

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
15 January 2015

Decision No: 14/00137

**Subject: CARE ACT IMPLEMENTATION – POWER TO DELEGATE
ADULT CARE AND SUPPORT FUNCTIONS**

Classification: Unrestricted

Future Pathway of Paper: Recommendation Report to the Cabinet Member

Electoral Division: All

Summary: This report follows on from the previous reports on the Care Act that were presented to the Adult Social Care and Public Health Cabinet Committee on 26 September 2014 and 4 December 2014 and sets out the detail of the Key Decision on the Delegation powers within the Care Act that is required to be made in readiness for April 2015. In summary, it is recommended that KCC exercises its power to delegate for the purposes of fulfilling the new duties to prisoners, carers and for the purposes of assessing self-funders for the care costs cap.

This issue was discussed along with other Key Decisions at the 22 October 2014 Adults Transformation Board meeting.

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member Adult Social Care on the proposed decision that the following adult social care and support functions can be delegated from April 2015 under Section 79 of The Care Act 2014:

- 1) Assessment and care provision for prisoners
- 2) Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs.
- 3) Carers' assessments and administration of some aspects of support for carers.

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. Delegation of Care and Support Functions

2.1 Section 79 of the Care Act gives local authorities the power to delegate most of the care and support functions it has under Part 1 of the Act or under section 117 of the Mental Health Act 1983 (after-care services). The only exceptions relate to promoting integration with health services, cooperating with partners, safeguarding and decisions about which services to charge for.

2.2 Delegation of functions does not absolve the local authority of responsibility for these functions and it still remains legally accountable for the way in which the functions are carried out or failed to be carried out. The local authority can, therefore, impose strict conditions on how a third party organisation undertakes the function that has been delegated to it.

2.3 If the local authority chooses to exercise its power under Section 79, it is able to determine the extent to which it delegates the function in any particular case, i.e. it can delegate all or part of a function. For example the carrying out of an assessment could be delegated with the final decision kept in-house or also delegated.

2.4 Delegation under Section 79 of the Care Act is strictly speaking distinct from commissioning, arranging or outsourcing procedural activities related to a function. Legal advice has been requested on how this will work in practice with the specific functions being considered for delegation, in particular the requirements relating to procurement. This will be available to the Cabinet Member before the decision on delegation is taken.

2.5 It is the view of the directorate that the local authority is likely to want to exercise this power in order to effectively implement the requirements of the Act in a timely and cost effective manner. Initially it is believed this would be in the following areas:

- Assessment and care provision for prisoners (new duty from April 2015 under section 76 of the Act).
- Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs. Early assessment of existing self-funders may take place from October 2015, although the cap is only applicable from April 2016.
- Carers' assessments and administration of some aspects of support for carers.

In the future it may be deemed necessary to consider other areas for delegation as implementation plans precede. If this proves to be the case further papers will be brought to future Cabinet Committees.

2.6 Due to the timescales involved, it is recommended that the Cabinet Member take a decision that delegation of the above functions can take place in principle, but that the detailed decisions of how this will work in practice can be taken by the Corporate Director for Social Care, Health and Wellbeing after full discussion in each case with the Adult Transformation Board and Cabinet Member.

3. Recommendations

3.1 Recommendation:

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member Adult Social Care on the proposed decision that the following adult social care and support functions can be delegated from April 2015 under Section 79 of The Care Act 2014:

- 1) Assessment and care provision for prisoners
- 2) Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs.
- 3) Carers' assessments and administration of some aspects of support for carers.

4. Background documents:

Care Act 2014

Statutory Regulations 2014 – released October 2014

Statutory Guidance 2014 – released October 2014

5. Appendices

Appendix 1: Draft Record of Decision

6. Report authors:

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Appendix 1 – Draft Record of Decision

DECISION TAKEN BY Graham Gibbens, Cabinet Member for Adult Social Care and Public Health	DECISION NO. 14/00137
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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: Delegation of Care and Support Functions under the Care Act 2014

Decision:

As Cabinet Member for Adult Social Care and Public Health, I AGREE: that the following adult social care and support functions can be delegated from April 2015 under Section 79 of The Care Act 2014:

- Assessment and care provision for prisoners
- Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs.
- Carers' assessments and administration of some aspects of support for carers.

Any Interest Declared when the Decision was Taken **None**

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

Section 79 of the Care Act gives local authorities the power to delegate most of the care and support functions it has under Part 1 of the Act or under section 117 of the Mental Health Act 1983 (after-care services). The only exceptions relate to promoting integration with health services, cooperating with partners, safeguarding and decisions about which services to charge for. Delegation of functions does not absolve the local authority of responsibility for these functions and it still remains legally accountable for the way in which the functions are carried out or failed to be carried out. The local authority can, therefore, impose strict conditions on how a third party organisation undertakes the function that has been delegated to it. If the local authority chooses to exercise its power under Section 79, it is able to determine the extent to which it delegates the function in any particular case, i.e. it can delegate all or part of a function. For example the carrying out of an assessment could be delegated with the final decision kept in-house or also delegated.

It is the view of the Social Care, Health and Wellbeing Directorate that the local authority is likely to want to exercise this power in order to effectively implement the requirements of the Act in a timely and cost effective manner. Initially it is believed this would be in the following areas:

- Assessment and care provision for prisoners (new duty from April 2015 under section 76 of the Act).

- Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs. Early assessment of existing self-funders may take place from October 2015, although the cap is only applicable from April 2016.
- Carers' assessments and administration of some aspects of support for carers.

Due to the timescales involved, it is recommended that the Cabinet Member take a decision that delegation of the above functions can take place in principle, but that the detailed decisions of how this will work in practice can be taken by the Corporate Director for Social Care, Health and Wellbeing after full discussion in each case with the Cabinet Member and the Adult Transformation Board.

Background Documents:

Recommendation report from Corporate Director to Cabinet Member

Cabinet Committee recommendations and other consultation:

The proposed policy will be considered by the Adult Social Care and Public Health Cabinet Committee on 15 January 2015.

Any alternatives considered:

The alternative to exercising the delegation power under the Care Act is to develop policy and procedures for carrying out the new and existing duties by internal staff. This decision is to allow delegation in principle. For each of the functions it is intended to delegate business cases will be developed. These will consider the alternative options in detail.

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

None.