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To: County Council – 25 October 2012

Subject: Dilnot Commission on Funding of Care and Support

Classification: Unrestricted

Summary: This report outlines the main recommendations of the Commission on Funding of Care and Support report (Dilnot Commission) and it updates Members on the Government's progress report on funding reform.

FOR DEBATE

Introduction

1. (1) The Commission on Funding of Care and Support, an independent body tasked by the Government, was launched on 20 July 2010 with reviewing the funding system for care and support in England[1]. The Commission was chaired by Andrew Dilnot with Lord Norman Warner and Dame Jo Williams as fellow Commissioners. The Commission laid down out its advice and recommendations on how to reform the system to the Government in 'Fairer Care Funding: The Report of the Commission on Funding of Care and Support' on 4 July 2011(Dilnot Commission).

(2) The Government published a progress report on social care funding reform – 'Caring for our future: progress report on funding reform' on 11 July 2012. The progress report confirmed that the Government 'agrees with the principles of the Dilnot Commission's model – financial protection through capped costs and an extended means test – would be the right basis for any new funding model'.

(3) A number of national newspapers (Telegraph, Guardian, Independent, and Daily Mail) reported on 16 August 2012, that the Government had indicated it would take steps to bring in implementation of key Dilnot Commission recommendation. It was stated that the amount of money people will have to pay towards their 'care cost' could be capped at £35,000. A formal announcement about this is expected to be made in the Government's autumn statement.

(4) 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. The Commission estimates 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. Relying on the general assumption that KCC is allocated about 2.5% of the national funding for social care, the additional cost to

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[1] The Commission was given four areas on which to produce recommendations:
(i) How best to meet the costs of care and support as a partnership between individuals and the state;
(ii) How people could choose to protect their assets, especially their homes, against the cost of care;
(iii) 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
(iv) How any option can be delivered.

Kent based on the Commission's calculation may be £32.5m and £55m respectively, depending on where the cap is set.

(5) This report summarises the main recommendations of Dilnot Commission. It also provides a summary position of the Government on the issue of care and support funding reform.

Policy Context

2. (1) Members will be aware that a number of the proposals put forward by the Dilnot Commission are in line with some of the Law Commission recommendations on the reform of adult social care law which was published in May 2011.

(2) The implementation of Dilnot Commission would have far reaching implications for adult social care provision in England. The Draft Care and Support Bill which is currently subject to a pre-legislative scrutiny consultation (closing date of 19 October 2012) would result in a fundamental reform of adult social care law not seen since the National Assistance Act 1948. If the bill is enacted, a single legal framework will sweep away some 30 pieces of legislation governing adult social care.

(3) Most commentators make the point that the present system is not sustainable given the demographic pressures and their financial implications. In line with demographic changes across the country, Kent's population over 65 is set to increase year on year, increasing 55% by 2030, with incidence of long-term conditions expected to rise at a similar rate. The Local Government Association have estimated that if the current trend continues, 70% of Council expenditure in 2019/20 will be on adult social care[2].

(4) The funding issue was also laid bare by the recent South East England Councils' (SEEC) report, 'Fixing a Broken System[3]' which highlighted the historical inequity in funding for the South East, with the region receiving significantly less per head than London and metropolitan areas, across both Local Government and Health funding. In his introduction to the report, former SEEC Chairman and KCC Leader, Paul Carter said "We welcome Government's commitment to updating public finances but we would like to move faster and further to change the current inequitable and unsustainable system." KCC would call for the new long-term adult social care funding approach to respond to the findings of the report and ensure that the South East is fairly funded to meet demand. There is a strong case for reprioritising existing public expenditure, for example a shift of 2% of NHS funding to pay for the implementation of Dilnot.

(5) This is the backdrop to changes in adult services. The Adult Social Care Transformation Programme has been developed to help KCC manage and ensure that we continue to respond to those with care and support needs and their carers in a challenging financial context. At the heart of the County Council's Adult Social Care Transformation Programme is the aim of supporting more people to live independently in their own homes for as long as possible, through innovative and personalised way of delivering services.

[2] LGA, 'Funding Outlook for Councils from 2010/11 to 2019/20: Preliminary modelling', June 2012
[3] South East England Councils, 'Fixing a Broken System', June 2012

(6) The underpinning principles of the Adult Social Care Transformation Programme[4] are broadly in-line with policy direction of the Dilnot Commission, Care and Support White Paper and Draft Bill. However, there are a number of issues that Members way wish to consider, chief amongst these being the timing of implementation of key Dilnot Commission proposals.

Two key recommendations

Contribution to social 'care costs' should be capped

3. (1) The Commission recommended that contribution to social care costs should be capped. That is, an individual's lifetime contribution to adult social 'care costs' should be capped at, between £25,000 and £50,000 (£35,000 being the Commission's 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. It is important to engage the financial sector now, to develop and test products which will underpin the implementation of Dilnot. Without this, we doubt that there will be the necessary confidence and incentives for the sector to fully respond to this challenge.

(2) 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) and money paid out from specific care related insurance policies.

(3) 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 'care costs', provided they are assessed as needing care and support.

(4) This capped contribution does <u>not</u> cover general living costs such as food, heating and accommodation. Individuals will need to find additional funding to cover this separate 'hotel cost'.

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

(5) 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 <u>not</u> 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.

(6) 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 to this element of their care cost (see Appendix 1 for outline of the other recommendations).

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[4] Adult Social Care Transformation vision: People are at the heart of all adult social care activities, receiving integrated services that are easy to access, of good quality and that maximise their ability to live independently and safely in their community

Financial Implications

4. (1) It is estimated 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. Applying the general assumption that KCC is allocated about 2.5% of the national funding for adult social care, the additional cost to Kent based on the Commission's calculation may be £32.5m and £55m respectively, depending on where the cap is set. Case studies of what this may mean for older Kent residents is provided in Appendix 2.

(2) The present recommendations, if implemented as proposed would lead to an 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.

(3) There would be an 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.

(4) 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.

(5) 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 and has long been regarded as key aspect of KCC's preventative response.

(6) Taking all of the above factors into account, lead to the conclusion that the associated transactional costs (assessment, monitoring and tracking changes in need and review) could be substantial. These concerns will be reduced if the reforms are backed by adequate funding for local government.

Training implications

5. All indications are that implementation of key Dilnot Commission proposals will take place only after the fundamental reform of adult social care law along the lines of the Law Commission recommendations. 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.

Progress report on funding reform

6. (1) The Government has confirmed that it agrees that the principles of the Commission's framework would be the right foundation for any new funding model including raising the means test threshold. According to the Government, protecting people against very high care costs would provide peace of mind and enable them to plan and prepare for their future care needs.

(2) Although the Government has confirmed that it supports the principles put forward by the Commission, it considers that there remain a number of important questions and trade-offs to be considered about how those principles could be applied to any funding reformed system.

(3) In the progress report on funding reform issued by the Department of Health, it is stated that 'given the size of the structural deficit and the economic situation the country is faced with, it is unable to commit to introducing the new system at this stage'. The Government intends working with stakeholders and the Official Opposition to consider the various options for what shape a reformed system, based on the principles of the Commission's model, could take before coming to a final view in the next Spending Review. Taking a decision in the Spending Review will allow the Government to take a broad view of all priorities and spending pressures.

(4) Mindful of the stress and anxiety that people face when they move into residential care and have to sell their homes, the Government has announced it will take definitive steps to move forward on a number of important recommendations made by the Commission. To address this, the Government is committed to introduce a universal system of deferred payments for residential care. The Draft Care and Support Bill, includes the necessary powers to implement this policy in England. Universal deferred payments will be introduced from April 2015. The Local Government Association reported that a survey of local authorities found that councils have already made deferred payments to around 8,500 people to a value of £197 million. KCC currently helps 94 residents under the deferred payments scheme to the tune of £2.8m per year.

(5) The Government will also introduce a national eligibility threshold for adult care and support in England. The Draft Care and Support Bill includes the necessary powers to set a national eligibility threshold. The national threshold will be introduced in April 2015. A national eligibility criteria at 'substantial level' will cause the issue highlighted in paragraph 4.5 above to be urgently addressed.

(6) Furthermore, the Government is committed to providing, a clear, universal and authoritative source of national information about the health and care and support system. This will include information on how the care and support system works, who might be eligible for financial support from the state, and how much care costs.

Conclusion

7. (1) This report has described the key proposals of the Dilnot Commission on Funding of Care and Support. In many ways, the Commission's recommendations would require fundamental changes as outlined in the Draft Care and Support Bill.

The changes will need to be underpinned by a new settlement for the funding of adult social care.

(2) KCC has prepared a draft response to the pre-legislative scrutiny consultation of the Draft Care and Support Bill, and it is attached to this report as appendix 3.

(3) Officially, the decision on the overall funding of a reformed care and support system will be taken alongside other funding decisions at next Spending Reviews whenever this takes place.

Recommendations

8. (1) The County Council note the contents of this report.
(2) The County Council is invited to debate the following motion:

At the heart of the County Council's Adult Social Care Transformation Programme is the aim of supporting more people to live independently in their own homes for as long as possible.

The County Council urges the Government to allocate the funding necessary to implement the Dilnot Commission's recommendations by 2015, to alleviate the stress and anxiety that the funding of care and support is causing to many of Kent's older residents and their families.

Appendices
Appendix 1: Dilnot Commission: other recommendations.
Appendix 2: Case studies - what the Dilnot recommendations mean to people with care and support needs
Appendix 3: KCC response to the Draft Care and Support Bill Consultation.

Background Documents
Fairer Care Funding: The Report of the Commission on Funding of Care and Support, Department of Health, 4 July 2011.
Caring for our future: progress report on funding reform, Department of Health, 11 July 2012.
Caring for our future: reforming care and support White Paper, Department of Health, 11 July 2012.
Draft Care and Support Bill, Department of Health, 11 July 2012.

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Dilnot Commission: other recommendations

Universal Deferred payments

(1) There should be universal access to deferred payments for people in residential care. The Government has announced that subject to a legal change this would come into force in 2015. The Local Government Association has reported survey of local authorities found that councils have already made deferred payments to around 8,500 people to a value of £197 million. KCC currently supports 94 residents under the deferred payments scheme to the tune of £2.8m.

No contribution from those who develop care and support needs under the age of 40

(2) People born with a care and support need or who develop one in early life (suggested as under 40) should 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.

Disability Benefits should continue

(3) 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 to replacement of Disability Living Allowance with Personal Independence Payments.

Accommodation costs in residential care

(4) 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.

Eligibility criteria should be standardised and portable

(5) 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.

Government awareness campaign

(6) 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.

Information and advice strategy

(7) The Government should develop a major new information and advice strategy to help when care needs arise. 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.

Carers support should be improved

(8) 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.

Integration with other services, especially the health service

(9) 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.

Funding the recommendations

(10) 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.

(11) 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.

Case study 1: Alice
An 83 year old person with a property and savings, needing to go into a residential care home for the last 5 years of her life

CURRENT SYSTEM

£175,000
Property value

(Above means test upper asset threshold of £23,250)

Just under 20% property value remains

Just over 80% property value spent on care costs

Income/savings

Alice needs to pay all of the costs of her residential care (both care and living expenses) until she dies = **£143,000 (£28,600 per year)**

Contribution of the public purse to residential care costs - **£0**

PROPOSED SYSTEM - DILNOT RECOMMENDATIONS

£175,000
Property value

(Above means test upper asset threshold of £100,000)

80% property value remains

20% property value spent on care costs

Income/savings

Alice only pays up to the £35,000 cap for her residential care = **£35,000** (reached in about 15 months)

Capped living expenses **£7-10,000** per year

Contribution of the public purse to residential care costs - **£108,000 (approx)**

Case study 2: Emma
An 80 year old person with a property and low income, needing care at home for 2 years then going into a residential care home for the last 3 years of her life

CURRENT SYSTEM

Income/savings - £6,240 (2 yrs)

Care at home
£10,000 over two years

KCC part contribution as income low - £3760 (2 yrs)

£75,000
Property value

In Residential Care

(Above means test upper asset threshold of £23,250)

34% property value remains

66% property value spent on care costs

Income/savings

Emma needs to pay the full costs of her residential care (both care and living expenses) until she reaches the upper threshold (£23,250). This will take about 90 weeks = **£50,000** (approx.) After this, she only contributes a total of £8000 (approx) until her death

Contribution of the public purse to residential care costs - **£28,000 (approx)**

PROPOSED SYSTEM - DILNOT RECOMMENDATIONS

Income/savings - £6,240 (2 yrs)

Care at home
£10,000 over two years

KCC part contribution as income low - £3760 (2 yrs)

£75,000
Property value

In Residential Care

(Below means test upper asset threshold of £100,000)

66% property value remains

34% property value spent on care costs

Income/savings

Emma only needs to contribute **£25,000** in total towards her residential care (care costs only) before she dies. If she had continued in residential care, she would only pay up to £28,760 before reaching the cap (including the £6,240 she already paid for care at home)

Capped living expenses **£7-10,000** per year

Contribution of the public purse to residential care costs - **£67,000 (approx)**

Appendix 3

KENT COUNTY COUNCIL'S RESPONSE TO THE PRE-LEGISLATIVE SCRUTINY CONSULTATON ON THE DRAFT CARE AND SUPPORT BILL

1. Introduction

Kent County Council (KCC) welcomes the opportunity to comment on the draft Care and Support Bill. We fully endorse the view that the current system of social care is not 'fit for purpose' and is in need of urgent reform. We recognise this as a once in a generation opportunity to introduce a new legislative basis for adult care and support, to make the much needed reform a reality. KCC's approach to adult social care is built around the principles of integration, prevention and early intervention, and we are pleased to see that these principles are at the heart of the draft Bill.

KCC is the largest Council with Adult Social Services Responsibilities (CASSR) in England. It comprise of some of the most deprived areas in the South East and includes large coastal areas, which contributes to it having above average care home market capacity. This, combined with our proximity to London, leads to many individuals being placed in Kent from out of the area making Kent a 'net importer' of care and support. KCC can end up becoming responsible for funding of individuals who place themselves in Kent under Ordinary Residence rules.

Despite high demand for care and support in the county, KCC continues to support individuals down to the 'Moderate' eligibility criteria for adult social care. This decision has local cross-party support, and we believe it results in better outcomes for the individual and better value for money in the long-term.

KCC has a strong track-record in pioneering the transformation of adult social care and has a national reputation for innovation. To ensure that we continue to respond to the needs of those who use our services and their carers in a challenging financial context, we have launched a three-year programme of transformation of adult social care. To support the transformation, we have developed a new Vision Statement for adult social care in Kent, as shown in Figure 1.

Our transformation will have a determined focus on prevention and targeted intervention, ensuring that services respond rapidly and are more effective. We will encourage and empower individuals to do more for themselves and ensure greater support is available to carers. We will also develop a new deal with both voluntary and independent providers; one that is based upon trust and incentivisation. Clearly this is consistent with the reforms set out in the White Paper and underpinned by the draft Bill, and KCC welcomes many of Government's proposals which will help support our own commitments.

Vision Statement

People are at the heart of all adult social care activities, receiving integrated services that are easy to access, of good quality and that maximise their ability to live independently and safely in their community.

We will achieve this by:

- Empowering citizens to build a support network of trusted people, places and services tailored to their needs and minimising their dependence on formal services
- Working with communities to ensure people can develop or retain a choice of social links and networks to maintain health and prevent social isolation
- Making every penny count in achieving service user outcomes and value for money services
- Providing the right assessment at the right time to support people to achieve or regain their ability to manage their lives
- Commissioning housing options that support people to thrive in their community
- Developing a vibrant market of services from which people can find the right support
- Agreeing clear and consistent standards across the county, but recognising distinctive local solutions for delivery
- Encouraging a positive culture that enables our workforce to develop and deliver a quality service

Figure 1: KCC Adult Social Care Transformation Vision Statement

Along with our colleagues in the sector, KCC is disappointed that the draft Bill has not been accompanied by more definitive proposals for the reform of long-term funding for care and support. KCC fully supports the recommendations of the Dilnot review and would welcome the opportunity to work with Government on the development of a long-term funding system that delivers these principles. We recognise and support Government's commitment to take forward some of the recommendations including the £35,000 lifetime cap. However we urge Government to deliver quicker agreement and implementation of the new funding arrangements, as the current five year timescale leaves a significant period of time during which Local Authorities, providers, people with care needs and their carers will continue to struggle with the current system which is no longer fit for purpose.

We are pleased to note the additional NHS funding transfer that Government has promised to promote integration with the NHS and cover the costs of the reforms. However, we believe that in order to truly promote integration and provide sustainable funding for care and support needs, this must go further, and secure the transfer of NHS money for adult social care for the longer term, if not on a permanent footing.

KCC recognises that the current system is not sustainable given the demographic pressures and their financial implications. In line with demographic changes across the country, Kent's population over 65 is set to increase year on year, increasing 55% by 2030, with incidence of long-term conditions expected to rise at a similar rate. There is little doubt that this leaves a significant funding gap for social care, and that cuts in government spending create an even tougher challenge for Local Authorities to deliver services in a sustainable way. The LGA have estimated that if the current trend continues, 70% of Council expenditure in 2019/20 will be on adult social care[5].

[5] LGA, 'Funding Outlook for Councils from 2010/11 to 2019/20: Preliminary modelling', June 2012

In the South East we are faced with particular funding challenges. South East England Councils' (SEEC) recent report 'Fixing a Broken System[6]' highlighted the historical inequity in funding for the South East, with the region receiving significantly less per head than London and metropolitan areas, across both Local Government and Health funding. In his introduction to the report, former SEEC Chairman and KCC Leader, Paul Carter said "We welcome Government's commitment to updating public finances but we would like to move faster and further to change the current inequitable and unsustainable system." KCC would call for the new long-term adult social care funding approach to respond to the findings of the report and ensure that the South East is fairly funded to meet demand.

KCC is pleased to offer this detailed response to the draft Bill. We have structured our response by working through the sections of the Bill and for each section have made comments in the following categories:

- **Where we feel that an issue is missing;**
- **Where we feel there is a lack of clarity;**
- **Where we feel there is contradiction and;**
- **Comments on regulatory provisions.**

In preparing our response, we have identified a couple of areas of the draft Bill where we would urge the Government to make revisions in subsequent drafts. These are:

1. KCC would like to ask Government to confirm that the intention of the draft Bill is that deferred payments can be used to cover all care costs including non-residential.

2. We would call Government to revisit the entire impact analysis to properly acknowledge the additional financial burden on Local Authorities and how this can be funded.

3. It is essential for the regulations to provide clarity on the way in which Local Authorities should factor reasonable cost into assessment / planning of care.

4. The powers and responsibilities of Safeguarding Adult Boards must be specifically defined in statutory guidance on a similar footing to that for Children's Safeguarding Boards.

KCC would like to reiterate our offer to work with colleagues on national working groups or directly with Government to share our ideas and contribute to the development and testing of proposals set out in the White Paper and underpinned by the draft Bill. We would particularly welcome the opportunity to influence the development of:

- Long-term funding solutions for adult care and support
- National eligibility criteria
- National assessment framework
- Provider Quality Profiles

[6] South East England Councils, 'Fixing a Broken System', June 2012

- Code of Conduct
- National information website

2. General responsibilities of local authorities

Wellbeing duty
KCC welcomes the consolidation of adult care and support legislation around the single defining purpose of promoting individual wellbeing.

(**Lack of clarity**) We are concerned however that the definition of 'wellbeing' is not precisely defined and is therefore open to interpretation, and the list of examples seems to give it a very wide scope. The term 'promote' is also open to interpretation. This could leave Local Authorities open to challenge, including Judicial Review, on the care and support services they provide and how they provide them - as acknowledged in the detailed notes for the Bill. KCC would like to see further clarity from Government on how the wellbeing principle is to be interpreted and translated into practice.

(**Lack of clarity**) We would also encourage Government to specify how this duty to promote individual wellbeing relates to broader wellbeing provisions, for example under the Local Government Act (2000).

(**Contradiction**) In the introduction to the draft Bill, the section 'What will the Bill do?' states that "the well-being of the individual is paramount." However this is not evident from the wording of the draft Bill, and in fact subsection (3) (e) requires Local Authorities to have regard to "the importance of achieving a balance between the adult's well-being and that of any friends and relatives who are involved in caring for the adult." It will be difficult for Local Authorities to interpret the duty with this contradiction, and there is a recurring need throughout the draft Bill to understand the 'hierarchy' of responsibility between the person with care needs and their carer.

Prevention
(**Comment**) This section of the Bill places a requirement on Local Authorities to provide or arrange for the provision of services that will prevent or delay the development of needs for care and support by adults in its area. As is currently the requirement, the Bill also specifies that a Local Authority must provide an assessment and subsequently any eligible services *where it appears that an adult may have needs for care and support.* There is a balance to be struck here between the Local Authority's responsibilities to those who are in need of care and support, and the wider population, the majority of whom will not have care and support needs. By stretching the scope of responsibility, Government needs to be clear about where they expect Local Authorities to focus their efforts and limited resources.

With increasing financial pressures, it is important that prevention and early intervention does not become overlooked, and further guidance and appropriate funding from Government can prevent this from happening. In Kent, prevention and early intervention are key components of our approach to adult social care, and we are working with colleagues in the health, housing and voluntary sectors on a range of early intervention and prevention initiatives. Government could greatly assist by focusing on the development of research evidence to back up the benefits in outcomes that early intervention and prevention brings, so that Local Authorities can use this as a tool to work with partners and push this important agenda forward.

Providing information and advice
(**Comment**) KCC welcomes the proposals in the draft Bill to provide information and advice both at national level and about the choices available at local level. Strengthening and improving the advice and information we provide about care and support in Kent is one of the objectives of our transformation programme. We are pleased to see that Provider Quality Profiles will make information on providers available to the public. We would like to encourage Government to supplement this with information from service users/carers on the quality of care given, bearing in mind the need to balance this with objective evidence such as the results of Local Authority contract compliance and safeguarding reviews

(**Issue missing**) We believe that better information and advice is essential to encouraging people to plan for their futures. However, with the significant wait until a long-term funding position is agreed and implemented, Government is missing an opportunity to incentivise saving for later life and is making it harder for people to make informed decisions about likely costs of care in the future.

Diversity and quality of services
KCC is pleased to see the duty for Local Authorities to promote a diverse market of providers. We believe that this is the most effective way to create a social care system that delivers a choice of high quality, personalised and affordable services. A diverse social care market is central to our transformation programme, and we are currently investing time and energy in gaining a thorough understanding of our local care and support market, as well as detailed analysis of local needs and potential solutions. This will enable us to develop clear and comprehensive Commissioning Plans for our adult care services.

(**Issue missing**) To promote the diversity of provision, Local Authorities should be supported to make it easier for small organisations from the Voluntary and Community Sector (VCS) to join the market. For example, KCC would welcome clear guidance from Government on how to apply the rules of Part B procurement to allow more flexible procurement that is accessible to smaller VCS providers. This would help us to make the principles of the Big Society a reality.

A more diverse and responsive care market in which people increasingly contract for their own care and support requires a well-defined and easy to implement definition of ‘quality’ and we are pleased to see that Government is intending to do this.

Co-operating
(**Issue missing**) Government may wish to consider adding ‘other providers of health services commissioned either by the NHS Commissioning Board or by a clinical commissioning group’ to the list of partners at clause 4, sub-section (5.) Alternatively, if it is intended that the power to co-operate is retained by the commissioner, this needs to be stated.

(**Lack of clarity**) In Clause 5, if an agency decides that it will not comply with a request for co-operation for the reasons given in subsection (1,) and the Local Authority believes that the reason given is not satisfactory, how can this be resolved?

Integration with health services
KCC fully supports Government’s drive for integration between health and social care, essential if the drive for increased personalisation, prevention and quality are to

be achieved. However, better integration at all levels has been worked towards for several decades and progress has generally been slow. We think it is the integration of services that is most important and therefore most emphasis should be put on encouraging integrated commissioning.

(**Comment**) We think that the Government can greatly assist the integration agenda by helping to develop a system of incentives and disincentives, for example developing a framework that can be used to distribute any savings achieved through integration so that all parties can see the financial reward. We would encourage Government to act on the findings of the Social Care Institute for Excellence briefing *Factors that promote and hinder joint and integrated working between health and social care services*[7]. This identifies various factors that can become a barrier to integration, including information sharing, which Government could help to resolve. Also although we welcome the alignment of the Public Health and Adult Social Care Outcomes Frameworks, the NHS Outcome Framework is still separate and Government could promote integration by aligning the three Frameworks together.

(**Lack of clarity**) Does the requirement for a Local Authority to ensure the integration of care and support with health provision put an onus on Local Authorities to do this over the NHS, or are both parties equally responsible for ensuring that integration happens?

3. Meeting needs for care

(**Comment**) The draft Bill's central purpose is to promote independence and wellbeing. However the order of examples of how care needs can be met is not consistent with the policy intention of prevention and care closer to home. For example, residential care would be the option pursued if other options to meet the individual's care and support needs in their own home were not suitable, but residential care is first in the list of examples. We would recommend re-ordering the examples to emphasise prevention and early intervention.

4. Assessing needs

Setting a national eligibility criteria

(**Lack of clarity**) KCC believes that the Local Authority is best placed to decide the level of eligible need in their area and subsequently to allocate appropriate funding, and are pleased to see some acknowledgement in the Impact Assessment that Councils will retain control for overall budget setting and size of individual care and support packages. However, assessment will always be open to subjectivity, and it is not currently clear how the new national eligibility criteria will eliminate the current inconsistency in application of FACS as Local Authorities will continue to interpret the criteria in their own way. We have concerns that the introduction of a national eligibility criteria could give a false impression to service users that the actual services they receive will be universal, when in fact they will necessarily vary between areas as acknowledged by the Impact Assessment which was published alongside the White Paper.

[7] Social Care Institute for Excellence, 'Factors that promote and hinder joint and integrated working between health and social care services', May 2012

(**Comment**) Experience from the National Framework for NHS Continuing Healthcare and NHS- Funded Nursing Care[8] shows that there are still large disparities between PCTs. A new eligibility criteria will need to be properly monitored and accountability for ensuring that it is being followed will need to be clear in order for it to have the positive effect that Government intends.

Level of national eligibility criteria

(**Contradiction**) As prevention is to be at the heart of the social care system, KCC would expect to see the universal threshold set to at least the equivalent of 'Moderate' on the FACS scale to promote a consistent message about the importance of early intervention and prevention. This would require appropriate funding and we acknowledge the statement in the Impact Assessment that Government will need to consider funding implications in setting the criteria, but would encourage an emphasis on early intervention and prevention.

Despite concerns about the level of the national eligibility criteria, KCC welcomes the freedom for Local Authorities to offer a more generous eligibility criteria. As previously stated, we believe that maintaining our eligibility rating of Moderate delivers better outcomes and value for money.

(**Lack of clarity**) KCC would like to seek assurance that the introduction of a universal eligibility threshold at the equivalent of 'Substantial' will not financially disadvantage authorities like Kent who have always maintained eligibility at moderate, and that any funding streams to support the new eligibility threshold will be distributed fairly.

New assessment framework

(**Comment**) We note from the White Paper that the new assessment framework aims to include more self-assessment. Our experience is that, although self-assessment is a useful and powerful tool for some, many people with care and support needs will not be able to carry out a self-assessment, due to their capacity and/or the complexity of their situation and needs. The point when people access care is also often a crisis point in an individual's life, meaning that they may be less able to conduct a self-assessment. The new framework needs to reflect this. We also see that there could be a key role for VCS organisations to support people who could self-assess if they received this extra support, if Government can support VCS organisations to do so.

(**Issue missing**) and (**Comment**) We feel that in both the draft Bill and White Paper, the importance of ensuring the quality of assessment is missing. We feel that future regulations around the new assessment framework need to clearly set out how the quality of assessment is to be achieved and monitored. Training and organisational development implications will need to be carefully considered. This will be particularly important when Local Authorities start to delegate assessment functions to third parties.

Assessment of carers needs

(**Comment**) KCC firmly believes that carers should receive the support they need to carry out their caring responsibilities and balance this with their own wellbeing. The proposals may have a particular benefit of redressing gender inequalities by better

[8] Department of Health, The national framework for NHS continuing healthcare and NHS-funded nursing care, July 2009 (revised)

supporting carers, the majority of whom are women. However, it will be important that the new framework follows best value in assessment by starting with an assessment of the strengths of a carer and what they are able to do, and avoids creating a dependency on the provision of care and support for carers.

Assessing adults with needs and assessing their carers

(**Lack of clarity**) and (**Comment**) The draft Bill introduces a parity of responsibility to assess and meet the eligible needs of the adult with care and support needs, and the carer. KCC fully supports the recognition of carers. However very clear and specific guidance in the regulations will be needed to explain how this should translate in practice. Current Department of Health guidance expects Local Authorities to first assess and meet the needs of the adult with care and support needs, which in turn supports their carer, and then to assess and meet any additional needs of the carer. For example, the DH Carer's Grant Guidance[9] states:

11. It is recognised that the results of a carer's assessment will usually be the provision of community care services to the service user. Such community care services should be as flexible as possible and take the needs of both parties into account as far as possible.

Guidance is needed on whether this is still expected practice, as it seems to be a logical approach to assessing and meeting carer needs.

(**Comment**) As Local Authorities start to use their new power to delegate assessment, it will be important to ensure that providers understand the position with regards to parity of responsibility to assess needs of the adult and their carer.

(**Contradiction**) and (**Comment**) On a related point, Clause 12, subsection (1) (a) states that further regulations may require the Local Authority to have regard to the needs of the family. Is this still the case if the needs of the family are in conflict with the needs of the person with care needs? Regulations will need to give clear guidance on this.

Shared assessment

(**Issue missing**) and (**Comment**) The Bill does not specifically reference shared assessment between agencies, which is something that KCC would like to promote where possible to prevent duplication and cost for public agencies and inconvenience and uncertainty for service users and carers. We would like to suggest that regulations should allow and encourage this to happen where appropriate.

Care and support in prisons

(**Lack of clarity**) The White Paper states that the new assessment framework will make it clear where responsibility for support in prison lies, with responsibility for assessment of need resting with the Local Authority in the area where the prison is situated. Provision of care would rest with the Local Authority if above a threshold of need that can no longer be provided by prison officers. KCC would like to seek clarification on how this will be reflected in the funding formula.

[9] Department of Health, Carer's Grant 2008-11 Guidance, January 2008

5. Imposing charges and assessing financial resources

Power to impose charges
(**Comment**) The draft Bill gives local authorities a general *power* to impose charges. This is a departure from the existing *duty* to charge for residential accommodation and power to charge for non-residential services. The draft Bill will remove this distinction. We suggest that it would be preferable to place the ability to impose charges under a 'duty' provision rather as presently stated in the draft Bill as a power. This will help give Local Authorities greater weight in pursuing payments, which is essential in delivering economically sustainable services.

Deferred payments
(**Lack of clarity**) KCC would like to ask Government to confirm that the intention of the draft Bill is that deferred payments can be used to cover all care costs, i.e. residential and non-residential. Although we assume that this is the intention, as it is in line with the general spirit of the draft Bill to remove distinctions between care settings, the draft Bill does not specifically clarify this point.

(**Lack of clarity**) and (**Comment**) Assuming that the draft Bill *does* intent to extend the use of deferred payments beyond residential care costs, we are supportive of this broader power. However we have concerns about how the up-front costs of deferred payments will be covered. An ADASS survey has found that Councils have already entered into deferred payment arrangements with around 8,500 people to a value of £197 million. It is not clear how Government intends that Local Authorities will cover the cost when more people start to use this option to cover a wider range of care costs. It is also likely that the costs of chasing payments will be high - a significant number of social care debts are currently signed off by Local Authorities because perusing the debt would become disproportionately costly.

(**Lack of clarity**) KCC would like Government to clarify the point from which interest can be charged on a deferred payment. Currently interest is only charged 54 days after the person has died. Under the new arrangements, is interest to be charged from the time that the agreement is signed? We also welcome Government's intention to set the interest rate that can be charged.

6. Who can have their needs met?

Power to meet needs
(**Lack of clarity**) Clarity is needed around Clause 18 which gives Local Authorities a power to meet care needs where the *duty* to do so does not apply and subsection (2) explains that this can happen where a person is not ordinarily resident in the Local Authority area. Our understanding is that this Clause intends to provide Local Authorities with power to arrange care to a person not ordinarily resident in the area in an urgent or emergency situation. This provision is currently set out in the National Assistance Act[10]. However, the wording of the Bill does not explain that this power is intended to be used in cases of urgent need, and we felt that this needs to be clarified to assist interpretation.

Self-funders

[10] National Assistance Act (1948) Section 24(3)

(**Comment**) Clause 17(3) turns the power for Local Authorities to meet needs even where the individual's financial resources are over the financial limit, into a duty to do so. KCC notes the positive impact that this will have on self-funders, particularly in helping them to avoid avoidably excessive care costs and to help individuals plan for their long-term care needs where their financial resources are likely to run out. However, although not the policy intention, the market implications would need to be fully quantified in the light of the cost of care between people supported by public funds and those who meet the cost of care and support out of their own means will disappear. Self-funders represent a significant proportion of the marker - a Lang and Buisson study in 2011[11] found that 44.9% of places in registered care homes in England are self-funded. There are significant implications for the social care market, and associated increases in care cost will fall on the Local Authority. We would call Government to revisit the impact analysis to properly acknowledge the additional financial burden on Local Authorities and how this can be funded.

In the South East, this proposal is likely to have a greater financial impact on Local Authorities as we have a higher number of self-funders. As an illustration, if all self-funders in the South East area were to ask Government to meet their needs as required in 17(3,) it is estimated that South East Local Authorities would be supporting three times the number of people we do now, without taking into account demographic changes.

Meeting needs of adults with care and support needs, and meeting needs of their carers

(**Lack of clarity**) and (**Comment**) In line with our comments on assessment above, we welcome the recognition of carers but feel that much greater clarity is needed on the parity of responsibility to meet needs. Clause 19 (b) and (c) talks about meeting the carer's through the provision of care and support to the adult needing care, and meeting the carer's needs by provision of support to the carer. Clarity is required on whether these two provisions are on an equal footing and how Government expects Local Authorities to put this into practice.

(**Lack of clarity**) We feel that Clause 19, subsections (7) and (8) around finding ways to meet carers' needs are vague and open to interpretation, which could lead to disputes between Local Authorities and individuals.

Boundary with health

We welcome the intention to define the boundary between adult social care and health.

(**Lack of clarity**) and (**Comment**) The present draft does not sufficiently deal with boundary issues between NHS continuing healthcare and Local Authority responsibility. The current difficulties in implementing the agreed boundary have not been acknowledged in the draft Bill, and it is important that the regulations on this matter properly address this point. In particular, clear definitions of 'incidental' and 'ancillary' are needed to guide Local Authorities. It may be beneficial to specify which elements of care are the responsibility of the Local Authority and which are the responsibility of the NHS so that the need to determine whether a need is 'ancillary' or not is removed.

[11] ADASS / LGA, People who pay for care: quantitative and qualitative analysis of self-funders in the social care market, January 2011

(**Lack of clarity**) Clause 21 (3) reflects the NAA 1948 s21 (8) and specifies that the Local Authority may not provide or arrange for the provision of health care. Clause 21 (4) further states that the Local Authority may arrange for the provision of accommodation with nursing care in certain circumstances. However the Clause does not clarify the position whereby the Local Authority is required to provide accommodation with nursing care for people from abroad with no recourse to public funds when they are assessed as having community care needs. The NAA means that many Local Authorities are caught in the position of having to provide care in a nursing home including the provision of care by a registered nurse, when NHS provisions do not actually allow them to support people with no recourse to public funds.

Boundary with education services

(**Issue missing**) We welcome the intention to define the boundary between adult social care and Immigration, health, and housing with reference to clauses 20, 21 and 22. We are of the view that a similar reference to the exception for the provision of education services as contained in section 46 of the Apprenticeships, Skills, Children and Learning Act 2009 is missing and should be corrected. Section 46 is merely permissive in that it allows local education authorities when securing suitable education and training provision for young people under 25 to also secure boarding accommodation where they consider this appropriate. There is no duty on the local education authority to do this as there previously was under section 13 of the learning and Skills Act 2000. The lack of a clear duty encourages conflicts between the Local Education Authority and the Local Authority with adult social services responsibility about who should fund the provision of boarding accommodation when this is necessary for the provision of education and training. The drafting of the new Care and Support Bill would seem to be an ideal opportunity to clearly delineate the duties of the respective authorities in this regard.

7. <u>What happens after assessment?</u>

(**Issue missing**) The draft Bill must have regard to the recent United Kingdom Supreme Court[12] decision about considering financial resources when planning to meet needs. The assessment section of the draft Bill adequately reflects the three 'tests' set out in section 47 of the NHS and Community Care Act (1990):

i. **what are the needs** of the person;
ii. in order to meet these needs **is it necessary for the authority** to make arrangements for the provision of any services;
iii. if so, what are the **nature and extent of the services** for which it is necessary for the local authority to make arrangements?

However it does not reflect the additional 'fourth test' around reasonable cost:

iv. **what is the reasonable cost** of securing provision of the services for which it is necessary for the authority to make arrangements?

The judges ruled it is lawful for councils to consider their own financial resources when deciding how they should meet a disabled person's needs. It is essential for

[12] R (on the application of KM) (by his mother and litigation friend JM) (FC) (Appellant) v Cambridgeshire County Council (Respondent) [2012] UKSC 23 *On appeal from* [2011] EWCA Civ 682

the regulations to provide clarity on the way in which Local Authorities should factor reasonable cost into assessment / planning of care.

Personal budgets
(**Comment**) Clause 25 (2) allows that a personal budget may also specify public money available for spending on matters relating to housing, health care or welfare. In Kent we are already working with health colleagues to bring together personal budgets for social care and for health. We feel that Regulations should provide more guidance to Local Authorities on aligning Personal Budgets and should encourage Local Authorities to work with partners to do so.

8. Who can receive direct payments?

Direct payments and Local Authority responsibility
KCC is fully supportive of the use of direct payments as an important tool to promote personalisation and choice. We have developed innovative ways of empowering people to use direct payments, including through our Kent Card (see below.)

(**Comment**) For direct payments to meet their full potential to give individuals choice and control, it is important that the process is as non-bureaucratic as possible, with a proportionate and light-touch approach to planning and overseeing how the money is spent, as suggested in the report *Improving Direct Payment Delivery*[13] by the Think Local Act Personal consortium in 2011. KCC fully endorses this view, and this would be greatly aided if regulations could clarify the extent of the Local Authority's responsibility towards service users in the use of their direct payment. Uncertainty in this area can contribute to a risk aversive approach by the workforce. It is not clear from Clause 30 (3), (4) and (5) the extent to which Local Authorities will still be required to ensure that money given is spent on meeting assessed need. We firmly believe that individuals should have as much freedom as possible to spend their direct payment to meet their care and support needs.

(**Lack of clarity**) We note in Clause 51 (2) that the provision of direct payments is exempt from the functions that Local Authorities can delegate to a third party. We would welcome clarity from Government on why this has been exempted. As stated above, we are opposed to any move that aims to restrict or control how individuals can use their direct payment unnecessarily.

(**Lack of clarity**) and (**Comment**) While direct payments are exempted from delegation, Local Authorities *are* able to delegate the functions of assessment, care planning and decision-making about the allocation of resources. We cannot see how Local Authorities could put this into practice, as assessment and care planning and the provision of direct payments cannot be easily separated. Is it the intention that a third party could make a recommendation on the suitability of a direct payment and the amount as part of assessment and care planning, which is then approved and monitored by the Local Authority? We would be supportive of this approach. It will be essential that the regulations are clear on this in order to support Local Authorities to work with third parties in practice.

(**Issue missing**) and (**Comment**) Although direct payments are a powerful solution for many individuals, we also believe that Government should do more to support the

[13] Think Local Act Personal, 'Improving Direct Payment Delivery', 2011

development of alternatives to this method of delivering a personal budget. Providing a single choice between a direct payment and a council-managed arrangement does not offer the full range of options that are available. An example of another approach is the Individual Service Fund whereby the personal budget is managed by another organisation (private or voluntary.) We feel that Regulations should acknowledge the use of other methods of delivery where appropriate.

Combining personal budgets in direct payments

(**Comment**) As mentioned in our response to the section on personal budgets, we agree with Government that there is potential to build on the advantages of direct payments by bringing together other personal budgets and welfare payments. We have pioneered the use of the Kent Card, a chip and pin VISA card which does not require a bank account and offers a secure and convenient way of receiving and spending direct payments. We believe there is potential for personal budgets from a range of agencies to be loaded onto the Kent Card, allowing individuals choice and control over the total allocation of support funding allowed to them by local and national government. As referenced above, this would require individuals to have more control over how they spend direct payments, with less responsibility for Local Authorities to oversee how it is spent.

NHS Kent and Medway and Kent County Council Personal Health Budget Pilot

Working with NHS colleagues, we have jointly delivered a Personal Health Budget pilot in the areas of Maternity, Continuing Health Care, End of Life and Mental Health pathways, with the Kent Card at the heart of the pilot. Working together we developed systems and processes to effectively offer personal health budgets to 75 people. Building upon the success of Personal Health Budgets, KCC and NHS Kent and Medway tested Integrated Budgets (bringing together health and social care funding) with people who have long term conditions. People on the pilot have reported that Personal Health Budgets/Integrated Budgets has made a positive difference, stating that they feel in control and have been at the centre of the decision making process. Those receiving continuing health care funding have said they have experienced a seamless transition, moving from social care (where they had a Kent Card employing PAs) into health, where they could maintain this level of control. This was not possible prior to the pilot.

Direct payments in residential care

(**Comment**) Government are intending to pilot the use of direct payments in residential care. Although we support this as an option, we note the following potential problems with such an approach:

- A person using a direct payment to purchase residential care may find they are charged the private rate (usually significantly higher) and are not able to access the local authority rates. This could reduce rather than enhance choice.

- Residential care is often needed at a time of crisis - individuals/carers may not have the capacity to be entering into arrangements with care homes, therefore direct payments should never be mandatory, only ever an option for individuals, and the timeliness of the offer of a direct payment must be carefully considered.

- Using a direct payment to purchase residential care could in practice result in less protection for individuals. To avoid this they must be offered the same protection as other local authority funded residents – e.g. subject to regular reviews of their needs.

(**Comment**) We also believe that direct payments should not be seen as the only way to offer greater personalisation to people in residential care. Giving residents a greater say in care regimes, activities, staff rotas etc (co-production) and involving the outside community more can also achieve this objective.

9. Establishing where a person lives

Continuity of care

We welcome the concept of 'portability' subject to the following concerns.

(**Lack of clarity**) and (**Comment**) Clarification is needed on how the 'receiving authority' can be "satisfied that the adult's intention is genuine." How are issues of capacity and duress to be considered?

(**Lack of clarity**) and (**Comment**) Clarification is also needed in regulations on the dispute resolution process.

(**Comment**) We think regulations should stipulate clearly that the 'sending authority' must be required to notify the 'receiving authority' where the sending authority makes the arrangement for an individual to be placed in accommodation provided by the independent sector in the receiving authority's area. This is stipulated in DH guidance on Ordinary Residence published in 2011[14]:

57. If a local authority places someone out of area in accommodation provided by the independent sector, **they should always inform the host authority of the placement**. This is to ensure the host authority is aware of the person in their area and to enable both authorities to agree on the suitability of the placement.

Experience shows that even though this should happen, it often does not happen and this can cause problems with continuity of care. The draft Bill should respond to this.

(**Issue missing**) and (**Comment**) It would also be helpful if timescales were provided within which the sending authority must notify the receiving authority. Regulations could specify this.

We would like to offer an alternative solution for continuity of care, for Government's consideration:

- The sending authority could maintain responsibility for meeting care and support needs for a set time period after the person has moved
- During this set time period, the receiving authority must carry out its assessment, or if not completed by the end of the time period, maintain the level of service provision until it has

[14] Department of Health, 'Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England', April 2011

- This would provide an incentive to the sending authority to give proper notice to the receiving authority
- It would also avoid the need for the receiving authority to attempt to reclaim its costs from the sending authority if the person actually remains ordinarily resident in the sending authority's area, as the OR dispute could be resolved within the time period when the sending authority retains responsibility for meeting the person's needs.

Ordinary residence
(**Lack of clarity**) and (**Comment**) The wording of Clause 32 appears to establish different interpretation according to the type of care and support being provided - specifically 'accommodation of a particular type.' It is not clear what this means and regulations will need to specify more clearly. This clause seems to contradict the unified approach of the draft proposals which apply irrespective of care setting or the type of care. Without the benefit of a clear and unambiguous definition in the regulations, this would potentially lead to new disputes between Local Authorities on the matter. It is not clear whether accommodation of a particular type will comprise of extra care housing, adult placement, de-registered care homes, specially adapted accommodation etc. It is extremely important that the regulations clarify this 'grey area'.

Please also see our comments on boarding accommodation for young people in Section 6.

10. Safeguarding adults at risk of abuse and neglect

KCC feels that the requirements set out in this section are positive and are in line with our current practice on Adult Safeguarding. We welcome the change to place Adult Safeguarding Boards on a statutory footing. However we have some concerns as below.

Enquiry by Local Authority
(**Lack of clarity**) Clause 34 on enquiry by Local Authority leaves significant scope for interpretation, for example it is particularly hard to establish risk of abuse or neglect, to determine whether an adult is unable to protect themselves as a result of their needs and to determine what kind of enquiry is necessary.

(**Lack of clarity**) All of the examples given in subsection (2) relate to financial abuse. Is it expected that Local Authorities will give particular attention to this area? Local Authorities are not well-placed to act as investigators into the private financial affairs of members of the public, and the Bill provides no investigative powers to back up this duty. Clarity is required on what is expected of Local Authorities in this situation, particularly as it is possible that families could claim compensation for losses if a Local Authority does not act appropriately in relation to financial abuse.

(**Issue missing**) The Law Commission considered that the statute should be worded to ensure that the Local Authority's duty can be discharged through a range of pathways or different routes through safeguarding. For example the Local Authority could undertake the enquiries themselves, refer to an appropriate agency or initiate a multi-agency investigation. Quite specifically, the Law Commission stated that "*The duty to investigate could be delegated to the NHS*". The Bill states only that the Local Authority "*must make (or cause to be made)*".

(**Issue missing**) The Law Commission also recommended that the statute should include an enhanced duty to co-operate in adult protection cases. Although the general duty to co-operate is provided in Clauses 4 and 5, the enhanced duty does not seem to be included in the draft Bill. Related to this, clarification is needed on how a Local Authority is to respond if another agency fails to respond to requests to co-operate in the Local Authority's enquiries.

(**Comment**) There is no mention of further regulations in this area, which we feel are essential to provide further guidance around this important issue which has wide-ranging implications for Local Authorities.

(**Lack of clarity**) We also note the abolition of Local Authority's power to remove persons in need of care (Clause 37.) Although not widely used, does Government intend that anything will replace this power, and is such a power needed to work alongside the new safeguarding duty?

Safeguarding Adults Boards

(**Issue missing**) The Law Commission review recommended that statute should set out a range of functions for SABs including to keep under review the procedures and practices of public bodies which relate to safeguarding adults and to give information and advice, or make proposals, to any public body on the exercise of functions which relate to safeguarding adults. The Bill appears only to say (at subsections 2 and 3) that an SAB must seek to achieve its objective of helping and protecting adults within the safeguarding category by "*co-ordinating and ensuring the effectiveness of what each of its members does*", and it "*may do anything which appears to it to be necessary or desirable for that purpose*". We note in the impact assessment that the provision of more specific functions for SABs was considered but rejected.

While we welcome the spirit of local flexibility, fundamentally SABs must have a clear mandate and be able to hold agencies to account. We do not believe that the draft Bill gives SABs sufficient weight to do so. We suggest that powers for SABs could usefully mirror those for (Local) Safeguarding Children Boards, as expressed in sections 13-16 of the Children Act 2004, the wording of which is similar to the more specified functions for SABs set out in the impact assessment. It would greatly assist Local Authorities to have the powers and responsibilities of Safeguarding Adult Boards specifically defined in statutory guidance on a similar footing to that for Children's Safeguarding Boards. This could be clarified in guidance for agencies who have a role in safeguarding adult as it for children's safeguarding in Working Together to Safeguard Children.

(**Issue missing**) The Law Commission also proposed that the CQC should be given a power to nominate an appropriate representative to attend meetings, but again this seems to be missing from the draft Bill.

(**Lack of clarity**) Government is asked to clarify how the activities of SABs are to be funded.

We endorse the government's stated aim to put Safeguarding Adults Boards on a statutory footing. This should ensure that all public bodies should be under the same duty and make sure that the work of the SAB adequately resourced.

Safeguarding adults reviews
(**Lack of clarity**) The trigger for a safeguarding adults review includes "concern about how the SAB, a member of it *or some other person involved in the adult's case acted*". Should this relate specifically to concerns about how a person has acted in their professional capacity? Otherwise this could be interpreted as concerns about the actions of any person, which would be the case for nearly every safeguarding case.

11. Transition for care from children's to adults' care and support

We welcome the clarification on young people in transition, as KCC currently experiences issues around this. However we feel much greater clarity is needed.

(**Lack of clarity**) and (**Comment**) This section raises various issues that require further clarification, which the further regulations could provide. For example, clarification is need on which worker should form the view that the child is likely to have ongoing needs at 18 and who carries out the assessment. Will specially trained transition workers be required to understand both the adult and children's social care systems?

(**Lack of clarity**) It is not clear why there is a distinction between the 'power' to assess a child and a young carer, the 'duty' to assess a child's carer.

(**Lack of clarity**) Clause 44 provides a power to meet a child's carer's needs as the LA considers appropriate. Annex B (para 68) further states: "*there may be certain services available only through adult care and support, and a child's carer should be able to request an assessment under this Part as the means of accessing any such services.*" This would suggest that the carer may be able to access adult services (rather than just assessment) before the child turns 18. This seems to be at odds with every other aspect of this part of the Bill, which provides for children's services to continue post-18, not for adult services to be available pre-18. We would like to seek clarification on the intention here.

(**Lack of clarity**) and (**Comment**) It would be helpful if regulations could include requirement for both departments to keep in mind any leaving care duties that are owed to the individual post-18. Both departments must be clear on their own duties and work towards a joined-up approach in relation to leaving care services and services provided to meet community care needs.

12. Enforcement of debts

Recovery of charges and deferred payments
(**Comment**) Clause 45 (2) states that a sum due to an authority is not considered as a debt due if a deferred payment could be entered into (unless the individual has refused a deferred payment.) As previously stated, KCC would like clarification from Government on how Local Authorities are expected to cover the up-front care costs (which are already debts in this case,) when a deferred payment is entered into. This will have significant financial implications for Local Authorities, and this Clause will delay the pursuit of payment of debts while a deferred payment agreement is being offered and considered. KCC would be particularly interested in Government's thinking on how the funding formula will be sensitive to this issue.

Transfer of assets to avoid charges
We are pleased to see that this section addresses some of the shortcomings of current legislation. We are particularly pleased that the draft Bill does not make a distinction between residential and non-residential care, and that the six months rule no longer seems to apply to the transfer of liability for costs to the transferee.

(**Issue missing**) However, there is nothing in this section which states that where deprivation has clearly occurred we can treat the person as if they still had the assets. Regulation 25 (1) of the Assessment of Resources Regulations (1992) currently provides that a resident may be treated a still possessing capital that he has deprived himself of for the purpose of decreasing the amount that he may be liable to pay for his accommodation. We feel that this provision is missing in the draft Bill and may weaken Local Authorities' powers.

13. Miscellaneous

Delegation of Local Authority functions
(**Lack of clarity**) and (**Comment**) We welcome the provision in the draft Bill for Local Authorities to delegate its functions in relation to care and support. We would welcome further clarification in regulations on situations under which functions can be delegated and clarity on the retained responsibilities of a Local Authority that has delegated functions.

(**Lack of clarity**) and (**Comment**) We would also like to encourage Government to provide clear guidance about any duties or powers that are being rescinded in order to allow for the new delegation power so that practitioners are clear about the legislative framework that they are working in.

Discharge from hospital
(**Issue missing**) We believe that a reference to NHS continuing healthcare responsibilities is an important missing aspect of the current draft in Schedule 2, specifically under section 2 (3) a. It is understood that the "relevant authority" responsibilities cannot come into force until and unless NHS continuing health care eligibility has been tested and ruled out. We would urge Government to correct the missing reference in subsequent revision of the draft Bill before it is laid before parliament.

(**Lack of clarity**) We observe that Schedule 2, as presently drafted makes no reference to the acute hospitals responsibility for the care and support of patients that require readmission within 28 days of being discharge. There is a need for an insertion into Schedule 2 to reflect the obligation of acute hospitals.

(**Comment**) We are concerned of the elasticity of what constitutes 'safe discharge', we therefore urge that this issue should be carefully considered in the regulation that will underpin discharge arrangements. Our concern is based on the fact that there is still unacceptable variation in practice in spite of policy guidance.

Section 117 Mental Health Act
(**Lack of clarity**) We note that Schedule 3 deals with 'After-Care Under The Mental Health Act 1983: Direct Payments'. Whilst the proposed changes make modifications to Mental Health Act 1983 in relation to the duty on local authorities to provide after-care services for qualifying persons, the draft Schedule does not refer to the fact that

'after-care' is a joint duty placed on the NHS and local authority. It is not clear if it is the intention of Government to change the current dual obligation on the NHS and councils. We believe that the Schedule would benefit from clarification to make clear that 'after-care' duty will continue to be a shared responsibility for both bodies . As a consequence we would ask that Government should consider making the necessary modifications to the National Health Service Act 2006.

14. General

Repeals
(**Issue missing**) Section 22 of the Health and Social Services and Social Security Adjudications Act 1983 has been repealed and does not appear to have been replaced. This is an extremely useful provision that enables Local Authorities to unilaterally charge land owned by care home residents as security for residential accommodation fees. It is a valuable extra-judicial security which is much used in practice and should not be lost to Local Authorities.

15. Concluding remarks

KCC welcomes this long-anticipated reform of the law, consolidating, updating and replacing the outdated legislation that has developed piecemeal since the 1940s. We believe that the draft Bill achieves Government's aim of introducing consolidated legislation and will be easier for practitioners to navigate and put into practice. However, we feel that there are areas where significant clarification is needed, issues are missing or more guidance will be required in regulation, as identified in our response. We would encourage Government to address the issues raised in the consultation and progress the draft Bill as soon as possible, as it underpins reform in the care and support system that is urgently needed. However, it will be difficult for Local Authorities to start planning to put the new duties and powers into practice without an agreed long-term funding approach, and so we would also urge Government to progress this as a matter of urgency.

Government has set a series of consultation questions that it is particularly seeking comments on. Our views are expressed throughout our response, but for clarity a summary of our response to the consultation questions is provided below:

Q1: Do the opening clauses (2-7) sufficiently reflect the LA's broader role and responsibilities towards the local community?

In these Clauses, and throughout the draft Bill, we feel that the Local Authority's broader role is made clear. We have expressed concern about how Local Authorities are expected to split their focus between meeting the specific needs of people who are in need of care and support and their carers, and the wider responsibility for prevention and provision of information to the entire population, within extremely limited budgets. However, as underpinned by our transformation programme, KCC believes that a significant part of our role is to take leadership of care and support in the local area - identifying needs and empowering people to take control of their own care using a range of care and support options. We would again encourage Government to urgently introduce long-term funding arrangements for social care and support that is fair, fit for purpose and supports a modern social care system to enable Local Authorities to fulfil their broader role.

Q2: Does the draft Bill (in clauses 17 and 19) clarify individual rights to care and support in a way that is helpful?

Generally we feel that the draft Bill does clarify individual rights to care and support more clearly than existing legislation. As a result, it will be far easier for individuals to understand their rights and for professionals to implement the law. However we do have concerns that areas of the draft Bill that are very open to interpretation, particularly around the new well-being principle, could lead to more cases where Local Authorities are challenged by individuals, and would like to urge Government to provide as much clarity as possible to support Local Authorities.

Q3: The law for carers has always been separate to that for the people they care for. Is it helpful to include carers in all the main provisions (clauses 9-33) of the draft Bill, alongside the people they care for, rather than place them in a separate group?

We welcome the greater recognition of carers, which is a central tenant of our Transformation Programme and approach to social care. As there is by definition a close link and overlap between assessment and service provision for individuals and their carers, it would seem to be necessary to include carers in all the main provisions as set out in the draft Bill. To do otherwise would require considerable cross-referencing between different sections, which would make the provisions less accessible and harder to follow. However, we have raised concerns about the parity of responsibility to those with care and support needs and their carers, and the practical way in which needs can be met for both.

Q4: Does the new well-being principle, and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?

Yes we believe that the focus is broadly right and is in line with our enabling, person-centred approach to care and support. Again, we have expressed concerns about the interpretation of the well-being principle which we believe could cause difficulties for Local Authorities.

Q5: Do the "portability" provisions (clauses 31-33) balance correctly the intention to empower the citizen to move between areas with the processes which are necessary to make the system fair and workable?

Although we support measures to promote continuity of care, we believe that the processes require a good deal more detail, particularly around issues including timescales and dispute resolution, to make the system fair and workable. It is essential that the system avoids detrimental impact on the receiving authority (which, as a net importer of care, KCC is often likely to be) as a result of bad practice on the part of the sending authority. We have suggested an alternative solution for Government's consideration.

We would like to reiterate our interest in working with Government and colleagues in the sector on the development of some of the new initiatives outlined in the White Paper and underpinned by the draft Bill, and would be happy to clarify or provide further information on any area of our response.

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