



Consultation Response

The Care Act: consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support

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This Department of Health consultation is about the draft regulations and statutory guidance for the capped cost care funding system, and the associated measures to be introduced in April 2016. These include how Local Authorities will calculate and meter someone's contribution towards their care costs, the ways people will be able to keep track of their progress towards the cap, an increase in the means test capital limits and how the level of the cap will be regularly updated.

Key points and recommendations

Age UK welcomes the Government's intention to introduce the cap on care costs. We support the introduction of the cap in principle; however, we are concerned that its benefit and reach are limited by the high level of the cap and some of the administrative arrangements which complicate the working of the policy.

We are concerned that the high level of the cap means its overall benefit to those currently using or planning ahead for care is very limited. It does not significantly increase the options for planning ahead, given many people will still lose a significant amount of their savings or capital assets, particularly if they need residential care. It offers no additional potential for savings or investment products. Unfortunately, many people will also still need to sell their home to pay for care fees.

An immediate way to ensure that the cap and metering system benefit more people would be to extend the eligibility criteria so that more people were within the state system, even if they were self funded.

Metering care costs is likely to prove complex and problematic, given the number of qualifications to the costs.

Age UK has a number of overarching principles we think could be reflected more strongly throughout this guidance:

- It should be clear what costs are metered and people should be able to reconcile their actual costs with their metered costs;

- Metered care costs should be as close as possible to actual care costs;

- First and third party top ups should not be standard practice where there is no cheaper alternative that meets eligible needs;

- A care home resident has the continued right to spend their savings or capital as they wish;

- Everyone, regardless of how their care costs are being funded, should be able to understand how their Personal Budget or Independent Personal Budget was arrived at and should be informed how to challenge it if it is insufficient.

In our consultation events with many older people were not clear how the cap will work and which costs are included, even after a thorough briefing. To help people to understand what the policy really means for them there should be a much great

Most of the older people we spoke to thought that the daily living costs charge was too high if set at £12,000 a year. They thought it was fairer if it more

not the case. From this it is obvious that there will be some significant communications issues to overcome.

Other issues connected to introduction of the cap

Different rates depending on source of funding

There is a historical unfairness in the care market which means that self funders tend to pay more for services. This is partially as a result of them being individual consumers of care, rather than being able to take advantage of bulk purchasing arrangements in Local Authorities. However, there is also an inequity built into the market as a result of Local Authority payments for care being frozen or reduced over recent years, forcing some care providers to make up the difference by charging private payers more.

The metering system is not the way to address these inherent inequalities in the charging system, but it does highlight more clearly that they exist. In Age UK's view using metering to even out the recorded payments for care is unfair. We think that the rate that self funders pay for their care should be recorded as accurately as possible in their care account. This will make progress towards the cap meaningful for them.

Top up fees

Age UK remains concerned that over-reliance on top up fees for domiciliary care and in particular for residential care will increase the discrepancy between the amount actually paid and the metered costs. The extent of their use reflects persistent underfunding. In paragraph 3.15 the consultation document highlights that someone's top up fees are clearly not part of their metered costs.

However it must be made very clear to people by Local Authorities that top ups should not be a standard requirement and it remains illegal under the Care Act to charge them unless someone has chosen specifically to 'upgrade' their care home or purchase additional services. Local Authorities must be reminded throughout the Guidance that where someone's eligible care needs cannot be met at the Local Authority Personal Budget rate a top up must not be charged (or the Independent Personal Budget should be increased to reflect this). Top up fees must not be ingrained further into the charging system as this would perpetuate the inequality experienced by people who pay for their own care.

Paragraph 3.15 also implies that on becoming a Local Authority funded care home resident any top up would automatically continue to be paid by the resident (or their third party). The 2014 guidance on top ups makes it clear that this is not always the case and that the wellbeing of the resident also has to be taken into account. For example, where someone has lived in the same care home for many years their relationships with residents and staff could be critical for their emotional wellbeing and this needs to be factored in.

The guidance should also remind Local Authorities that they must demonstrate there is alternative accommodation available that meets the person's assessed needs. If there is not this could be further grounds for increasing the rate of the Personal Budget to meet the costs of the current care home placement. The recent Orders issued under the Care Act are useful here as in paragraph 26 it states "[Local Authorities] must ensure an individual has a genuine choice when it comes to choice of accommodation. They must also ensure that at least one of the accommodation

options provided by the local authority is within that person's personal budget and they should ensure that there is more than one accommodation option available'.

The use of averages must not be used to perpetuate the 'usual rate' in all but name. Age UK has seen many problems caused by Local Authorities operating the usual rate system, not least the indiscriminate charging of top up fees in situations where their rate was insufficient. This can be counteracted by Local Authorities using clear assessment and resource allocation systems which show a clear link between the eligible needs and the cost of meeting them. This transparency will also reduce the number of challenges to the calculations.

5. Can more be done to ensure that the care account is a useful tool to support people in planning for care costs?

Provision of online access to statements should be a requirement for Local

Although so

that the Independent Reviewer must consider how the Local Authorities has undertaken their Duty to promote wellbeing in each case.

We are also keen to ensure that people can request a meeting in person in order to put forward their case. The onus in paragraph 15.29 should be on the Local Authority to demonstrate there is *no* value in a meeting in person. It is important that people feel they have had a right to a fair hearing. Not everyone will want this and the wishes of the person bringing the appeal must be considered.