

**Social Care and Health
Overview and Scrutiny Committee**

**Agenda
Item No.**

11th April 2019

XX

HSCSC Statutory Services

Ward(s) All

Portfolios: Cllr Rose Martin, Adult Social Care

1. Executive Summary:

- 1.1 Walsall Council has an extremely wide range of statutory duties and functions, which are aimed at delivering the health and wellbeing of citizens or individuals resident in the borough. The responsibility of delivering these duties are usually delegated to the Director of Adult Social Care (DASS).
- 1.2 The statutory duties often place the responsibility of delivery with the local authority and councils but these can often only be delivered in partnership with other statutory and non-statutory organisations. In this sense Walsall Council like many councils are held to account not simply on the delivery of services to individuals but the successful partnerships and relationships within and between many communities and organisations including the voluntary sector; health systems; the business community; the Police; the Fire Service; religious communities and the public.

2. Reason for scrutiny:

- 2.1 The committee called for a report on the statutory functions of Adult Social Care, following on from the discussions concerning the closure of the Community Alarm Service; the operation of which was not a statutory function of the Council. Members subsequently asked for clarification of the statutory functions of Adult Social Care and an update on how social care is performing.

3. Recommendations:

That: The committee note the contents of the report

4. Background papers:

- 4.1 Appendix 1 details legislation that contains the main statutory responsibilities.

4.2 A presentation describing the activities and performance of Social Care in Walsall will be presented on the day of the meeting.

5. Introduction:

5.1 Adult Social Care legislation led services are heavily dependent on strategic system leadership, professional decision making, public engagement and partnership, accompanied by exceptional resource management.

5.2 The current financial environment of budget reductions at a time of significant demographic change with increased need and higher expectations, present challenges of a magnitude of which has not previously been faced in Adult Social Care. Additionally, major change is underway in relation to the integration of health and social care to deliver sustainable systems to meet the needs of an increasing population of older people and people with disabilities and extremely complex needs.

5.3 The importance of professional adult social services leadership cannot be underestimated. The knowledge and skill of adult social care leaders is a significant feature in the successful commissioning and delivery of sustainable, high quality care services. That leadership contributes to the wellbeing of the population; the avoidance of serious harm to individuals, the avoidance of legal or financial challenge, that resources are used as judiciously as possible and that the care market is stimulated and of sufficient quality. The sustainability of social care, social work and the social model is essential to the sustainability of the NHS.

5.4 There is a requirement that each local authority appoints a Director of Adult Social Services to ensure the above. An outline of the key articles of legislation that the role is responsible for are attached as Appendix 1.

6. Relevant Information:

6.1 One of the main articles of legislation affecting practice within Adult Social Care at is the Care Act 2014. The Care Act sought to bring together various pieces of legislation into one legislative article covering the provision of Adult Social Care across England. One of the drivers for this was to ensure consistent practice across the country, whilst ensuring services focus on improving the wellbeing of the community and ensuring that service users and their carers have their voices heard. One aim being that they have the ability to access services that meet their needs in a way that supports community integration, maximises the use of community based resources, and where possible and appropriate work in partnership to integrate services at the point of delivery to ensure smooth transition of effective care.

6.2 This focus on wellbeing and community was the key driver for the development of our Social Work Locality Teams. These teams were established to work alongside community based NHS services and work

around GP practice areas to ensure early identification of people whose needs would/could otherwise escalate to the point they may require acute service provision. The primary aim being, that early intervention at a lower level will not only reduce the need for higher cost escalated care services, but will also promote the growth and development and ultimately closer working with community based supports. This in turn will have a more positive future impact on wellbeing, thereby adopting an approach that focussed on prevention of escalating care needs and local community based support which aim to keep people at home and independent for as long as possible.

- 6.3 A number of duties were incorporated within the Care Act, such as the duty to provide Advice and Information about social care and alternative provision, including sign posting to support services at the time of need, or when care needs may be escalating/developing. Within the locality model, we have established an Access Team which picks up all initial enquiries and provides advice, guidance and support to people in need of early advice or intervention at a low level.
- 6.4 The Care Act strengthened duties in respect of Carers rights to have their needs assessed separately from any service user, with a view to supporting carers to provide care within a supportive system, where they can access services and receive support to meet their needs, which in turn could enable them to provide informal care and support longer and with assistance, whilst recognising the impact the caring role can have on individuals and their families.
- 6.5 The Care Act also placed specific duties on the Local Authority, such as the requirements to establish a Safeguarding Adult Board to strengthen the partnership approach to safeguarding adults and to undertake Safeguarding Adult Reviews.
- 6.6 The Care Act 2014 states that Safeguarding Adult Boards (SABs) must arrange a Safeguarding Adult Review (SAR) when an adult in its area dies as a result of abuse or neglect, whether known or suspected. The overall purpose of a Review is to promote learning. Lessons learnt are shared to maximise the opportunity to better safeguard adults with care and support needs, who are or may be at risk of abuse or neglect.
- 6.7 A local authority must act when it has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident)
 - has needs for care and support
 - is experiencing or at risk of abuse or neglect
 - as a result of those needs is unable to protect her/himself against the abuse or neglect or the risk of it (Care Act 2014 Section 42)
- 6.8 There are a wide range of duties relating to Market Shaping, and monitoring care quality (based on duty to protect people with care needs from abuse and neglect) of the external provider market. Moreover, there is a requirement to ensure that such services are financially viable and a duty placed on the local authority to work with them in order to prevent market failure.

- 6.9 Given the number of providers within the Council area, this duty can be particularly challenging within our existing resource. As such, we are in the process of working with partners to develop a model that can provide quality assurance/quality monitoring within the market place.
- 6.10 Another piece of legislation that impacts heavily on Adult Social Care is the Mental Health Act (1983 amended 2007) This Act sets out a wide range of duties and functions for the council; for example, we have a duty to ensure that there are approved mental health professionals in each area able to undertake relevant functions under the Mental Health Act. We ensure that an approved mental health professional considers patients' cases where necessary, to decide if steps need to be taken to detain the patient in hospital for their own health or safety, or to protect other people, or to make them subject to guardianship.
- 6.11 Historically, these services were delivered through our S.75 partnership agreement with the Dudley Walsall Mental Health Trust. However, over recent years, the number of Approved Mental Health Practitioners (AMHP) to deliver the service had reduced within the Walsall area, to the extent that it relied heavily on the use of external agency staff to bring some stability. Since withdrawing from the partnership, the Directorate has worked hard to recruit sufficient numbers of suitably qualified AMHPs to undertake the task. We have recently establish a permanent 24/7 AMHP hub model which can respond to requests at short notice. Furthermore, we have begun to recruit and train AMHPs to work within our locality teams, to ensure that access to high quality specialist mental health practice is available across the borough.

Finally recent legislation passed in 2005 referred to as the Mental Capacity Act dramatically increased the workload of social workers. The underlying philosophy of the Mental Capacity Act is to ensure that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves is made in their best interests. As a consequence much time is spent in establishing whether an individual has 'mental capacity' at a point in time (decisions are time and subject specific) and as a consequence whether social workers as a Best Interest Assessor should complete a Deprivation of Liberty.

7. Conclusion

- 7.1 As outlined in the background papers, there is an extremely wide range of legislation that sets out our statutory duties, responsibilities and requirements. It is important that the directorate evolve to meet the demands of new legislation. The current focus on wellbeing sits at the heart of adult social care and Social Work practice, however it requires the whole Council and our partners to work together to improve the life chances and aspirations of our citizens.
- 7.2 As stated in the introductory section, the oversight of this, is a key function of the Health and Social Care Scrutiny and Oversight Committee. The

recent developments within our locality teams, specialist mental health hub, and our work with partners on the Walsall Together programme and the Walsall Proud programme all share that common theme, which is underpinned by the key principles of the Care Act 2014.

Contact Officer:

Carl Griffiths
Head of Community Care – Partnership
 **01922 650563**
Carl.Griffiths@walsall.gov.uk

Appendix One

Key responsibilities for Directors of Adult Social Services (DASS):

The DASS has responsibilities for professional leadership and operational delivery of Adult Social Care, including for people when they are most disadvantaged and vulnerable, and their families and carers.

The following legislation shapes the role of the DASS and responsibilities of Adult Social Care:-

- The Care Act 2014
- The Mental Capacity Act 2005 and Deprivation of Liberty Safeguards
- The Mental Health Act 1983 (amended 2007)
- The Human Rights Act 1998
- The Domestic Violence, Crime and Victims Act 2004 and subsequent legislation relating to Domestic Violence Protection Notices and Orders, the criminal offence of Coercive and Controlling Behaviour, Modern Slavery and Forced Marriages.

Specific duties under the Care Act 2014

Under the Care Act 2014, local authorities have to make sure that people who live in their areas:

- Receive services that prevent their care needs from becoming more serious, or delay the impact of their needs. This involves signposting people to any existing community resources, facilities and assets to help prevent their needs from escalating further.
- Can get the information and advice they need to make good decisions about care and support. Local authorities must establish and maintain an information and advice service. They must provide this to everyone in the area not just people who are entitled to care and support from the council.
- Have a range of provision of high quality, appropriate services to choose from

When local authorities commission services they need to ensure they facilitate a diverse, vibrant and sustainable market for care and support services that benefits the whole population.

The Care Act 2014 sets out in one place, local authorities' duties in relation to assessing people's needs and their eligibility for publicly funded care and support.

Under section 9 Care Act 2014

Assessment of an adult's needs for care and support

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
 - (a) whether the adult does have needs for care and support, and

(b) if the adult does, what those needs are

In summary local authorities must:-

- Carry out an assessment of anyone who appears to require care and support, regardless of their likely eligibility for state-funded care
- Focus the assessment on the person's needs and how they impact on their wellbeing, and the outcomes they want to achieve
- Involve the person in the assessment and, where appropriate, their carer or someone else they nominate
- Provide access to an independent advocate to support the person's involvement in the assessment if required
- Consider other things besides care services that can contribute to the desired outcomes (e.g. preventive services, community support)
- Use the national minimum threshold to judge eligibility for publicly funded care and support.

Under section 10 Care Act 2014

Assessment of a carer's needs for support

(1) Where it appears to a local authority that a carer may have needs for support (whether currently or in the future), the authority must assess—

(a) whether the carer does have needs for support (or is likely to do so in the future), and

(b) if the carer does, what those needs are (or are likely to be in the future)

Many people provide unpaid care and support to an adult, family member or friend either in their own homes or somewhere else. They will be entitled to a carer's assessment and may be able to get help and support to carry on caring and look after their own wellbeing.

Under section 67 Care Act 2014

Involvement in assessments, plans etc.

(1) This section applies where a local authority is required by a relevant provision to involve an individual in its exercise of a function.

(2) The authority must, if the condition in subsection (4) is met, arrange for a person who is independent of the authority (an "independent advocate") to be available to represent and support the individual for the purpose of facilitating the individual's involvement; but see subsection (5).

Under section 68 Care Act 2014

Safeguarding enquiries and reviews

(1) This section applies where there is to be—

- (a) an enquiry under section 42(2),
- (b) a review under section 44(1) of a case in which condition 2 in section 44(3) is met or a review under section 44(4).

(2) The relevant local authority must, if the condition in subsection (3) is met, arrange for a person who is independent of the authority (an “independent advocate”) to be available to represent and support the adult to whose case the enquiry or review relates for the purpose of facilitating his or her involvement in the enquiry or review; but see subsections (4) and (6).

Some people have substantial difficulty in engaging with local authority care and support processes and don't have someone appropriate to support and represent them, for example, family or friends. In these instances the local authority must arrange for an independent advocate to help people communicate their views, wishes and feelings. Once an assessment has been made there is a duty on local authorities to produce care and support plans and to offer a personal budget. The personal budget gives the person clear information regarding the money that has been allocated to meet the needs identified in the assessment and recorded in their support plan. The Act also sets out a duty to review Care and Support plans to ensure they continue to meet the needs of the person.

Under section 42 Care Act 2014

Enquiry by local authority

(1) This section applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there)—

- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
- (b) is experiencing, or is at risk of, abuse or neglect, and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

Local authorities must make enquiries if they believe an adult is, or is at risk of, being abused or neglected. They must also set up a safeguarding adults board including key stakeholders. This board will carry out safeguarding adults reviews when people die as a result of neglect or abuse and there's a concern that the local authority, or its partners, could have done more.

Specific duties under the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards

The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:

- By empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process

- By allowing people to plan ahead for a time in the future when they might lack the capacity, for any number

All professionals have a duty to comply with the Code of Practice. It also provides support and guidance for less formal carers.

The Act's five statutory principles are the benchmark and must underpin all acts carried out and decisions taken in relation to the Act.

Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity – follow the two-stage test.

The MCA is designed to empower those in health and social care to assess capacity themselves, rather than rely on expert testing – good professional training is key. The MCA code of practice explains how the MCA works on a day-to-day basis and provides guidance to those working with people who may lack capacity. The Code explains the key features of the MCA in more detail, as well as some of the practical steps that people using and interpreting the law need to take into consideration. If you work with people who lack capacity and you are a professional and/or you are paid for the work you do then you have a legal duty to have regard to the Code. It is also relevant to unpaid carers who will be helped and guided by it.

The DoLS code of practice is invaluable for understanding the roles and responsibilities created by these Safeguards.

The role of the local authority to act as a supervisory body for DoLS imposes upon it a more general duty to act as a human rights champion for those adults who might lack capacity to agree to actions taken by others.

When a local authority is carrying out its supervisory functions, it is essential that its processes and practices promote human rights, are open, transparent and helpful to the person at the centre of DoLS, the 'relevant person' (or person for whom detention is sought), and their relatives or friends. The 'positive obligation of the state' means that all its interventions must be accompanied by scrutiny within this essential framework. Process should be lawful, consistent and accurate:

- People subject to a request for authorisation to deprive them of their liberty must be informed about the request, and have its implications explained
- They must also be clearly advised how to challenge the authorisation.

Best interests assessors are responsible for ascertaining that the person is 18 or older (the age assessment, now generally incorporated as part of the best interests assessment). They are solely responsible for assessing whether there are any lawful decision-makers who object to what is proposed (the 'no refusals' assessment). Most significantly, they must carry out two vital tasks: they are responsible for deciding whether a restrictive situation is authorised by Sections 5 and 6 of the MCA, or whether it amounts to a deprivation of the person's liberty. If they conclude, given all evidence and scrutiny of the concrete situation of the person, and in the light of current case law, that the person is deprived of their liberty, they must assess holistically whether the restrictions are in the person's best interests, and proportionate to the risk and seriousness of harm to that person without the proposed restrictions. They must keep abreast of developments in case law to carry out these tasks correctly.

It is the role of the best interest assessor to:

- suggest any conditions that might reduce the need for ongoing deprivation of liberty, or lessen the impact of the deprivation on the relevant person
- frame any conditions so that they apply to such matters that the managing authority can control (rather than general care planning)
- discuss any conditions in advance of setting them with the managing authority, to ensure that the managing authority can comply
- suggest a maximum length for which authorisation can be granted – this can be for up to a year, although many supervisory bodies are reluctant to authorise for such a long period (however, an authoriser can shorten the period from that suggested by the best interests assessor, but cannot lengthen it).

It is the duty of the supervisory body to support the continued learning and practice development of best interests assessors. This is currently done in a range of ways which includes the mandatory annual refresher training.

Specific duties under the Mental Health Act 1983

The Mental Health Act lays down the legal framework in which people can be compulsorily admitted and detained in psychiatric hospitals. It covers ordinary members of the public who might become mentally disordered, as well as “mentally disordered offenders” – people who have committed criminal offences and who have gone to court, but who may need assessment or treatment for mental disorder.

An Approved Mental Health Professional (AMHP) can be a social worker, a psychiatric nurse, an occupational therapist or a clinical psychologist. AMHP’s have had to undergo extensive specialist training, and therefore have an in depth knowledge of law and have the responsibility for upholding the law when conducting assessments under the MHA. They can use that knowledge to ensure that the rights of those being assessed are protected, and can provide a counter to the medical model of mental health, introducing a more rounded social perspective to the process. They need to use their knowledge not just of mental health legislation but also the Human Rights Act and other legislation, such as the Mental Capacity Act.

Approved Mental Health Practitioners powers:

- The power to make an application for compulsory admission to hospital under Sec.2, Sec.3 or Sec.4
- The power to make an application for guardianship under Sec.7
- The power to convey the patient to hospital or to authorise others to do so
- The power to enter and inspect premises – other than a hospital -- where someone is not receiving proper care

- The power to apply for a warrant to search for and remove patients or persons living alone in need of care under Sec.135(1)
- The power to remove and return patients within UK, or to take or re-take detained patients absent without leave (S.18 and S.138)

AMHP duties:

- The duty to interview the patient “in a suitable manner” (Sec.13(2))
- The duty to respond to a request by a Nearest Relative to assess someone under the MHA (Sec.13(4))
- The duty to consult the patient’s Nearest Relative when considering a Sec.3 (or guardianship)
- The duty to inform the patient’s Nearest Relative when detaining under Sec.2
- The duty to interview a person removed to a "place of safety" by police under S.136
- The duty to consider an application for a patient to be made subject to Supervised
- Community treatment under Sec.17A

Local Authority Responsibilities under Mental Health Act 1983

The primary responsibility of the local authority is to provide the AMHP service and ensure that there are sufficient AMHPs available in their area to provide access to a 24 hour service. It is good practice for local authorities to provide AMHP skills and knowledge in a number of places and is responsible for the commissioning of AMHP training.

Whenever an AMHP starts an assessment under the Mental Health Act, or carries out a Best Interest Assessment in a residential care home under the Mental Capacity Act, they will be acting on behalf of the local authority and will need a contractual relationship with that authority. This is particularly important for AMHPs who are not on the payroll or in the employment of the local authority on whose behalf they act as an AMHP.

Local authorities have a number of key duties in relation to AMHPs who undertake assessments on their behalf, these include:

- Ensuring that all AMHPs have access to professional supervision and support in their role as AMHPs
- Provide a minimum of 18 hours of refresher training, relevant to the AMHP role each year – as determined by the local authority
- Responsibility for the health and safety of AMHPs whilst they are undertaking assessments on their behalf

- Responsibility for professional competence in their role as AMHP, and for removing or suspending their warrant as necessary
- Legal indemnity whilst undertaking the AMHP role
- Access to legal advice whilst carrying out AMHP duties

Good practice suggests that local authorities should identify and establish a robust process to ensure that a potential AMHP has successfully undertaken the required professional training and has sufficient knowledge to be approved as an AMHP. Once approved, the process should identify the requirement for re-approval on an agreed frequency which should be no more than every 5 years.

Local authorities have a responsibility to agree protocols with other agencies, such as Police and Ambulance Service i.e. to cover transport arrangements, use of Places of Safety and roles and responsibilities of such organisations in relation to work under the MHA. Such protocols should include monitoring arrangements and mechanisms for dealing

Local authorities have responsibility for governance including standards for warranting, re-warranting and quality assurance.

The Human Rights Act 1998

The Human Rights Act (HRA) came into force in October 2000. It enables individuals to enforce 16 of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR) in British courts. This makes Parliament and public bodies more accountable to UK citizens through the courts. The fundamental rights include rights that impact directly on service provision in the health and social care sector. Rights particularly relevant to dignity in care include the right to life, the right not to be subjected to inhuman or degrading treatment and the right to a family life. A balance has to be reached between rights and responsibilities. Not all rights are absolute and frequently practitioners are required to balance competing rights. The ethics and values that underpin good practice in social care, such as autonomy, privacy and dignity, are at the core of human rights legislation. There are ongoing tensions between adherence to these values and the need to protect people from abuse, neglect and harm. For example, someone with dementia may want to do something that presents a risk to themselves or others, and in such a case workers would need to consider whether this decision has been made with capacity. If so, then they should strive to find a way of ensuring the person's safety while respecting their right to choose what they want to do. If the person may lack capacity, they should be assessed according to the Mental Capacity Act.

Specific duties under the Domestic Violence, Crime and Victims Act 2004 and subsequent legislation relating to Domestic Violence Protection Notices and Orders, the criminal offence of Coercive and Controlling Behaviour, Modern Slavery and Forced Marriages.

Key risks

Key risks to the local population, to the council and to the NHS that the DASS should help to manage or mitigate are:

- The safety and wellbeing of people needing care and support in relation to the quality of services, quality failure and safeguarding people at home and in the community
- Market and provider failure
- Financial failure
- Legal challenge

The rise in need and the complexity of need, together with increasing expectations and rights in law, alongside reducing resources increases each and all of these risks.

Local Assurance Requirements

- Senior management arrangements ensure that the safety and the care and support needs of the community are given due priority and how they enable staff to help the local authority discharge its statutory duties in an integrated and coherent way
- Clarity about how the local authority intends to discharge its adult social services functions and be held accountable for them from political, professional, legal and corporate perspectives (including where, for example, services are commissioned from external providers or mutualised in an arm's length body)
- The ability to lead the development of an efficient and sustainable social care system and market and to ensure effective financial performance
- The ability to evidence the level of resource required to meet statutory social care requirements, reflecting the needs of the population, changing demographic trends and cost pressures. To oversee the effective use of resources to meet statutory need
- Clarity about how the social workers will deliver the legal safeguards for individuals who are at risk of abuse or neglect, who may be being considered for compulsory admission or treatment or who lack capacity to make decisions and are at risk of being deprived of their liberty
- Clarity about the seniority of and breadth of responsibilities allocated to individual post holders and are aware of how this impacts on their ability to undertake those responsibilities (especially where a local authority or council and NHS partnership is considering allocating any additional functions to the DASS post)
- The involvement and experiences of people needing care and support in relation to local services

- Clarity about safeguarding systems, ensuring that professional leadership and practice is robust and can be challenged on a regular basis, including an appropriate focus on offering early help and working with other agencies in doing so
- The adequacy and effectiveness of local partnership arrangements (e.g. the local authority's relationship with the Health and Wellbeing Board, the NHS, providers, the third sector, Community Safety Partnerships, health and wellbeing boards, police, Multi-Agency Public Protection Arrangements and Multi-Agency Risk Assessment Conferences) and their respective accountabilities