

From: Andrew Ireland, Corporate Director - Social Care, Health and Wellbeing

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

Decision No: **14/00134**

Subject: **ELIGIBILITY CRITERIA FOR ADULT CARE AND SUPPORT**

Classification: Unrestricted

Past Pathway: Adults Transformation Board 22 October 2014, Corporate Management Team 11 November 2014, Cabinet 1 December 2014, Adult Social Care and Health Cabinet Committee 4 December 2014

Future Pathway:

Electoral Division: All

Summary: This report recommends that Kent County Council should adopt the National Minimum Eligibility Criteria as its policy for determining eligibility for adults with care and support needs. As a consequence, the existing 'Moderate' eligibility shall cease to apply and in its place the National Minimum Eligibility Criteria will come into effect from April 2015.

Although this report concentrates on the eligibility for adults with care and support needs, it is important to note that from April 2015 there will also be for the first time national minimum eligibility criteria for carers which local authorities must adopt. This will form part of the decision.

Recommendation

That the Cabinet Member for Adult Social Care and Public Health should agree that the National Minimum Eligibility Criteria will be Kent County Council's eligibility criteria policy for adults with care and support needs and that we adopt the national minimum eligibility criteria for carers from April 2015.

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 and, subject to final decisions by the Government, it is planned that 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 be introduced from April 2016.

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 new national minimum eligibility criteria for adults with care and support needs which all

councils must follow. This is set out in section 13 of the Act. The detail of the new criteria is contained in The Care and Support (Eligibility Criteria) Regulations 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 The eligibility for adults with care and support needs is to be assessed without regard to the support provided by carers. 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 and support provided by the council and/or 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 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 1 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 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 Kent County Council should adopt the new National Minimum Eligibility Criteria as the Kent eligibility criteria for care and support from April 2015. As the new minimum criteria 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 making the above recommendation, the following factors have been taken into account from the perspectives of Kent County Council and Kent residents:
- (a) all current service users (including those assessed as 'Moderate') will continue to be eligible after April 2015. They will not be

reassessed against the new criteria until their planned review or if their needs change.

- (b) it is believed that individuals who would be assessed as 'Moderate' if they were assessed now will still be assessed as eligible if they come forward for the first time after April 2015.

- 2.8 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 1 contains details of how the current eligibility criteria compares to the new minimum. Appendix 2 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 was carried out by operational staff who assessed current 'moderate' cases against the new national minimum. The results and further information of this exercise is contained in the Equality Impact Assessment (Appendix 3).
- 2.11 The Department of Health (DH) 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 PSSRU³ 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 meetings were held to inform people about the new criteria. The organisations involved are set out in Appendix 3.
- 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).

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 : 'Survey of fair access to care services (FACS) assessment criteria among local authorities in England' 2012

⁴ Ibid

- 2.15 Discussions with some of the other local authorities confirmed the view that the national minimum criteria may lead to more people coming into the care and support system.
- 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 and has been separately provided.

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 1 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. Also, such an option will require Kent County Council to have a complex system in place which will separate out those costs that will count towards the cap (i.e. only those needs that meet the national minimum eligibility criteria). It is considered that this will be very difficult to operate and put into practice. 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. Cabinet Committee input

- 4.1 The proposed decision was considered by the 4 December 2014 Adult Social Care & Health Cabinet Committee. Officers explained the huge scale of the change to social care policy enshrined in the new Care Act, which had consolidated and changed much existing legislation. There would be national and local media campaigns early in 2015 to raise public awareness of the changes, and all current service users and stakeholder partners would be written to. In addition, SCHW staff would be given extensive training to help them learn the new legislation and switch to applying the new rules and criteria when undertaking care assessments. A briefing for elected Members had been arranged for 15 January, to which all elected Members had been invited.
- 4.2 In response to questions from members, officers responded as follows:

a) The previous eligibility criteria had focussed on minimising the risks to a person's independence, while the new national eligibility criteria had moved this focus to concentrate more on outcomes.

b) The retention of the manager discretion element of the assessment process was welcomed, and it is important in any social care legislation that there should be an ability to address cases of exceptional need. Officers added that there would always be some people who had needs which KCC would meet even though they did not fit within the new eligibility criteria.

c) The appeal process by which service users could challenge their assessment needed to be easily accessible. A new national appeal system will be established, relating solely to the implementation the Care Act, however, the form of this would not be announced until early in 2015.

d) Officers explained that the County Council needed to come to a view on the new national eligibility criteria for two reasons; firstly, because it was not lawful for any local authority to set its eligibility criteria at a higher level than the national minimum and, secondly, because the extent to which the Council believed that the new criteria represented a change to legislation would determine what level of public consultation it needed to undertake. The Council would need to form this view early, so that, if public consultation were needed, this could be undertaken as promptly as possible. It was clear that there was some level of change between the old and new criteria, and the need for extensive staff training and adjustment to a new regime added to the level of change which needed to be undertaken.

e) Officers reminded Members that existing service users who had been assessed against the current criteria would be unaffected and would be passported to the new national eligibility in April 2015.

4.3 The Cabinet Member thanked Members for their careful consideration of the issues set out in the report, and for their comments, which he assured them he would take account of when taking the decision. He emphasised the scale of the change represented by the new Care Act – the single largest change to social care since 1948 - and said that the extensive work the County Council had undertaken in the past to its social care policy and assessment process had placed it in the best possible position to accommodate the current changes. He was determined that Kent should maintain its excellent record and reputation in this field.

4.4 Cabinet Committee resolved that the decision proposed to be taken by the Cabinet Member for Adult Social Care and Health, that the County Council adopt the national minimum eligibility criteria for determining which adults with care and support needs meet Kent's eligibility criteria, from 1 April 2015, after taking into account the comments made by this Committee, be endorsed.

4. Recommendation

4.1 The Cabinet Member for Adult Social Care and Public Health is asked to:

Agree, for the reasons set out in this report, that Kent County Council should adopt the National Minimum Eligibility Criteria for adults with care and support needs and that we adopt the national minimum eligibility criteria for carers from April 2015.

Appendices:

Appendix 1 – Comparison of the current ‘Moderate’ and new eligibility criteria

Appendix 2 – Case Studies

Appendix 3 – Equality Impact Assessment

Background documents:

Care Act 2014

Statutory Regulations 2014

Statutory Guidance 2014

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Appendix 1 – 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.

Appendix 2 – 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.	<p>YES</p> <p>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.</p> <p>The above does pose a risk to her independence and wellbeing.</p>	<p>YES</p> <p>She is unable to achieve outcomes (b), (e), (f), (l) 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.</p>
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.	<p>YES</p> <p>She is unable, without prompting, to carry out several personal care and domestic routines and also needs help overcoming her social isolation.</p>	<p>YES</p> <p>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.</p>
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.	<p>YES</p> <p>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.</p>	<p>YES</p> <p>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</p>
Ms D is a 70 yr old lady who suffers from osteoarthritis. She manages most of her	<p>NOT ELIGIBLE</p> <p>She falls below the</p>	<p>YES</p> <p>For the reason that she is unable</p>

<p>personal care herself except for having a shower as she is unsteady at times and prone to falling.</p>	<p>'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.</p>	<p>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.</p> <p>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.</p>
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