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 Health Cabinet Committee
4 December 2014

Decision No: **14/00135, 14/00136**

Subject: **CARE ACT IMPLEMENTATION – CHARGING AND DEFERRED PAYMENTS**

Classification: Unrestricted

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

Future Pathway: 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 Health Cabinet Committee on 26 September 2014 and sets out the detail of the Key Decisions required to be made in readiness for April 2015 with regard to charging and Deferred Payments. The decisions are as follows:

1. To put the current charging arrangements for adults in respect of residential care and non-residential services on a new statutory footing under the Care Act 2014.

2. To approve in outline terms the new Deferred Payments Scheme from April 2015 and further to agree that the current Temporary Financial Assistance scheme should cease from 31 March 2015.

Recommendations:
The Adult Social Care and Health Cabinet Committee is asked to:

a) **CONSIDER** and **ENDORSE**, or **MAKE RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decisions on Charging Policies for Adult Care and Support and Deferred Payments and Temporary Financial Assistance as set out in this report.

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. Power to charge for care and support

2.1 The current legal framework governing charging for adult care and support involves a mixture of duties and powers. Councils are under a duty to charge for residential care under section 22(1) of the National Assistance Act 1948 and have a power to charge for non-residential services under section 17 of the Health and Social Services and Social Security Adjudication Act 1983. These powers and duties will cease from April 2015 and are being replaced by a power to charge under section 14 of the Care Act 2014.

2.2 As charging will be a power only from April 2015, KCC has to actively make a decision about which services it will charge for. Having taken such a decision, the way charges are to be worked out (i.e. the rules around means-testing) will be broadly the same as currently. These are to be governed by The Care and Support (Charging and Assessment of Resources) Regulations 2014 and the accompanying Statutory Guidance. It is important to note that the significant increase in the capital threshold for residential care charging does not come into force until April 2016.

2.3 It is recommended that for 2015-16 we preserve the status quo and continue to charge the same groups of people and for the same services as we currently do. However, it will be necessary for a Key Decision to be taken by the Cabinet Member in order for charging to be put on a firm legal basis under the new legal framework. Kent Legal Services have endorsed this view.

2.4 With regard to public consultation, it is believed that this is not required at this stage as no substantive changes are to be made to Kent's charging regime. Any minor changes to the rules on charging are those that have been prescribed by Government and these do not significantly affect service users' contributions.

2.5 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. Deferred Payments and Temporary Financial Assistance

3.1 The Care Act 2014 introduces a new Universal Deferred Payments Scheme which all local authorities must introduce from April 2015. The relevant sections of the Act are sections 34 and 35. Further details are provided in The Care and Support (Deferred Payment) Regulations 2014 and in the statutory guidance, the final versions of which were issued in October 2014. The Act confers a duty on local authorities to develop a mandatory scheme based on national regulations. Kent will institute a scheme from April 2015 in accordance with these criteria. Appendix 3 gives a brief overview of what the mandatory scheme will involve.

3.2 In addition to the mandatory scheme, the Act gives the local authority the power to offer Deferred Payments to a wider group of people on a discretionary basis. It is envisaged that the criteria for the discretionary scheme will encompass, at the very least, the sort of situations currently covered by the Kent Temporary Financial Assistance (TFA) scheme and may even be wider in scope. Appendix 4 gives a brief overview of the discretionary scheme.

3.3 In view of the above, it is not believed to be necessary to continue the local TFA scheme and it is recommended therefore that the TFA scheme end for new clients from 31 March 2015.

3.4 It is important to note that when the new Deferred Payment scheme starts on 1 April 2015, existing Deferred Payment and TFA agreements will not be affected and will continue. There are currently (as at 29.10.14) 119 Deferred Payments agreements and 43 TFA agreements extant.

3.5 Further information about the current TFA scheme is available in the report to the Cabinet Committee on TFA dated 11 July 2014.

3.6 The Cabinet Committee is asked to consider and endorse the proposal that the Cabinet Member takes the Key Decision detailed in Appendix 2 below.

4. Recommendation:

4.1 The Adult Social Care and Health Cabinet Committee is asked to:

a) **CONSIDER** and **ENDORSE**, or **MAKE RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decisions on Charging Policies for Adult Care and Support and Deferred Payments and Temporary Financial Assistance as set out in this report.

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

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Appendix 1 – Draft Record of Decision on Charging

KENT COUNTY COUNCIL - PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY **Graham Gibbens, Cabinet Member for Adult Social Care and Public Health**	DECISION NO. **14/00135**

Charging for Adult Care and Support

Decision:

As Cabinet Member for Adult Social Care and Public Health, I propose to agree:

That Kent County Council exercises its power under Section 14 of The Care Act 2014 to charge from 1 April 2015 for the same services that it currently charges for as at 31 March 2014.

Any Interest Declared when the Decision was Taken:

Reason(s) for decision, including alternatives considered and any additional information

The current legal framework governing charging for adult care and support involves a mixture of duties and powers. Councils are under a duty to charge for residential care under section 22(1) of the National Assistance Act 1948 and have a power to charge for non-residential services under section 17 of the Health and Social Services and Social Security Adjudication Act 1983. These powers and duties will cease from April 2015 and are being replaced by a power to charge under section 14 of the Care Act 2014.

As charging will be a power only from April 2015, KCC has to actively make a decision about which services it will charge for. Having taken such a decision, the way charges are to be worked out (i.e. the rules around means-testing) will be broadly the same as currently. These are to be governed by The Care and Support (Charging and Assessment of Resources) Regulations 2014 and the accompanying Statutory Guidance. It is important to note that the significant increase in the capital threshold for residential care charging does not come into force until April 2016.

It is recommended that for 2015-16 we preserve the status quo and continue to charge the same groups of people and for the same services as we currently do. However, it will be necessary for a Key Decision to be taken by the Cabinet Member in order for charging to be put on a firm legal basis under the new legal framework. Kent Legal Services have endorsed this view.

Background Documents:
Recommendation report from Corporate Director to Cabinet Member

Cabinet Committee recommendations and other consultation:

The proposed policy would be considered by KCC Cabinet on 1 December 2014 and by the Adult Social Care and Health Cabinet Committee on 4 December 2014.

Any alternatives considered:

An alternative might be to continue charging from April 2015 in the same way as currently without taking a Key Decision over the use of the section 14 power. However it is believed this would potentially leave KCC open to an accusation that we are charging without the proper legal backing, not having taken a decision to exercise the power to charge under the Act.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

Appendix 2 – Draft Record of Decision on Deferred Payments and TFA

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY	DECISION NO.
Graham Gibbens, Cabinet Member for Adult Social Care and Public Health	**14/00136**

Subject: : Deferred Payments and Temporary Financial Assistance

Decision:

As Cabinet Member for Adult Social Care and Public Health, I propose to agree:

That Kent County Council should adopt the proposed Deferred Payments scheme (both the mandatory and discretionary elements) from 1 April 2015 and that the current Temporary Financial Assistance scheme should end for new clients on 31 March 2015.

Any Interest Declared when the Decision was Taken:

Reason(s) for decision, including alternatives considered and any additional information

The Care Act 2014 introduces a new Universal Deferred Payments Scheme which all local authorities must introduce from April 2015. The relevant sections of the Act are sections 34 and 35. Further details are provided in The Care and Support (Deferred Payment) Regulations 2014 and in the statutory guidance, the final versions of which were issued in October 2014. The Act confers a duty on local authorities to develop a mandatory scheme based on national regulations. Kent will institute a scheme from April 2015 in accordance with these criteria.

In addition to the mandatory scheme, the Act gives the local authority the power to offer Deferred Payments to a wider group of people on a discretionary basis. The criteria for the discretionary scheme will be in place by January and it is envisaged that this will encompass, at the very least, the sort of situations currently covered by the Kent Temporary Financial Assistance (TFA) scheme and **is likely to be** wider in scope.

In view of the above, it is not believed to be necessary to continue the local TFA scheme and it is recommended that the TFA scheme end for new clients from 31 March 2015.

It is important to note that when the new Deferred Payment scheme starts on 1 April 2015, existing Deferred Payment and TFA agreements will not be affected and will continue. There are currently (as at 29.10.14) 119 Deferred Payments agreements and 43 TFA agreements extant.

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 Health Cabinet Committee on 4 December 2014.

Any alternatives considered:
None.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

Appendix 3 – Overview of the Deferred Payments mandatory scheme

1. From April 2015 KCC will be required to enter into a Deferred Payment agreement if the following criteria are met:

a) The individual with care and support needs meets the minimum eligibility criteria. *

b) The care and support plan specifies that the needs are going to be met by the provision of accommodation in a care home.

c) The individual has a legal or beneficial interest in a property which is their main or only home and that interest falls to be taken into account in the financial assessment. It appears that this could include jointly-owned property provided the legal charge can be registered (i.e. the other joint owners would have to agree).

d) The value of any other capital (i.e. apart from the interest in the property) does not exceed £23,250.

e) Adequate security can be obtained for the deferred amount and any interest and administration costs which can also be deferred. For the purposes of the mandatory scheme “adequate security” means a charge by way of a legal mortgage which is capable of being registered as a first legal charge in favour of the local authority.

f) The costs of care and support deferred are what the local authority considers it necessary to meet the adult’s needs.

2. Interest can be charged on the deferred amount but this can be no more than 0.15% above an amount to be set and updated regularly by Government (this will be the weighted average interest rate on conventional gilts).

3. The costs of administration and legal procedures can be charged and added to the deferred amount.

* It is not yet clear if this will include people who arrange their own care due to the delay in implementation of section 18(3)(b) of the Care Act.

Appendix 4 – Overview of the Deferred Payments discretionary scheme

1. From April 2015 KCC will be permitted, if it so decides, to enter into a Deferred Payment Agreement in a wider set of circumstance than those that apply to the mandatory scheme. However the following criteria must still be met:

a) The individual with care and support needs meets the minimum eligibility criteria. *

b) The care and support plan specifies that the needs are going to be met by the provision of accommodation in a care home or supported living accommodation.

c) Adequate security can be obtained which may include a legal charge on a property but may also include other security that is considered sufficient.

2. In addition to the costs of care and support deferred being what the local authority considers it necessary to meet the adult's needs, an additional top-up may also be deferred if this is considered appropriate.

3. Interest can be charged on the deferred amount but this can be no more than 0.15% above an amount to be set and updated regularly by Government (this will be the weighted average interest rate on conventional gilts).

4. The costs of administration and legal procedures can be charged and added to the deferred amount.

* It is not yet clear if this will include people who arrange their own care due to the delay in implementation of section 18(3)(b) of the Care Act.