

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

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

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

Classification: Unrestricted

Past Pathway: Adult Social Care and Health Cabinet Committee – 15 January 2015 and 11 September 2015

Future Pathway: Cabinet Member decision

Electoral Division: All

Summary: Section 79 of the Care Act 2014 gives local authorities the power to delegate most of their adult care and support functions. This issue was discussed at the 22 October 2014 Adults Transformation Board meeting and the 15 January 2015 Adult Social Care and Health Cabinet Committee and it was recommended that this power be exercised for the time being in certain limited areas. This included some aspects related to Phase 2 of the reforms which were due to be implemented in April 2016. However the Government's recent announcement, that these Phase 2 reforms will be delayed until 2020, means that the issue needs to be revisited.

Recommendations:

The Cabinet Member for Adult Social Care and Public Health is asked to agree that, under Section 79 of The Care Act, the following adult social care and support functions can be delegated:

- 1) Assessment and care provision for prisoners
- 2) Carers' assessments and support for carers.
- 3) Specialist assessments and support for blind people.
- 4) Specialist assessments and support for deaf people

Detailed decisions of how these delegations will work in practice will 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.

1. Introduction

- 1.1 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, co-operating with partners, safeguarding and decisions about which services to charge for.
- 1.2 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.

- 1.3 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.
- 1.4 Delegation under Section 79 of the Care Act is strictly speaking distinct from commissioning, arranging or outsourcing procedural activities related to a function. However, in most cases it is anticipated that delegation will take place via the Commissioning process and Legal advice will be sought as appropriate.

2. Specific functions recommended for delegation

- 2.1 It is the view of the directorate that the local authority will want to exercise this power in order to effectively implement the requirements of the Act in the following areas:
 - Assessment and care provision for prisoners (new duty from April 2015 under section 79 of the Act)
 - Carers' assessments and support for carers
 - Specialist assessments and support for blind people
 - Specialist assessments and support for deaf people

In the future it may be deemed necessary to consider other areas for delegation as implementation plans precede. This will be significantly influenced by how the Government decides to implement Phase 2 of the Care Act, which has currently been deferred to 2020. If this proves necessary or desirable, further papers will be brought to future Cabinet Committees.

- 2.2 This issue was previously discussed at the Adult Social Care and Health Cabinet Committee on 15 January 2015 and the proposal to delegate these functions was endorsed. This proposal was for the Cabinet Member for Adult Social Care and Public Health to take a decision to allow the principle of delegation of these functions. As part of this, the practical details of the delegations were to be agreed by the Corporate Director for Social Care, Health and Wellbeing, in discussion with the Cabinet Member and the Adult Transformation Board.
- 2.3 The earlier decision however also explicitly included the delegation of:

- Assessment of self-funders (existing and on-going) for the purposes of the cap on care costs.

As mentioned above, since the earlier discussion by the Adult Social Care and Health Cabinet Committee, the Government has now deferred the implementation of Phase 2 of the Care Act and the cap on care costs. Consequently the council cannot currently delegate the assessments for this and so, for the purpose of clarity on what the council can and has subsequently chosen to delegate, this needs to be revisited. The Government has indicated that the cap on care costs, and hence the need to assess self-funders, will be

introduced from April 2020 but it is too early at this stage to take a Key Decision on this aspect.

- 2.4 It is recommended that the Cabinet Member for Adult Social Care and Public Health takes a Key Decision (attached as appendix 1) that, in principle, the functions outlined in paragraph 2.1 can be delegated, with the practical details being approved by the Corporate Director for Social Care, Health and Wellbeing.

3. Recommendations

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Detailed decisions of how these delegations will work in practice will 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.

4. Background documents:

Care Act 2014

Statutory Regulations 2014 – released October 2014

Statutory Guidance 2014 – released October 2014

5. Report authors:

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