



## Social care reform: funding care for the future

Standard Note: SN/SP/6391  
Last updated: 26 September 2013  
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Section: Social Policy Section

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The issue of how social care should be funded to cope with demographic change is one which successive Governments have attempted to address.

Following the 2010 General Election, the Coalition Government appointed an independent Care and Support Commission to consider the issue of sustainable funding for long-term care. The Government announced that the review, and further work from a Law Commission project on reform of the law on adult social care, would inform proposals to be included in a subsequent Government white paper.

This note provides a brief history of the proposals to reform the system of adult social care, including information on the Coalition Government's *Caring for our future* white paper and the accompanying progress report on funding reform published in July 2012.

The note also introduces the Government's announcements made in early 2013 to introduce a cap on social care costs and a revised means test, effective from April 2016, and the *Care Bill* introduced in May 2013 to reform the social care system.

Details of the current charging policy and eligibility criteria for adult social care services are set out in two Library papers available on the Parliament website:

[Financing care home charges](#) (SN/SP/1911)

[Domiciliary care: eligibility criteria](#) (SN/SP/6067)

This note applies to England only.

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# 1 Social care reform in the face of an aging population

The impact of demographic change, including an expansion of an aging population and changes in the willingness of family members to provide informal care for elderly relatives, has placed a strain on social care services and resulted in an increased demand for residential care.

Both the previous Labour Government and the current Coalition Government published a number of policy documents seeking to address the challenges for social care posed by a changing and aging population.

## 1.1 Proposals for reform under the Labour Government

The policy direction under the previous Labour Government was to provide people with greater independence and control over the support they receive from the state in their own homes, thereby averting the need to move into residential care.

The 2005 social care green paper, *Independence, Well-being and Choice*,<sup>1</sup> set out a vision of social care to maintain the independence of individuals by giving them greater choice and control over the way in which their needs are met. The proposals focused on developing greater use of direct payments and early intervention to maintain an individual's independence by allowing them to remain active in the community.<sup>2</sup>

The subsequent white paper, *Our health, our care, our say*,<sup>3</sup> built on the social care proposals introduced in *Independence, Well-being and Choice*, with emphasis on the importance of joint-working between health, housing and social care, to allow individuals greater choice in service delivery and the tackling of inequalities in access and care.

### The Wanless Review: funding long-term care

Against a background of policy shifts in social care support and funding, which placed greater emphasis on individual choice and independence, the health think-tank, the King's Fund, commissioned Sir Derek Wanless to undertake a review of social care. The review report, *Securing Good Care for Older People*<sup>4</sup> (the Wanless review) projected that by 2026, 1 in 5 people in England would be over 65, with the number of people over 85 growing by two-thirds.<sup>5</sup> It further projected that to 2025, there would be a 53 per cent increase in those with some need and a 54 per cent increase in those with a high level of need.<sup>6</sup>

The review found that despite users' preference to stay in their own homes, local authority spending on care home placements had risen at a faster rate than that on home care. In 2004/5, almost 60 per cent of local authority gross spending on older people's social care went on residential and nursing home placements. Furthermore, in directing resources to people with the most intensive needs, a substantial number of people with lesser but still significant needs, were not being helped in many cases.<sup>7</sup>

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<sup>1</sup> Department of Health, *Independence, Well-being and Choice*. Cm 6499; March 2005

<sup>2</sup> Further information on information on direct payments is set out in the Library standard note, *Direct payments for social care* SN/SP/3735

<sup>3</sup> Department of Health, *Our Health, our care, our say: a new direction for community services*, Cm 6737, January 2006

<sup>4</sup> The King's Fund, 2006

<sup>5</sup> *Securing Good Care for Older People – Taking a long term view*, Derek Wanless, March 2006, p32

<sup>6</sup> *Securing Good Care for Older People – Taking a long term view*, Derek Wanless, March 2006, Summary

<sup>7</sup> More recent figures on council assistance for domiciliary care is set out in the Library note *Domiciliary care: eligibility criteria*, SN/SP/6067

The Wanless review also strongly criticised the current funding of social care services.<sup>8</sup> It found:

There is ... widespread dissatisfaction with the current funding system. In part this results from ignorance about what to expect. It often comes as an unwelcome surprise to older people to discover that social care is means-tested and they are expected to rely on their own savings and income until their assets have fallen to the threshold set for state funded care. It is a common complaint that the existing system penalises those who have saved for their old age.<sup>9</sup>

The review recommended abandoning some aspects of means-testing and changing the current rules so that fewer users would have to pay charges. It further recommended a 'partnership model' which would provide a universal minimum level of care with incentives for individual's to 'top-up' contributions which would be matched by the state. Those on low incomes would be supported in making additional contributions through the benefits system.

## 1.2 Developments leading up to the 2010 General Election

In 2009, the need to reform the social care system moved up the political agenda with all three major parties proposing alternatives to the current system. The then Labour Government published a green paper following a consultation based on the findings of the King's Fund commissioned Wanless review.

The *Shaping the Future of Care Together*<sup>10</sup> green paper proposed a 'universal deferred payment mechanism, allowing residential care and accommodation costs to be charged upon a person's estate when they die, rather than having to go through the process of selling their home when they need residential care.'<sup>11</sup>

The Conservative Party was highly critical of the proposal which it dubbed the "death tax". At that stage, the Conservatives proposed a one-off voluntary payment of £8,000 to pay for future care costs.<sup>12</sup> The 'home protection system', aimed at averting the need for pensioners to have to sell their homes to pay for care costs, was announced at the Conservative Party conference.<sup>13</sup> The then Shadow Chancellor, George Osborne, explained that under Conservative proposals, on retirement people would be invited to pay a one-off fee of £8,000, in return for which the state would pledge to meet their care home fees for life. Those participating in the voluntary scheme, which the Conservatives said would be self-funding, would then be free to bequeath their family home to their children on their death.

A leading pensioners group, the National Pensioners Convention, criticised the proposal as unrealistic for addressing the growing number of people who would need care in old age. They pointed out that the typical cost of long-term care for a pensioner is £52,000, twice as much as the Conservative proposals suggested.<sup>14</sup>

At the time the Liberal Democrats called for a cross-party commission to consider ways to fund care.

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<sup>8</sup> *Securing Good Care for Older People – Taking a long term view*, Derek Wanless, March 2006

<sup>9</sup> *Ibid*, Summary

<sup>10</sup> HM Government, Cm 7673; July 2009

<sup>11</sup> *Ibid*, p20

<sup>12</sup> [The Conservative Manifesto 2010](#), p48

<sup>13</sup> 3 October 2009

<sup>14</sup> *The Independent*, 5 October 2009

Background information on the Wanless report and the Government proposals is set out in the Library paper [Shaping the Future of Care Together: the 2009 social care Green Paper](#).<sup>15</sup>

Following the consultation process on the green paper, the Labour Government decided to opt for a comprehensive system to fund a new National Care Service.<sup>16</sup> The model would require everyone who could afford to pay to contribute to a universal service to support all adults with eligible needs. However, legislation to reform the system was not introduced prior to the General Election.

### 1.3 Developments under the Coalition Government

Following the 2010 General Election, the new Coalition Government did not adopt the home protection system proposal. In the 2010 Queen's Speech, the Coalition Government acknowledged the need to reform the current care system and instead announced plans to set up a commission to consider long term funding for social care:

The Government recognises that urgent reform of the social care system is needed to provide much more control to individuals and their carers, and to ease the cost burden that they and their families face. This is one of the biggest challenges faced by society today.

The Government will establish an independent Commission to consider how we ensure responsible and sustainable funding for long-term care. It will ensure that there is a fair partnership between the state and the individual, which takes into account the vital role of families and carers. The commission will report within a year.

The Government will also take decisive steps to accelerate the pace of reform so that older people and disabled people get the care they need and have more choice and control over how their needs are met. The Government will take steps to accelerate the pace of reform so that older people and disabled people get the care they need, ensuring:

- services are personalised to individual needs, with personal budgets offered by all councils giving people choice and control over how their needs are met;
- preventative support is given to people when they most need it, such as after discharge from hospital, with health and social care working together to help people stay independent at home;
- carers are helped to provide care and support for friends and family members, with direct payments and other support for their own needs as well as those they care for.<sup>17</sup>

The intention was repeated in the [Coalition programme](#) document:

We will establish a commission on long-term care, to report within a year. The commission will consider a range of ideas, including both a voluntary insurance scheme to protect the assets of those who go into residential care, and a partnership scheme as proposed by Derek Wanless.<sup>18</sup>

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<sup>15</sup> SN/SP/5184

<sup>16</sup> See HM Government, [Building the National Care Service](#), March 2010; Cm 7854

<sup>17</sup> [Queen's speech- social care](#), Tuesday 25<sup>th</sup> May 2010

<sup>18</sup> HM Government, [The Coalition – Our programme for government](#), May 2010.

The Coalition Government's proposals for reforming the adult social care system have been informed by two independent social care reviews. The first review, by the Law Commission, examined reforms to social care legislation.<sup>19</sup> The second report, by the Care and Support Commission, was commissioned by the Government to explore options for funding social care in the future.<sup>20</sup>

### **Law Commission report**

The legislative framework for social care has developed piecemeal since the enactment of the *National Assistance Act 1948*. Many provisions of that Act are still in force and underpin the provision of residential and non-residential adult social care services. Following a scoping project in 2008, the Law Commission announced its intention to consult on proposals to reform what was regarded as an outdated framework for adult social care.

The Law Commission's consultation report, published in May 2011 recommended a wholesale overhaul of the current fragmented social care system and the enacting of a single social care statute.<sup>21</sup> The consultation paper provides:

#### **A SINGLE ADULT SOCIAL CARE STATUTE**

3.2 The legislative framework for adult social care is a confusing patchwork of conflicting statutes, built up over the past 60 years. There is no single modern statute to which local authorities, service users, carers and others can look to understand whether services can or should be provided. The consultation paper proposed that the best way to achieve a simple and consistent legal framework would be to introduce a unified adult social care statute. This would mean that the existing provisions under which adult social care is provided would be consolidated and reformed into a single piece of legislation. This includes the relevant provisions in the *National Assistance Act 1948*, the *Chronically Sick and Disabled Persons Act 1970*, the *NHS and Community Care Act 1990* and carers' legislation.

The full consultation document is available on the [Law Commission website](#).

### **Dilnot report**

The [Care and Support Commission](#), led by Andrew Dilnot, published its report<sup>22</sup> in July 2011 (the 'Dilnot report'). The Commission explained that while hosted by the Department of Health, it was independent of both the Department and Government. It was chaired by Andrew Dilnot, with Lord Norman Warner and Dame Jo Williams as fellow Commissioners.<sup>23</sup>

The Care and Support Commission reported the following key findings about the current state of the funding of adult care and support:

- 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

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<sup>19</sup> The Law Commission, *Adult social care report*, (Law Com No.326) May 2011

<sup>20</sup> Care and Support Commission, *Fairer Care Funding – The Report of the Commission on Funding of Care and Support*, July 2011

<sup>21</sup> Law Commission, *Adult social care*, May 2011

<sup>22</sup> Care and Support Commission, *Fairer Care Funding*, July 2011

<sup>23</sup> *Ibid*,

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.<sup>24</sup>

In response, the Commission's main recommendations were:

1. **To protect people from extreme care costs we recommend capping the lifetime contribution to adult social care costs that any individual needs to make at between £25,000 and £50,000. We think that £35,000 is an appropriate and fair figure** and have used this example throughout our report. Where an individual's care costs exceed the cap, they would be eligible for full support from the state. This change should bring greater peace of mind and reduce anxiety, for both individuals and carers.
2. Not everyone will be able to afford to make their personal contribution, and those currently just outside the eligibility for means-tested help are not adequately protected. To address this, **means-tested support should continue for those of lower means, and the asset threshold for those in residential care beyond which no means-tested help is given should increase from £23,250 to £100,000.**
3. People born with a care and support need or who develop one in early life cannot be expected to have planned in the same way as older people. **Those who enter adulthood already having a care and support need should immediately be eligible for free state support to meet their care needs, rather than being subjected to a means test.**
4. **Standardisation of the current system of deferred payments to pay for care** with consideration given to allowing councils to charge for the service to recover costs.
5. Universal disability benefits for people of all ages should continue as now. **We recommend that the Government consider how better to align benefits with the reformed social care funding system and that Attendance Allowance should be re-branded to clarify its purpose.**
6. **People should contribute a standard amount to cover their general living costs, such as food and accommodation, in residential care.** We believe a figure in the range of £7,000 to £10,000 a year is appropriate.
7. **We recommend that eligibility criteria for service entitlement should be set on a standardised national basis to improve consistency and fairness across England, and that there should be portability of assessments.** In the short term, we think it is reasonable for a minimum eligibility threshold to be set nationally at 'substantial' under the current system. The Government

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<sup>24</sup> *Ibid.*, p5

should also urgently develop a more objective eligibility and assessment framework.

8. **To encourage people to plan ahead for their later life we recommend that the Government invest in an awareness campaign.** This should inform people of the new system and the importance of planning ahead. This campaign could be linked into the wider work to encourage pension savings.
9. **The Government should develop a major new information and advice strategy to help when care needs arise.** It is critical that the public has access to better, easy-to-understand and reliable information and advice about services and funding sources. This strategy should be produced in partnership with charities, local government and the financial services sector. As proposed by the Law Commission, a statutory duty should be placed on local authorities to provide information, advice and assistance services in their areas. These should be available to all people, irrespective of how their care is funded or provided.
10. **Carers should be supported by improved assessments which take place alongside the assessment of the person being cared for and which aim to ensure that the impact on the carer is manageable and sustainable.** We support the proposals set out by the Law Commission to give carers new legal rights to services and improve carers' assessments. In implementing our recommendations on information and advice, the Government should ensure that carers have better information and advice about support and available services.
11. **In reforming the funding of social care, the Government should review the scope for improving the integration of adult social care with other services in the wider care and support system.** In particular, we believe it is important that there is improved integration of health and social care in order to deliver better outcomes for individuals and value for money from the state.<sup>25</sup>

The Commission estimated that while 'under the current system someone who has lifetime care costs of £150,000 could lose up to 90% of their accumulated wealth', their proposals (namely the combination of the capped cost model, with the cap set at £35,000, and the extended means test) would 'ensure that no one going into residential care would have to spend more than 30% of their assets on their care costs'.<sup>26</sup> Accordingly, the proposals, if adopted, would not mean that individuals would no longer have to sell their homes to pay for care. Those with assets of less than £100,000 (including property) would, however, qualify for state help, whereas currently the threshold is set at £23,250.

In terms of the cost of their proposals, the Commission stated that 'we estimate that our recommended changes to the funding system would cost from around £1.3 billion for a cap of £50,000 to £2.2 billion for a cap of £25,000'. The Commission's proposed cap of £35,000 'would cost the State around £1.7 billion'.<sup>27</sup>

Further information on the current local authority means-tests for residential care funding is set out in Library standard note, [Financing care home charges](#).<sup>28</sup>

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<sup>25</sup> Care and Support Commission, [Fairer Care Funding – The Report of the Commission on Funding of Care and Support](#), July 2011

<sup>26</sup> As above, p7

<sup>27</sup> As above, p8 and Care and Support Commission, [Our report](#), website

<sup>28</sup> SN/SP/1911

On presenting the Dilnot report to Parliament, the Minister for Health, Andrew Lansley MP, said that the Government would be responding to the Law Commission and the Dilnot report in early 2012 when a white paper on reform would also be published. In his statement, the Minister set out the Government's intention:

Reform in this area will have to meet a number of tests, including whether the proposals would promote closer integration of health and social care; whether the proposals would promote increased personalisation, choice and quality; whether the proposals would support greater prevention and early intervention; whether a viable insurance market and a more diverse and responsive care market would be established as a result of the proposals; what is the level of consensus that additional resources should be targeted on a capped costs scheme for social care; and what a fair and appropriate method of financing the additional costs would be.

The Government have set out a broad agenda for reform in social care. We want to see care that is personalised; that offers people choice in how their care needs are met; that supports carers; that is supported by a diverse and flourishing market of providers; that has a skilled work force who provide care and support with compassion and imagination; and that offers people the assurances they expect of high-quality care and protection against poor standards and abuse. Andrew Dilnot's report was never intended to address all those issues, but it forms a vital part of that wider agenda.

To take the matter forward, we will work with stakeholders in the autumn, using Andrew Dilnot's report as the basis for engagement and as a key part of the broader picture. That engagement will look at the fundamental issues for reform in social care, such as improving quality, developing and assuring the care market, integration with the NHS and wider services, and personalisation. We want to hear stakeholders' views on the priorities for action from the commission's report and on how we should assess the proposals, including in relation to other priorities for improvement in the system. [...]The Government will engage directly with the official Opposition to seek consensus on the future of long-term care funding.

We will set out our response to the Law Commission and the Dilnot commission in the spring. There will be full proposals for the reform of adult social care in a White Paper and a progress report on funding reform. It remains our intention to legislate to this effect at the earliest opportunity. The care of the elderly and of vulnerable adults is a key priority for reform under this Government, and I commend this statement to the House.<sup>29</sup>

Between September and December 2011, the Government engaged in discussions with people who use care and support services, carers, local councils, care providers, and the voluntary sector about the priorities for improving care and support.<sup>30</sup> In early December, the Government reaffirmed that it would publish its full response to the Dilnot report, in the form of a White Paper, in the spring:

Government have spent the last few months engaging with stakeholders from across the care and support community to ensure that we get funding reform — and social care reform more broadly — right. As the Secretary of State set out in his July statement, the Government plan to publish a social care White Paper and a progress report on funding reform in the spring. We remain committed to this timetable.<sup>31</sup>

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<sup>29</sup> HC Deb 4 July 2011 c1234

<sup>30</sup> Further information is available on the [Department of Health website](#).

<sup>31</sup> [HC Deb 6 December 2011 c256W](#)

## 2 Social care white paper and the progress report on funding reform

The delayed white paper was published on 11 July 2012 alongside a progress report on funding reform and a draft *Care and Support Bill*<sup>32</sup> - which would implement a number of the Law Commission's recommendations for legislative change.<sup>33</sup>

### 2.1 The Care and Support white paper

The *Caring for our future: reforming care and support*<sup>34</sup> white paper sets out a number of actions the Government proposes to take to 'deliver a re-engineered care and support system that shifts resources towards prevention and early intervention'.<sup>35</sup> These include:

- Ending the current system of locally determined eligibility criteria for care by introducing a national minimum eligibility threshold by 2015. The standardising of eligibility criteria was one of the key recommendations made in the Dilnot report.<sup>36</sup>

The white paper provides:

In setting the level of the national threshold, the Government will need to review the eligibility position of local authorities and the resources available, and take into account work to develop options for a potential new assessment and eligibility framework. **Given the commitment to a national threshold, and the funding in this Spending Review, there should be no need for local authorities to tighten current eligibility thresholds.**

These changes will mean that people's entitlements to care and support will be much clearer and fairer, reducing the variations in access that currently exist between local authorities. We think it is right that people's individual care and support plans continue to be determined by their needs and circumstances, so that care and support does not become a 'one size fits all' service. However, introducing more consistency to access will help people to plan for their future with much greater certainty. **It will give people using services, and carers, greater confidence that they can move around the country without losing access to care and support.**<sup>37</sup>

- Legislating to ensure portability of assessments. Local authorities will be required to continue to meet the previously assessed needs of a person who moves into their area until a new assessment has been carried out. The change is designed to ensure continuity of care for persons who move for example to be near family members. The Government states:

We believe that it is right for people to be reassessed by their new local authority when they move home, as their needs, goals and ambitions may change. However, we will place a duty on local authorities to provide a written explanation if the result of the new assessment is different from that of the previous local authority. The draft Care and Support Bill also sets out new duties on the local authorities

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<sup>32</sup> Cm 8386, July 2012

<sup>33</sup> *Ibid*, p63

<sup>34</sup> HM Government, Cm 8378; July 2012

<sup>35</sup> *Ibid*, p63

<sup>36</sup> Further information on the current eligibility criteria is set out in the Library standard note: *Domiciliary care: eligibility criteria* (SN/SP/6067)

<sup>37</sup> *Caring for our future: reforming care and support*, p32

involved to share information to encourage a smoother transition. This will include the ability for people to request an assessment before they move home.<sup>38</sup>

- Piloting the use of direct payments in residential care. At present direct payments cannot be used to pay for residential care services except on a short term basis.<sup>39</sup>
- Legislating to give people an entitlement to personal budgets. Personal budgets are an allocation of funding given to users after a social services assessment of their needs. They do not currently have a legislative basis. The draft *Care and Support Bill*, published alongside the white paper, contains provisions which provide a statutory foundation for personal budgets.
- Exploring the use of ‘Social Impact Bonds’ – a type of payment by results tool – in care and support to help people live independently.<sup>40</sup>
- Testing the use of supportive time share initiatives such as time banks to allow people to build up a ‘bank’ of care by caring for others that they can later draw on for themselves.
- Improving mechanisms for the early identification of carers and legislating to provide carers with an entitlement to support. In addition, the proposed national eligibility threshold for support would also be extended to carers services.<sup>41</sup>
- Legislating to introduce Local Safeguarding Adult Boards.<sup>42</sup>
- Consulting on options to ensure better oversight of the social care market including:
  - ending prescriptive commissioning practices, for example contracting care by the minute;
  - when care provider businesses fail.<sup>43</sup>
- Greater investment in the social care workforce by training more care workers and appointing a new Chief Social Worker by the end of 2012.<sup>44</sup>

## 2.2 Progress report on funding reform

A separate document, *Caring for our future: progress report on funding reform*<sup>45</sup> sets out the Government’s response to the Care and Support Commission’s recommendations to reform the way people pay for care services in the future. In addition to the introduction of national eligibility thresholds for adult social care accepted in the white paper, the progress report provides that the Government will adopt in principle the Care and Support Commission’s funding model of capped costs and an extended means-test.<sup>46</sup> The progress report also proposes adopting a further recommendation - the introduction of a universal system of

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<sup>38</sup> *Ibid.*, pp32-33

<sup>39</sup> Further information on Direct Payments for social care is set out in the Library standard note [SN/SP/3735](#)

<sup>40</sup> *Caring for our future: reforming care and support*, p26

<sup>41</sup> *Ibid.*, pp34-5

<sup>42</sup> *Ibid.*, pp43-4

<sup>43</sup> *Ibid.*, pp45-48

<sup>44</sup> *Ibid.*, pp49-52

<sup>45</sup> HM Government, Cm 8381; July 2012

<sup>46</sup> Information on the current means-test for residential care is set out in the Library standard note [Financing care home charges](#).

system of deferred payments for residential care – which was also proposed by the previous Labour Government.

**Capping contributions and extending the means-test**

The current means-test for care allows councils to charge for residential and non-residential services following a means-test examining the income and assets of an individual.<sup>47</sup> In summary, persons with assets of less than £14,250 (the lower limit) are not expected to pay for their care costs. Those with assets between £14,250 and £23,250 (the upper threshold) will be expected to make a contribution to costs from their income in the form of a tariff income. Persons with assets (including property) over £23,250 will be expected to fund their own care home costs in full. The same savings limits are generally applied for domiciliary care eligibility although housing assets are not taken into account.<sup>48</sup>

In its progress report, the Government agreed with the assessment in the Dilnot report that the current system was unfair on those with modest means who would be spending a greater portion of their assets on care costs, if there required a long stay in residential care. During its engagement exercise, the Government found that the proposed cap on fees by the Care and Support Commission to protect those in most needs of protection from high care costs was broadly supported by respondents.

Although accepting the Commission’s capped cost model for the basis of reform, in conjunction with an extended means-test threshold for residential care, the progress report does not set out the levels of the proposed cap or where the new threshold levels will be set. The Dilnot report recommended that an individual’s lifetime contribution to care costs<sup>49</sup> be capped at £35,000 and the upper means-test threshold be raised from £23,250 to £100,000.

Chapters 5 and 6 of the progress report summarises the Government’s analysis of the proposed funding model. A final decision on the levels of the new funding model is not expected to be taken until the next Spending Review.<sup>50</sup>

The table below sets out the expected timeline for reform:

July 2012	Publish draft <i>Care and Support Bill</i> with powers to introduce national eligibility and universal deferred payments
2012	Parliament undertakes Pre Legislative Scrutiny of draft <i>Care and Support Bill</i> .  Continue engagement with sector and Official Opposition on broad range of issues including the level of the cap, threshold and potential voluntary and opt-in models.
Autumn 2012	Establish a working group, including financial services and the care sector, to ensure people have access to the right information to help them financially plan for care needs.
Winter 2012	Publication of an integration framework, setting out how the modernisation of the NHS can be built upon to provide a more joined-up experience for older people.
2013	Introduce <i>Care and Support Bill</i> .  Work with sector on designing final implementation of universal deferred payments, and consult with users
Spending Review	Make decisions on capped cost model and extended means test threshold, alongside other funding priorities for the Government.  Confirm level of eligibility for national threshold.

<sup>47</sup> *Ibid*

<sup>48</sup> *Fairer Charging Policies for Home Care and other non-residential Social Services*, p4. Unlike for residential care housing assets are not taken into account.

<sup>49</sup> Excluding general living costs which would be paid for by the resident.

<sup>50</sup> *Caring for our future: reforming care and support*, p22

April 2015	<p>Introduce universal deferred payments.</p> <p>Introduce national eligibility.</p>
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Source: *Caring for our future: progress report on funding reform*; July 2012

## A universal system of deferred payments

At present, local authorities have the discretion to enter into 'deferred payment arrangements' with care home residents. The scheme helps those whose property is taken into account by the means-test for residential accommodation but who do not wish to sell their homes, or cannot do so, in order to meet their care costs. The scheme, however, is only a way of postponing paying the full cost payment of care home accommodation; the deferred payment will eventually be recouped by the sale of the property either during or after the care home resident's lifetime.

The previous Labour Government had also proposed extending the scheme to make it universal.<sup>51</sup> The Dilnot report went further and recommended that consideration be given to allowing local authorities to charge interest on the deferred payment so that their costs could be recovered. The recommendations were accepted by the Coalition Government in the progress report which provides:

**We accept this recommendation. Deferred payments will be available in all local authorities from April 2015 and the necessary powers are included in the draft Care and Support Bill, published today.**

What this means

No one will have to sell their home in their own (or spouse's) lifetime to pay for residential care. People that cannot afford reasonable residential care charges without selling their home will have the choice to defer the fees until they are ready to sell.

We think this will have a range of benefits, preventing 'distressed' housing sales and providing convenience, choice and peace of mind.

We will introduce a universal scheme, available in all authorities from April 2015, using new powers set out in the draft Care and Support Bill, subject to parliamentary agreement. This will mean that deferred payments come into force as part of the new care and support statute.

The Commission recommended deferred payments should be run on a cost-neutral basis to the Government, by charging interest so that authorities can recover their costs. Currently authorities cannot do this, making it harder for them to offer deferred payments. We agree that interest or charges should apply and the draft Bill will allow this.

In 2013 and 2014, we will work with the care sector on how the scheme would work, including exactly when someone should be eligible and what interest or charges would be appropriate. We will fund local authorities for this new requirement.<sup>52</sup>

## Funding

Neither the white paper nor the progress report on funding reform sets out a funding settlement for any of the Coalition Government's proposals. On presenting the package of reforms to the House, the Secretary of State for Health, Andrew Lansley, revealed that

<sup>51</sup> Department of Health, *Shaping the Future of Care Together*, 14 July 2009; p120

<sup>52</sup> *Caring for our future: progress report on funding reform*, p17

decisions on funding would be made at the subsequent spending review since cross-party talks had not yielded a plan for funding:

...any proposal that includes extra public spending needs to be considered alongside other spending priorities, including the demographic pressures on social care services. The right and necessary time to do that is at the next spending review. Our talks with the Labour party were constructive, but no plan for funding Dilnot was agreed or, indeed, proposed by either side. A decision at the next spending review will allow time for continuing discussions with stakeholders and between the parties, and we can undertake open engagement on detailed implementation issues and options. These discussions will include the level of the cap, whether a voluntary or opt-in approach is a viable option in addition to the universal options and whether legislative provision is required.<sup>53</sup>

### 2.3 Parliamentary debate on announcement

In response to the Secretary of States's announcement that the proposals would not be supported by a commitment on funding, the shadow health secretary, Andy Burnham MP, labelled the white paper a "half plan" which failed the "credibility test".<sup>54</sup> He argued:

There is simply no point in promising new ideas if they come on top of the crumbling foundations of inadequate care budgets. Councils need emergency support. The right hon. Gentleman has allocated just £100 million and £200 million today, but last week it was confirmed that the Treasury had clawed back £1.4 billion from the Department of Health budget. Surely it would have made sense to have reallocated at least half that clawback—£700 million—to council budgets, to relieve pressure on care. Does he not accept that such a move is needed if his plans are to have any credibility in local government circles?<sup>55</sup>

Mr Burnham accused the Government of "adopting a pick and mix approach" to the Dilnot report recommendations which "were conceived as a coherent and complementary whole."<sup>56</sup> He was also critical of the Government's decision not to continue with cross-party discussions on funding, blaming Treasury mishandling of the issue.<sup>57</sup>

Labour MP Grahame M Morris accused the Health Minister of trying to "hoodwink" the country by dressing up the universal deferred payments policy, labelled as "a death tax" by the Conservatives when proposed by the Labour Government, as a new policy.<sup>58</sup>

Questions were also asked about the portability of assessments extending outside of England to make care packages "passportable".<sup>59</sup> Conservative MP, David Nuttall asked whether the proposal for paying a one-off insurance premium, as contained in the [Conservative Party Election Manifesto](#), would not have been a far better funding option for promoting personal responsibility.<sup>60</sup>

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<sup>53</sup> HC Deb 11 July 2012, c313

<sup>54</sup> HC Deb 11 July 2012 c 314

<sup>55</sup> *Ibid*

<sup>56</sup> *Ibid*, c316

<sup>57</sup> *Ibid*, c315

<sup>58</sup> HC Deb 11 July 2012 c 318

<sup>59</sup> Mark Durkan MP; HC Deb 11 July 2012 c325

<sup>60</sup> HC Deb 11 July 2012 c326

The Secretary of State reassured Members that discussions about funding options - whether universal or voluntary opt-in options - would be had.<sup>61</sup> He also added that he was open to discussions with the devolved Parliaments on ensuring continuity of support.<sup>62</sup>

### 3 Legislative reform: the *Care Bill*

#### 3.1 Pre-legislative scrutiny

The draft *Care and Support Bill* published in July 2012 (an overview of which is provided in a Library standard note, [SN/SP/6402](#)) was subjected to pre-legislative scrutiny by a Committee of both Houses. The Committee published its [report](#) on the draft Bill on 19 March 2013.<sup>63</sup> The Committee's recommendations included:

- A national campaign to raise awareness of what the national care and support offer is, how people can plan and prepare for their own care needs, and what rights they have to care and support.
- Information and advice for all (including self funders) about support, care planning and housing options.
- Provision of independent financial advice about the different options available to pay for care, including deferred payment arrangements.
- A new power to mandate joint budgets and commissioning across health, care and housing, such as support for the frail elderly, making it simpler for NHS and local Councils to pool budgets.
- A greater emphasis on assisting people to prevent and postpone the need for care and support.
- Fast-tracking of care and support assessments for terminally-ill people
- An end to 'contracting by the minute' whereby care workers sometimes spend just fifteen minutes with the person being cared for.
- New legal rights for young carers to protect them from inappropriate caring responsibilities and ensure they get the support they need.
- An obligation on the Secretary of State to take into account the draft Bill's well-being principle when designing and setting a national eligibility threshold.
- Stronger measures on safeguarding, including explicit responsibilities for local authorities to prevent the abuse and neglect.
- Independent resolution of disputes over decisions about care and support - and costs that count towards the cap – through a Care and Support Tribunal.

In addition, the Committee makes a number of recommendations to improve health research and the education and training of NHS workers, including:

- Strengthening the Health Research Authority responsibilities by ensuring full disclosure of research data

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<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, c327

<sup>63</sup> Draft Care and Support Bill Committee, [Greater focus on prevention and integration essential to improve Care & Support Bill, warn Peers and MPs](#), 19 March 2012

- Supporting greater integration of health and social care by ensuring more common training of care staff who often switch between the two sectors
- Strengthening the duties of Health Education England to give clinical experience to managers.<sup>64</sup>

### 3.2 Government response and the *Care Bill*

The *Care Bill* was published in May 2013.<sup>65</sup> Alongside it, the Government published *The Care Bill Explained*, which includes responses to the consultation on the draft Bill and also the Government's response to the Joint Committee's pre-legislative scrutiny report.<sup>66</sup> *The Care Bill Explained* set out the Bill's intentions relating to social care:

It is over six decades since the foundations of social care law were put in place, based on principles that are no longer relevant in today's society. We need new laws that reflect modern standards, modern expectations and modern practices. The first part of the Care Bill is a critical step in reforming care and support and achieving the aspirations of the white paper, *Caring for our Future*. It also introduces a cap on the costs that people will have to pay for care in their lifetime, as recommended by the Commission on the Funding of Care and Support. The Bill pulls together threads from over a dozen different Acts into a single, modern framework for care and support. But it is far from being a mere compilation – it fundamentally reforms how the law works, prioritising people's wellbeing, needs and goals so that individuals will no longer feel like they are battling against the system to get the care and support they need. It highlights the importance of preventing and reducing needs, and putting people in control of their care and support. For the first time, it puts carers on a par with those for whom they care.<sup>67</sup>

The Bill was introduced in the House of Lords, where it had its [Second Reading debate](#) on 21 May 2013.

## 4 A cap on costs: early 2013 announcements

### 4.1 February 2013 announcement

On 11 February 2013, the Health Secretary, Jeremy Hunt, made a statement to the House setting out the Government's proposals for social care funding reform.<sup>68</sup> He announced a £75,000 cap on social care costs and a revised means test under which people with less than £123,000 in capital will be eligible for financial support in paying care fees. These measures were intended to be effective from April 2017, but were subsequently brought forward a year to 2016 (see section 3.2).

The Department of Health [website](#) provides an overview of the measures announced:

The new measures include, from April 2017:

- A cap on care costs, which gives everyone the reassurance that they will have a level of protection, if they have the most serious needs and incur very high care costs.

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<sup>64</sup> Ibid.

<sup>65</sup> Department of Health, [Government publishes Care Bill](#), 10 May 2013

<sup>66</sup> Department of Health, [The Care Bill Explained: Including a response to consultation and pre-legislative scrutiny on the Draft Care and Support Bill](#), Cm 8627, 10 May 2013

<sup>67</sup> Ibid., p5

<sup>68</sup> HC Deb 11 Feb 2013 c593

If someone is assessed by their local authority as having eligible care needs, they will be told how much it will cost the local authority to meet those needs with local services. These costs count towards their cap. So, however great a person's costs become, once they have reached the cap the state will step in and provide financial support.

Due to the economic circumstances, we are introducing a cap that is equivalent to around £61,000 in 2010/11 prices – slightly above the £25,000-£50,000 range originally recommended by Andrew Dilnot. This is equivalent to £75,000 in 2017/18 prices. We expect up to 16% of older people to face costs of £75,000 or more.

People of working age who develop care needs before retirement age will benefit from a cap that's lower than £75,000. People who have care needs before they turn 18 will effectively have their cap set at zero.

- New financial protection for those with modest wealth. People with the least will get the most support.

Currently only those with assets of less than £23,250 get help with paying for their care costs. Our changes will mean that those with property value and savings of £100,000 (in 2010/11 prices) or less will start to receive financial support, with the Government paying a proportion of their residential care costs on a sliding scale. £100,000 was the amount recommended by Andrew Dilnot, and is equivalent to around £123,000 in 2017/18 prices. The most financial support will go to those with the greatest care needs and the least in savings or home value, and the poorest people will continue to have the majority of their care costs paid.

And from April 2015:

- No-one will have to sell their home in their lifetime to pay for residential care. If people cannot afford their fees without selling their home, they will have the right to defer paying during their lifetime.
- People will have clearer entitlements. A national minimum eligibility will make access to care more consistent around the country, and carers will have a legal right to an assessment for care for the first time.

The [Care Bill](#) includes provision to introduce the cap on costs.

The Department of Health website also sets out how the cap is intended to [operate](#):

The full cost of your care package counts towards the cap, not your contribution to it. This means if you have modest wealth then the amount you may have to spend on eligible care needs could be less than the full level of the cap. For example, if you are in residential care in 2017 and have assets including your home of £50,000, pay a local authority rate of around £34,000 per year for residential care, and cannot pay for these costs from income, then you could only have to pay £17,000 to meet your eligible care needs.

The following table<sup>69</sup> sets out how the total amount a person might be expected to pay to their care would differ, depending on the value of their assets, as compared against the current system:

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<sup>69</sup> Source: [Department of Health](#), *How the care and support funding reforms will work*, 11 February 2013

The value of your assets	The amount you could pay to meet the costs of your eligible needs	
	Current	£75K cap
£250,000	£184,000	£75,000
£200,000	£173,000	£75,000
£150,000	£126,000	£67,000
£100,000	£79,000	£45,000
£70,000	£50,000	£29,000
£50,000	£30,000	£17,000
£40,000	£20,000	£11,000
£17,500 or less	£0	£0

#### 4.2 Budget 2013 announcement

In his Budget statement on 20 March 2013, the Chancellor announced that the cap on social care costs would be introduced a year earlier than previously announced. The cap would now be effective from April 2016, with the maximum level of costs set at £72,000.<sup>70</sup>

#### 4.3 Consultation on funding reform

On 18 July 2013, the Government published *Caring for our future: implementing funding reform*, a consultation which will remain open until 25 October 2013. The consultation covers a range of topics, including:

- How to help people make informed choices over care through information and advice and assessments and help local authorities meet the demands for these
- How the capped cost system should work with assessments, personal budgets, charging, and care and support planning
- The design of the new charging framework for care and support and the choices around how the capped cost system should work for working age adults
- How deferred payment agreements should be managed and administered
- The process for providing redress and resolving complaints<sup>71</sup>

<sup>70</sup> HM Treasury, *Budget 2013*, March 2013, HC 1033, p5

<sup>71</sup> Department of Health, *Caring for our future: implementing funding reform*, July 2013, p8