CABINET

22 NOVEMBER 2011

Title: Funding Adult Social Care	
REPORT OF THE CABINET MEMBER FOR HEALTH AND ADULT SERVICES	
Open Report	**For Decision**
Wards Affected: All	**Key Decision:** Yes
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Summary:

There is cross-party recognition of the significant pressures on funding for adult social care as our population ages and the demand for services increase. The need to secure a funding settlement which addresses these pressures and is sustainable led to the setting up of an independent commission (the Dilnot Commission) by the Government in July 2010.

The commission chaired by Andrew Dilnot on the funding of care and support presented its findings to the Government in its report *Fairer Care Funding* in July 2011. The proposals represent a radical review of the way that people contribute towards the cost of their care.

In particular the report recommends that:

- Individual's lifetime contributions to their social care costs should be capped at a total proposed contribution of £35,000
- The means-tested threshold above which people are liable for their full care costs should be increased from £23,5000 to £100,000
- All those who become adults with a pre-existing care and support need should be eligible for free state support immediately. There would be a sliding scale of charging for people aged 40 plus.
- There should be national eligibility criteria for access to adult social care services.

The recommendations effectively reduce the contribution of the individuals towards the cost of their care, leaving an even wider funding gap, and enable people with assets to retain more of them. More people will receive some state support, and there is greater protection for homeowners than at present.

The Government launched an engagement exercise on 15 September on a wide range of adult social care issues, including the findings of the Dilnot Commission - this document is attached at Appendix 1. The closing date for responses is 12 December and the Council's draft response is attached at Appendix 4. The Government will incorporate key recommendations following on from this exercise into subsequent papers.

The Government have announced that they will issue a White Paper on the future arrangements in April 2012. It is not anticipated that the Government will introduce any changes based on these proposals until 2014. Until that time the existing charging and contributions policies will continue.

Recommendation(s)

The Cabinet is asked to

1. Note the findings of the Dilnot Commission and the implications for Barking and Dagenham; and

2. Agree the Council's response to the Department of Health's engagement paper "Caring for our Future", as set out at Appendix 4

Reason(s)

To assist the Council in achieving its Priorities of "Better Health and Well-Being".

1. Introduction and Background

1.1 In 1997 the Labour Government stated that it would make reforming the funding of care a priority. However, although the Royal Commission that it established reported in 1999 it then took until 2009, despite cross party support, for the Government to set out options for fundamental reform. These proposals fell through when a General Election was called.

1.2 An independent commission on the funding of care and support was set up by the coalition Government in July 2010 and was asked to recommend a fair and sustainable funding system for adult social care in England. The commission chaired by Andrew Dilnot on the funding of care and support presented its findings to the Government in the report *Fairer Care Funding* in July 2011.

1.3 Older people make up the largest group of social care users, and although nationally the number of people over the age of 85 has risen by two-thirds since 2004, local authority budgets for social care have stood still and are now being cut. Demand far outstrips supply. Currently there are 400,000 elderly people in residential care in England and Wales. This number is predicted to increase to 750,000 in 2031 and more than triple in 2081 to 1.5million.

1.4 The system is coming under considerable financial strain as a result of the increasing demand for services and cuts in local authority budgets – the King's Fund estimate that a £2.1 billion gap could develop by 2014. There is concern from some independent organisations that some local authorities are managing services

through tightening eligibility criteria so that support is only offered to people with very high care needs.

1.5 This scenario is in stark contrast to that of the NHS where there is national consensus that health care should be free at the point of delivery, with some notable exceptions such as prescriptions etc. The increasing demands on the healthcare system are well recognised and this is the first year of many in which the health system has not received an increase to the overall budget. Yet in adult social care, although increasing demand has also been recognised, the funding scenario is different and has been subject to year on year cuts. No government has yet explained why if you are old and frail and need healthcare it is free at the point of delivery, but if you are old and frail and need social care, this service requires a contribution. This inequity is played out in discussions as to whether an individual requires a health or a social care bath and the resulting financial consequences of this.

1.6 Adult social care helps frail and disabled people remain independent, active and safe. Support services can be provided in someone's home, in a community centre or in a care home and include support with everyday activities such as bathing or preparing meals. The costs of such care are either paid for by individuals, or on a means-tested basis by local authorities in the form of specific services or cash payments that enable people to make their own care and support arrangements.

1.7 If a council assesses someone as needing residential care in England, and they have less than £14,250 in financial assets, he or she will qualify for local authority funded long-term care. Those with savings or assets (including their home if they live alone) of between £14,250 and £23,250 will get some help towards costs, but those with assets or savings of more than £23,250 will have to pay for the full cost of their care. The contribution towards the cost of a residential place is determined nationally through statutory guidance, the Charging for Residential Accommodation Guidance.

1.8 If someone is assessed as needing care at home, they are entitled to help from the local authority, but can be charged for it up to the full cost of the help required. The value of their savings is assessed, as is their income, but the value of their house is not taken into account. Charging for care at home is governed by the Fairer Contributions Guidance and there is some local flexibility in how these are applied.

1.9 Charges made by a council should only be as high as the actual cost of providing the care. The council is not able to make a profit through the charges – and people should only pay what they can reasonably afford. This means that any payment should not leave anyone below the current income support or pension minimum guarantee level plus a buffer of 25%. In Barking and Dagenham, we have just revised our Fairer Contributions Policy giving older people aged 85 and above an additional buffer of £10 on top of this.

2. Proposal and Issues

2.1 The Dilnot recommendations aim to eliminate the huge care costs faced by some people by capping the maximum amount individuals contribute over their lifetime. There is considerable disquiet and a sense of injustice that was locally demonstrated in the Big Care Debate, and our response, that people who have

worked hard and scrimped and saved are penalised and have to contribute savings or even the value of their own home to the cost of care. Unlike other events that happen to people such as subsidence or even death, the cost of care is one event that insurance providers have felt unable to offer insurance protection on, because of all the unpredictability in type and cost of care and individual need.

2.2 Dilnot recognises that many people do not plan for their care and do not even know how care services work, or what the expectations are about paying for care. Indeed many people think that care services, like health services, are free. This is clearly not the case. Ministers, such as Paul Burstow, are now publically referring to charging for adult social care as social care's "nasty little secret".

2.3 By limiting the amount people might pay for their care, the Dilnot Commission expect people to be able to plan realistically for any care they might need when they are older and a market to develop for financial products so that people can insure themselves against the cost of their contribution. Because some groups of people, such as people who are born with a disability or those who acquire a disability early in their lifetime, are unable to plan for such an eventuality, there are separate proposals for younger adults. Everyone would be expected to continue to pay for general living costs.

2.4 The key recommendations are:

- The contribution any individual makes towards the costs of their care, excluding general living costs, should be capped at between £25,000 and £50,000, with the Commission recommending the cap should be set at £35,000.
- All those who enter adulthood with a care and support need should be eligible for free state support immediately rather than being subjected to a means test. There would be a sliding scale for adults who acquired a disability from 40 years plus.
- The asset threshold above which people in residential care are liable for the full cost of their care should be increased from the current level of £23,250 to £100,000.
- People in residential care should make a standard contribution to cover their general living costs of between £7,000 and £10,000 a year. (This needs to be compared to current state retirement pension levels which are £140 per week. This equates to £7,280, leaving next to nothing for any personal spend on such things as clothing, gifts for family relatives etc.)
- Eligibility criteria for services should be set nationally as part of a clear national offer, and needs assessments should be 'portable' between local authorities.
- A new information and advice strategy should be developed, a national awareness campaign should be launched to encourage people to plan ahead and the deferred payment scheme should be improved.
- Social care and welfare benefits should be better aligned, Attendance Allowance re-branded and carers' assessments improved.
- Integration between social care and other services, especially the NHS, should be improved, and a stronger emphasis placed on prevention.

2.5 If the Commission's recommendations are implemented in full, it forecasts that no-one would have to spend more than 30 per cent of their assets to fund their care. It estimates that its recommended changes to the funding system would require £1.7 billion in additional public expenditure (0.14 per cent of GDP) if the cap on individual contributions is set at £35,000, rising to £3.6 billion (0.22 per cent of GDP) by 2025/6.

2.6 A White Paper on social care reform (including the Government's response to the Law Commission's report on modernising social care law) and a 'progress report' on funding reform will be published in spring 2012. The Secretary of State has said that legislation will follow 'at the earliest opportunity'. However, it is not anticipated that there will be any changes to the current regime until 2014.

2.7 **Key facts which informed the Dilnot report are as follows**:

- One in ten people aged 65 or over, pay £100,000 towards their care
- One in four pay £50,000
- Every year 20,000 people sell homes to pay for their care
- In the UK, the typical 55 to 64-year-old has a total wealth of £200,000 (this would include the value of a house, savings, insurance payouts etc.)
- People in the South East pay between £30,000 and £45,000 a year towards their residential and nursing care fees
- The number of people aged over 85 is expected to double over the next two decades to 2.4million

2.8 **Capping the cost of contributions towards adult social care**

2.8.1 Under the current system, people with assets over £23,250 receive no help towards the cost of adult social care and are expected to self-fund until their assets fall below this amount. When assessments are carried out for financial contributions towards the cost of residential care, the value of homes are included where there is a single homeowner. This means test offers virtually no protection to homeowners who need residential care. The financial calculation for non-residential adult social care is different and does not include the value of someone's home.

2.8.2 The average housing wealth among single people aged over 65 who own property is around £160,000, so most homeowners would have to spend nearly all of their housing assets before qualifying for support under the existing rules.

2.8.3 This would equally apply to Barking and Dagenham residents. From October 2010 to December 2010 the average property price in Barking and Dagenham was £179,519 (Land Registry of England and Wales).

2.8.4 The Dilnot Report recommendation that the means tested threshold should be increased to £100,000 does mean that homeowners will receive greater protection. Of the 464 older people in residential care in Barking and Dagenham, 21% of people contribute towards the cost of their care on a sliding scale. 39 people own their own property and a further 57 people are self-funders (i.e. pay for their own placement). Many self-funders will also be homeowners.

2.8.5 It also means that more people will receive a higher proportion of state support towards the cost of their community based services as those people with savings up to £100,000 will become potentially eligible for subsidised services.

2.8.6 The Dilnot Report also recommends that adults who have an eligible need for social care and support when they become 18 should be eligible for free support. People who acquire an impairment which means that they are eligible for support after the age of 40 will be liable to pay a sliding contribution based on their age.

2.8.7 The rationale for this recommendation is that, unlike older people who have had time to acquire assets and/or plan for their care, this group of people have not had the opportunity to do so.

2.9 **What difference would the recommendations make to our residents?**

2.9.1 The following case studies were taken from the "Fairer Care Funding: Reforming the funding of adult social care" pamphlet produced by the Commission on Funding of Care and Support. The case studies illustrate the difference for people if the recommendations were to be agreed - see Appendix 2 for a table summarising the differences between the current system and the proposed system.

2.9.2 However, one of the key issues is the focus of the Dilnot Commission on reducing the call on peoples' assets. The Commission does not consider the level of peoples' income. This is of particular concern for us because many of our residents will not only be asset poor, but they will also be on low incomes. The impact of the wider changes to the benefit system and the specific changes to the real value of pensions will impact on the individual's ability to contribute towards the housing costs which were detailed earlier. It is likely that Council tenants, on benefits, will not benefit from the increased asset protection and will have difficulty in covering housing costs and meeting personal requirements.

2.9.3 **Case Study - Henry**

Henry had a stroke when he was 85. He entered a care home for the last four years of his life. Prior to this, he was living alone in his own home, which was worth £140,000 and which he owned outright.

Under the current system, Henry needed to contribute all his pension income down to £22.60 a week and his daughter had to arrange for his house to be sold in order to be able to use the money to pay for his care. He paid for his care in full until he died, spending £110,000 in total.

Under the proposed reforms, Henry would initially have had to contribute in full to his care costs. After two years, he would have contributed £35,000 in care costs and would start to receive his care for free. He could still have used his housing assets to pay this £35,000, but would retain £105,000. He would have continued to pay general living costs until he died, but would have been able to meet most of this through his pension income.

2.9.4 **Case Study - Emma**

Emma was born with a learning disability. From age 18 until she died aged 52, she lived independently in supported housing. When she was 35 years old, she inherited her parents' house worth £160,000.

Under the current means-tested system, Emma had to start paying for all of her care when she inherited the money from her parents. It ran out by the time she was in her mid-40s, leaving her to fall back on the state with no additional resources left.

Under the proposed system, as she turned 18 years of age with an eligible care need, she would be entitled to free care for the whole of her life. She would pay her living costs partly herself and partly through her disability benefits, still leaving her with half of her assets to use how she wanted to improve her overall well-being throughout the rest of her life.

2.10 Insurance for adult social care

2.10.1 The expectation of the Dilnot commission is that once people know roughly how much the costs of their social care will be, they can plan and prepare for this by taking out insurance. Although there are currently specialist products available now to help people pay for long-term care, they are complicated and usually very expensive. Insurance policies are available to pay for immediate-needs care and pre-funded care. However, pre-funded policies are not popular, not least because people may not need to claim on them and so will effectively have lost money.

2.10.2 Immediate needs care annuities are more commonly used by families wanting some insurance against part or all of the cost of care fees, should their older relatives live longer than their capital.

2.10.3 Currently, two companies – Partnership and Axa – dominate this market, and the initial outlay can be enormous. If Dilnot's recommendations are accepted insurance products designed to meet the cost of care up to the cap are more likely to become mainstream and hopefully cheaper and simpler.

2.10.4 Experts suggest companies could cover costs up to £50,000 for a one off premium of around £17,000. Specialist insurance and investment vehicles will need to be available to pay for future care.

2.11 Implications for Local Authorities and Adult Social Care

2.11.1 There is some concern nationally that the Dilnot Report failed to address the key issue which is the lack of funding for adult social care and the increasing cost pressures on this sector. Indeed the recommendations increase the funding gap rather than seek to address it.

2.11.2 There are also resource issues in implementing all the recommendations of Dilnot – the increased role of the Council in the provision of information and advice, increased assessment responsibilities and the setting up of financial monitoring systems to keep track of an individual’s spend on social care to identify when they reach the agreed capped amount (currently £35,000 proposed).

2.11.3 The setting of national criteria and “portable” assessments (currently, if you live in one borough and receive social care, and move to another borough, you would need to have another assessment to determine your eligibility and your support plan may differ) poses problems for local authorities as we set local eligibility criteria within the national framework and offer support plans making best use of available resources. In many boroughs, particularly boroughs with higher levels of deprivation, this could place financial strain on already limited resources, particularly when considered alongside the proposed changes to the business rates (NNDR).

2.11.4 Local authorities will lose out on funding generated through residential and community care charging policies.

2.11.5 The Government will need to consider the financial implications of all these issues and resource local authorities appropriately before implementing any of the recommendations.

3. Options Appraisal

3.1 The Government have committed to a White Paper in April 2012, and then to implement legislation at the earliest opportunity. It is not expected that this will be until 2014 at the earliest.

3.2 A further report will be brought back at that time.

4. Consultation

4.1 The Dilnot Commission has already consulted as part of the process of developing these recommendations and given the scale of the national call for evidence, responses were made through national and regional bodies, including London Councils and the Association of Directors of Social Services. The consultation responses are summarised in "Summary of Responses to the Call for Evidence" April 2011.

4.2 Caring For Our Future

4.2.1 On 15 September 2011, the Government launched a three month consultation on the Dilnot Commission Report and the Law Commission Report - see Appendix 1. The consultation also wishes to take views on the Vision for Adult Social Care, the National Strategy for Carers and the Palliative Care Funding Review. Put simply, the Government wishes to ascertain a range of views on the current state of play in adult social care.

4.2.2 The process does not specifically request views on the funding levels within adult social care, and there is a very strong view being currently articulated through recent ministerial speeches that there is enough money in the system to meet the needs of both health and social care. Their view is that the key to making this work is further integration between health and social care.

4.2.3 The consultation process is termed "engagement" which means that it is up to individuals and organisations to engage with the lead person for each strand of engagement. Comments are invited via the website, through discussions with the leaders by invitation or through a feedback form. The six issues on which we are being consulted are:

- Quality
- Personalisation of care
- Integration
- Prevention and early intervention
- Shaping local care services
- The role of financial services

4.2.4 Locally, the consultation documents have been put on the agenda for both the Disability Equality Forum and Silvernet, the Older Peoples' Forum. They have also been circulated to the Learning Disability Partnership Board. The Disability Equality Forum have decided that they will feedback independently.
CVS is also encouraging people to respond directly o the Department of Health or through the National Association of Voluntary and Community Associations (NAVCA) on this consultation.

A proposed response from the Council is attached at Appendix 4 for the Cabinet's consideration.

5. Financial Implications

Implications completed by: Ruth Hodson, Finance Group Manager

5.1 Depending of the level of cap there will be new burdens on local authorities. There will also be a loss of income from existing charging policies. The cost to the London Borough of Barking and Dagenham of the reforms could be an estimated £7.6m gross. Mapping of existing people in residential care homes within the borough, self funders and likely costs estimate a minimum cost of £1 million in the first year rising year by year (see Appendix 3 for a detailed analysis). There will be a limited benefit for the London Borough of Barking and Dagenham residents, as only 21% in residential care are self funders.

5.2 It is difficult to map the impact on the costs of community care and the reduction in income from charging policy – however it is likely that this would also have a significant impact on the local authority's budget.

5.3 Those on a middle income with assets get hit hardest now, but by combining a cap with a new "extended" means test, the recommendations would spread out the costs and lower them for everyone.

5.4 However, Stephen Burke, chief executive of charity United for All Ages, said "the proposals were regressive because richer families would benefit disproportionally from the cap". He warned: "This could be seen as a care poll tax for the so-called 'squeezed middle'."

5.5 The additional costs nationally of £1.7 billion, rising to £3.6 billion by 2025/6, reflect the additional costs of implementing the new proposals only. The Commission acknowledges that the current system is underfunded and has not kept pace with demographic changes in relation to working age adults and older people. This has resulted in tighter rationing of services and rising levels of unmet need. The overall level of resources required by the current system was outside the Commission's terms of reference, but the report makes clear that in addition to funding for the new proposals, 'additional public funding for the means-tested system' will also be needed.

5.6 Payments made by people to meet the cost of home care would count towards their maximum lifetime contribution. However, charging arrangements for home care would continue to be determined by local authorities, potentially creating an uneven playing field between home and residential care, and the risk of perverse incentives

for people to go into residential care. The report suggests that the Government may wish to rationalise these arrangements, although it stops short of making a clear recommendation on this.

5.7 For Barking and Dagenham the changes would mean implementing new procedures to take into account the new thresholds for care costs.

6. Legal Implications

Implications completed by: Shahnaz Patel, Senior Lawyer

6.1 The current legislation placing an obligation on local authorities to charge for adult social care for both residential and non accommodation services remains in force. Therefore there are no specific legal implications that arise from this report at this stage.

7. Other Implications

7.1 Risk Management

7.1.1 There are significant financial risks to local authorities if these recommendations are implemented without addressing the existing pressure on adult social care and the funding gap created by these proposals.

7.1.2 It is expected that these discussion will be conducted at a national level, most likely through ADASS (the Association of Directors of Social Services) and the LGA. We will seek to ensure that the best interests of our residents are represented through.

7.2 Customer Impact

7.2.1 The report's recommendations lay the basis for a system where people will have a degree of certainty about their future care costs. This will not necessarily help people plan for the future as people do not usually have a clear understanding of adult social care, how to access it and any costs associated with it, until they need to use it.

7.2.2 As people in receipt of adult social care are by definition either older or disabled, then these people will financially benefit from the proposals in the main.

7.2.3 It is not expected that local older residents will benefit as much as others, because many of our older people do not own homes, nor do they have substantial savings. We are below the national average with only 21% of our residential care users self-funding. The national average is 23%. Some places, like West Sussex have 80% self funders.

7.2.4 The premise of the Dilnot report is that older people can plan for their future care through their paid working life by taking out insurance is based on an erroneous assumption that people are in paid employment. We have high levels of unemployment and many women stay at home because of their domestic responsibilities. This group of people are unlikely to be affected by the Dilnot report.

7.3 Safeguarding

7.3.1 Adult social care supports the safeguarding of adults who are at risk. Adult care is accessed through eligibility criteria not through financial assessment. However, the proposals may help people to plan their care and access good independent financial advice so that they make the best decision at the time.

7.3.2 Some of the proposals from Dilnot such as universal eligibility criteria and the portability of assessments will enable adults to move home across boundaries and access social care in a more timely way thus preventing a gap in care.

7.4 Health Issues

7.4.1 Adult social care supports people to remain healthy and independent and to live the life they want for as long as possible. The Dilnot report does not change this.

Background Papers Used in the Preparation of the Report:

- "Fairer Care Funding" report by the Dilnot Commission on Funding of Care and Support (available at http://www.dilnotcommission.dh.gov.uk/files/2011/07/Fairer-Care-Funding-Report.pdf)
- King's Fund Briefing
- "Fairer Care Funding: Reforming the funding of adult social care" pamphlet produced by the Commission on Funding of Care and Support

List of appendices:

- Appendix 1 – Department of Health engagement paper "Caring for Our Future: Shared ambitions for care and support"
- Appendix 2 – Table of the current and proposed systems
- Appendix 3 – Financial Impact of the Dilnot Report
- Appendix 4 – Draft response to "Caring for Our Future"