

# Social Care Reform

## National Pensioners Convention Briefing Paper

July 2012



### Introduction

On 11 July 2012, Health Secretary Andrew Lansley published the long awaited social care white paper under the title of Caring for our future: reforming care and support. Alongside it, the government also published a draft Care and Support Bill and a progress report on funding reform. This briefing summarises the main elements contained in these three documents and offers an initial analysis of what they might mean for older people and their families.

### Funding

The government has endorsed the principle of having a cap on domiciliary and residential care costs and an increase in the means-tested threshold for residential care, but any decision on the detail has been delayed until the next spending review and even then is unlikely to be introduced before the next election. This could make the funding of care an election issue, unless the three main parties reach a consensus on funding beforehand.

It is also highly unlikely that the government will endorse the Dilnot Commission's recommended cap of £35,000; instead favouring something around £75,000-£100,000. Ministers have also hinted that the cap might be voluntary and applied just to those who take out private care insurance, despite the fact that the private insurance industry has reacted by saying it would not have a suitable range of products in place for at least a decade, and even then the coverage of a voluntary scheme is likely to very patchy (eg. eight people need to pay in for one person to draw out).

The Dilnot Commission also recommended that alongside a cap on the cost of an individual's care, there should also be a more generous means-tested threshold for those going into residential care so that anyone with assets below £100,000 (including the value of any property) would have either all or part of their residential care costs paid. However, there has been no information as to whether the means-tested threshold for domiciliary care would also be set at the same level.

Following publication of the government's papers, Andrew Dilnot also suggested that some of the universal pensioner benefits could be means-tested to pay for this care. However, the health secretary has already indicated that the means-tested threshold might have to be lower than £100,000 to restrict the number of people entitled to free care. In addition to any care costs, individuals would also still face between £7,000-£10,000 annual costs of accommodation in residential care. This charge would continue to be excluded from any cap. Given that any new arrangements for funding

would be introduced after April 2015, it is also unclear whether those who have already paid their care costs will be able to count this towards any lifetime cap that is introduced, or have to start counting from the date the legislation is introduced. For example, someone who has already paid more than £35,000 in care fees might feel they have already made their contribution.

Furthermore, if the cap was set at a higher level; such as £75,000, the actual number of people in domiciliary and/or residential care that would ever exceed that figure would be very small, with some estimates suggesting the state would only step in to help around 100,000 out of the 1m currently in the care system.

The government has also yet to decide whether the cap will increase annually in line with the triple-lock of CPI, earnings or 2.5% (whichever is the greater). Some inflationary measure will also be needed for the means-tested threshold over which all costs would need to be paid.

Surprisingly; especially since the long-term funding issue has yet to be resolved, the government has given a commitment to introduce a universal deferred payment scheme (with interest and administration costs) for residential care by 2015. This would mean that individuals could use the value of their property to secure a loan from their local authority; the amount of which would be recouped once the property was sold after death. This arrangement already exists in some areas, and is currently offered as an interest free loan. Given the government's early commitment to this idea, it seems likely that they plan to ask individuals to pay large sums towards their care and therefore will require a universal deferred payment scheme as the only way in which the majority of people will be able to fund their costs.

### **Information and advice**

The government intend to establish a new website to provide clear and reliable information on care and support services and develop a comparison website to make it easy for people to compare the quality of care providers. However, the emphasis on accessing information online will exclude millions of older people who need information and advice in a range of formats, such as by telephone or face-to-face.

### **Access to care services**

The government wish to introduce a national minimum eligibility threshold to care services that will apply across the country. This will replace the existing Fair Access to Care Services criteria and is likely to be set at the 'substantial' level, although there is no detail available as to what the criteria will include. Those with moderate or low level needs will lose out on support and the lack of preventative care at this level will inevitably lead to greater demands on more acute services at a later date. Already 800,000 older people are in need of care services, but are unable to meet the existing criteria for help. It is unlikely that the new proposals will do anything to include these people.

Assessments will also be carried out by new providers, rather than the local authority. This raises serious concerns as to the independence of the assessment and whether or not the assessor will be suitably qualified to carry it out. It is possible a care provider could over estimate an individual's care needs in order to charge for more hours than were necessary.

### **Quality of care services and the issue of dignity**

The white paper states that a new code of conduct for staff and recommended minimum training standards will be published by September 2012; drawing on the NPC's Dignity Code and SCIE's Dignity Challenge. This is a huge success for the Convention and we must ensure that our code is properly used. However, there is an urgent need to also professionalise the social care workforce, through improved pay, training and regulation which has yet to be determined. There is no detail as to whether the new code of conduct will be voluntary or statutory, or how it might be enforced.

Ministers have also stated that they want to rule out 'contracting by the minute' by local authorities, but the papers contain very little detail as to how this could be done. Given that this is a crucial way in which the private care sector currently operates, it is difficult to see how the government intends to stop this from happening, but this may be a way to exercise more control over the quality of services and help us move towards a model of "commissioning for dignity".

### **Carers**

For the first time legislation will be put in place to enable carers to have their needs assessed and give them an entitlement to support. However, whilst having a legal entitlement to services is a positive step, it is unlikely to make any significant difference without the necessary funding in place to provide carers with additional support. There is also no detail as to what support will be available and no mention of giving the carer's allowance to those of pensionable age.

### **Personalisation**

The government intends to give people a legal entitlement to a personal budget (a statement of care costs) and pilot direct payments to care home residents. Given that two thirds of all residential home residents have dementia, this idea raises serious concerns. The draft Bill also sets out the right to a direct payment – but there is no consideration as to the challenges that direct payments cause for vulnerable older people who struggle with the responsibility of becoming a micro-employer. This can lead to extra stress, a breakdown in patient-carer relationships and creates the opportunity for other organisations to manage budgets on behalf of the individual – effectively reducing the amount of money they then have left to spend on their care.

### **Adult Protection**

Local authorities will be required to convene Safeguarding Adults Boards with powers to conduct reviews and enquiries, but there is no information as to how these boards will be funded. There will also be a new definition of what constitutes an adult at risk of abuse. However, whilst welcome this is not legislation that will protect older people who are not covered by the Mental Health Act or Mental Capacity Act from abuse and neglect.

### **The social care market**

Local authorities will be responsible for developing diverse local markets in social care. The government sees social care as another market governed by consumer choice and competition, and is seeking local authorities to promote a wider care

market, without recognising that older people are not always in a position to act as well informed consumers. The government will also consult on what should happen if private care providers go out of business (eg. Southern Cross), but has made it clear that it is not the role of the state to support private businesses that fail. In the past, companies had to show that they had three times the assets before being allowed to take over a social care business, but the government has removed this requirement because it is keen to encourage smaller care providers to enter into the market.

## **Housing**

The white paper recognises the need for improved access to housing aids and adaptations for those who can pay, and will encourage housing providers to develop new accommodation options, by establishing a new capital fund worth £200m over five years to develop specialised housing for older and disabled people. It is difficult to say at this stage how many properties this would provide, but an estimate would be around 6000.

## **Additional items**

- The government wish to expand the use of telehealth and telecare in the NHS and social care. However, evidence is far from clear that these pilots have produced any benefits and often they are used as a substitute for human contact and personal care. What would be more helpful, would be the greater use of low level assistive technology that enabled people to stay in their own homes for longer periods.
- The draft Care and Support Bill will replace the current Community Care (delayed Discharge) Act 2003, but will not address the problem that older people are often discharged from hospital without the necessary support services being put in place when they arrive home.
- The government will develop initiatives that help older people share their time, talents and skills with others in their community as a way of reducing reliance on paid for care. This could take the form of a time-bank – in which someone does the gardening for an older person for free because the older person has done someone's washing for them. It is debatable how successful this idea will be – especially given the potential safeguarding concerns that it might raise.
- The government will investigate the possibility of offering free social care for a few days to those at the end of their life.

## **The issues not covered by the white paper or draft Bill**

Whilst the government's delay in publishing any detail on the long-term funding of social care has been well documented, there are a number of other important issues which appear to be completely absent from the announcements so far. These include:

- Domiciliary care – Much of the debate about funding has revolved around the cost of residential care, but there is nothing in the documents to address the cost of care at home. Local authorities will still be able to means-test for these services and different councils will charge different rates – meaning that the postcode lottery which has been identified as one of the main failings of the current system will remain in place.
- Advocacy – There is no acknowledgment that a significant number of older people require someone else to act on their behalf in order to ensure that their

wishes and needs are properly explained and understood. It is crucial that the government therefore considers how an independent advocacy service can be introduced into the social care sector for those who are unable to properly express themselves.

- **Human Rights Act** - Those receiving care in their own home, even if they are funded by the local authority, are still excluded from the Human Rights Act. Along with those who are self-funded in residential care also being excluded from the Act; these are two areas where the government must close the legal loop hole as a matter of urgency.

### **The case for a National Care Service**

Fundamentally, society has to consider why the responsibility for funding the care of older people rests with the individual, rather than on society as a whole in the same way that the NHS, education and defence are financed. Of course there is the artificial divide between medical and social care and the urge to move older people out of hospitals and into the community as quickly as possible, but there is also the expansion of the hugely profitable private sector, whose aims are beginning to look incompatible with the needs of vulnerable pensioners. The answer must therefore lie in the creation of a public National Care Service, free at the point of delivery, that can deliver high quality and comprehensive care that meets individual needs – either at home or in residential care.

Essential elements of a National Care Service should include:

- **National Assessment** - nationally determined assessment criteria which will be used throughout England to assess care needs. Individuals should have the right to have their needs (critical, substantial, moderate and low) assessed and receive the appropriate care from a universal menu of services. At the same time family carers' needs to also be assessed. Assessments would also be portable, and move with the individual should they leave their particular local authority area.
- **A Comprehensive Service** - Individuals and their family carers should be entitled to receive a variety of care services from a range of regulated providers of the highest standard. There should be no divide between health and social care provision and the process of accessing care should be transparent and easily understood. All services should operate to nationally agreed standards of pay, conditions and training which will be properly regulated and enforced.
- **Information and advice** - Individuals and their carers should be able to easily access straightforward information and advice about their entitlements to services at every stage of their care, and advocacy when required. Whether in the community, care home or hospital, individuals and their family carers should be entitled to receive information which clearly explains their entitlements to care, how to access the services available and their rights as a service user.
- **Personalised care** - A range of care and support services should be made available that can be tailored to individual personal circumstances and needs. Care and support should be designed and delivered around an individual's needs through a regulated provider. Under a National Care Service there would be no need for personal budgets.

- **Respect and dignity** – It is important to uphold the rights and maintain the personal dignity of older people, within the context of ensuring the health, safety and well-being of those who are increasingly less able to care for themselves or to properly conduct their affairs. There should be a Dignity Code which applies to all care providers and recognises that certain practices and actions are unacceptable to older people.
- **Fair funding** - Society to share the cost of providing care for those in need. A tax-funded universal National Care Service to entitle individuals to free non-means-tested care, support and accommodation appropriate to their needs.

### **Future funding of care**

The Wanless Social Care Review of 2006<sup>1</sup> summarised the amount of money in circulation in the adult social care system as follows:

- £8bn spent by local authorities (largely funded through central government grant)
- £1.6bn was recouped through means-tested charges on individual users
- £3.7bn was paid through tax-funded disability benefits (Attendance Allowance and care component of Disability Living Allowance)
- £3bn was spent by the NHS on the long-term care of older people
- £3.5bn was spent privately in residential and nursing homes

This gives an existing total spend on social care of £19.8bn including the NHS contribution. A more recent House of Commons Library calculation also showed that in 2011/12 total net expenditure on social care for the over 65s would be £7.4bn – very near the Wanless figure for the amount local authorities spend on social care. In addition, the Wanless report also suggested that the first two thirds of a person's care package should be free of charge, and the final third would be means-tested based on their income.

A National Care Service would not only change the way in which social care was funded, but also address the issues of quality and standards. Care would be paid for through taxation – rather than being means-tested, and in addition, it would seek to professionalize the social care sector with improved training, staff conditions and regulation.

As a step towards this we could provide free domiciliary and residential care to all existing users at a cost of £5.1bn. But an improved National Care Service would have to also take account of the following unmet needs:

- Provision of services for up to 200,000 older people who have low or moderate care needs and are currently excluded from the system
- Improved terms and conditions for care staff
- Modernisation programme of residential homes<sup>2</sup>
- Improved regulation and monitoring

<sup>1</sup> Securing Good Care for Older People, Wanless Social Care Review, Kings Fund 2006

<sup>2</sup> £540m according to Calculating the cost of efficient care homes, Joseph Rowntree Foundation, September 2008

The total cost of such a social care system could therefore be estimated to be nearer an additional £10bn – or around 1% of total government spending. If however, a comprehensive National Care Service was truly inclusive, it could be argued that there would be significant savings from other areas of care expenditure that could help to reduce the tax bill.

The choice we face as a society is to therefore find the additional funding by diverting existing spending from one area to another, accepting the need to pay additional tax – or a combination of the two. For example, the National Audit Office has stated that the taxpayer is currently supporting the banking sector to the tune of £228bn.

It would be possible to find the necessary additional resources by using a combination of income tax, national insurance and inheritance tax as a way of spreading the cost and risk across the population as a whole. In this way the cost is shared appropriately across those who are best able to pay, whilst removing means-tested care and the postcode lottery of charges, alongside the need to sell one's home to pay for care.

## **Conclusion**

There is no doubt that whilst some elements of the white paper and draft Bill are to be welcomed, the lack of detail and the delay in addressing the key issue of funding will severely undermine their effectiveness. Throughout the ongoing debate we must therefore continue to promote the key principles against which any changes must be judged:

- A National Care Service which is delivered free at the point of need
- Funding that is shared across society as a whole and not based on either pensioners paying for pensioners or just those individuals that are affected
- A service which does more than the current system; widening access and improving the quality of care, especially in the area of dignity and safeguarding
- A commitment to professionalise the care sector through improved pay, terms and conditions, training and regulation
- A recognition that the needs of the private sector are not necessarily compatible with the delivery of social care that society expects and older people deserve

The deadline for comments on the white paper is 19 October 2012 and the draft Bill has yet to be assigned any time to go through Parliamentary scrutiny.