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To: Adult Social Care and Public Health Policy Overview and Scrutiny Committee – 20 September 2011

Subject: **THE COMMISSION ON FUNDING OF CARE AND SUPPORT REPORT**

Classification: Unrestricted

Summary: The Committee is asked to consider the initial assessment of the implications arising from the above report for Kent County Council.

Introduction

1. (1) The Commission on Funding of Care and Support (informally known as the Dilnot Commission) published its final report on 4 July 2011. This report summarises the main recommendations of the Dilnot Commission report and the potential implications as well as opportunities for Kent County Council. The summary of the key recommendations together with the key implications and opportunities for KCC is attached as Appendix 1.

(2) A full financial and non-financial impact assessment would be carried out by officers following the publication of the Government's full response to the Commission's proposals later this summer.

Policy Context

2. (1) The Policy Overview and Scrutiny Committee will be aware that a number of the proposals put forward by the above report also formed part of the recommendations in the Law Commission Report which focused on the reform of adult social care law.

(2) It is likely that the implementation of both reports, should they receive Government endorsement, would result in a comprehensive renewal of the adult social care legal framework not seen since the National Assistance 1948.

Recommendation

3. (1) The Committee is asked to:
 - (a) **NOTE** and **COMMENT** on the initial impact assessment.
 - (b) **NOTE** that further work be done to produce a full impact assessment following the publication of the Government's full response.

Background documents: None

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THE COMMISSION ON FUNDING OF CARE AND SUPPORT REPORT

1. INTRODUCTION

The Commission on Funding of Care and Support (informally known as the Dilnot Commission) published its final report on 4 July 2011. This briefing note summarises the main recommendations in the report and the potential implications as well as opportunities for Kent County Council.

The report raises a number of important issues and implications for local government. Many of the issues that concern KCC were outlined in the County Council's response to the 'Shaping the Future of Care and Support' consultation in November 2009. The implications arising from the Dilnot Commission are covered in some detail later in this briefing. They cover financial, democratic legitimacy, workforce and training, partnership and public expectations concerns. The areas that present real opportunities are also touched upon.

The Government is considering the Dilnot Commission's Report and it is the expectation that it will publish its full response later this summer. A full assessment will be carried out following the publication of the Government's response to the report.

The implementation of key recommendations from this report and that of the Law Commission would result in fundamental reform of adult social care law not seen since the National Assistance Act 1948. If a new law is enacted, it will result in sweeping away some 30 pieces of legislation governing adult social care, to be replaced by a single legal framework.

2. BACKGROUND

The Commission on Funding of Care and Support was launched in July 2010 as an independent body to make recommendations on how to achieve an affordable and sustainable funding system for care and support, for all adults in England, both in the home and other settings.

The Commission was given four areas on which to produce recommendations:

- How best to meet the costs of care and support as a partnership between individuals and the state;
- How people could choose to protect their assets, especially their homes, against the cost of care;
- How, both now and in the future, public funding for the care and support system can be best used to meet care and support needs; and
- How any option can be delivered.

3. SUMMARY OF THE KEY RECOMMENDATIONS

3.1 Contribution to social care costs should be capped

An individual's lifetime contribution to adult social care costs should be capped at between £25,000 and £50,000 (£35,000 being the preferred figure).

The Commission believes that this certainty about the maximum an individual has to pay will lead to a great increase in the social care insurance products available to individuals.

This contribution could be made in various ways including from:

- Weekly income from pensions and benefits
- Savings
- The equity in property either now or the future (secured via a legal charge as with Deferred Payments)
- Money paid out from specific care related insurance policies

The capped contribution of those below retirement age should be less, reducing to zero for those who develop their need for care and support under the age of 40.

Once a person has made their capped contribution, the state will pick up any further costs (providing they are assessed as needed) for care and support.

This capped contribution does not cover general living costs such as food, heating and accommodation. Individuals will need to find additional funding to cover this.

3.2 Means-tested support should continue but the threshold should be raised

For those of lower means who cannot afford to pay the full cost of their care and support, means-tested support should continue. However the asset threshold for those in residential care beyond which no means-tested help is given should increase from the current threshold of £23,250 to £100,000. This does not mean that people with less than £100,000 will not have to use their capital at all as it is recommended that capital between £14,250 and £100,000 is assumed to generate a "tariff income" of £1 per week for every £250 between these limits.

It is presumed that a person making only a partial weekly contribution towards the cost of their care could still reach the capped contribution of £35,000. After that it appears they would cease having to make a contribution.

3.3 No contribution from those who develop needs under the age of 40

People born with a care and support need or who develop one in early life (suggested as under 40) should immediately be eligible for free state support to meet their care needs, rather than being subjected to a means test. They will still be expected to contribute towards their general living costs, including in residential care.

3.4 Disability Benefits should continue

Universal disability benefits for people of all ages should continue as now. The Government should consider how better to align benefits with the reformed social care funding system and the Attendance Allowance should be re-branded to clarify its purpose (a similar exercise is currently underway with Disability Living Allowance).

3.5 Accommodation costs in residential care

People should contribute a standard amount to cover their general living costs, such as food heating and accommodation, in residential care. A figure in the range of £7,000 to £10,000 a year is recommended.

3.6 Eligibility criteria should be standardised and portable

Eligibility criteria for service entitlement should be set on a standardised national basis to improve consistency and fairness across England, and there should be portability of assessments. In the short term, it is recommended that a minimum eligibility threshold should be set nationally at 'substantial' under the current system. The Government should also urgently develop a more objective eligibility and assessment framework.

3.7 Government awareness campaign

To encourage people to plan ahead for their later life, the Government should invest in an awareness campaign to inform people of the new system and the importance of planning ahead. This campaign could be linked into the wider work to encourage pension savings.

3.8 Information and advice strategy

The Government should develop a major new information and advice strategy to help when care needs arise. It is critical that the public has access to better, easy-to-understand and reliable information and advice about services and funding sources. This strategy should be produced in partnership with charities, local government and the financial services sector. As proposed by the Law Commission, a statutory duty should be placed on local authorities to provide information, advice and assistance services in their areas. These should be available to all people, irrespective of how their care is funded or provided.

3.9 Carers support should be improved

Carers should be supported by improved assessments which take place alongside the assessment of the person being cared for and which aim to ensure that the impact on the carer is manageable and sustainable. Proposals set out by the Law Commission to give carers new legal rights to services and improve carers' assessments are supported. In implementing recommendations on information and advice, the Government should ensure that carers have better information and advice about support and available services.

3.10 Integration with other services, especially the health service

In reforming the funding of social care, the Government should review the scope for improving the integration of adult social care with other services in the wider care and support system. In particular, it is important that there is improved integration of health and social care in order to deliver better outcomes for individuals and value for money from the state.

3.11 Funding the recommendations

The Commission believes that greater government resources should be devoted to adult social care and the resources made available to local authorities should be 'transparent'. They estimate that, at current costs, the recommended changes would cost from around £1.3 billion for a cap of £50,000 to £2.2 billion for a cap of £25,000.

The Commission has identified three possible ways to pay for the recommendations:

- Raising additional revenue through general taxation. This is the way in which the current system is funded.
- Reprioritising existing expenditure.
- Introducing a specific tax increase and, if it did so, making this to be paid at least in part by those who are benefitting directly from the reforms, i.e those over state pension age. The recommendation is that rather than creating a new tax, it would be preferable to use an existing tax.

4. TIMETABLE FOR IMPLEMENTATION

The commission recommends the following timetable:

December 2011

The Government should publish a white paper bringing together the work of the Dilnot Commission, the Law Commission's recommendations and the Government's vision for adult social care.

The Government should also set up three working groups:

- To develop a national eligibility and assessment framework
- To support the development of new financial products and
- To design a new national and local framework for information and advice.

Spring 2012

The Government should introduce a bill on social care and a firm timetable for the introduction of the reforms.

2013 onwards

The implementation of changes to the funding of adult social care should commence.

NB: since the publication of the report, the Government has stated it aims to introduce a white paper by Spring 2012 which is later than planned.

5. POTENTIAL IMPLICATIONS AND OPPORTUNITIES FOR KENT COUNTY COUNCIL

Financial implications

The present recommendations, if implemented as proposed would lead to a huge increase in the number of people requiring a care assessment. This is because in order to work out when a person has spent up to their capped contribution (e.g. £35,000) they and the state will need to know how much they need to spend on their care in order to meet their needs (this will be worked out according to national and local criteria).

The raising of the capital threshold means it would be worthwhile for many more people to approach the local authority as they may benefit for financial help. KCC could potentially be supporting three times the number of people it does now, before any demographic changes are taken into account. Moreover, it is difficult to accurately predict the likely additional numbers without knowing the threshold a person would need to pass before receiving support under the new eligibility scheme.

There would be a huge increase in the number of people requiring a detailed financial assessment as all people with less than £100,000 could potentially receive financial support from the local authority. Whether they do actually receive financial support will depend on the means test. The extra work/staff involved may be partially offset if the data

sharing clauses in the current Welfare Reform Bill go through. This would enable financial assessments for many people to be simplified and possibly be carried out as an electronic exercise.

Furthermore, the potential increase in transactions from needs and financial assessments could be compounded by the effect of young people with care and support need who are placed by other local authorities in Kent. As noted above, people born with a care and support need or who develop one in early life would be eligible for free a state support to meet their care needs. This is because the current ordinary residence rules result in children placed by other local authorities acquiring ordinary residence in Kent. When this happens they become the responsibility of adult social care in Kent. The Law Commission report on the reform of adult social care law did not make a recommendation on changing the ordinary residence rules.

The proposal to base the national eligibility criteria at the substantial level may work against KCC financially, if the local government funding formula is not sensitive to the issues of authorities such as Kent that has invested in providing services at the moderate level of the eligibility criteria. If eligibility is made uniform at substantial KCC will have to decide whether to retain the moderate level in Kent. If it chose not to or there was no local discretion, significant number of service users may have to be reassessed and /or given transitional protection. There are two important factors in connection with the funding issue. The first one concerns the overall funding to local authorities and the second, relates to the distributional effect of the funding between local authorities.

KCC has historically and, continues to spend more on adult social care than is indicated by national government funding levels. This additional support is subsidised from the council tax and is a legitimate part of a set of local democratic decisions.

We do not have any information on how current service users with debts owed to the local authority will be funded and managed.

Taking all of the above factors into account, naturally, leads one to conclude that the associated transactional costs (assessment, monitoring and tracking changes in need and review) could be substantial, not unless the national system is streamlined and heavily relies on technology. This will be against the backdrop of current pressures to deliver £340 million over the next four year.

These concerns will be reduced if the reforms are backed by adequate funding for local government. The initial assessment by the Finance Team indicates that this will present a significant funding issue for the authority without sufficient funding from central government to address the additional burden associated with the implementation of the proposals.

Implications for local political accountability

The potential for these proposals to disrupt the established local democratic accountability should not be underplayed. Any proposal that risks removing KCC's ability to make decisions that reflect its local circumstances should be carefully assessed. KCC would be in a difficult position if, on the one hand, it is required to apply a national system and on the other, local people held it responsible.

Workforce and training implications

All indications are that implementation of key proposals contained in the Dilnot Commission Report will take place only after the fundamental reform of adult social care law along the lines of the Law Commission recommendation. The effect of this will mean that all frontline social care staff, managers and lawyers in local government will all have to be trained in order to understand and carry out the new responsibilities.

Public expectation implications

The public may form high expectations from the headline messages of the Dilnot Commission Report. Specifically, matters such as the portability of assessment, national eligibility and capped contribution. The report acknowledges that portability would not mean that care packages would be fully portable. The level of and type of support that an individual receives under different local authorities could still differ.

The report also states that local authorities will continue to be able to determine the cost of care packages at local prices within the system. Moreover, local authorities would use the care package rates to decide at what point in time a person (not entitled to means-tested support) would meet the cap. Initial assessment indicates that there will be winners and losers. People moving from local authorities with higher care package costs to local authorities with lower care package costs will be winners, whilst the converse will generally be losers. The 'postcode lottery effect will therefore not disappear all together even with the introduction of national systems.

Similarly, the call for better recognition for carers through the assessment framework stops short of making carers services statutory provision. Under the proposals, local authorities will continue to have a duty to carry out carers assessments.

Implications for partnership working

A key concern of the present system is that it is difficult to practically define the limits of the local authority responsibilities vis-a-vis the boundaries between health and social care systems. Putting in place an objective assessment scale for social care will need to be considered alongside the responsibility of the NHS in respect of continuing healthcare. It will be a good outcome if the development of the national eligibility system for social care manages to overcome this difficulty.

Opportunities for KCC

There is a real prospect for KCC to be involved and influence developments that might flow from work that precedes the introduction of proposals contained in the Dilnot Commission Report.

Apart from the opportunity to bring to bear its ideas on the national assessment framework, financial products and informational provision, KCC could also put itself forward regarding proposals to pilot aspects of the new system. The opportunity to work with the Government therefore will become clear following its response to this report later this summer.

6. CONCLUSION

This briefing has described the key proposals in the Report of the Commission on Funding of Care and Support. In many ways the recommendations would require fundamental changes when considered alongside the Law Commission proposals. It will need to be underpinned by a new settlement for the funding of social care.

The laws that have framed the provision of social care since the Second World War would have to be consigned to the past, to be replaced by consolidated legal framework that is able to better balance the role of the state and that of the individual.

The House of Commons Health Select Committee has announced an inquiry into adult social care since the publication of the Dilnot Commission Report. It is understood that this will take place this autumn and it will examine the provision of care and support including alternative forms for commissioning of health and social care and consider the merits of full integration of health and social care.