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To: Cabinet – 1 February 2010

Subject: **'PERSONAL CARE AT HOME – A CONSULTATION ON PROPOSALS FOR REGULATIONS AND GUIDANCE'**

Classification: Unrestricted

Summary: The 'Personal Care at Home Bill' was announced in the Queen's Speech on 18 November, and was published on 25 November. Accompanying the Bill was a consultation, 'Personal Care at Home' on regulations and guidance which ends on 23 February 2010. Attached to this paper is the County Council's draft response to the consultation (Appendix A).

The report asks Cabinet's approval for the response to be submitted to the Government.

FOR DECISION

Introduction

1. (1) This paper informs Cabinet of Kent County Council's draft response to the consultation on 'Personal Care at Home' regulations and guidance. It seeks Cabinet's comments and agreement on the draft response, and also agreement for the manner in which any final points of detail and editing may be approved before submission of the response.

(2) The Government is consulting on the proposals until 23 February 2010. Kent County Council will be submitting a response to the consultation, having analysed its implications, including the financial and operational impact of implementation.

(3) This paper is accompanied by a draft response (Appendix A), which includes the Government's Consultation Questions.

(4) The purpose of this report is to recommend the County Council's draft response to Cabinet prior to its submission to the Department of Health. The draft response has been informed by debate of the Adult Social Services Policy Overview and Scrutiny Committee on 13 January 2010.

Background

2. (1) The 'Personal Care at Home Bill' was announced in the Queen's Speech on 18 November, and was published on 25 November. Accompanying the Bill was a consultation, 'Personal Care at Home' on regulations and guidance which ends on 23 February 2010, although the Department of Health has requested that responses reach them by 26 January if possible.

(2) The bill has completed its passage through the House of Commons, having undergone its third reading unopposed on 12 January 2010. It has now begun its progress through the House of Lords, with the first reading having taken place on 13 January 2010 with the second reading scheduled to take place on 1 February 2010.

(3) The regulations and guidance that are proposed should be viewed in the context of the recent Care and Support Green Paper and the *Transformation* agenda, a drive by Government over recent years to modernise Adult Social Care, particularly through an increased emphasis on *Personalisation*. The key policy documents which set forth these reforms are the White Paper *Our Health, Our Care, Our Say* (2006) and *Putting People First* (2007).

Personal Care at Home Bill - Overview

3. (1) The Personal Care at Home Bill amends previous legislation to make the necessary statutory provisions to require councils to provide free personal care indefinitely in settings other than care homes. **There is no requirement to provide free personal care in a care home setting.**

(2) The bill also makes the necessary provisions for free care to be linked to *Fair Access to Care Services eligibility criteria*, and grants councils the power to make free care conditional based on a person undergoing a process designed to maximise the person's ability to live independently (e.g. reablement).

Personal Care at Home Consultation – Key Proposals

4. (1) The consultation document contains the intended regulations based upon the powers conferred by the Bill. It anticipates that *free personal care for those with the highest needs* would be made available from *1 October 2010*. It states:

- Councils will be able to decide whether or not to make free personal care conditional on a person undergoing intensive support or reablement.
- There will be the possibility of individuals making retrospective claims for free care.
- No charge will be raised for intensive support or reablement services.
- That the 'highest needs' requirement be based on the FACS *Critical* criteria and a person's need to require *significant help* with *4 Activities of Daily Living* (ADLs). The latter will be a new requirement.
- The guidance will cover details of the assessment process, eligibility criteria and examples of what an intensive intervention / reablement package could include.
- That personal care should be provided in the form of a personal budget, services or a direct payment. Interestingly, the document states that *non-personal care elements of a personal budget will continue to be means tested*.

(2) It also sets out:

- Three options for allocating an amount to meet an individual's personal care needs.
- Key aspects of the proposals that impact upon councils, including implementation from 1 October 2010, reimbursement of individuals who present themselves after that date and the creation of a national assessment tool.
- Three potential options for the formula grant to distribute the funding to councils, each of which amount to between £5M and £6M for Kent for the half year 1 October 2010 – 31 March 2011.
- Funding of free personal care in the next spending review period (2011/12) is not addressed in the consultation. The consultation states that this will be discussed with councils separately.

Personal Care at Home Consultation – Key Implications

5. (1) If the Guidance is published as set out in the consultation document, it has a number of implications for KASS, including:

- The requirement to implement free personal care for those with highest needs from 1 October 2010, including those who are currently self – funding.
- The need to reimburse individuals who are shown to meet the criteria but present themselves after this date.
- Raised expectations of the public, due to high profile policy of 'free personal care'
- A decision would need to be taken on whether KASS should make free personal care conditional on an individual taking a period of reablement.
- A full public consultation on charging policy may need to be undertaken in relation to Kent's implementation of the Guidance when published.
- The need to carry out assessments using a new national assessment tool and to record additional information – implementation will add to the cost due to training, changes to the SWIFT system, etc.
- There will be increased demands on staff who would be required to carry out more detailed assessments to ascertain whether individuals qualify. This would increase transactional costs and reduce capacity.
- There may be disputes / appeals against decisions where individuals do not meet the criteria for free care. These could potentially become very costly and acrimonious.

- The consultation suggests that a distinction would need to be made between personal and non-personal care regarding what would be free. This would introduce further complications for charging (again perhaps leading to dispute), particularly in the light of more 'holistic' personal budgets. It also mitigates against the responsiveness to personal need, one of the main justifications for developing personal budgets.
- The determination of what is personal care and what is not has already become a fault line in Scotland, where for example, the provision of meals has been challenged in court as to whether it is personal care (i.e. ensuring that the person is fed) or not
- Those whose needs may be best met in a residential setting may resist entering a care home because of the financial incentive of receiving free care at home.
- The local market may become destabilised over time, as more people opt for care in their own homes.
- There is a risk that the requirement that to qualify for support people need to demonstrate a significant need for support in 4 or more activities of daily living could prove age discriminatory, in that it would exclude some profoundly disabled younger adults from the assessment.
- The current software does not record anywhere the need (or otherwise) for support in activities of daily living. To be able to implement this change, it will be necessary to specify appropriate changes, the software house will have to develop them, for us to apply and test, and to train staff in their use. All of this would need to be in place before October 2010.

Financial implications

(2) It is hard to provide a clear estimate for the likely cost of this policy. There are significant areas of uncertainty, notably:

- The extent to which current self-funders qualify for this financial support.
- The extent to which current service users on critical also need significant help with 4 or more activities of daily living (and the definition of 'significant').
- The extent to which people currently in residential care will seek to discharge themselves to benefit from this policy.
- The extent to which this will influence people's future choices on residential or non-residential care.
- The extent to which a reliable distinction can be made between personal and non-personal care.

(3) Other financial risks, which cannot be assessed but which could further increase costs are:

- People believing that they should be eligible for this support, when they are not, refusing to pay for their support, thereby increasing levels of debt.
- Individuals who are eligible for this support not seeing the need to apply for continuing health care status (and indeed PCTs being reluctant to assess for this) thereby increasing the numbers and costs of people supported.
- Informal carers stepping back from some or all of the care they currently provide, on the basis that this is now a free service.

(4) The overall funding proposed is only for the second half of the 2010/11 financial year, after that there is no clarity at all. Government will similarly have struggled with the uncertainties listed above, and therefore there is some concern that their figures do not adequately reflect the likely true cost of this policy. In addition, there is an assumption that, of the estimated £670m national cost, £250m (or 37%) will be found by efficiencies in local authorities. In Kent (as in many other local authorities) the efficiency savings arising from enablement and other preventative services have already been factored in to the Medium Term Plan to pay for the demographic increases in older people numbers. It is also considered that the assumption that local authorities will pay for part of a new policy is in direct contravention of the Government's own New Burdens Doctrine, which states that new Government requirements should be fully funded.

(5) The above factors give rise to considerable uncertainty in estimating the cost implications for Kent. This is clearly unsatisfactory. It is known that the Department of Health are currently revising some of the assumptions they have made in the light of responses already received to the consultation.

(6) There will be increased costs of administration as it is clear that the assessment and review processes will need to become more rigorous, and the recording of judgements will need to be sharp. It is inevitable that there will be legal challenge either from people (or their families) believing that they should qualify; or by KASS following up debts from people who are refusing payment. These costs are estimated at £700k per annum. There will also be costs of implementation (software changes and training). These are estimated at £100–200k.

Communication

6. (1) Due to the significant implications of the proposals, in particular the cost of implementation and concerns about the assumptions underpinning the Department of Health's Impact Assessment, Kent has been in touch with a number of key players at a local and national level.

(2) Communication has involved elected members, Kent MPs, senior civil servants, Local Government Association colleagues, and the Association of Directors of Adult Social Services, among others. It has largely been focussed on the significant financial risk posed to KASS and the services it provides to the people of Kent, should the funding provided by Government prove to be inadequate to implement the proposals.

Developing a Kent response

7. (1) The KASS Finance and Policy teams have been working on analysing the implications for Kent, with input from the Performance team. There has also been liaison with Corporate Finance regarding the budgetary implications for the Council, given the requirement to implement the proposals in the next financial year and the financial impact in subsequent years.

(2) The consultation has been discussed internally within the Directorate and with the Adult Social Services Policy Overview and Scrutiny Committee. The discussions that have taken place at these meetings have informed the Kent draft response to date.

Conclusion

8. (1) The ramifications of the Government's proposals are varied and far-reaching. The impact of the Bill, should it be enacted, and the regulations and guidance resulting from the Government consultation will have significant impacts.

(2) The financial risk of implementing this policy is significant for local authorities. It is quite clear that there are many unknowns in determining how many people will benefit and at what cost. This represents a very high risk to the authority, at a time when budgets need to be tightly managed.

(3) These considerations aside, the short timescale for implementation would in itself present challenges to KASS. The Directorate is already in the throes of modernisation as part of the *Transformation* agenda, and faces competing demands as a result of the current economic situation and the ageing population.

Recommendations

9. (1) Cabinet is asked to:

(a) NOTE the contents of this report and the key points raised in the draft response to the consultation.

(b) COMMENT on the draft consultation response; and,

(c) AGREE the proposed response to the consultation on 'Personal Care at Home' and further agree that the Cabinet Member for Adult Social Services together with the Managing Director for Kent Adult Social Services be granted authority to approve any final points of detail and editing before the response is submitted to Government which must be done by 23 February 2010.

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Background documents:

Personal care at home - A consultation on proposals for regulations and guidance, Department of Health, 25 November 2009;

Impact Assessment Personal Care at Home, Department of Health, 25 November 2009;

Equality Impact Assessment Personal Care at Home, Department of Health, 25 November 2009;

Personal Care at Home Bill 2009-10, Parliament, 18 November 2009.
