

Southend-on-Sea Borough Council

Report of Executive Director (Adults and Communities)

to

Cabinet

on

28th July 2020

Report prepared by: Sarah Baker, Interim Director of
Communities

Agenda
Item No.

12

Covid-19: Implementation of Care Act Easements under the Coronavirus Act 2020

Cabinet Member: Councillor Trevor Harp

A Part 1 (Public Agenda Item)

1 Purpose of Report

- 1.1 To present the framework that sets out how the Council would implement the provision set out within the new Care Act easements, created under the Coronavirus Act 2020. This far reaching legislation has been enacted in response to the challenges arising from COVID -19. The Government has also published a range of guidance to support this unprecedented situation
- 1.2 To seek approval for delegated authority to the Executive Director of Adults and Communities in consultation with the Lead Member to implement if required the temporary changes to the Council's Care Act duties. Any such decision would also involve engagement the Chief Executive, Leader of the Council and the Chair of People Scrutiny.
- 1.3 The easements took legal effect on 31 March 2020 and will be in place for a period of two years (reviewed in Parliament every six months); they should only be implemented by local authorities where it is essential in order to maintain the highest possible level of services during the COVID-19 outbreak.
- 1.4 In line with the government's recommendation our use of the easements would be as a last resort, would be time-limited and used as narrowly as possible to ensure the best possible care for people during this exceptional period. The framework has been produced from the national guidance and Ethical Framework and all decisions made will be in line with this.

2 Recommendations

- 2.1 That Cabinet approve the Care Act Easements framework that sets out how the Council would implement the provision set out within the new Care Act easements, created under the Coronavirus Act 2020.
- 2.2 Following engagement with the Chief Executive ,the Leader of the Council and the Chair of People Scrutiny, that authority is delegated to the Executive Director of Adults and Communities in consultation with the Cabinet Member for Adult Social Care and Health to implement the Care Act Easements framework . This would be in line with Government guidance and as referenced in the framework all or any powers provided by the Care Act Easements under the Coronavirus Act 2020 in line with the timescales outlined in the framework.

3. Background

- 3.1 The role of prevention is a priority for Adult Social Care and intrinsically links to the Safe and Well Southend 2050 theme by supporting the aspiration that people are remaining well enough to enjoy fulfilling lives.
- 3.2 Adult social care also provides care and support for people who need it because of age, illness, disability or other circumstances. It ranges from help with essential daily activities, such as eating and washing, to participation in all aspects of life, such as work or socialising. Social care can be provided in people's homes, to enable independent living or help with recovery after illness and, care in a person's home is no longer an option, provide a safe space for people to live in supported housing, residential or nursing homes.
- 3.3 During COVID -19, there are new demands on the existing health and social care system. For example, increasing requirements around swift hospital discharge with a need for the creation of extra capacity in care homes and domiciliary care, and in some situations increased complexity of need for services to manage.
- 3.4 Necessary requirements around social distancing are leading to social isolation and this is especially challenging for those with dementia, learning disabilities, mental health problems or autism and is also very difficult for their carers. Some services, such as day opportunities, have had to be stopped in their current form, to comply with social distancing. In addition, family carers may become ill, or their loved one may become ill with Covid-19 and require more support.
- 3.5 There may be challenges to the nursing and social care workforce impacting upon nursing and residential care homes, the provision of domiciliary care and social work capacity due to the impact of the illness itself, as well as the essential need to protect staff and other residents from infection.

- 3.6 The framework sets out how the Council would implement the provision set out within the new Care Act easements, created under the Coronavirus Act 2020, to ensure the best possible care for people during this exceptional period. The framework has been produced from the national guidance and Ethical Framework and all decisions made will be in line with this.
- 3.7 The Ethical Framework is there to ensure that ample consideration is given to a series of ethical values and principles when possibly making challenging decisions that could have a significant impact on people's lives.
- 3.8 Alongside ethical considerations, every decision would require consideration of individual wellbeing, overall public good and the resources that are available. The values and principles would serve as a starting point to guide decision-making, supported by the views of lead professionals, collaboration across disciplines and organisations, and the extent of information available in each particular circumstance.
- 3.9 The aim of the framework is to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met were the demand for support to outstrip the ability to meet all currently identified needs. The powers in the Coronavirus Act enable the Council to prioritise more effectively where necessary than would be possible under the Care Act 2014 prior to its amendment. To not prepare for the possibility of such eventualities could arguably leave people at significant risk, so it is important to plan to carefully use easements if needed.
- 3.10 The changes fall into four key categories, each applicable for the period the powers are in force:
- The Council would not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements and would instead complete a proportionate assessment which includes a statement of Adult Social Care operating under Care Act Easements.
 - The Council would not have to carry out financial assessments in compliance with pre-amendment Care Act requirements, but would have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessments.
 - The Council would not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They would however still be expected to carry out proportionate, person-centred care planning which provided sufficient information to all concerned, particularly those providing care and support, often at short notice.

- 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. The Council would still be expected to take all reasonable steps to continue to meet needs as now but in the event that they are unable to do so, the powers would enable them to prioritise the most pressing needs, and to temporarily delay or reduce other care provision.

3.11 The use of the easements would be as a last resort; they would be time-limited and used as narrowly as possible to minimise any long term impact to people's autonomy and choice. Were the enactment of easements to be required, there is the potential that people would be likely to have reduced choice in how their needs would be met e.g. because of reduced market capacity/staff availability/reduced choice of accommodation for people. Less detailed assessments may result in less clear care planning information for support providers, and consequently for potentially poor support provision. Increased pressure on carers, as staff would not be carrying out carer assessments. A delay in completing financial assessments could lead to a build-up of client contributions which some clients might find difficult to repay or negatively impact benefit awards, which could have long-term consequences for entitlement to benefits such as Housing Benefit, etc.

3.12 The framework explains that the main areas that might trigger requirements for temporary changes to statutory duties under the Care Act 2014 include new or increased social care demand, inadequate numbers of social workers, inadequate numbers of direct care staff and/ or inadequate nursing or residential care capacity.

3.13 The Council would only consider the use of easements as a last resort and a number of measures are already in place in the relevant areas to mitigate the necessity to enact them, including:

- Making regular calls to people in the shielded categories and providing advice and support as well as ensuring they have access to food, medication and other essentials so that they do not need to leave their homes.
- Creating the conditions so that the majority of social care staff can work from home and carry out assessments virtually.
- Close monitoring of social care demand and financial and practical support to support providers with managing capacity.
- Robust support for care providers around infection control by supporting with the provision of relevant PPE, offering robust infection

protection control advice and maintaining regular contact and communication channels.

3.14 If there was no alternative than to use the easements, it would not be a blanket implementation. The Council would adopt a tiered approach with reference to the guidance and escalation would be as part of a robust care governance process. It would only be in place for the minimum time necessary with the continued aim of returning to Care Act 2014 compliance as soon as possible.

3.15 Guidance issued by the Department of Health and Social Care sets out actions that should be taken before considering and when using the easements. In particular it is clear that use of the easements should be carefully considered and that Care Act 2014 duties should continue to be met for as long as possible.

4. Other Options

4.1 The other option is to do nothing, however if any of the trigger points were reached and the decision was not to enact the necessary easements then it is likely to result in urgent or acute needs not being met, potentially risking life.

5. Reasons for Recommendations

5.1 To ensure that the Council have an agreed framework that can be implemented if challenges resulting from covid-19 reach a critical level. Having a transparent process, that is underpinned by the Ethical Framework, with a clear rationale for any recommended actions will enable us to continue to safeguard vulnerable adults.

6. Corporate Implications

6.1 Contribution to the Southend 2050 Road Map

Our focus is on continuing to support people and to be effective at delivering the Southend 2050 ambitions detailed in the table below:

Pride & Joy	<ul style="list-style-type: none"> Local provision for local people A care sector that makes a difference for Southenders
Safe & Well	<ul style="list-style-type: none"> People in all parts of the borough feel safe and secure at all times We are all effective at protecting and improving the quality of life for the most vulnerable in our community.
Active & Involved	<ul style="list-style-type: none"> The benefits of community connection are evident as more people come together to help support each other. People from different backgrounds are valued and get on well together.

Opportunity & Prosperity	<ul style="list-style-type: none"> • A trained and supported social care workforce • Southend is a place that is renowned for its creative industries
Connected & Smart	<ul style="list-style-type: none"> • The use of data to support decision making and planning in social care • The use of technology to increase independence and reduce the need for care and support

6.2 Financial Implications

On 19 March 2020, the Government announced £1.6 billion of additional funding for local government to help them respond to Coronavirus pressures across all the services they deliver. This includes increasing support for the adult social care workforce and for services helping the most vulnerable, including homeless people. The Council's allocation of this funding (across all its services) was £5.4m. A further £1.6 billion was announced on 18 April, taking the total for the sector to £3.2 billion. The Council's share of this second tranche of funding has now been confirmed as £5m. This funding is being used to cover the additional costs incurred by the Council due to Coronavirus.

The Care Act Easements guidance is to be read alongside the COVID-19 Hospital Discharge Service Requirements. This makes it clear that Local Authorities do not have to undertake financial and eligibility assessments for people who are being discharged as part of the enhanced hospital discharge service.

The Government is fully funding the cost of new or extended out-of-hospital health and social care support packages for people being discharged from hospital or who would otherwise be admitted into it for a limited time, to enable quick and safe discharge and more generally reduce pressure on acute services.

If the Council were to implement the easements, a delay in completing financial assessments could lead to a build-up of client contributions which some people might find difficult to repay or significantly affect the award and receipt of a range of means-tested benefits

6.3 Legal Implications

The provisions of the Coronavirus Act 2020 relating to adult social care as set out in Schedule 12 of this Act give local authorities power to decide not to comply with certain legal duties under the Care Act 2014 for the period in which the relevant new provisions are in force. For example, local authorities can therefore decide not to carry out the usual assessments, not to determine

usual eligibility, not to make usual provision to meet eligible needs, not to prepare care and support plans and not to agree to arrangements for top up payments.

The Council will strive to meet its existing Care Act duties for as long as it can and by so doing will be following government guidance. Any decision to exercise the Care Act easements in the Coronavirus Act 2020 will also be in line with government guidance.

6.4 People Implications

The Council's overall, and individual service, business continuity plans were put into effect and adapted to circumstances, with staff encouraged to work from home, following Government guidance from 16 March.

The Council's social work teams have continued to work remotely, supporting existing and new people requiring support and proactively contacting people known to have high levels of vulnerability including shielded groups. Locality teams are responding to urgent need, maintaining all statutory functions such as Mental Health Act assessments and safeguarding work, carrying out functions remotely wherever possible.

6.5 Property Implications

None

6.6 Consultation

For reasons of urgency, formal consultation has not taken place to date. However, should it become necessary for the Care Act easements to be used, the Executive Director of Adult Social Care and Communities would engage with relevant senior members, officers, partners and (where possible) user/carer groups. Communication would take place as appropriate to inform any affected service users and carers, providers, partners. A Communications Plan is attached (Appendix 1).

6.7 Equalities and Diversity Implications

The equality and diversity implications are implicitly addressed in the Ethical Framework, (Appendix 2). We have linked into the Equality Impact Assessment which has been undertaken as part of the Council's response to Covid-19

6.8 Risk Assessment

Appropriate risk assessments would be carried out if there was a necessity to enact any of the easements.

6.9 Value for Money

None specific

6.10 Community Safety Implications

Safeguarding adults remains a statutory duty of local authorities to keep everyone safe from abuse or neglect. The Coronavirus Act 2020 does not affect the safeguarding protections in the Care Act.

6.11 Environmental Impact

None

7. **Background Papers**

Framework for implementation of Care Act Easements

8. **Appendices**

Appendix 1 – Communications Plan

Appendix 2 – Ethical Framework

Appendix 1

Communications Plan: Adult social care easement

Strategy

Due to demand on social services during the Coronavirus pandemic and social care becoming the new frontline of care, we have to protect our staff and service to ensure the ongoing quality of care we provide. This document outlines the communications plan should we implement 'Care Act easements', designed to ease pressure by reducing and streamlining aspects of the service. The easements will only be introduced should the service come under severe and critical pressure and specific baseline points have been met, as determined by senior management.

Communications objectives:

- a. To inform stakeholders of changes to processes and procedures, only if and when, easement is introduced.

2. Audiences:

- a. Care providers, carers and clients
- b. Internal - Councillors and social workers
- c. Stakeholders - NHS, voluntary sector, advocacy etc.
- d. Wider public, media etc.

Key messages:

Message funnel – all audiences:

- a. What is easement?
- b. Why are we introducing it?
- c. Who does it apply to?
- d. How will it affect our work/my loved one/residents?
- e. When is it happening?
- f. Where does it apply?
- g. When can we expect it to be lifted?
- h. Reassurance of continuing duty of care
- i. Emphasis that this is to ultimately improve and speed up the service we provide to those most in need.

3. Channels:

Email, letter, councillor briefing, press release, social media, website.

Target Market	Channel	Detail	Date
A	Email / letter	Wording sign off required and agreement of who the letter should come from (Ali, Tandra, Sarah, Cllr Harp or Cllr Gilbert)	Once easement date is confirmed
B	Councillor briefing (email), email to key staff, manager briefings	Wording based on comms to audience A.	Day before easement begins
C	Email	As above	As above
D	Press release	Based on above with quote from Cllr Harp	Day easement begins
	Update website		Day easement begins
	Social media posts		When press release is issued.

Appendix 2

GOV.UK

1. Home (<https://www.gov.uk/>)
2. COVID-19: ethical framework for adult social care (<https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care>)
1. Department of Health & Social Care (<https://www.gov.uk/government/organisations/department-of-health-and-social-care>)

Guidance

Responding to COVID-19: the ethical framework for adult social care

Published 19 March 2020

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Introduction

The current novel coronavirus (COVID-19) outbreak, which began in December 2019, will have major implications for health and care services in the UK.

As set out in the coronavirus action plan (<https://www.gov.uk/government/publications/coronavirus-action-plan>), published on 3 March 2020, the UK's health and social care systems have planned extensively over the years for a pandemic and are well prepared to offer substantial protection to the public. Of course, the exact response to COVID-19 will be tailored to the nature, scale and location of the threat as our understanding of this develops.

Local authorities and the wider health and care workforce are faced with difficult decisions every day. However, planning for and responding to COVID-19 as it develops will undoubtedly require making difficult decisions under new and exceptional pressures with limited time, resources or information.

These decisions could be personal, relating to our families, carers and communities, or have wider impacts on the organisation and delivery of our health and care services. Decisions will need to be made in accordance with the law and official guidance issued and applicable at the time, and while meeting statutory duties and professional responsibilities.

This framework intends to provide support to ongoing response planning and decision-making to ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults.

Recognising increasing pressures and expected demand, it might become necessary to make challenging decisions on how to redirect resources where they are most needed and to prioritise individual care needs. This framework intends to serve as a guide for these types of decisions and reinforce that consideration of any potential harm that might be suffered, and the needs of all individuals, are always central to decision-making.

Equal concern and respect should be given to all individuals, their families and carers, and communities, as well as the professionals and volunteers that we will be relying on to ensure the delivery of our services and ambitions.

As the outbreak affects society as a whole, everyone will have their role to play to support the ongoing and future response. It is vital that professionals, organisations and public agencies work together at local and national level, and that planning and response activities at national, regional and local level are well-coordinated. Appropriate records must be kept of which decisions are taken and their justifications to both ensure accountability and to share learning with others during and as the outbreak develops.

This document has been adapted and refreshed from the ethical framework first developed by the Committee on Ethical Aspects of Pandemic Influenza in 2007, which was later revised by the Department of Health and Social Care (DHSC) in 2017.

How to use the framework

This framework is aimed at planners and strategic policy makers at local, regional and national level to support response planning and organisation of adult social care during and as COVID-19 develops. It also aims to support the work of professionals and others in the health and social care workforce who are developing policies and responding to the outbreak, in line with their own professional codes of conduct and regulations.

These principles can also be applied more widely in the social care sector.

Social care is a locally led and delivered service built on a detailed understanding of individuals and their families, communities and cultures. Social workers, occupational therapists and nurses form the core professional group and have clear responsibilities and accountabilities to their own professional codes and guidelines.

Local professional leaders, such as principal social workers and principal occupational therapists, will be key in ensuring this framework is applied and understood. As such, the skills of these professionals should be used to help develop and review locally agreed processes.

Alongside ethical considerations, every decision will require consideration of individual wellbeing, overall public good and the resources that are available. The values and principles should serve as a starting point to guide decision-making, supported by the views of lead professionals, collaboration across disciplines and organisations, and the extent of information available in each particular circumstance.

The ethical values and principles are equally relevant to those in need of social care who may face increased vulnerability, those who may become in need of social care, and the health and social care workforce who may face new and unexpected burdens when making difficult decisions and providing care and support during and as COVID-19 develops.

It might be useful to use the framework as a checklist to ensure ethical considerations are taken in to account, however, the values and principles described in this document are not exhaustive. When implementing the ethical values and principles in urgent and uncertain circumstances, you may encounter tension between them which will require a judgement to be made on the extent that a particular value or principle can be applied in the context of each particular decision.

In all instances, respect and reasonableness should be used as the fundamental, underpinning principles which guide planning and support judgements.

The values and principles

This section outlines each ethical value and principle and associated actions and best practice when considering and applying them. These should be considered alongside professional codes of conduct and the most recent official guidance and legislation where these apply.

The principles are numbered for ease of reference but are not ranked in order of significance or exhaustive. There are no absolute answers to making the correct or most ethical decisions.

Where resources are constrained and there are surges in demand, it may not be feasible to consider all the principles or the actions below them. Each principle must be considered to the extent possible in the context of each circumstance with appropriate risk management and considerations of individual wellbeing, overall public good and available information and resources.

1. Respect

This principle is defined as recognising that every person and their human rights, personal choices, safety and dignity matters.

- To ensure people are treated with respect, those making decisions should:
- provide people with the opportunity to express their views on matters that affect their care, support and treatment
- respect people's personal choices as much as possible, while considering and communicating implications for the present and future
- keep people as informed as possible of what is happening or what is expected to happen in any given circumstance
- where a person may lack capacity (as defined in the [Mental Capacity Act](#)), ensure that a person's best interests and support needs are considered by those who are responsible or have relevant legal authority to decide on their behalf
- strive to support people to get what they are entitled to, subject to available resources, ensuring that there is a fair judgement and clear justification for any decisions made on prioritisation

2. Reasonableness

This principle is defined as ensuring that decisions are rational, fair, practical, and grounded in appropriate processes, available evidence and a clear justification.

When considering how reasonable a decision is, those making decisions should:

- ensure the decision made is practical with a reasonable chance of working
- base decisions on the evidence and information that is available at the time, being conscious of known risks and benefits that might be experienced
- consider alternative options and ways of thinking, being conscious of diverse views from cultures and communities
- use a clear, fair decision-making process which is appropriate for the time and context a decision must be made in, and allows for contributions to be considered seriously

This principle should be considered alongside relevant equalities-related legal and policy frameworks. Although resources may become stretched, it should be upheld that people with comparable needs should have the same opportunity to have those needs met.

3. Minimising harm

This principle is defined as 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.

It's important that those responsible strive to:

- acknowledge and communicate that everyone has a role to play in minimising spread, for example by practising thorough hand-washing or social distancing
- minimise the risk of complications in the event that someone is unwell
- provide regular and accurate updates within communities and organisations
- share learning from local, national and global experiences about the best way to treat and respond to the outbreak as understanding of COVID-19 develops
- enable care workers and volunteers to make informed decisions which support vulnerable people

4. Inclusiveness

This principle is defined as 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.

To ensure inclusiveness to the extent possible, those making decisions should:

- involve people in aspects of planning that affect them, their care and treatment, and their communities
- involve families and carers in aspects of planning that affect them and the individual who they care for
- ensure that no particular person or group is excluded from becoming involved
- consider any disproportionate impacts of a decision on particular people or groups
- provide appropriate communications to all involved, using the range of communication methods and formats needed to reach different people and communities
- be transparent and have a clear justification when it is decided to treat a person or group in a different manner than others, that which shows why it is fair to do so

Where appropriate, the above should be considered alongside relevant equalities-related legal and policy frameworks that will inform inclusive decision-making by ensuring that specific barriers to service use are minimised for those who may be or become disadvantaged as the outbreak develops.

5. Accountability

This principle is defined as 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.

Those responsible must be accountable for their decisions and actions by:

- acting on and delivering the outcomes required by their responsibilities and duties to individuals, their families and carers, and staff
- adhering to official guidance, statutory duties, and professional regulations at the time
- being transparent about how and which decisions need to be made and on what basis
- being prepared to justify which decisions are made and why, ensuring that appropriate records are being kept
- supporting others to take responsibility for their decisions and actions

Within organisations, this will also entail:

- continuing to carry out professional roles and responsibilities unless it is deemed reasonable not to do so
- providing an environment in which staff can work safely, effectively and collaboratively, which protects their health and wellbeing as the outbreak develops
- providing appropriate guidance and support to staff who may be asked to work outside of their normal area of expertise or be unable to carry out some of their daily activities
- having locally-agreed processes in place to handle ethical challenges during and in the aftermath of the outbreak

6. Flexibility

This principle is defined as 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.

To ensure flexibility, those making decisions should be prepared to:

- respond and adapt to changes as and when they occur, for example in the event of new information arising or changed levels of demand
- ensure that plans and policy have room for flexibility and innovation where necessary
- provide people with as much opportunity as possible to challenge decisions that affect them in the time that is available
- ensure that the health and care workforce is supported to work collaboratively across disciplines and organisations, as agile and resilient as possible
- review organisational practices, standard approaches and contractual arrangements that may obstruct these ambitions

7. Proportionality

This principle is defined as 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.

When considering proportionality, those responsible should:

- assist people with care and support needs to the extent possible
- act on statutory or special responsibilities, while noting any duties that might be amended as the outbreak develops
- provide support for those who have extra or new responsibilities to care for others
- provide support for those who are asked to take increased risks or face increased burdens, while attempting to minimise these as far as possible
- provide appropriate support and communications to staff who may experience unexpected or new pressures

8. Community

This principle is defined as a commitment to get through the outbreak together by supporting one another and strengthening our communities to the best of our ability.

Everyone involved will have a role to play in the response to the outbreak and will be affected in one way or another, and therefore should:

- work with and support one another to plan for, respond to, and cope with the outbreak
- support our networks and communities to strengthen their response and meet needs that arise, for example by helping and caring for neighbours, friends and family
- be conscious of own behaviour and decisions, and how this may impact on others
- share learning from own experiences that may help others