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COMMUNITY CARE
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Care Act 2014

Charging for care

This is the third newsletter in a series focussing on the Care Act.

In this newsletter we look at the policy considerations that fed into the drafting of the Care Act charging reforms and summarise the new legal position as it will be from 1st April 2015. We describe the proposals for further change to be introduced in April 2016.

How to pay for the long term care of the elderly has been a longstanding headache for government trapped as it has been between increasing demand, pressure on public finances and an electorate wishing to protect life savings.

A Royal Commission on Long Term Care of the Elderly reported on the issue in 1999. It recommended that housing and living costs be separated from personal care with the former means tested and the latter free. The government baulked at the cost.

Later efforts focussed on co-payment between the individual and the state or as it became known, the "partnership" model – see for example the Wanless report from 2006, Securing Good Care For Older People, commissioned by the Kings Fund.

It is one of the stranger features of the genesis of the Care Act that the debate on appropriate charging for care was led by concerns over the property inheritance of the children of residents.

The issue of paying for long term care of the elderly became an issue in the 2010 election with the proposals of the then Labour government to charge estates condemned as a "death tax" by the Conservatives.

In 2010 the new coalition government commissioned Andrew Dilnott, a well known expert in public finance, to write a report on the future of care funding.

His terms of reference put the issue of protecting peoples' homes at centre stage.[1]

Dilnot report terms of reference

- how best to meet the costs of care and support as a partnership between individuals and the state;
- how people could choose to protect their assets, especially their homes, against the cost of care;
- how, both now and in the future, public funding for the care and support system can be best used to meet care and support needs;
- how its preferred option can be delivered.

Dilnot Report: Key findings

- The current adult social care funding system in England is not fit for purpose and needs urgent and lasting reform.
- The current system is confusing, unfair and unsustainable. People are unable to plan ahead to meet their future care needs. Assessment processes are complex and opaque. Eligibility varies depending on where you live and there is no portability if you move between local authorities. Provision of information and advice is poor, and services often fail to join up. All this means that in many cases people do not have good experiences.
- A major problem is that people are unable to protect themselves against very high care costs. The current availability and choice of financial products to support people in meeting care costs is very limited. There is great uncertainty and people are worried about the future.
- Most people are realistic about the need for individuals to make some contribution to the costs of care in later life, but they want a fairer way of sharing costs and responsibility between the state and individuals and they want to be relieved of fear and worry. There is consensus on the need for reform.

His conclusions were heavily influenced by meeting the aim of protecting people from incurring very high care costs.

The innovations of the Care Act as regards funding are thus substantially about protecting the assets of care users.

Yet this was very much a concern that would affect a small minority. The report noted that just 1 in 10 people would face care costs, excluding living costs, exceeding £100,000.[2] It is obvious of course, that the only people who can suffer such an "extreme"[3] reduction in their wealth in consequence of their payments for care, are those who have such wealth in the first place. Local authorities would otherwise support residents requiring their needs to be met in residential care over several years.

Whilst the Commission was clear that government would have to meet its own side of the bargain, the focus was thus not on how the wider and politically dominant agenda of austerity would affect the quality of care, but on protecting the assets of moderately wealthy individuals.

There is now ample evidence that the side of the partnership struggling with its side of this bargain is government. So for example in March 2015 the UK Home Care Association reported[4] that only 15% of councils were paying what they regarded as the minimum hourly rate which would allow providers to pay the minimum wage and run a sustainable business.

The charity Independent Age published a report which expressed the view that the use of top up payments by relatives had become a widespread subsidy to the residential care sector given uneconomic rates in contracts for care offered by councils.[5]

The results of a joint consultation by the charity with English Community Care Association with care homes showed:

- strong reinforcement of our FOI findings that many councils - despite their legal requirements - leave homes and relatives to organise top-up fee contracts themselves, and
- a belief that this is becoming even more common
- an overwhelming sense from care homes that top-ups are increasing in most places because the rates that councils pay for care home places are too low
- despite this overall trend, a striking degree of variation between councils (and indeed care homes), with a minority refusing to allow top-up fees to be charged but many others encouraging them
- a majority of care homes have had at least one instance where a relative has struggled to pay the top-up fee.[6]

The Care Act

Capital limits

The present capital limit for residential care is £23,250. If a resident has capital above this limit then the council has no duty to provide them with financial support. The council may be required to make arrangements for their care if the adult is unable to do so themselves and has no person willing and able to make arrangements for them.

There is a lower capital limit of £14,250 and between these limits, a weekly contribution is expected of £1 for every £250 or part thereof.

In the year April 2015-16, these capital limits will remain the same.

From April 2016, it is proposed that the upper capital limit will be £27,000 for those who do not own their own home, and £118,000 for those that do. The lower capital limit will be £17,000.

The generosity of the increased upper capital limit is more apparent than real. A person with equity in a property of £118,000 will be required to contribute up to £404 per week by way of tariff income to top up their income contribution. In their first year they will contribute £19,023 from capital.[7] By the end of year 3 - longer than the average life expectancy of a care home resident - they would have contributed £47,005 by way of tariff income.

The net result is that for a resident with income of £12,000 per year and a house with equity of £118,000, if care home fees are say £25,000 per year, in that first 3 years they would pay the full amount from their own resources. Only if their income dropped to below £8,000 would they receive any support at all.

Currently, a number of local authorities do not automatically reduce capital on account of tariff income payments. It is Wrigleys view that such notional deductions from capital should lead councils to reduce tariff income over time without the adult being required to notify the council that they have paid out capital to meet charges. This will be an even greater issue when such high tariff income contributions are implemented from April 2016. Such "tariff income drift" should not become a windfall to councils at the expense of residents.

Care capping

The Act provides that the charge to the adult for personal care may be capped. During March 2015, the Department of Health is consulting on proposals that from April 2016, the cap for those aged 25 or over at the time the eligible care need developed, the care cap will be £72,000. For those under 25 it will be nil. However under the draft regulations, if the adult is over 25 when the legislative provision commences, their cap will be £72,000, regardless of the age their care need developed.

It will be appreciated that the £72,000 cap on personal care will have no effect on the charges made in the example given above, unless the adult has received personal care before entering the care home to a value which causes the care cap to kick in earlier.

In care homes, there will be no cap on board and lodging costs. In means testing it will be assumed that the charge for board and lodging in a care home is £230 per week.

Costs that will count towards the cap

The costs that count toward the care cap will be those which the council assesses are necessary to meet eligible needs. Where care is provided at home, this will be equivalent to the value of the personal budget. Costs incurred before commencement of the provision do not count.[8]

Where an adult is self funding, the council must set an "independent personal budget"[9] and record eligible costs in an individual care account. The adult will be entitled to have their independent budget reviewed if they make a reasonable request.

Direct payments

Following evaluation of a pilot, direct payments for residential care may be introduced in April 2016. But from April 2015, direct payments will not be available to pay for permanent residential care.[10] A direct payment can be used to fund a period of not more than 4 consecutive weeks of care home accommodation. If separate periods in the care home are separated by less than 4 weeks, these periods are aggregated to determine the limit, but otherwise repeat periods of stay in the care home are not aggregated. So direct payments will generally remain available to use to pay for respite care.

Top ups

At present, councils have a legal duty to meet the needs of adults to whom they owe a duty to provide accommodation under section 21 National Assistance Act. This means that they must identify and pay for care home accommodation that meets their needs. All too commonly Wrigleys clients report being provided with a list of care homes by their council and being asked to visit. They are then told the price and that this exceeds the council usual cost so a top up will be required. Only if they then insist will the council point to available care homes at their usual rate, which are often unsuitable for a variety of reasons.

Presently top ups can only be provided by third parties save in very limited circumstances[11] where the resident can top up from their own resources. These arrangements will persist for the year from April 2015. In April 2016 the Department of Health proposes that the restriction on residents making their own top up arrangements will be lifted. The rationale appears to be that with the increased capital limits combined with the capping of personal care costs, such top ups will be affordable.

As mentioned above, the whole issue of top ups is tied up with the adequacy of the council's usual rate for care. The language of the "usual rate" disappears under the Care Act. Remuneration to care homes becomes a function of the determination of the resident's mandatory personal budget which is "the cost to the local authority of meeting those of the adult's needs which it is required to meet or decides to meet…"[12].

Personal budgets will be discussed in a future Newsletter.

Deferred payments

The conflict between public perception and the realities of public finance is nowhere more marked than in the new deferred payments scheme. Deferred payments are complex arrangements and the detail will be discussed in a future Newsletter. But it is worth noting here that public unhappiness about the sale of residents' homes to meet care fees was always primarily about inheritance for their children and the spin on the Care Act, that it provides that no-one will be forced to sell their former home during their lifetime, is something of a diversion from the concern that has motivated the public debate.

The statutory guidance has found it necessary to say that: "It should be stressed from the outset that the payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date."[13]

Residents who own an interest in property have a right to a deferred payment agreement subject to conditions, from April 2015.

The conditions are that:

1. Needs are to be met by residential care
2. Accessible capital other than the property is below £23250
3. The property is assessable as capital under the charging regulations

Conditions 2-3 can be waived at the council's discretion.

The statutory guidance identifies[14] 3 benefits of the deferred payment:

- It provides peace of mind during a time that can be challenging (or even a crisis point) for the resident and their loved ones as they make the transition into residential care.
- Flexibility for when and how someone pays for their care and support
- Use as a bridging loan to give them time and flexibility to sell their home when they choose to do so.

It is certainly true that transition from independent living to residential care can be traumatic for the adult and the loss of their home within a short timescale to pay for fees only adds to this. It was this issue that motivated the introduction of the 12 week disregard of the former home. However are there really a significant number of residents wish to maintain their former home indefinitely as an alternative to residential care, with all the risks and costs of keeping the property on? If so, these residents have not brought their concerns to Wrigleys.

On the face of it, the greatest incentive to take out a deferred payment agreement will be to extend the application of the £118,000 upper capital limit to be applied from April 2016. Whether this will be of any benefit to an individual will be a question of arithmetic. Modelling by Wrigleys community care department suggests that there will be circumstances where there is a significant financial benefit to retaining the property and residents and their families will benefit from advice regarding this.

Sources:

1 Dilnot Commission: "Fairer Care Funding: The Report of the Commission on Funding of Care and Support" July 2011 page 9.

2 Ibid page 12

3 Page 44 UKHCA: "The Home Care Deficit" March 2015.

5 Independent Age. "Care Home Top Up Fees: The Secret Subsidy" July 2013

6 Ibid page 18

7 See draft regulation 5A(5) The Care and Support (Cap on Care Costs etc.)Regulations 2015

8 Care Act section 15(1). Commencement should be April 2016

9 Care Act section 28

10 Care and Support (Charging and Assessment of Resources) Regulations 2014 regulation 5.

11 Where they have a disregarded property interest - during the first 12 weeks of council support and also if they have a deferred payment arrangement with the council

12 Section 26(1)(a) Care Act 2014

13 Paragraph 9.3

14 Paragraphs 9.2-9.5

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