Caring for our future: implementing funding reform

LGA, ADASS and Solace joint response

October 2013

About us

1. The Local Government Association (LGA) is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times, focusing our efforts where we can have real impact. We will be bold, ambitious, and support councils to make a difference, deliver and be trusted.

2. The LGA is an organisation that is run by its members. We are a political organisation because it is our elected representatives from all different political parties that direct the organisation through our boards and panels. However, we always strive to agree a common cross- party position on issues and to speak with one voice on behalf of local government.

3. We aim to set the political agenda and speak in the national media on the issues that matter to council members.

4. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils, fire, police, national park and passenger transport authorities.

5. We work with the individual political parties through the Political Group Offices.

6. Visit www.local.gov.uk

7. The Association of Directors of Adult Social Services (ADASS) represents Directors of Adult Social Services in councils in England. As well as having statutory responsibilities for the commissioning and provision of adult social care, ADASS members often also share a number of other responsibilities for the commissioning and provision of housing, leisure, library, culture, arts, community services and a significant proportion also hold statutory role of children's services Director.

8. Solace (the Society of Local Authority Chief Executives and Senior Managers) is the representative body for senior strategic managers working in the public sector in the UK. We are committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development, and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of Solace members work in local government we also have members in senior positions in health authorities, police and fire authorities and central government.

A note on our response

9. We welcome the opportunity to comment on this consultation. The LGA, ADASS and Solace have been at the forefront of calling for reform of our care and support system for a number of years. The local government sector is fully behind this agenda and there is consensus on the need for change from across the political spectrum. This cross-party support at the local level must also be matched by a cross-party approach at the national level.

10. The issues this consultation addresses are an important part of the solution for reforming care and support. But they are only one part. Wider reforms set out in the Care Bill, and which emanate from the white paper vision, are inextricably linked to funding reform, as is the integration agenda and the on-going issue of local government (and NHS) funding.

11. Our response to the consultation is written with the above in mind and does not rigidly adhere to the numerous questions posed. We comment on the issues that matter most to local government.

12. We are pleased that the Department is working with us in a true spirit of coproduction. The Joint Programme Management Office between the LGA-ADASS-DH is already proving extremely helpful and we are pleased that the LGA, ADASS and other senior local government figures are involved in the many working groups and boards that are working on implementation. This approach must continue if the full set of reforms is to be implemented successfully and the benefits for individuals realised. We are therefore very happy to expand further on any of the points set out below.[1]

What are we trying to achieve?

13. Given the multifaceted agenda before us on social care and health it is worth setting out briefly our vision for the future. In the context of short to medium term funding pressures, and a longer-term pressure stemming from our changing demography, we need a fundamental rebalancing of the relationship between, and funding for, adult social care and health. This means taking an integrated, whole system approach between social care and health and alleviating pressure on the acute sector by increasing our focus, and associated spending, on integrated, community-based preventative and early intervention solutions.

14. Recalibrating health and social care in this way is not just about addressing short-term pressures on hospitals, however. There must also be a much deeper and longer-term aspiration to develop a more integrated system that is primarily concerned with keeping people fit, well and independent. This process needs to support people at key points in their lives (or as necessary), incorporating a range of local services from across the public, third and private sectors, as well as the

[1] Department of Health colleagues also have the notes of the recent LGA-ADASS-DH funding reform consultation engagement events. Over 100 senior local government Members and officers attended these events, at which a number of important points were made. As we have not received the Department's notes from these meetings we request that they be considered alongside this response.

informal care and support provided by friends and family. The emphasis of such an asset approach must absolutely be on local communities as this is where the resilience and support needs to be built. It must also look right upstream to its source, linking the adult social care and health agenda to the children's health agenda. Unless we have such an approach that tackles lifestyles early on in childhood then we will still have people coming into the system with long-term health conditions. Therefore, as well as shifting care from institutions to the community and building on wellbeing approaches for adults, we also need to have the right 'pipeline' by ensuring prevention is invested in throughout the life course.

15. Such a recalibration will have an impact on the relationship between the state and the individual as the responsibilities of each shift. As we focus more on prevention the state must provide a universal offer that supports people to live in a way that decreases the likelihood of needing more intensive care in the future. In turn, the individual must be supported to take full advantage of that offer.

16. However, the safety net must remain an important feature of a future system for those requiring more than just 'that little bit of help'. If the state is capping a person's contribution to the cost of care the accompanying responsibility of the individual is to make that contribution. The state therefore needs to work with the individual to ensure that happens in the most appropriate and fair way. And in return for paying from their own means the individual must have confidence that their contribution will result in access to services that are tailored and flexible to meet their unique needs and which will improve their outcomes.

17. The agenda is a complex one. It involves the interplay of rights and responsibilities backed up by services and support spanning everything from information and advice through to high-end residential care. In every local area the key ingredients required to make the whole system work will be the same. The trick is ensuring sufficient flexibility to allow for the development of different recipes. In that context the consultation proposals on funding reform provide an important part of the framework required.

Summary of key messages

18. Our key points are set out below and expanded on throughout this response.

    18.1. **The bigger picture:** the funding reform proposals are an important part of the process of transforming care and support and health. However, they are only one part and it is important to consider them in the context of the Care Bill, national and local work on integration, and the funding environment local government is operating in. A consistent narrative linking all agendas together is required if we are to 'sell' this to the sector and beyond.

    18.2. **Funding**: the reforms need to be fully funded as new burdens and taken forward from a system that is itself adequately funded. We are concerned that some of the costs have been underestimated and would therefore welcome further detail on the government's assumptions and

modelling.

18.3. **Timings and detail**: there is still a great deal of detail to come and the consultation itself is in part a call for further evidence. We are already operating to an extremely tight schedule so it is essential that the detail is made available at the earliest opportunity.

18.4. **Awareness**: the success of the reforms will be determined in large part by the extent to which they are understood by a range of different people and sectors. It is incumbent upon us all to play our part in raising awareness of the reforms in a clear and accessible way.

18.5. **Assessment:** we anticipate a significant increase in demand for assessments. This carries a clear cost implication but will also stretch workforce capacity. A tier-two system of assessment may therefore be required to deal with (i) high-end, complex cases, and (ii) simpler cases where the assessment is conducted simply to start the care account running.

18.6. **Universal Deferred Payment Agreements:** the scaling up of the current DPA scheme constitutes a significant financial and reputational risk for councils, which we want to see central government assume by acting as a national underwriter for the scheme.

18.7. **Care and support definition**: the current proposals are ambiguous as regards to what is and is not likely to count towards the cap. Councils are at risk of legal challenge and unexpected costs whilst individuals face uncertainty and inconsistency. We urge the government to address this as a priority.

18.8. **Impact on the market**: it is not clear what impact the range of reforms will have on the provider market. The government (working with local government) needs to understand the possible scenarios to plan and manage any potential impacts.

Context and concerns

19. Funding is inevitably a concern for local government and two key points need to be stressed. First, there is a clear issue about the adequacy of the baseline for the adult social care system, with adult social care budgets having reduced by £2.68 billion over the last three years[2]. **The reforms will have the best chance of success if they are taken forward from an adequately funded system**. The £3.8 billion announced in the June Spending Round was certainly a positive step in the right direction, and we believe that efficiencies can be unlocked through integrated working. But this is not new money and will not – certainly in the short term at least – provide a funding foundation from which we can move forward with confidence.

[2] ADASS Budget Survey 2013.

20. Second, there is the cost of the reforms themselves. We acknowledge the announcement in the June Spending Round of £335 million "so that councils can prepare for reforms to the system of social care funding, including the introduction of a cap…and a universal offer of deferred payments". However, early indications from the sector lead us to **question whether the money made available for implementation will be sufficient. It would be extremely helpful if the Department of Health could provide a breakdown on the £335 million** as we understand it is intended to cover the following:

    20.1. Assessments and reviews.
    20.2. Capital investment in systems.
    20.3. Capacity building in individual councils.
    20.4. Information and advice.
    20.5. Introduction of deferred payments.

21. Furthermore, the £335 million is not new money and instead comes from top-slicing the local government settlement. **In order for the reforms to be a success they must be fully funded, and funded as new burdens[3]**. As our own work on modelling the costs of reform begins to yield results we would therefore like to meet with Department of Health officials at the earliest opportunity to agree a common analysis of the money that will be required to see the reforms through.

Staying independent for longer – planning and prevention

Founding principles

22. The social care system has centuries old foundations, with notions of 'deserving' and 'undeserving' poor arising from the Elizabethan Poor Laws. Since its formal inception in modern times in 1948 it has always been a cash-limited, rationed service, rooted in the idea of providing a safety net and a crisis response for those with the most severe needs and/or limited means. For a number of years we have consistently argued that this needs to change; **that care and support should be about preventing or delaying the onset of more serious conditions in a personalised way** with the aim, as far as possible, of keeping people out of 'the system'.

23. We therefore fully support the emphasis on supporting people to stay independent for longer and the overarching 'wellbeing principle' that is on the face of the Care Bill. However, given the fundamental importance of this approach we do want to flag up the **inherent tension between what is in the Care Bill/White Paper and what is in the separate consultation on national eligibility[4]**. The former articulates an asset approach to care and support, which

[3] "The net additional cost of all new burdens placed on local authorities…by central Government must be assessed and fully and properly funded", *New Burdens Doctrine,* Department for Communities and Local Government, June 2011.
[4] We will be responding separately to the consultation on national eligibility but it is appropriate to flag here our concern that the proposed threshold, described as "equivalent to 'substantial' in the current system", is

we support. This is about valuing the individual's own aspirations and considering them alongside the full range of strengths and resources their community can call on to assist in achieving relevant outcomes. The latter, however, is a framework based on a deficit model, giving people access to the system in line with what they are unable to do. As national eligibility will be at the heart of a reformed system we believe it is essential that the threshold is not given disproportionate attention. Doing so may result in less attention being given to the system's 'universal offer' which designed to keep people well and independent for longer.

24. Of course, that universal offer – comprising, for example, preventative work, reablement, telecare, information and advice – comes with a cost. This goes to the heart of the point raised at paragraph 18 on making sure the system itself is adequately funded in the baseline. The ADASS budget survey demonstrates that only 4.2 per cent of the adult social care budget (£588 million in 2013/14) is being spent on prevention. Therefore, **if one of the founding principles of a new, reformed system is about preventing need then this will need to be adequately funded**. At a time of significant demand pressures, and the prospect of significant additional costs as a result of reform, it is not clear whether local government will be able to support the prevention agenda to the extent it is envisaged as the foundation of a reformed system. The focus on integrated working with health will certainly be part of the answer but that alone is unlikely to resolve the issue.

Raising awareness

25. The proposals for reforming what and how an individual contributes to the cost of their care are extremely complicated. To make them a success **there must be a clear and comprehensive national campaign to raise awareness of how the new system will operate and what it will mean for individuals**. We agree this needs to involve the public, private and third sectors and we are ready to work with government on designing and delivering such a campaign.

26. Such a national campaign should not be confined to the public and **there is a clear need to raise awareness of the reforms amongst councils**. Members (be they ward councillors, cabinet members, or leaders) in particular will need support given the leadership role they will play in delivering the new system. This was a point made strongly at the recent LGA-ADASS-DH funding reform engagement events in Leeds and London. This is clearly an area where the LGA, ADASS and Solace will play a key role. Furthermore, awareness needs to be raised across public services more generally – particularly with the health service given the need to integrate.

27. The funding reform proposals, and the changes set out in the Bill, are essentially concerned with the care and support system itself. We therefore also believe that there is a need to **explain the reforms as part of a wider and more general debate about ageing and living with long term conditions**. This needs to be

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actually a broader threshold more in line with the current 'moderate'. This will again carry a significant cost implication.

more 'evangelical' in nature, akin to national 'stop smoking' campaigns, and highlight the shared responsibilities of both the individual and public services in making sure that, together, we add life to years, and not just years to life.

Information and advice

28. Information and advice will be a cornerstone of the new system and for many people their first interaction with it. Councils are already doing a great deal of work in this area, such as through the Think Local, Act Personal partnership and the offer will need to extend to information on financial advice. **Information and advice should not be the preserve of councils alone; many local and national third sector organisations have a key role to play in providing appropriate services to people in a clear and timely way**.

29. As well as the cost implications of implementing and then running an enhanced information and advice offer we have a number of other concerns:

    29.1. Councils are not expert in financial services products so their role in this sphere should be more about information than advice. In this way we anticipate councils assuming a signposting function; that may be to local resources (such as local third sector organisations that are well versed in financial advice or are aware of local independent financial advisers) or national resources (such as the 'paying for care' website). We believe **councils may be exposed to risk of challenge if an individual is not happy with the financial advice they receive. We want to work with the Department of Health to understand this risk and consider how best to protect councils from it**.

    29.2. Furthermore, there may be a potential tension in the system if councils are required to be closer to financial *advice* in as much as that advice may encourage people to avoid paying the costs of care. There is already an established advice industry that attempts to help people avoid paying care costs. Under the new system this is likely to develop further as some of the people entering the system will be likely to have access to good legal advice and may approach the system from more of a consumerist perspective and with a stronger sense of entitlement. 'Gaming of the system' and deprivation of capital are issues councils may well face. And we may also see individuals being advised to try and get services that are not typically considered 'care and support' services classified as such so they reach their cap quicker. **Urgent clarity will be needed so as to avoid the risk of increased legal challenge of councils' decisions and ensure consistency for all individuals.**

    29.3. Of particular concern is the use of Trust Funds which individuals are legally able to use to protect their assets. This needs further review to ensure fairness and consistency for all individuals.

29.4. Financial information and advice will only be meaningful if the financial services sector quickly steps into this space and develops products that are attractive to individuals. **There is some concern that the sector is still holding back**, which may be due in part to the absence of the real detail of the reforms and the lack of public awareness of the reform agenda. At the very least we know the public is sceptical of the insurance sector so there is clearly still much to be done in terms of working with the financial services sector to support the development of the market.

30. Information and advice for self-funders will be particularly important, as will identifying them early so they do not present at the point of crisis or high need and with the majority of their assets depleted. They will need as clear an indication as possible of when they are likely to qualify for financial support, as well as the impact any change to their circumstances may have on their entitlements. **Identifying self-funders should not be the sole responsibility of the council**. GPs are an obvious point of contact for many people and as such will often be the first to recognise an individual who may have care needs. Capturing and sharing that local intelligence will be key to identifying people in good time.

31. Providers too are an important part of the system and we believe councils will need to work closely with them to ensure self-funders do not 'slip through the net'. However, we are alert to the fact that some providers may be reluctant to have that relationship with the council if they fear it will impact on fee levels. The 'open book' approach many councils are taking with providers (to understand business drivers and profit margins, for example) will be important in the reformed system.

32. Financial advice on paying for potential care needs will inevitably be initiated in many cases at the point of crisis or needing support. However, and linking to the points at paragraphs 24-26, there are opportunities to provide this information earlier in an individual's life, such as when they first make contact with the pensions system, or when a pension is first accessed.

Assessment of the care and support you need

33. We agree with the idea that the assessment process will essentially become more of a service in its own right; not only identifying eligible needs but helping people to understand the options available for meeting those needs, including through personal action, and how they might be prevented or their escalation delayed.

34. It is also clear that **councils will have to deal with a significant increase in the number of people requesting an assessment given that the process will be the gateway to starting the care account. This is an area that carries an obvious cost implication**. However, in the absence of the detail on how

assessments will work it is extremely difficult to be able to model this cost[5]. It is essential that government publishes as much of this detail as quickly as possible, and is open to the sector's subsequent analysis of the cost implications.

35. **As demand increases we may well see (or may well *need* to see) a type of triage service develop. Through this, some people would receive what would effectively be a 'statement of pre-eligibility need' that identified and set out relevant support from universal services and informal support from friends and family.** This 'pre-eligibility' work would not necessarily have to be conducted locally and could (as suggested at paragraph 27) involve national third sector organisations. Again, the issue is one of joining up all relevant agencies whose remit concerns the wellbeing of people who need, or may need, care and support. Of course, if such an approach developed we would need a clear understanding from all sides on the principles underpinning it. For example, we would need to carefully manage the potential tension between such work being more focussed on prevention and signposting, rather than advocacy and pressure for a service at an earlier stage.

36. **Flexibility and a proportionate approach will also be crucial in terms of managing the increased demand for assessments**, and we will need to carefully consider whether a 'two-tier' system is appropriate to help deal with capacity issues. For example, the significant numbers that will approach their local authority simply to start their care account running will not require a detailed assessment conducted by a professional social worker.

37. It may therefore be appropriate to contract out assessments for this group of people. These 'simpler' assessments could then be conducted by, for example, providers or local third sector organisations who would play a new role combining elements of assessment, financial advice, signposting, and support on self-assessment. This would free up professional social workers to conduct the more complex and 'technical' assessments and alleviate capacity pressure. Self-assessment may also be an option (with the individual supported by a family member or friend) as might joint assessments with health where, for example, the individual concerned is already in contact with a district nurse. **If a two-tier system of assessment develops we will need to work swiftly across central and local government to develop guidance on what different levels of assessment might look like**. Some local authorities are already working in such a way so we will be able to build on existing good practice.

38. With regard to the services people receive to meet eligible need following their assessment two points are worth considering:

    38.1. First, the impact of the capped-cost model on subsidised services. In domiciliary care, for example, self-funders receive many services that are subsidised. Under the new system many councils may well go for a full cost recovery model otherwise they will face paying twice: once for

[5] For example, if guidance sets an expectation that everyone, irrespective of their level of need, should be assessed in the same way then the associated costs will be much higher than if guidance allows for a two-tier approach (see below).

the subsidy; and once for the full amount contributing to the individual's care account. The implications of this need to be considered.

38.2. Second, if the bulk of self-funders come through the council to set up their residential care we need to be clear about rates payable and the impact on providers. At the moment providers rely on the self-funder subsidy for their sustainability so clarity is needed on whether the expectation is for a single fee or a continuation of the self-funded and council-funded rates. Transparency for self-funders will be crucial as it may be that, if councils do not charge different prices for the 'care' element, providers will make up the difference through the 'daily living costs' element. This may perpetuate a two-tier system that the reforms are in part designed to combat, and could lead to providers challenging the legality of fees paid by councils.

Paying for care

39. We support the general principles underpinning the new charging framework, building as they do on some of the main recommendations of the Dilnot Commission, which the LGA, ADASS and Solace supported. However, there are a number of issues which will need to be worked through before implementation.

Setting the cap

40. The LGA, ADASS and Solace have declined to comment in detail on the issue of where the cap should be set, focusing instead on the implications of implementation. One such issue relates to the transition from children's to adult services. The resource allocation system for 0-25 year olds is more generous than the equivalent system used in adult social care and there is some concern amongst the sector regarding the ability of adult services to continue providing the care packages of 'children and young people' – particularly 18-24 year olds with SEN.

Deferred Payment Agreements

41. Councils already offer deferred payment agreements (DPA) and there are approximately 8,500 DPAs in place, with an average loan value of around £23,000 (£197 million in total)[6]. The expectation of *universal* DPAs raises a number of issues.

41.1. There is an inherent policy tension between the government wanting to build more houses on the one hand yet encouraging homes to remain vacant (through DPAs) on the other. If homes are to be vacant we may want to consider how they could be best utilised.

41.2. Houses that are empty through a DPA when the individual is in residential care are exempt from Council Tax. This means a loss of

[6] ADASS Budget Survey, 2012.

income to local authorities at a time when resources are already scarce.

41.3. There is an issue about upkeep and maintenance of property whilst the home owner is in residential care. It is not clear who is responsible for these costs, which are important for ensuring the property does not depreciate in value.

41.4. There is a question about what happens if the package of care exceeds the value of the asset.

41.5. We need absolute clarity on whether councils will need to provide for the debt that increased uptake of deferred payment agreements will create. We are aware of some concern amongst the sector that by holding this debt on the council's balance sheet there will be an associated impact on the local government gearing ratio and councils' ability to borrow.

41.6. Experience from other sectors operating similar types of arrangements shows that there may well be issues regarding recovery rates and legal challenge when it comes to the council attempting to recover the monies it is owed.

41.7. We need clarity on how ordinary residence rules will apply to people taking out a DPA.

41.8. We need to consider whether an increase in the number of people paying for residential care through a DPA will impact on councils' bulk purchasing power.

41.9. There are incidences when an individual is required to pay the full cost of their care (because the value of their property is included in their financial assessment) but they can only pay from income/other savings until the property is sold. In such circumstances a debt will accrue between the full cost of care and the amount the individual can pay in the interim. In these cases it may not be appropriate to enter into a deferred payment agreement, or the individual may not want to. Currently, councils are able to secure the debt via Section 22 of the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983. If this power is removed then councils would require some similar power to safeguard council debt.

42. Taken together **these issues constitute a significant risk for councils** – particularly when combined with the funding that will be required to pump prime the system when it goes live. We acknowledge that the Care Bill will give councils the ability to charge a set-up fee and a rate of interest but it is not at all clear whether this will ensure that the scheme runs on a cost-neutral basis for councils. Given these concerns **we want to see central government commit to**

acting as a national underwriter for universal deferred payment and assume the financial (and reputational) risk councils will be exposed to.

43. **Further, and as part of ensuring that DPAs are a viable option for people, we suggest that the government considers the option of a separate national organisation to run the DPA scheme on behalf of councils.**

44. We are also aware of the recent Care Bill debate in the House of Lords on deferred payment and the criterion of an individual needing to have less than £23,250 in non-housing assets in order to be eligible for the loan. Clearly any eligibility criteria associated with deferred payment runs counter to the stated intention of it being 'universal'. Furthermore, the inclusion of the means test may act as a disincentive to downsizing as doing so would increase an individual's non-housing assets. These are policy tensions that the government needs to resolve. However, removing this criterion would compound the issues noted above and would increase the costs to local authorities significantly as everyone would be eligible.

Financial services and the individual

45. The shift towards individual responsibility to meet personal care costs will require the availability of (and easy access to) a range of financial products. As noted at paragraph 29.4 we have concerns regarding the ability of the financial services sector to deliver products that are attractive to consumers and within appropriate timescales.

46. This is not to deny the importance of such products. For example, recent research has highlighted the potential to increase the take-up of Immediate Needs Annuities (INA's). The research suggests that up to 40 per cent of all self-funders could afford and benefit from INAs and that, of the £4-6 billion spent privately on care, only £100 million is spent on INAs.

47. Concern regarding availability of appropriate products is matched by concern regarding the **lack of awareness amongst the public on the importance of making preparations for paying personal care costs**. All sectors need to work together to address this issue. Consideration must also be given to the longer-term. The proposed reforms are targeted at a home-owning generation and if they are to truly build a new system for the coming decades further political debate will be required to consider their viability for the next "austerity generation" characterised by fewer fixed assets and a lower propensity to save.

48. The proposal to uplift the cap and threshold on annual basis makes sense, but the formula applied must be commensurate to the individual's on-going ability to make provision from their personal income and assets.

Daily living costs

49. The proposals to exclude daily living costs from the cap is appropriate and will create greater transparency and fairness between residential and community care settings. However, the approach raises a number of important issues.

49.1. Whilst some self-funders may be paying more to receive better quality of daily living, in other cases they may be subsidising the cost of council funded residents. The subsequent impact upon the market is unknown, but we can assume that if self-funders are aware of how much the council will pay for care, they will be likely to seek care at this price. This could have the effect of driving up councils' rates for residential placements, but also (through market forces) driving down provider charges for residential care. The potential impact of the reforms on the market is difficult to quantify and, as per the point at 38.2 above, there is the possibility of council rates being challenged by providers. It is therefore essential that the government fully understands the impact of the reforms on the provider market and associated council liabilities.

49.2. The notion that individuals should pay up to a certain amount (£12,000 per year) for daily living costs sends a clear message to providers about reasonable charges. However, the reality is that daily living costs will vary according to local market conditions and there can be no absolute guarantee about what an individual should budget for when considering residential care. £12,000 in the North East will go much further than £12,000 in the South East.[7]

49.3. The proposals are potentially confusing and there is a risk that individuals will conflate care costs with daily living costs in terms of what counts towards the cap.

49.4. Many people – particularly older people on basic benefits – will not have the financial means to pay for their accommodation costs. Clarity is needed on who will pay the difference.

<u>A cap for different ages</u>

50. We recognise the need to create a system that is equitable across all ages, not just for older people. Further, we agree with the principle that people should contribute to the cost of care if they can afford to. What must therefore underpin the system is an eligibility and charging framework that is fair and proportionate to each individual's financial profile, and is totally consistent with equality legislation. This needs to ensure that everyone needing care is left with a sufficient income to enjoy a good quality of life after contributions to care costs have been paid, and that people have a financial incentive to work if they are able to. As councils will have the discretion not to charge, they should also have discretion to reduce charges in special circumstances to avoid hardship.

51. The principle of making the system of charging fair and consistent also needs to reflect the specific cost pressures faced by individual councils and the local democratic mandate they have to manage these reductions. With this in mind we

[7] Note that ADASS has developed a cost of accommodation and care calculator to help inform council discussions with providers on fees.

support a broad national charging system that retains local flexibility and interpretation.

52. It is important to consider how the future system should work in the case of, for example, individuals facing long-term care costs as a result of injury or accident. In some such cases individuals may be in receipt of insurance or other compensation payments designed in part to meet their personal care costs. Consideration is needed as to how such money should be treated in the future system to ensure fairness and equity for all (based upon the principles of individuals ability to pay).

53. Finally, the government needs to be mindful of the potential perverse incentive that may exist within the new system for councils to support individuals in residential care rather than at home, given the latter is often more expensive than the former. This obviously runs counter to the overall policy direction of supporting people to remain independent at home.

Meeting Eligible Need

54. As noted previously we support the overarching national principles of fairness and transparency in meeting eligible need but believe this must be balanced with local discretion and flexibility on the cost of meeting that need. This is important for reflecting local market conditions and each council's own financial position.

55. Defining 'care and support' will be key to making the system work effectively and we are aware of concerns from the sector that there is no such watertight definition. As currently drafted, neither the Care Bill nor the draft eligibility criteria address this issue and neither would therefore prevent people from arguing (possibly through the courts) that the cost of a wide range of support should be legitimately credited to their care account. There are obvious cost implications associated with this, alongside a situation whereby what is defined as 'eligible need' develops over time through case law and challenge. This clearly needs to be avoided.

56. The lack of definition also poses a risk of 'double subsidy' for councils which might see them pay once for services that cannot be charged for, and again if those same services do contribute to the care cap. This is an issue that carries clear cost implications and will need to be carefully considered.

57. Within this context we also need to consider the potential perverse incentive of discouraging informal care from friends and family given that not providing such support would help an individual reach their care cap more quickly.

58. On a linked point we are concerned about the potential cost implications of funding additional carers' support services. The size of this burden could be significant and transparency on exactly how this will be funded is essential (for example, there seems to be an expectation that this will be funded by monies in the Integration Transformation Fund). For many areas, the value of informal care and support is more than double existing council budgets for adult social care so

it is imperative that there is clarity on what the costs of this new burden will be and how they will be funded.

Personal budgets

59. We fully support the use of personal budgets and back the principles underpinning them. As touched on above it will be absolutely essentially that individuals fully understand how their personal budget is calculated and what it is that counts towards the cap.

60. We suggest that the term 'independent personal budget' (i.e. for those meeting their own needs) as opposed to 'personal budget' (i.e. for those who have chosen for their local authority to meet their needs) is not particularly helpful. It implies less independence if arranging care through councils, which is clearly at odds with the huge amount of work councils are already doing to promote and embed individual independence and control.

Complaints

61. We support the broad principles underpinning the process to handle complaints and suggest the following as additional principles:

    61.1. A process which leads to learning from complaints to inform practice, develop services and prevent recurrence of errors.
    61.2. Access to advocacy.

62. Existing complaint processes are generally appropriate and accessible; individual councils have different systems for dealing with complaints and under current procedures complaints about funding and charging issues are already being dealt with. We see no reason why complaints about the reformed funding system could not also be successfully dealt with under the present processes.

63. Whilst the intention of the proposal to include the right of appeal can be seen as a positive move towards increased transparency, it does pose a number of issues as set out below.

    63.1. At a headline level there are issues of cost and capacity if, as we suspect, the new system leads to an increase (at least in the short term) in challenges to council decisions and associated complaints.

    63.2. Any redesign of the appeals process needs to be mindful of the fact that the culture of complaints has changed over time. We are now seeing complaints aimed more at individual members of staff, rather than 'services', which further strengthens the need for supporting the workforce to fully understand how the new system will operate.

    63.3. Introducing a tribunal system would, in effect, add another 'stage' back in to the process, which previous regulations have sought to streamline. Experience suggests that having a staged approach, and the opportunity to have a complaint heard by an independent Complaint

Review Panel, slows the process down and does not significantly reduce the numbers of people approaching the Local Government Ombudsman or reaching a satisfactory outcome. A Tribunal system is also potentially more costly.

When the Cap is reached

64. It is essential that the transition to council-funded care and support once an individual's cap has been reached is as smooth and seamless as possible. Any disruption to services will: undermine confidence in the system; pose a risk to councils' reputation; and pave the way for potential legal challenge from individuals who may have to change their residential care setting).

65. Part of the answer for how to achieve a smooth transition relates to earlier comments about making sure that the public and providers fully understand how the new system will work. Planning in advance as the cap ceiling approaches will also be important. As part of this we need to better understand (or predict) the point at which people are likely to reach the cap. This involves understanding the dynamics between the cost of care locally, the numbers of self-funders locally, and local house values and home-ownership rates. It is these kinds of issues that the ADASS modelling work is exploring.

66. Upon reaching the cap some people may still have income and savings. In these cases it would be reasonable to allow this personal financial resource to top-up additional or more expensive care and support (i.e. a more expensive residential home). However, people would need to understand that, in such circumstances, if they depleted their assets to the point of not being able to afford the 'top-up', alternative arrangements may need to be put in place.

Conclusion

67. As highlighted above these reforms do pose a number of significant challenges and risks for local government; from macro issues of funding to micro issues of implementation. However, we remain committed to overcoming these challenges and mitigating these risks. The best way to do this is through continued dialogue with central government and the Department of Health and by maintaining the collaboration that has become such a positive feature of this reform agenda. In this spirit we would therefore be very happy to discuss any of the above in more detail.