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To: Social Care and Public Health Cabinet Committee – 14 September 2012

Subject: **CARE AND SUPPORT WHITE PAPER AND DRAFT BILL**

Classification: Unrestricted

Summary: This paper provides Cabinet Committee with an overview of the key proposals set out in the White Paper 'Caring for our future: reforming care and support' and draft Care and Support Bill, both published in July 2012. The paper highlights the proposals that are of particular importance for KCC. Government is inviting comments on the draft Bill by 19 October, and a draft response from KCC is attached. Cabinet Committee is asked to comment on and approve the draft response.

1. Introduction

1.1 In July 2012, Government released a series of documents on the future of adult social care. These are:

- The White Paper ***Caring for our future: reforming care and support*** - an overarching vision for adult social care
- A draft ***Care and Support Bill*** which legislates for measures in the vision, particularly responding to the Law Commission's call for streamlining social care legislation
- ***Caring for our future: progress report on funding reform*** which sets out how the government intends to respond to the Dilnot Commission's recommendations
- A consultation on a new ***adult safeguarding power***

1.2 Government are inviting consultation responses on the draft Bill by 19 October 2012.

2. Policy Context

2.1 The White Paper and draft Bill have responded to the recommendations of the Law Commission review (2011) on social care legislation and has responded to some of the Dilnot Commission's review (2011) of funding of long-term care.

2.2 The Law Commission recommended a single, clear, modern statute that would pave the way for a coherent social care system. The Commission recommended:

- Putting an individual's wellbeing at the heart of decisions, using statutory principles
- Giving carers new legal rights to services
- Placing duties on councils and the NHS to work together
- Building a single, streamlined assessment and eligibility framework
- Giving adult safeguarding boards a statutory footing

All of these recommendations have been adopted in the draft Bill.

2.3 The Dilnot Commission's recommendations included:

- A cap on social care costs, suggested at £35,000, for an individual's lifetime contribution towards their social care costs, after which they would be eligible for full state support
- An increase in the means tested threshold, above which people should pay full care costs, from £23,250 to £100,000
- Introduction of national eligibility criteria
- Portable assessments
- Younger adults to be entitled for free care and support without being means tested

In the separate document *Caring for our future: progress report on funding reform*, Government acknowledges that the recommendations of the Dilnott review are a sound basis for future social care funding arrangements, and the draft Bill introduces a national eligibility criteria and portable assessments. Government have also recently announced their intention to introduce the suggested cap on social care costs. However, funding decisions on implementing the Dilnot recommendations and providing sustainable funding for a reformed care system are postponed until the next Comprehensive Spending Review, and are unlikely to be enacted for at least five years.

2.4 KCC previously responded to Government's consultation *Caring for our future: Shared ambitions for care and support* in 2011, setting out our position on key issues and what we wanted to see from the White Paper and Bill, giving a good reference point for the consultation response.

2.5 The reforms proposed in the White Paper are broadly in line with the FSC Adults Transformation Programme, which are centred around prevention, personalisation and choice.

3. Key Issues

3.1 Key proposals of the White Paper and draft Bill

Appendix 1 shows a timeline of key actions proposed in the White Paper and enacted in the draft Bill from the current financial year through to 2015-2016.

Some of the key proposals that are likely to have most importance for KCC include:

Role of Local Authorities and new duties around prevention

The White Paper articulates a changing role for Local Authorities focused on **leadership** of care and support in the local area - identifying needs and empowering people to take control of their own care using a range of care and support options. The draft Bill is written around a single unifying purpose for care and support to promote the individual's **wellbeing**. It introduces a **statutory duty** to provide services that contribute towards **preventing, reducing or delaying** the development of needs for care and support. Commentators have expressed concerns about the capacity of Local Authorities to make this a reality given funding constraints.

Health and social care integration

The draft Bill introduces a **duty** on Local Authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services (e.g. Housing.) There is also a clause about general **co-operation** with partners including Districts, Police, Prisons and Probation, but there are no new duties. The White Paper references a framework to be published later this year to support the removal of barriers to integration - including the development of integration measures and incentives, although there will still be separate Outcomes Frameworks for the NHS and public health and adult social care.

Power for Local Authorities to delegate functions

The draft Bill proposes a **power** for Local Authorities to **delegate** their care and support functions, including assessment and care planning, to a third party, unless specifically excluded. Exclusions are duties and powers related to co-operation, promoting integration with health services, imposing charges, making direct payments and safeguarding adults at risk of abuse or neglect. This is one of the most significant changes that the draft Bill proposes and would open up new commissioning possibilities, but further clarification is needed on the situations in which Authorities can delegate functions and where responsibilities lie.

Minimum eligibility threshold

The draft bill paves the way for a **national minimum eligibility threshold** which Government suggest would be equivalent to the FACS 'Substantial' band. It is proposed that Local Authorities have flexibility to implement a lower eligibility threshold if they wish. This could be seen to undermine the focus on prevention.

Carers

The draft Bill introduces a **statutory duty** to meet carer's needs for support where they meet the eligibility criteria. It places carers on an equal footing as service users for the first time. This recognition of carers is a welcome move, but is likely to have significant financial implications that will require careful analysis. This is one of the implications of the White Paper and draft Bill that will be discussed at Budget Programme Board to get a full understanding of the financial impact on KCC and how this could be managed.

New short/medium-term funding commitments

New short/medium-term funding announced in the White Paper is explained in the Financial Implications section below. It includes an additional **NHS transfer** of £300 million between 2013 and 2015 and new funding to support the development of **specialist housing** for older and disable people.

Delay to decision on long-term funding reform

Significantly, there is a disappointing **delay of decision on funding reform**. Although Government have acknowledged that the Dilnot recommendations of a cap on lifetime care costs and a rise in means testing is a sound basis for future funding schemes, no decision will be made until the Spending Review in 2013. The Progress Report on Funding Reform raises various issues that Government are still considering, including the level of cap and how it should change over time, the issue of paying living costs in residential care and whether to introduce financial protection through voluntary opt-in or opt-out schemes. KCC has expressed its views on these issues in various responses to Government, including our response to *Caring for our Future* and has expressed a desire to work with Government on this. As well as the increased demand for all Local Authorities in assessing and providing care that the proposals would bring, there are particular issues for Kent due to the higher costs of care and number of current self-funders.

Deferred payments

The draft Bill appears to permit deferred payments to **cover costs for all types of care** (not just residential care as at present,) and to charge interest on the deferred sum. This would come into force in 2015. The LGA has reported on an ADASS survey which found that councils have already made deferred payments to around 8,500 people to a value of £197 million. It is not clear how Councils will afford to cover the care costs upfront when more people begin to use this option.

Personal Budgets and Direct Payments

The Bill introduces the **right** for all those eligible for care to have a **Personal Budget**, preferably delivered as a Direct Payment. The White Paper also commits to making it 'straight forward' for people to combine personal budgets for social care with personal health budgets, and to continue to learn from pilots where benefits have also been integrated in personal budgets. This could present opportunities for use of the Kent Card.

The White Paper also announces Government's intention to launch a pilot of the use of **Direct Payments in residential care**. FSC is considering whether it is appropriate for KCC to take part in the pilot. KCC will be keen to ensure that the pilots address concerns that KCC has raised in the past, including residents being charged at private rates. Other routes to personalising residential care could also be explored.

Information and support

As well as national information about care and support being developed through a single online portal for health and social care and directory of care providers, the draft

Bill places a **duty** on Local Authorities to provide a comprehensive information and advice service about **care options** in the local area. Start-up funding is being provided to support this.

Developing the market

The draft Bill introduces a **Statutory Duty** to develop a **diverse local market** of providers of social care. This is in line with Bold Steps for Kent commitments and the Transformation Programme. The White Paper does not make any new provisions to support the Voluntary and Community Sector.

Adult safeguarding

The draft Bill introduces a statutory requirement for Local Authorities to establish a **Safeguarding Adults Board** including as a minimum, the Local Authority, clinical commissioning groups and the Chief Officer of Police. It also places a duty on Authorities to make **enquiries** where they reasonably suspect that an adult with care needs is at risk of abuse or neglect. A separate consultation has been launched on whether a new power should be created to allow Authorities access to a person where we would not otherwise be able to carry out a safeguarding enquiry.

3.2 Implications for the FSC Transformation Programme

The fundamental principles and policy direction of the White Paper and draft Bill are broadly in-line with the Transformation Programme. However there are a number of specific proposals that are likely to impact on the Programme, and which FSC will consider in more detail and aim to influence the development of. These include:

- Arranging care for self funders
- New responsibilities for carers
- Local Authority delegated functions
- National assessment framework
- National eligibility criteria
- Deferred payments

3.3 Financial Implications

Government has stated that it expects the additional transfer of NHS funding in 2013-14 and 2014-15 to cover the costs of the reforms outlined in the White Paper. Finance is undertaking a detailed analysis of the financial implications of the new proposals and the findings will inform part of KCC's consultation response. Particular attention will be given to the assumptions and cost estimates made in Government's Impact Assessments of the likely costs and benefits of the reforms, which may not be reflective of Kent's position.

A summary of the financial announcements made in the White Paper is provided below:

- £100 million in 2013-14 and £200 million in 2014-15 to be **transferred** from NHS to councils under section 256 with similar conditions to previous transfer. Kent's share is likely to be approximately **£2.5 million** and **£5 million** respectively. The funding will be transferred to Local Authorities and overseen by the NHS Commissioning Board, clinical commissioning groups, Health and

Wellbeing Board and Councils. This funding is expected to cover the reforms set out in the White Paper.

- £200 million capital spread over 5 years for **specialist housing schemes** - KCC's share may be about **£5 million** over 5 years.
- Start up funding of £32.5 million from 2014-15 to develop local online information services
- Investment by NHS in end of life care pilots to be doubled from £1.8 million to £3.6 million.

3.4 Development of KCC consultation response

KCC will submit a response to the consultation on the draft Care and Support Bill by the deadline of 19 October. The draft response is attached as Appendix 2. A separate letter from Graham Gibbens will comment on any significant issues in the White Paper that we wish to raise with Government. The draft response has been discussed by FSC DMT and Divisional Management Teams. Advice on the legal implications has been sought from Legal Services and included in the response. Detailed analysis of the financial impacts is being provided by Finance and will be included in the final draft.

Social Care and Public Health Cabinet Committee are asked to comment on the draft response. It has been agreed that the final draft will be approved by the Corporate Director and Cabinet Member before being submitted to Government.

3.5 Joint working with other authorities

The consultation on the draft Bill represents an opportunity for Local Authorities to influence the proposed reforms to social care and support. By co-ordinating responses and submitting joint responses with other South East Authorities, we can emphasise key issues and concerns and highlight any specific implications for the South East. Hampshire County Council are keen to work with us to align our consultation responses. We are due to take a draft response to the meeting of South East Adult Social Care (SECASC) on 28 September. KCC will also contribute to joint responses from South East England Councils (SEEC), South East Strategic Leaders (SESL) and SECASC. The KCC response that we are drafting will be the basis for our contribution to the other responses.

As well as coordinating our response to the consultation, Kent will also support and influence the development of new frameworks and initiatives brought in through the White Paper reforms, working with the LGA/ADASS local authority family, and with Government. We may particularly wish to influence the development of:

- National eligibility criteria
- National assessment framework
- Provider Quality Profile
- Code of Conduct
- National Information Website
- Funding system for palliative care

4. Recommendations

4.1 Social Care and Public Health Cabinet Committee are asked:

- a) To NOTE the key proposals of the White Paper and draft Bill
- b) To NOTE that more detailed analysis of the implications of the reforms for the FSC Adults Transformation programme will be undertaken
- c) To COMMENT on the draft consultation response to the draft Care and Support Bill (Appendix 2)

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Appendices:

Appendix 1 - Care and Support White Paper - at a glance high level key actions 2012/13 - 2015/16

Appendix 2 - Kent County Council's response to the pre-legislative scrutiny consultation on the draft Care and Support Bill (working draft)

Background Documents:

[Draft Care and Support Bill, DH July 2012](#)

[Caring for our future: reforming care and support White Paper, DH, July 2012](#)

Appendix 1 - Care and Support White Paper - at a glance high level key actions 2012/13 - 2015/16

2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016
<ul style="list-style-type: none"> ➤ Volunteering fund bid (Jun) ➤ Provider quality profile (basic) on NHS and social care published (July) ➤ Consultation on new safeguarding power (ends 12 Oct) ➤ Draft Care and Support Bill (ends 19 Oct) ➤ Issue invitation for EOI to pilot DP in residential care ➤ NHS plans for short break agreed and published (30 Sept) ➤ Exclusion of Armed forces QIP from social care charging (Oct) ➤ Appointment of Chief Social Worker (autumn) ➤ Publish process for social impact bond trailblazer (autumn) ➤ Incentivise support for Telecare ➤ Ban age discrimination in health, care and support (Oct) ➤ Publish quality framework (Dec) ➤ Publish code of conduct and minimum training standards ➤ Publish social care leadership framework ➤ Details of £200m capital sch. ➤ Consultation on oversight of market ➤ Publication of integration plan 	<ul style="list-style-type: none"> ➤ NHS transfer to social care £100m ➤ National care and support library (NICE) ➤ National website about health, care and support (Apr) ➤ NHSCB & CCG responsibility to identify carers (Apr) ➤ Pilot new care audit on delivery dementia care ➤ LGO to publish data on complaints by LA ➤ Local Health Watch established (Apr) ➤ Publish Sector Compact on training development ➤ Provider quality profile (full details) independent quality ratings ➤ Launch new leadership forum on transformation ➤ Care and Support Bill in Parliament ➤ Direct Payment in residential care pilot ➤ National vol. fund bid ➤ Social impact bond trailblazer ➤ Establish working group on assessment and eligibility criteria frameworks 	<ul style="list-style-type: none"> ➤ NHS transfer to social care £200m ➤ Local authority online information start-up funding £32.5m 	<ul style="list-style-type: none"> ➤ Universal Deferred Payment ➤ National minimum eligibility criteria ➤ New assessment framework developed ➤ New carers' legal entitlement to support ➤ New funding system for palliative care

Appendix 2 - WORKING DRAFT V.02
KENT COUNTY COUNCIL'S RESPONSE TO THE PRE-LEGISLATIVE SCRUTINY
CONSULTATION ON THE DRAFT CARE AND SUPPORT BILL

1. Introduction

Kent County Council (KCC) welcomes the opportunity to comment on the draft Care and Support Bill. We endorse the view that the current system of social care is not fit for purpose and is in need of reform. We recognise this as a once in a generation opportunity to introduce a new legislative basis for adult care and support, to make the much needed reform a reality. KCC's approach to adult social care is built around the principles of integration, prevention and early intervention, and we are pleased to see that these principles are at the heart of the draft Bill.

KCC is the largest Council with Adult Social Services Responsibilities (CASSR) in England. It contains some of the most deprived areas in the South East and includes large coastal areas, which contributes to it having above average residential home capacity. This, combined with our proximity to London, leads to many individuals being placed in Kent from out of the area making Kent a 'net importer' of care and support. KCC can end up becoming responsible for funding of individuals placed here under Ordinary Residence rules.

Despite high demand for care and support in the county, KCC continues to support individuals down to the 'Moderate' Fair Access to Care Services (FACS) eligibility criteria. This decision has local cross-party support, and we believe it results in better outcomes for the individual and better value for money in the long-term.

KCC has a strong track-record in pioneering the transformation of adult social care and has a national reputation for innovation. To ensure that we continue to respond to the needs of those who use our services and their carers in a challenging financial context, we have launched a three-year programme of transformation of adult social care. To support the transformation, we have developed a new Vision Statement for adult social care in Kent, as shown in Figure 1.

Our transformation will have a determined focus on prevention and targeted intervention, ensuring that services respond rapidly and are more effective. We will encourage and empower individuals to do more for themselves and ensure greater support is available to carers. We will also develop a new deal with both voluntary and independent providers; one that is based upon trust and incentivisation. Clearly this is consistent with the reforms set out in the White Paper and underpinned by the draft Bill, and KCC welcomes many of Government's proposals which will help support our own commitments.

Vision Statement

People are at the heart of all adult social care activities, receiving integrated services that are easy to access, of good quality and that maximise their ability to live independently and safely in their community.

We will achieve this by:

- Empowering citizens to build a support network of trusted people, places and services tailored to their needs and minimising their dependence on formal services
- Working with communities to ensure people can develop or retain a choice of social links and networks to maintain health and prevent social isolation
- Making every penny count in achieving service user outcomes and value for money services
- Providing the right assessment at the right time to support people to achieve or regain their ability to manage their lives
- Commissioning housing options that support people to thrive in their community
- Developing a vibrant market of services from which people can find the right support
- Agreeing clear and consistent standards across the county, but recognising distinctive local solutions for delivery
- Encouraging a positive culture that enables our workforce to develop and deliver a quality service

Figure 1: KCC Adult Social Care Vision Statement

Along with our colleagues in the sector, KCC is disappointed that the draft Bill has not been accompanied by more definitive proposals for the reform of long-term funding for care and support. KCC fully supports the recommendations of the Dilnot review and would welcome the opportunity to work with Government on the development of a long-term funding system that delivers these principles. We recognise and support Government's commitment to take forward some of the recommendations including the £35,000 lifetime cap. However we urge Government to deliver quicker agreement and implementation of the new funding arrangements, as the current five year timescale leaves a significant period of time during which Local Authorities, providers, people with care needs and their carers will continue to struggle with the current system which is no longer fit for purpose.

We are pleased to note the additional NHS funding transfer that Government has promised to promote integration with the NHS and cover the costs of the reforms. However, we believe that in order to truly promote integration and provide sustainable funding for care and support needs, this must go further, and secure the transfer of NHS money for adult social care for the longer term, if not on a permanent footing.

KCC recognises that the current system is not sustainable given the demographic pressures and their financial implications. In line with demographic changes across the country, Kent's population over 65 is set to increase year on year, increasing 55% by 2030, with incidence of long-term conditions expected to rise at a similar rate. There is little doubt that this leaves a significant funding gap for social care, and that cuts in government spending create an even tougher challenge for Local Authorities to deliver

services in a sustainable way. The LGA have estimated that if the current trend continues, 70% of Council expenditure in 2019/20 will be on adult social care¹.

In the South East we are faced with particular funding challenges. South East England Councils' recent report 'Fixing a Broken System'² highlighted the historical inequity in funding for the South East, with the region receiving significantly less per head than London and metropolitan areas, across both Local Government and Health funding. In his introduction to the report, former SEEC Chairman and KCC Leader Paul Carter said "We welcome Government's commitment to updating public finances but we would like to move faster and further to change the current inequitable and unsustainable system." KCC would call for the new long-term adult social care funding approach to respond to the findings of the report and ensure that the South East is fairly funded to meet demand.

KCC is pleased to offer this detailed response to the draft Bill. We have structured our response by working through the sections of the Bill and for each section have made comments in the following categories:

- (a) where we feel that an issue is missing;
- (b) where we feel there is a lack of clarity;
- (c) where we feel there is contradiction, and
- (d) comments on regulatory provisions.

In preparing our response, we have identified three areas of the draft Bill that we would most like to encourage Government to revise in subsequent drafts. These are:

1. *(to be included in brief - reference further detail in full response below)*
- 2.
- 3.

Top three (or more?) areas to be agreed for final draft.

KCC would like to reiterate our offer to work with colleagues on national working groups or directly with Government to share our ideas and contribute to the development and testing of proposals set out in the White Paper and underpinned by the draft Bill. We would particularly welcome the opportunity to influence the development of:

- Long-term funding solutions for adult care and support
- National eligibility criteria
- National assessment framework
- Provider Quality Profiles
- Code of Conduct
- National information website
- Funding system for palliative care

¹ LGA, 'Funding Outlook for Councils from 2010/11 to 2019/20: Preliminary modelling', June 2012

² South East England Councils, 'Fixing a Broken System', June 2012

2. General responsibilities of local authorities

Wellbeing duty

KCC welcomes the consolidation of adult care and support legislation around the single defining purpose of promoting individual wellbeing.

(b) We are concerned however that the definition of ‘wellbeing’ is not precisely defined and is therefore open to interpretation, and the list of examples seems to give it a very wide scope. The term ‘promote’ is also open to interpretation. This could leave Local Authorities open to challenge, including Judicial Review, on the care and support services they provide and how they provide them - as acknowledged in the detailed notes for the Bill. KCC would like to see further clarity from Government on how the wellbeing principle is to be interpreted and translated into practice.

(b) We would also encourage Government to specify how this duty to promote individual wellbeing relates to broader wellbeing provisions, for example under the Local Government Act (2000.)

(c) In the introduction to the draft Bill, the section ‘What will the Bill do?’ states that “the well-being of the individual is paramount.” However this is not evident from the wording of the draft Bill, and in fact subsection (3) (e) requires Local Authorities to have regard to “the importance of achieving a balance between the adult’s well-being and that of any friends and relatives who are involved in caring for the adult.” It will be difficult for Local Authorities to interpret the duty with this contradiction, and there is a recurring need throughout the draft Bill to understand the ‘hierarchy’ of responsibility between the person with care needs and their carer.

Prevention

(d) This section of the Bill places a requirement on Local Authorities to provide or arrange for the provision of services that will prevent or delay the development of needs for care and support by adults in its area. As is currently the requirement, the Bill also specifies that a Local Authority must provide an assessment and subsequently any eligible services *where it appears that an adult may have needs for care and support*. There is a balance to be struck here between the Local Authority’s responsibilities to those who are in need of care and support, and the wider population, the majority of whom will not have care and support needs. By stretching the scope of responsibility, Government needs to be clear about where they expect Local Authorities to focus their efforts and limited resources.

With increasing financial pressures, it is important that prevention and early intervention does not become overlooked, and further guidance and appropriate funding from Government can prevent this from happening. In Kent, prevention and early intervention are key components of our approach to adult social care, and we are working with colleagues in the health, housing and voluntary sectors on a range of early intervention and prevention initiatives. Government could greatly assist by focusing on the development of research evidence to back up the benefits in outcomes that early

intervention and prevention brings, so that Local Authorities can use this as a tool to work with partners and push this important agenda forward.

Providing information and advice

(d) KCC welcomes the proposals in the draft Bill to provide information and advice both at national level and about the choices available at local level. Strengthening and improving the advice and information we provide about care and support in Kent is one of the objectives of our transformation programme. We are pleased to see that Provider Quality Profiles will make information on providers available to the public. We would like to encourage Government to supplement this with information from service users/carers on the quality of care given, bearing in mind the need to balance this with objective evidence such as the results of Local Authority contract compliance and safeguarding reviews

(a) We believe that better information and advice is essential to encouraging people to plan for their futures. However, with the significant wait until a long-term funding position is agreed and implemented, Government is missing an opportunity to incentivise saving for later life and is making it harder for people to make informed decisions about likely costs of care in the future.

Diversity and quality of services

KCC is pleased to see the duty for Local Authorities to promote a diverse market of providers. We believe that this is the most effective way to create a social care system that delivers a choice of high quality, personalised and affordable services. A diverse social care market is central to our transformation programme, and we are currently investing time and energy in gaining a thorough understanding of our local care and support market, as well as detailed analysis of local needs and potential solutions. This will enable us to develop clear and comprehensive Commissioning Plans for our adult care services.

(a) To promote the diversity of provision, Local Authorities should be supported to make it easier for small organisations from the Voluntary and Community Sector (VCS) to join the market. For example, KCC would welcome clear guidance from Government on how to apply the rules of Part B procurement to allow more flexible procurement that is accessible to smaller VCS providers. This would help us to make the principles of the Big Society a reality.

A more diverse and responsive care market in which people increasingly contract for their own care and support requires a well-defined and easy to implement definition of 'quality' and we are pleased to see that Government is intending to do this.

Co-operating

(a) Government may wish to consider adding 'other providers of health services commissioned either by the NHS Commissioning Board or by a clinical commissioning group' to the list of partners at clause 4, sub-section (5.) Alternatively, if it is intended that the power to co-operate is retained by the commissioner, this needs to be stated.

(b) In Clause 5, if an agency decides that it will not comply with a request for co-operation for the reasons given in subsection (1,) and the Local Authority believes that the reason given is not satisfactory, how can this be resolved?

Integration with health services

KCC fully supports Government's drive for integration between health and social care, essential if the drive for increased personalisation, prevention and quality are to be achieved. However, better integration at all levels has been worked towards for several decades and progress has generally been slow. We think it is the integration of services that is most important and therefore most emphasis should be put on encouraging integrated commissioning.

(d) We think that the Government can greatly assist the integration agenda by helping to develop a system of incentives and disincentives, for example developing a framework that can be used to distribute any savings achieved through integration so that all parties can see the financial reward. We would encourage Government to act on the findings of the Social Care Institute for Excellence briefing *Factors that promote and hinder joint and integrated working between health and social care services*³. This identifies various factors that can become a barrier to integration, including information sharing, which Government could help to resolve. Also although we welcome the alignment of the Public Health and Adult Social Care Outcomes Frameworks, the NHS Outcome Framework is still separate and Government could promote integration by aligning the three Frameworks together.

(b) Does the requirement for a Local Authority to ensure the integration of care and support with health provision put an onus on Local Authorities to do this over the NHS, or are both parties equally responsible for ensuring that integration happens?

Comments to follow from Finance on the additional transfer of £300 million from 2013-2015 to promote the integration of services - is this sufficient to promote any real change, especially as it must cover costs of the reforms as well?

3. Meeting needs for care

(d) The draft Bill's central purpose is to promote independence and wellbeing. However the order of examples of how care needs can be met is not consistent with the policy intention of prevention and care closer to home. For example, residential care would be the option pursued if other options to meet the individual's care and support needs in their own home were not suitable, but residential care is first in the list of examples. We would recommend re-ordering the examples to emphasise prevention and early intervention.

³ Social Care Institute for Excellence, 'Factors that promote and hinder joint and integrated working between health and social care services', May 2012

4. Assessing needs

Setting a national eligibility criteria

(b) KCC believes that the Local Authority is best placed to decide the level of eligible need in their area and subsequently to allocate appropriate funding, and are pleased to see some acknowledgement in the Impact Assessment that Councils will retain control for overall budget setting and size of individual care and support packages. However, assessment will always be open to subjectivity, and it is not currently clear how the new national eligibility criteria will eliminate the current inconsistency in application of FACS as Local Authorities will continue to interpret the criteria in their own way. We have concerns that the introduction of a national eligibility criteria could give a false impression to service users that the actual services they receive will be universal, when in fact they will necessarily vary between areas.

(d) Experience from the National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care⁴ shows that there are still large disparities between PCTs. A new eligibility criteria will need to be properly monitored and accountability for ensuring that it is being followed will need to be clear in order for it to have the positive effect that Government intends.

Level of national eligibility criteria

(c) If prevention is to be at the heart of the social care system, KCC would expect to see the universal threshold set to at least the equivalent of 'Moderate' on the FACS scale. This would require appropriate funding and we acknowledge the statement in the Impact Assessment that Government will need to consider funding implications in setting the criteria, but would encourage an emphasis on early intervention and prevention.

Despite concerns about the level of the national eligibility criteria, KCC welcomes the freedom for Local Authorities to offer a more generous eligibility criteria. As previously stated, we believe that maintaining our eligibility rating of Moderate delivers better outcomes and value for money.

(b) KCC would like to seek assurance that the introduction of a universal eligibility threshold at the equivalent of 'Substantial' will not financially disadvantage authorities like Kent who have always maintained eligibility at moderate, and that any funding streams to support the new eligibility threshold will be distributed fairly.

Assessing adults with needs and assessing their carers

(b) and (d) The draft Bill introduces a parity of responsibility to assess and meet the eligible needs of the adult with care and support needs, and the carer. KCC fully supports the recognition of carers. However very clear and specific guidance in the regulations will be needed to explain how this should translate in practice. Current

⁴ Department of Health, The national framework for NHS continuing healthcare and NHS-funded nursing care, July 2009 (revised)

Department of Health guidance expects Local Authorities to first assess and meet the needs of the adult with care and support needs, which in turn supports their carer, and then to assess and meet any additional needs of the carer. For example, the DH Carer's Grant Guidance⁵ states:

11. It is recognised that the results of a carer's assessment will usually be the provision of community care services to the service user. Such community care services should be as flexible as possible and take the needs of both parties into account as far as possible.

Guidance is needed on whether this is still expected practice, as it seems to be a logical approach to assessing and meeting carer needs.

(d) As Local Authorities start to use their new power to delegate assessment, it will be important to ensure that providers understand the position with regards to parity of responsibility to assess needs of the adult and their carer.

(c) and (d) On a related point, Clause 12, subsection (1) (a) states that further regulations may require the Local Authority to have regard to the needs of the family. Is this still the case if the needs of the family are in conflict with the needs of the person with care needs? Regulations will need to give clear guidance on this.

Shared assessment

(a) and (d) The Bill does not specifically reference shared assessment between agencies, which is something that KCC would like to promote where possible to prevent duplication and cost for public agencies and inconvenience and uncertainty for service users and carers. We would like to suggest that regulations should allow and encourage this to happen where appropriate.

Care and support in prisons

(b) The White Paper states that the new assessment framework will make it clear where responsibility for support in prison lies, with responsibility for assessment of need resting with the Local Authority in the area where the prison is situated. Provision of care would rest with the Local Authority if above a threshold of need that can no longer be provided by prison officers. KCC would like to seek clarification on how this will be reflected in the funding formula.

Further analysis to follow on the financial impact to KCC of assessment and provision of care - likely impact on LD/MH services. Also issues of ordinary residence need to be clarified. Kent may be particularly affected due to number of prisoners in the area

Resource impact of the changes

Analysis from Impact Assessment to be provided by Finance - particularly around costs associated with carer assessment and subsequent support and cost of prison assessment as above.

⁵ Department of Health, Carer's Grant 2008-11 Guidance, January 2008

5. Imposing charges and assessing financial resources

Power to impose charges

(d) The draft Bill gives local authorities a general *power* to impose charges. This is a departure from the existing *duty* to charge for residential accommodation and power to charge for non-residential services. The draft Bill will remove this distinction. We suggest that it would be preferable to place the ability to impose charges under a ‘duty’ provision rather as presently stated in the draft Bill as a power. This will help give Local Authorities greater weight in pursuing payments, which is essential in delivering economically sustainable services.

Deferred payments

(b) KCC would like to ask Government to confirm that the intention of the draft Bill is that deferred payments can be used to cover all care costs, i.e. residential and non-residential. Although we assume that this is the intention, as it is in line with the general spirit of the draft Bill to remove distinctions between care settings, the draft Bill does not specifically clarify this point.

(b) and (d) Assuming that the draft Bill *does* intent to extend the use of deferred payments beyond residential care costs, we are supportive of this broader power. However we have concerns about how the up-front costs of deferred payments will be covered. An ADASS survey has found that Councils have already entered into deferred payment arrangements with around 8,500 people to a value of £197 million. It is not clear how Government intends that Local Authorities will cover the cost when more people start to use this option to cover a wider range of care costs.

(b) KCC would like Government to clarify the point from which interest can be charged on a deferred payment. Currently interest is only charged 54 days after the person has died. Under the new arrangements, is interest to be charged from the time that the agreement is signed? We also welcome Government’s intention to set the interest rate that can be charged.

6. Who can have their needs met?

Power to meet needs

(b) Clarity is needed around Clause 18 which gives Local Authorities a power to meet care needs where the *duty* to do so does not apply and subsection (2) explains that this can happen where a person is not ordinarily resident in the Local Authority area. It is not clear why a Local Authority would choose to do this when they have no duty to do so, and is more likely that this would result in an Ordinary Residence dispute. Clarity is needed on the intention and application of this clause.

Self-funders

(d) Clause 17(3) turns the power for Local Authorities to meet needs even where the individual’s financial resources are over the financial limit, into a duty to do so. KCC

notes the positive impact that this will have on self-funders, particularly in helping them to avoid avoidably excessive care costs and to help individuals plan for their long-term care needs where their financial resources are likely to run out. However, although not the policy intention, practical arrangements would mean that the 'cross-subsidy' in the cost of care between people supported by public funds and those who meet the cost of care and support out of their own means will disappear. Self-funders represent a significant proportion of the market - a Lang and Buisson study in 2011⁶ found that 44.9% of places in registered care homes in England are self-funded. There are significant implications for the social care market, and associated increases in care cost will fall on the Local Authority. We would call Government to revisit the impact analysis to properly acknowledge the additional financial burden on Local Authorities and how this can be funded.

In the South East, this proposal is likely to have a greater financial impact on Local Authorities as we have a higher number of self-funders. As an illustration, if all self-funders in the South East area were to ask Government to meet their needs as required in 17(3,) it is estimated that South East Local Authorities would be supporting three times the number of people we do now, without taking into account demographic changes.

Analysis of Impact Assessment from Finance to follow

Meeting needs of adults with care and support needs, and meeting needs of their carers

(b) and (d) In line with our comments on assessment above, we welcome the recognition of carers but feel that much greater clarity is needed on the parity of responsibility to meet needs. Clause 19 (b) and (c) talks about meeting the carer's through the provision of care and support to the adult needing care, and meeting the carer's needs by provision of support to the carer. Clarity is required on whether these two provisions are on an equal footing and how Government expects Local Authorities to put this into practice.

(b) We feel that Clause 19, subsections (7) and (8) around finding ways to meet carers' needs are vague and open to interpretation, which could lead to disputes between Local Authorities and individuals.

Analysis on resource implications of supporting carers to follow from Finance.

Boundary with health

We welcome the intention to define the boundary between adult social care and health.

(b) and (d) The present draft does not sufficiently deal with boundary issues between NHS continuing healthcare and Local Authority responsibility. The current difficulties in implementing the agreed boundary have not been acknowledged in the draft Bill, and it is important that the regulations on this matter properly address this point. In particular, clear definitions of 'incidental' and 'ancillary' are needed to guide Local Authorities. It

⁶ ADASS / LGA, People who pay for care: quantitative and qualitative analysis of self-funders in the social care market, January 2011

may be beneficial to specify which elements of care are the responsibility of the Local Authority and which are the responsibility of the NHS so that the need to determine whether a need is 'ancillary' or not is removed.

(b) Clause 21 (3) reflects the NAA 1948 s21 (8) and specifies that the Local Authority may not provide or arrange for the provision of health care. Clause 21 (4) further states that the Local Authority may arrange for the provision of accommodation with nursing care in certain circumstances. However the Clause does not clarify the position whereby the Local Authority is required to provide accommodation with nursing care for people from abroad with no recourse to public funds when they are assessed as having community care needs. The NAA means that many Local Authorities are caught in the position of having to provide care in a nursing home including the provision of care by a registered nurse, when NHS provisions do not actually allow them to support people with no recourse to public funds.

Boundary with education services

(a) We welcome the intention to define the boundary between adult social care and Immigration, health, and housing with reference to clauses 20, 21 and 22. We are of the view that a similar reference to the exception for the provision of education services as contained in section 46 of the Apprenticeships, Skills, Children and Learning Act 2009 is missing and should be corrected. Section 46 is merely permissive in that it allows local education authorities when securing suitable education and training provision for young people under 25 to also secure boarding accommodation where they consider this appropriate. There is no duty on the local education authority to do this as there previously was under section 13 of the learning and Skills Act 2000. The lack of a clear duty encourages conflicts between the Local Education Authority and the Local Authority with adult social services responsibility about who should fund the provision of boarding accommodation when this is necessary for the provision of education and training. The drafting of the new Care and Support Bill would seem to be an ideal opportunity to clearly delineate the duties of the respective authorities in this regard.

7. What happens after assessment?

(a) The draft Bill must have regard to the recent United Kingdom Supreme Court decision about considering financial resources when planning to meet needs. The assessment section of the draft Bill adequately reflects the three 'tests' set out in section 47 of the NHS and Community Care Act (1990):

- i. **what are the needs** of the person;
- ii. in order to meet these needs **is it necessary for the authority** to make arrangements for the provision of any services;
- iii. if so, what are the **nature and extent of the services** for which it is necessary for the local authority to make arrangements?

However it does not reflect the additional 'fourth test' around reasonable cost:

- iv. **what is the reasonable cost** of securing provision of the services for which it is necessary for the authority to make arrangements?

The judges ruled it is lawful for councils to consider their own financial resources when deciding how they should meet a disabled person's needs. It is essential for the regulations to provide clarity on the way in which Local Authorities should factor reasonable cost into assessment / planning of care.

Personal budgets

(d) Clause 25 (2) allows that a personal budget may also specify public money available for spending on matters relating to housing, health care or welfare. In Kent we are already working with health colleagues to bring together personal budgets for social care and for health. We feel that Regulations should provide more guidance to Local Authorities on aligning Personal Budgets and should encourage Local Authorities to work with partners to do so.

8. Who can receive direct payments?

Direct payments and Local Authority responsibility

KCC is fully supportive of the use of direct payments as an important tool to promote personalisation and choice. We have developed innovative ways of empowering people to use direct payments, including through our Kent Card (see below.)

(d) For direct payments to meet their full potential to give individuals choice and control, it is important that the process is as non-bureaucratic as possible, with a proportionate and light-touch approach to planning and overseeing how the money is spent, as suggested in the report *Improving Direct Payment Delivery*⁷ by the Think Local Act Personal consortium in 2011. KCC fully endorses this view, and this would be greatly aided if regulations could clarify the extent of the Local Authority's responsibility towards service users in the use of their direct payment. Uncertainty in this area can contribute to a risk averse approach by the workforce. It is not clear from Clause 30 (3,) (4) and (5) the extent to which Local Authorities will still be required to ensure that money given is spent on meeting assessed need.

(b) and (d) We are pleased to see in Clause 51 (2) that the provision of direct payments is exempt from the functions that Local Authorities can delegate to a third party. We believe it is important for Local Authorities to retain their responsibility to make decisions on offering direct payments. However we would welcome greater clarity on the boundary between the general power to delegate functions including assessment and care planning, and the provision of direct payments which cannot be delegated. Is the exemption purely for the award of money? Are decisions on where direct payments are suitable also exempt, or could this be delegated? This will be important to support Local Authorities to work with third parties in practice.

⁷ Think Local Act Personal, 'Improving Direct Payment Delivery', 2011

(a) and (d) Although direct payments are a powerful solution for many individuals, we also believe that Government should do more to support the development of alternatives to this method of delivering a personal budget. Providing a single choice between a direct payment and a council-managed arrangement does not offer the full range of options that are available. An example of another approach is the Individual Service Fund whereby the personal budget is managed by another organisation (private or voluntary.) We feel that Regulations should acknowledge the use of other methods of delivery where appropriate.

Combining personal budgets in direct payments

(d) As mentioned in our response to the section on personal budgets, we agree with Government that there is potential to build on the advantages of direct payments by bringing together other personal budgets and welfare payments. We have pioneered the use of the Kent Card, a chip and pin VISA card which does not require a bank account and offers a secure and convenient way of receiving and spending direct payments. We believe there is potential for personal budgets from a range of agencies to be loaded onto the Kent Card, allowing individuals choice and control over the total allocation of support funding allowed to them by local and national government. As referenced above, this would require individuals to have more control over how they spend direct payments, with less responsibility for Local Authorities to oversee how it is spent.

NHS Kent and Medway and Kent County Council Personal Health Budget Pilot

Working with NHS colleagues, we have jointly delivered a Personal Health Budget pilot in the areas of Maternity, Continuing Health Care, End of Life and Mental Health pathways, with the Kent Card at the heart of the pilot. Working together we developed systems and processes to effectively offer personal health budgets to 75 people. Building upon the success of Personal Health Budgets, KCC and NHS Kent and Medway tested Integrated Budgets (bringing together health and social care funding) with people who have long term conditions. People on the pilot have reported that Personal Health Budgets/Integrated Budgets has made a positive difference, stating that they feel in control and have been at the centre of the decision making process. Those receiving continuing health care funding have said they have experienced a seamless transition, moving from social care (where they had a Kent Card employing PAs) into health, where they could maintain this level of control. This was not possible prior to the pilot.

Direct payments in residential care

(d) Government are intending to pilot the use of direct payments in residential care. Although we support this as an option, we note the following potential problems with such an approach:

- A person using a direct payment to purchase residential care may find they are charged the private rate (usually significantly higher) and are not able to access the local authority rates. This could reduce rather than enhance choice.

- Residential care is often needed at a time of crisis - individuals/carers may not have the capacity to be entering into arrangements with care homes, therefore direct payments should never be mandatory, only ever an option for individuals, and the timeliness of the offer of a direct payment must be carefully considered.
- Using a direct payment to purchase residential care could in practice result in less protection for individuals. To avoid this they must be offered the same protection as other local authority funded residents – e.g. subject to regular reviews of their needs.

(d) We also believe that direct payments should not be seen as the only way to offer greater personalisation to people in residential care. Giving residents a greater say in care regimes, activities, staff rotas etc (co-production) and involving the outside community more can also achieve this objective.

9. Establishing where a person lives

Continuity of care

We welcome the concept of ‘portability’ subject to the following concerns.

(b) and (d) Clarification is needed on how the ‘receiving authority’ can be “satisfied that the adult’s intention is genuine.” How are issues of capacity and duress to be considered?

(b) and (d) Clarification is also needed in regulations on the dispute resolution process.

(d) We think regulations should stipulate clearly that the ‘sending authority’ must be required to notify the ‘receiving authority’ where the sending authority makes the arrangement for an individual to be placed in accommodation provided by the independent sector in the receiving authority’s area. This is stipulated in DH guidance on Ordinary Residence published in 2011⁸:

57. If a local authority places someone out of area in accommodation provided by the independent sector, **they should always inform the host authority of the placement.** This is to ensure the host authority is aware of the person in their area and to enable both authorities to agree on the suitability of the placement.

Experience shows that even though this should happen, it often does not happen and this can cause problems with continuity of care. The draft Bill should respond to this.

(a) and (d) It would also be helpful if timescales were provided within which the sending authority must notify the receiving authority. Regulations could specify this.

⁸ Department of Health, ‘Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England’, April 2011

We would like to offer an alternative solution for continuity of care, for Government's consideration:

- The sending authority could maintain responsibility for meeting care and support needs for a set time period after the person has moved
- During this set time period, the receiving authority must carry out its assessment, or if not completed by the end of the time period, maintain the level of service provision until it has
- This would provide an incentive to the sending authority to give proper notice to the receiving authority
- It would also avoid the need for the receiving authority to attempt to reclaim its costs from the sending authority if the person actually remains ordinarily resident in the sending authority's area, as the OR dispute could be resolved within the time period when the sending authority retains responsibility for meeting the person's needs.

Ordinary residence

(b) and (d) The wording of Clause 32 appears to establish different interpretation according to the type of care and support being provided - specifically 'accommodation of a particular type.' It is not clear what this means and regulations will need to specify more clearly. This clause seems to contradict the unified approach of the draft proposals which apply irrespective of care setting or the type of care. Without the benefit of a clear and unambiguous definition in the regulations, this would potentially lead to new disputes between Local Authorities on the matter. It is not clear whether accommodation of a particular type will comprise of extra care housing, adult placement, de-registered care homes, specially adapted accommodation etc. It is extremely important that the regulations clarify this 'grey area'.

Please also see our comments on boarding accommodation for young people in Section 6.

10. Safeguarding adults at risk of abuse and neglect

KCC feels that the requirements set out in this section are positive and are in line with our current practice on Adult Safeguarding. We welcome the change to place Adult Safeguarding Boards on a statutory footing. However we have some concerns as below.

Enquiry by Local Authority

(b) Clause 34 on enquiry by Local Authority leaves significant scope for interpretation, for example it is particularly hard to establish risk of abuse or neglect, to determine whether an adult is unable to protect themselves as a result of their needs and to determine what kind of enquiry is necessary.

(b) All of the examples given in subsection (2) relate to financial abuse. Is it expected that Local Authorities will give particular attention to this area? Local Authorities are not well-placed to act as investigators into the private financial affairs of members of the

public, and the Bill provides no investigative powers to back up this duty. Clarity is required on what is expected of Local Authorities in this situation, particularly as it is possible that families could claim compensation for losses if a Local Authority does not act appropriately in relation to financial abuse.

(a) The Law Commission considered that the statute should be worded to ensure that the Local Authority's duty can be discharged through a range of pathways or different routes through safeguarding. For example the Local Authority could undertake the enquiries themselves, refer to an appropriate agency or initiate a multi-agency investigation. Quite specifically, the Law Commission stated that "*The duty to investigate could be delegated to the NHS*". The Bill states only that the Local Authority "*must make (or cause to be made)*".....

(a) The Law Commission also recommended that the statute should include an enhanced duty to co-operate in adult protection cases. Although the general duty to co-operate is provided in Clauses 4 and 5, the enhanced duty does not seem to be included in the draft Bill. Related to this, clarification is needed on how a Local Authority is to respond if another agency fails to respond to requests to co-operate in the Local Authority's enquiries.

(d) There is no mention of further regulations in this area, which we feel are essential to provide further guidance around this important issue which has wide-ranging implications for Local Authorities.

(b) We also note the abolition of Local Authority's power to remove persons in need of care (Clause 37.) Although not widely used, does Government intend that anything will replace this power, and is such a power needed to work alongside the new safeguarding duty?

Safeguarding Adults Boards

(a) The Law Commission review recommended that statute should set out a range of functions for SABs including to keep under review the procedures and practices of public bodies which relate to safeguarding adults and to give information and advice, or make proposals, to any public body on the exercise of functions which relate to safeguarding adults. The Bill appears only to say (at subsections 2 and 3) that an SAB must seek to achieve its objective of helping and protecting adults within the safeguarding category by "*co-ordinating and ensuring the effectiveness of what each of its members does*", and it "*may do anything which appears to it to be necessary or desirable for that purpose*". We note in the impact assessment that the provision of more specific functions for SABs was considered. *DMT comments welcomed on this issue.*

(a) The Law Commission also proposed that the CQC should be given a power to nominate an appropriate representative to attend meetings, but again this seems to be missing from the draft Bill.

(b) Government is asked to clarify how the activities of SABs are to be funded. *Financial analysis of whether the impact assessment accurately reflects costs is to follow.*

We are responding separately to the consultation about an additional power of access for Local Authorities to make enquiries. *Will add any relevant highlights from the other consultation response.*

Safeguarding adults reviews

(b) The trigger for a safeguarding adults review includes “concern about how the SAB, a member of it *or some other person involved in the adult’s case acted*”. Should this relate specifically to concerns about how a person has acted in their professional capacity? Otherwise this could be interpreted as concerns about the actions of any person, which would be the case for nearly every safeguarding case.

11. Transition for care children to adult care and support

We welcome the clarification on young people in transition, as KCC currently experiences issues around this. However we feel much greater clarity is needed.

(b) and (d) This section raises various issues that require further clarification, which the further regulations could provide. For example, clarification is need on which worker should form the view that the child is likely to have ongoing needs at 18 and who carries out the assessment. Will specially trained transition workers be required to understand both the adult and children’s social care systems?

(b) It is not clear why there is a distinction between the ‘power’ to assess a child and a young carer, the ‘duty’ to assess a child’s carer.

(b) Clause 44 provides a power to meet a child’s carer’s needs as the LA considers appropriate. Annex B (para 68) further states: “*there may be certain services available only through adult care and support, and a child’s carer should be able to request an assessment under this Part as the means of accessing any such services.*” This would suggest that the carer may be able to access adult services (rather than just assessment) before the child turns 18. This seems to be at odds with every other aspect of this part of the Bill, which provides for children’s services to continue post-18, not for adult services to be available pre-18. We would like to seek clarification on the intention here.

(b) and (d) It would be helpful if regulations could include requirement for both departments to keep in mind any leaving care duties that are owed to the individual post-18. Both departments must be clear on their own duties and work towards a joined-up approach in relation to leaving care services and services provided to meet community care needs.

Financial analysis of the resource implication of carrying out multiple assessments on an individual before and after they reach 18 is to follow.

12. Enforcement of debts

Recovery of charges and deferred payments

(d) Clause 45 (2) states that a sum due to an authority is not considered as a debt due if a deferred payment could be entered into (unless the individual has refused a deferred payment.) As previously stated, KCC would like clarification from Government on how Local Authorities are expected to cover the up-front care costs (which are already debts in this case,) when a deferred payment is entered into. This will have significant financial implications for Local Authorities, and this Clause will delay the pursuit of payment of debts while a deferred payment agreement is being offered and considered. KCC would be particularly interested in Government's thinking on the funding formula will be sensitive to this issue.

Transfer of assets to avoid charges

We are pleased to see that this section addresses some of the shortcomings of current legislation. We are particularly pleased that the draft Bill does not make a distinction between residential and non-residential care, and that the six months rule no longer seems to apply to the transfer of liability for costs to the transferee.

(a) However, there is nothing in this section which states that where deprivation has clearly occurred we can treat the person as if they still had the assets. Regulation 25 (1) of the Assessment of Resources Regulations (1992) currently provides that a resident may be treated as still possessing capital that he has deprived himself of for the purpose of decreasing the amount that he may be liable to pay for his accommodation. We feel that this provision is missing in the draft Bill and may weaken Local Authorities' powers.

13. Miscellaneous

Delegation of Local Authority functions

(b) and (d) We welcome the provision in the draft Bill for Local Authorities to delegate its functions in relation to care and support. We would welcome further clarification in regulations on situations under which functions can be delegated and clarity on the retained responsibilities of a Local Authority that has delegated functions.

Further analysis and comment on this section will be included in the final draft - particularly on after-care under the Mental Health Act (section 117.)

14. General

Repeals

(a) Section 22 of the Health and Social Services and Social Security Adjudications Act 1983 has been repealed and does not appear to have been replaced. This is an extremely useful provision that enables Local Authorities to unilaterally charge land owned by care home residents as security for residential accommodation fees. It is a valuable extra-judicial security which is much used in practice and should not be lost to Local Authorities.

Further analysis on the implications of repealed legislation is to follow.

15. Concluding remarks

KCC welcomes this long-anticipated reform of the law, consolidating, updating and replacing the outdated legislation that has developed piecemeal since the 1940s. We believe that the draft Bill achieves Government's aim of introducing consolidated legislation and will be easier for practitioners to navigate and put into practice. However, we feel that there are areas where significant clarification is needed, issues are missing or more guidance will be required in regulation, as identified in our response. We would encourage Government to address the issues raised in the consultation and progress the draft Bill as soon as possible, as it underpins reform in the care and support system that is urgently needed. It will be difficult for Local Authorities to start planning to put the new duties and powers into practice without an agreed long-term funding approach, and so we would also urge Government to progress this as a matter of urgency.

Government has set a series of consultation questions that it is particularly seeking comments on. Our views are expressed throughout our response, but for clarity a summary of our response to the consultation questions is provided below:

Q1: Do the opening clauses (2-7) sufficiently reflect the LA's broader role and responsibilities towards the local community?

In these Clauses, and throughout the draft Bill, we feel that the Local Authority's broader role is made clear. We have expressed concern about how Local Authorities are expected to split their focus between meeting the specific needs of people who are in need of care and support and their carers, and the wider responsibility for prevention and provision of information to the entire population, within extremely limited budgets. However, as underpinned by our transformation programme, KCC believes that a significant part of our role is to take leadership of care and support in the local area - identifying needs and empowering people to take control of their own care using a range of care and support options. We would again encourage Government to urgently introduce long-term funding arrangements for social care and support that is fair, fit for purpose and supports a modern social care system to enable Local Authorities to fulfil their broader role.

Q2: Does the draft Bill (in clauses 17 and 19) clarify individual rights to care and support in a way that is helpful?

Generally we feel that the draft Bill does clarify individual rights to care and support more clearly than existing legislation. As a result, it will be far easier for individuals to understand their rights and for professionals to implement the law. However we do have concerns that areas of the draft Bill that are very open to interpretation, particularly around the new well-being principle, could lead to more cases where Local Authorities are challenged by individuals, and would like to urge Government to provide as much clarity as possible to support Local Authorities.

Q3: The law for carers has always been separate to that for the people they care for. Is it helpful to include carers in all the main provisions (clauses 9-33) of the draft Bill, alongside the people they care for, rather than place them in a separate group?

We welcome the greater recognition of carers, which is a central tenant of our Transformation Programme and approach to social care. As there is by definition a close link and overlap between assessment and service provision for individuals and their carers, it would seem to be necessary to include carers in all the main provisions as set out in the draft Bill. To do otherwise would require considerable cross-referencing between different sections, which would make the provisions less accessible and harder to follow. However, we have raised concerns about the parity of responsibility to those with care and support needs and their carers, and the practical way in which needs can be met for both.

Q4: Does the new well-being principle, and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?

Yes we believe that the focus is broadly right and is in line with our enabling, person-centred approach to care and support. Again, we have expressed concerns about the interpretation of the well-being principle which we believe could cause difficulties for Local Authorities.

Q5: Do the "portability" provisions (clauses 31-33) balance correctly the intention to empower the citizen to move between areas with the processes which are necessary to make the system fair and workable?

Although we support measures to promote continuity of care, we believe that the processes require a good deal more detail, particularly around issues including timescales and dispute resolution, to make the system fair and workable. It is essential that the system avoids detrimental impact on the receiving authority (which, as a net importer of care, KCC is often likely to be) as a result of bad

practice on the part of the sending authority. We have suggested an alternative solution for Government's consideration.

We would like to reiterate our interest in working with Government and colleagues in the sector on the development of some of the new initiatives outlined in the White Paper and underpinned by the draft Bill, and would be happy to clarify or provide further information on any area of our response.

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