the urgent measures where progression to stage 4 becomes necessary.

The Decision Framework documents the various stages of the contingency plan and the process requirements for each stage. The Decision Framework provides details of actions taken in respect of stages already utilised by the Council.

Any decision made in respect of the stages set out in the Decision Framework will be made in accordance with:

- the delegated authorisation and reporting requirements detailed in the report; and
- the consultation requirements detailed in the report; and
- the following relevant policy, procedure and/or guidance document:
  - the DHSC Ethical Framework for adult social care;
  - the Unique Operating procedure;
  - The Homecare Prioritisation Process;
  - Principles of Personalisation and Co-production
  - the Council's Ethical Care Framework;
  - Hospital Discharge Service: Policy and Operating Model ;
  - any other relevant guidance or practice direction which is aimed at fostering reasonable decision making in respect of adult social care.

## Decision Framework

Operating under the Care Act (2014)				
Stage	Urgent Measure	Process	Comments/Actions	RAG
Stage 1: Operating fully under The Care Act (2014)	Business as usual	To continue at this stage for as long as is feasible		

<p><b>Stage 2: Applying flexibilities under the Care Act (2014)</b></p>	<p><b>Decision for Individual service type to prioritise short term allocation of care and support using current flexibilities within the Care Act</b></p>	<p>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 Corporate Director of Adults Social Care, or their delegate, 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 likelihood of this being available.</p> <p>Where the Principal Social Worker is satisfied, this position can then be presented to the Corporate Director of Adults Social Care for a final decision about moving into stage 2</p> <p>It is important to note that all other services may well continue to deliver their services as business as usual</p>	
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<p><b>Operating under s.19 Care Act</b></p>				
<p><b>Stage 3: Streamlining services under the Care Act</b></p>	<p><b>Decision to streamline services based on urgency using the flexibilities of the Care Act (s.19)</b></p> <p>Section 19 of the Care Act gives local authorities a power to act to meet needs, but it does not require that authorities must act. Whether or not to act is a decision for the authority itself. In particular, section 19(3) permits a local authority to meet needs which appear to it to be urgent. In this context,</p>	<p>The Corporate Director of Adults Services, or their delegate, 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.</p> <p>If it is agreed by the Corporate Director of Adult</p>	<p>31.12.2021.</p> <ul style="list-style-type: none"> <li>❑ 30/56 Care homes closed due to COVID</li> <li>❑ Homecare Framework providers at capacity</li> <li>❑ Off Framework Homecare capacity utilised week ahead of Xmas-little capacity remaining</li> <li>❑ Forecasted hospital admissions &gt;. Surge capacity being enacted</li> </ul>	

	<p>'urgent' takes its everyday meaning, subject to interpretation by the courts. This is likely to be the case in many situations where services are interrupted but business failure is not the cause. The power in section 19(3) can be exercised in order to meet urgent needs without having first conducted a needs assessment, financial assessment or eligibility criteria determination.</p> <p>This may include, new requests for support (including transition) cease formal Care Act assessments, applications of eligibility and reviews. However, there is an expectation that Local Authorities will do everything they can to continue to meet need as was originally.</p> <p>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 formal Care Act functions and move to a position of proportionate assessment and planning, in line with the Care Act core objectives.</p>	<p>Social Care and the Principal Social Worker is satisfied that the Care Act escalation level's need to be enacted, the Corporate Director of Adult Social Care, in consultation with the Corporate Director for Governance and Community Strategy and the Executive Member for Adults Social Care, shall make the final decision. The decision should also consider and be informed by a conversation with the local NHS Leadership.</p>	<ul style="list-style-type: none"> <li>❑ Elective procedures highly likely to be stepped down</li> <li>❑ Increased levels of COVID related absences (across H&amp;SC system) <ul style="list-style-type: none"> <li>• We are prioritising Home care where we can source</li> <li>• We have written to all residents in receipt of homecare explaining how their care (where appropriate to do so ) may need to be delivered 'flexibly' in terms of times of visits</li> <li>• We are utilising the VCFSE to meet non regulated associated care needs</li> <li>• Due to increasing levels of Social Work absence (COVID), incoming referrals are being prioritised (high risk &amp; safeguarding)</li> <li>• HR Resourcing hub prioritising volunteers to support care providers</li> <li>• Seven day working across Urgent Care community services</li> <li>• We continue to operate under the Care Act, but are monitoring activity daily</li> <li>• Ethical Framework template created to ensure no breaches of human rights should stage 4 be enacted.</li> </ul> </li> </ul>	
<p><b>Stage 4: Prioritisation under Care Act</b></p>	<p><b>Whole system prioritising care and support</b></p> <p><b>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.</b></p>	<p>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.</p> <p>The Corporate Director of Adult Social Care, or their</p>		

		<p>delegate, 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.</p> <p>If a Local Authority decides it may need to move into stage 4, the Corporate Director of Adult Social Services should call an Emergency Decision Meeting with the Corporate Director of Governance and Community Strategy and the executive Member for Adult Social Care, where a decision about whether and how to prioritise care across ASC will need to be made.</p> <p>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.</p> <p>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</p>		
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