APPENDIX 1 TO CABINET REPORT

From: Graham Gibbens, Cabinet Member for Adult Social Care and Public Health

Andrew Ireland, Corporate Director Social Care Health and Wellbeing

To: Adult Social Care and Public Health Cabinet Committee
4 December 2014

Subject: **CARE ACT IMPLEMENTATION – ELIGIBILITY CRITERIA FOR ADULT CARE AND SUPPORT**

Classification: Unrestricted

Past Pathway of Paper: Adults Transformation Board 22 October 2014, CMT 11 November 2014, Cabinet 1 December 2014

Future Pathway of Paper: Recommendation Report to the Cabinet Member

Electoral Division: All

Summary: This report follows on from the previous report that was presented to the Adult Social Care and Public Health Cabinet Committee on 26 September 2014 and sets out the detail of the Key Decision on the Eligibility Criteria policy that is required to be made in readiness for April 2015. In summary, it is recommended that KCC adopts the new national minimum eligibility criteria as Kent's offer from April 2015.

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member Adult Social Care on the proposed decision as set out below in this report and in Appendix 1.

1. Introduction

1.1 The Care Act 2014 received Royal Assent in May this year. It will be implemented in two stages starting in April 2015 with the introduction of the new legal framework. The majority of the reforms will come into effect in April 2015 but the key 'Dilnot' reforms (cap on care costs and raising of the capital threshold) and new rights for self-funders in relation to care homes will not be instituted until April 2016 (subject to final decisions by the Government).

2. Eligibility Criteria for Care and Support

2.1 One of the major planks of the Care Act is the introduction from April 2015 of a new national minimum eligibility criteria for adults with care and support needs which all councils must adhere to (section 13 of the Act). The detail of the new criteria is contained in The Care and Support (Eligibility Criteria) Regulations 2014, the final version of which was released in October 2014.

2.2 In summary an individual with care and support needs will meet the minimum eligibility if:
(a) their needs arise from or are related to a physical or mental impairment or illness AND
(b) as a result they are unable to achieve two or more specified outcomes AND
(c) as a consequence there is, or is likely to be, a significant impact on their wellbeing, as defined under section 1 of the Care Act.

An adult's needs are only eligible if they meet all three of the above conditions.

2.3 It is important to note that eligibility is to be assessed without regard to the support provided by a carer. Therefore, a person may be eligible under the Care Act without KCC necessarily having to provide significant services. In practice most people assessed as eligible will probably have their needs met by a combination of care provided by the council and their carer, if they have one. The increased rights for carers under the Act should help carers to perform this role on a sustainable basis. Support from the voluntary sector and the wider community can also be an appropriate way of meeting needs in some cases.

2.4 It is also important to note that safeguarding has separate criteria and therefore if safeguarding issues are identified, care and support can if necessary be provided regardless of whether the individual meets the minimum eligibility for care and support.

2.5 The final version of the Eligibility Regulations differs slightly from the draft version released for consultation on 6 June 2014 (and which was discussed at previous Cabinet Committees). The main change is that in order to meet the eligibility criteria a person must be unable to meet two or more specified outcomes rather than "an outcome" as stated in the draft regulations. In addition, the previous version contained a mixture of outcomes and basic care activities, whereas in the final version everything has been framed as outcomes. Appendix 2 contains a full description of the new criteria and how it compares to the existing 'Moderate' level applicable in Kent.

2.6 Despite the changes, it is still the considered view of officers working on this issue that the new criteria create a threshold that is lower than the current substantial level, and is more in line with the moderate level which applies in Kent. It is therefore recommended that the council adopts the new national minimum eligibility criteria as the Kent eligibility criteria for care and support from April 2015. As the new minimum is thought to offer a similar threshold for accessing care and support as the current "moderate" level applicable in Kent, it is thought to be reasonable to adopt the national minimum as Kent's offer.

2.7 In considering the above proposal, the key questions for KCC and Kent residents are as follows:
(a) Will current service users assessed as 'Moderate' continue to be eligible after April 2015?
(b) Will an individual who would be assessed as 'Moderate' if they were assessed now, still be assessed as eligible if they come forward for the first time after April 2015?

2.8 It is believed that both of the above questions should be answered in the affirmative. The evidential basis for this view is a combination of analysis of the precise wording of the new criteria, a review of DH commissioned research and an exercise

comparing actual cases against both the current and new criteria. Further details are provided in the following sections.

2.9 As stated above, Appendix 2 contains details of how the current eligibility criteria compares to the new minimum. Appendix 3 considers a number of anonymised cases currently assessed as 'Moderate' or lower to show how they would be assessed under the new criteria. It demonstrates that a case assessed now as meeting the 'Moderate' criteria is likely to meet the new national minimum.

2.10 In order to compare the criteria against actual cases an exercise will be carried out with operational staff who will assess current 'moderate' cases against the new national minimum. The results of this exercise will be available to the Cabinet on 1 December 2014, the Cabinet Committee on 4 December 2014 and the Cabinet Member before the decision is made.

2.11 The Department of Health commissioned the Personal Social Services Research Unit (PSSRU) at the London School of Economics (LSE) to evaluate the various drafts of the new Eligibility regulations against current practice.[1] Current practice for the majority of councils (130 out of 152) means providing to the 'Substantial' level in theory. However, as the DH's impact assessment acknowledges, [2] an earlier report in 2012 by the PSSRU [3] demonstrated that councils interpret the current criteria very widely and that there is not a clear correlation between the level applied in a particular council and the level of needs supported.

2.12 PSSRU's current research indicates that the new eligibility criteria will lead to an extra 4,000 individuals becoming eligible. However they clearly state that because of their earlier research, they expect the impact to be felt on all councils and not just those with the more, on the face of it, restrictive eligibility.[4]

2.13 In order to explain the thinking on eligibility and gather views from service users, carers and organisations that represent them, some engagement will take place over the next few weeks. The results of this will be made available to the Cabinet Member before any decision is taken.

2.14 With regard to current service users, it is proposed that they continue to be recorded as eligible under the new national minimum criteria without the need for a reassessment unless their needs have clearly changed. This approach is clearly supported by the final version of the statutory guidance (paragraph 23.11).

2.15 Discussions are currently being held with some of the other local authorities that offer support for 'Moderate' needs. The results of this will be made available to the Cabinet Member before the decision is taken.

2.16 In order to have an independent legal opinion on how Kent's current eligibility compares to the new national minimum and also on the requirement for consultation, external legal advice has been sought. This will be made available to the Cabinet Member to consider before a final decision is taken.

---

[1] DH Impact Assessment: 'The Care Act 2014: Regulations and guidance for implementation of Part 1 of the Act in 2015/16' (IA no. 6107) 16.10.2014
[2] Ibid
[3] PSSRU report **: 'S**urvey of fair access to care services (FACS) assessment criteria among local authorities in England' 2012
[4] Ibid

2.17 The Cabinet Committee is asked to consider and endorse the proposal that the Cabinet Member takes the Key Decision detailed in Appendix 1 below.

3. Alternative Options

3.1 All local authorities from April 2015 must, by law, meet the unmet eligible needs of individuals who meet the national minimum criteria. There are therefore only two lawful alternatives:

(a) For Kent's eligibility criteria to be set at the level of the new national minimum
OR
(b) For Kent's eligibility criteria to be set at a lower level than the national minimum.

3.2 If option (b) was chosen as the preferred alternative, a possible way to achieve this would be to state that an individual had to be unable to achieve only one of the specified outcomes (see Appendix 2 below).

3.3 Option (b) is not recommended as it would seem to set the bar at a lower level than currently operates in Kent. It is also believed to be unnecessary as it will still be possible in exceptional cases to arrange care and support for people who fall below the minimum eligibility criteria if it is deemed to be appropriate to prevent or delay the development or increase in needs. In individual cases Case Managers always have the discretion to accept a person as eligible even when they do not strictly meet the criteria and this is thought to be sufficient to cover those cases, as now, that may be on the borderline of eligibility.

4. Recommendations

4.1 Recommendation: The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Adult Social Care on the proposed decision to adopt the new national minimum eligibility criteria as Kent's offer from April 2015.

5. Background documents:

Care Act 2014
Statutory Regulations 2014 – released October 2014
Statutory Guidance 2014 – released October 2014

6. Report authors:

Christine Grosskopf,
Strategic Policy Lead for the Care Act Programme,
Policy & Strategic Relationships,
(Programme Policy Lead)
01622 696611 (7000 6611)
chris.grosskopf@kent.gov.uk

Relevant Director:
Andrew Ireland, Corporate Director Social Care, Health and Wellbeing
01622 696083

DRAFT

andrew.ireland@kent.gov.uk

Appendix 1 – Draft Record of Decision

DECISION TAKEN BY	DECISION NO.
Graham Gibbens, Cabinet Member for Adult Social Care and Public Health	**TBC**

If decision is likely to disclose exempt information please specify the relevant paragraph(s) of Part 1 of Schedule 12A of the Local Government Act 1972
Subject: : **Eligibility Criteria for Care and Support (Adults)**
Decision: As Cabinet Member for Adult Social Care and Public Health, I AGREE: That Kent County Council should adopt the National Minimum Eligibility Criteria for determining which adults with care and support needs meet Kent's eligibility criteria from 1 April 2015.
Any Interest Declared when the Decision was Taken **None**

Reason(s) for decision, including alternatives considered and any additional information:
One of the major planks of the Care Act is the introduction from April 2015 of a new national minimum eligibility criteria for adults with care and support needs which all councils must adhere to (section 13 of the Act). The detail of the new criteria is contained in The Care and Support (Eligibility Criteria) Regulations 2014, the final version of which was released in October 2014.

In summary an individual with care and support needs will meet the minimum eligibility if they meet all three of the following conditions:
(a) their needs arise from or are related to a physical or mental impairment or illness AND
(b) as a result they are unable to achieve two or more specified outcomes AND
(c) as a consequence there is, or is likely to be, a significant impact on their wellbeing, as defined under section 1 of the Care Act.

It is considered that the new criteria create a threshold that is lower than the current substantial level, and is more in line with the moderate level which applies in Kent. It is therefore recommended that the council adopts the new national minimum eligibility criteria as the Kent eligibility criteria for care and support from April 2015. As the new minimum is thought to be as generous as the current "moderate" level applicable in Kent, it is not thought necessary to widen eligibility beyond the national minimum in order to maintain the current level of eligibility. It is recommended that existing service users be passported to eligibility under the new national minimum criteria from 1 April 2015, unless there is evidence that their needs have clearly changed.

DRAFT

The only lawful alternative to the above is for Kent's eligibility criteria to be more generous than the national minimum. A possible way to achieve this would be to state that an individual had to be unable to achieve only one of the specified outcomes rather than two or more. This is not recommended as it would seem to set the bar at a lower level than currently operates in Kent. It is also believed to be unnecessary as it will still be possible in exceptional cases to arrange care and support for people who fall below the minimum eligibility criteria if it is deemed to be appropriate to prevent or delay the development or increase in needs. In individual cases Case Managers always have the discretion to accept a person as eligible even when they do not strictly meet the criteria and this is thought to be sufficient to cover those cases, as now, that may be on the borderline of eligibility. **Background Documents:** Recommendation report from Corporate Director to Cabinet Member
Cabinet Committee recommendations and other consultation: The proposed policy will be considered by KCC Cabinet on 1 December 2014 and by the Adult Social Care and Public Health Cabinet Committee on 4 December 2014.
Any alternatives considered: See above.
Any interest declared when the decision was taken and any dispensation granted by the Proper Officer: None.

DRAFT

Appendix 2 – Comparison of the current 'Moderate' and new eligibility criteria

Definition of the current 'Moderate' level of eligibility

In general, councils may provide community care services to individual adults with needs
arising from physical, sensory, learning or cognitive disabilities, or from mental health needs. The needs should be assessed according to the risk to independence and well-being and should support the outcomes an individual wants to achieve. The four bands (Critical, Substantial, Moderate and Low) describe the seriousness of the risks to independence and wellbeing if the needs are not addressed. The criteria for **Moderate** is as follows:

- there is, or will be, an inability to carry out several personal care or domestic routines; and/or
- involvement in several aspects of work, education or learning cannot or will not be sustained; and/or
- several social support systems and relationships cannot or will not be sustained; and/or
- several family and other social roles and responsibilities cannot or will not be undertaken.

Definition of the new national minimum eligibility from April 2015

In summary an individual with care and support needs will meet the minimum eligibility if:

(a) their needs arise from or are related to a physical or mental impairment or illness AND
(b) as a result they are unable to achieve a two or more specified outcomes AND
(c) as a consequence there is, or is likely to be, a significant impact on their wellbeing, as defined under section 1 of the Care Act.

The specified outcomes are:

(a) managing and maintaining nutrition;
(b) maintaining personal hygiene;
(c) managing toilet needs;
(d) being appropriately clothed;
(e) being able to make use of the adult's home safely;
(f) maintaining a habitable home environment;
(g) developing and maintaining family or other personal relationships;
(h) accessing and engaging in work, training, education or volunteering;
(i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
(j) carrying out any caring responsibilities the adult has for a child.

DRAFT

Appendix 3 – Case Studies

The following table contains case studies of individuals who meet and don't meet the current Kent 'Moderate' criteria and looks at whether they would be eligible under the new national minimum criteria to be introduced in April 2015. It should be stressed that once an individual is assessed as eligible, there might be various ways to meet needs which do not only include the provision of services by KCC on an ongoing basis. Also, eligibility should be assessed without reference to any care provided by a carer. What the carer can or cannot do only comes into the equation after the eligibility decision, during the care and support planning stage.

Case details	Current moderate eligibility	New national minimum
Mrs A – an 80 yr old lady who lives alone; she has arthritis and is somewhat at risk of falling; she is also socially isolated, gets anxious and is at risk of becoming low in mood. At the moment her daughter visits twice a day and Mrs A tends to spend all day Sunday with her daughter, but there is a danger of the carer role breaking down.	YES She is unable to safely get showered, in and out of bed and perform some domestic routines; she also cannot maintain social support systems and relationships without help. The above does pose a risk to her independence and wellbeing.	YES She is unable to achieve outcomes (b), (e), (f), (I) and possibly (g) (so at least 2); it is clear this is already having a significant impact on her wellbeing – she is at risk of falling and becoming socially isolated and low in mood. Therefore without any help the impact would be very significant.
Miss B is a 56 yr old lady with Down's syndrome who lives with her 90 yr old father in a private house. She needs supervision and prompting with managing personal care and domestic tasks; she is socially isolated and needs social stimulation.	YES She is unable, without prompting, to carry out several personal care and domestic routines and also needs help overcoming her social isolation.	YES She is unable to achieve outcomes (b), (c), (d), (f), (g) and (i) without assistance, and (h) may be relevant (so at least 2). This is already having a significant impact on her wellbeing even with the help she gets from her father. Therefore without any help the impact would be very significant.
Mr C is a 60 yr old man who lives alone in a first floor flat; he suffers from chronic obstructive pulmonary disease, gets breathless on exertion and is prone to chest infections; he is also very down about the recent break-up of his marriage; his needs (mainly help with washing and dressing) fluctuate depending on his condition.	YES Looking at his needs over a longer period we can conclude that he is unable to carry out several personal and domestic routines; he also has difficulty sustaining work and developing personal relationships.	YES He is unable to achieve outcomes (b), (e) and (f) on a regular basis (although at times he can self-manage) and probably also (h) (so at least 2). Without help this is likely to have a significant impact on his wellbeing

DRAFT

Ms D is a 70 yr old lady who suffers from osteoarthritis. She manages most of her personal care herself except for having a shower as she is unsteady at times and prone to falling.	NOT ELIGIBLE She falls below the 'Moderate' eligibility level as she does not have an inability to carry out several personal care or domestic routines. However she may be provided with a one-off adaptation to minimise the risk of falling.	YES For the reason that she is unable to achieve outcomes (b) maintaining personal hygiene and (e) being able to make use of the home safely (so at least 2 outcomes). The pain she experiences and the impact of not being able to shower is having a significant impact on her wellbeing. NB: although eligible, it may be that her needs can be met, as now, without the need for ongoing care and support, by providing equipment and adaptations to the home.

DRAFT