

## **Policy statement on care and support funding reform and legislative requirements**

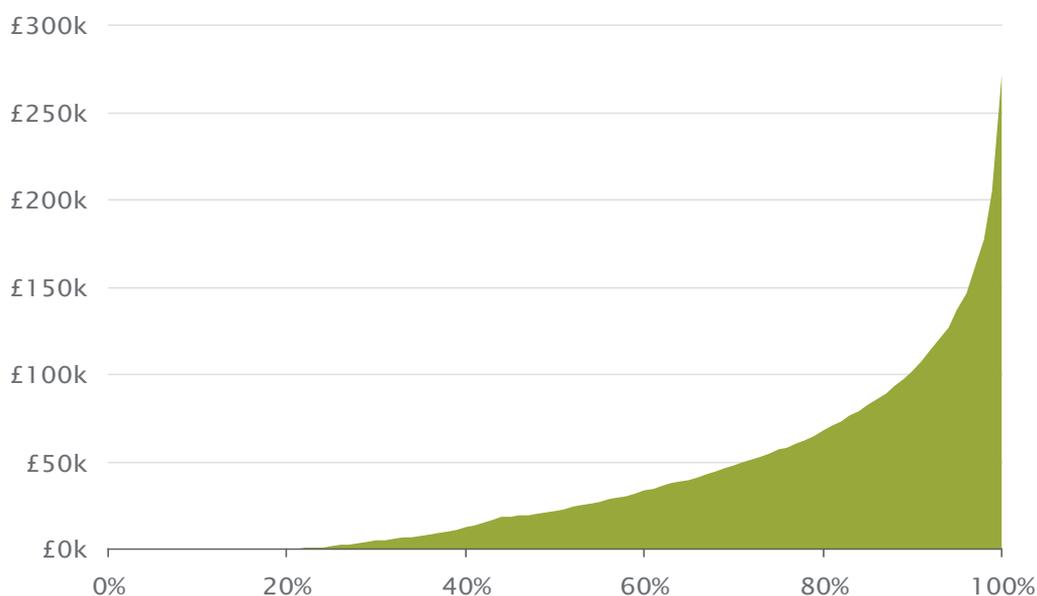
1. Following the Government's announcement to implement a new funding model for adult social care, based on the recommendations of the Commission on the Funding of Care and Support, this document sets out further detail on what the new system will mean and how it may be legislated for. It will support pre-legislative scrutiny of the draft Care and Support Bill.
2. Section 1 of this document describes the case for change, and the Government's objectives in bringing forward these proposals for a reformed system. In particular, it is envisaged that the new funding model will provide greater fairness and certainty for people faced with the costs of care, either now or in the future.
3. Section 2 describes how this would work for individuals and the changes that might be provided for in legislation, including where revisions might be required to the proposals set out in the draft Care and Support Bill. Provisions to enact these reforms would be included when legislation is introduced.

## Section One

### The new approach to care and support funding

#### The case for change

4. The current system offers little financial protection for the cost of care and support. The report by the Commission on the Funding of Care and Support, and *Caring for our Future: progress report on funding reform*, set out in detail the difficulties this creates for people receiving care and support.
5. The Commission found that because care needs are unpredictable, individuals and families are unable to know what care costs they might face in the future. A quarter of people may need to spend very little, but one in ten people will have more serious care needs, and will face care costs in excess of £100,000 (see Figure 1 below). Those who pay the most are likely to be those with long-term chronic disabilities such as dementia, which mean that they need care and support for a long period, whilst those without significant care needs spend very little, if anything, on care. People feel it is unfair that if they have budgeted carefully through their working life, they feel you are penalised because they receive little or no help.

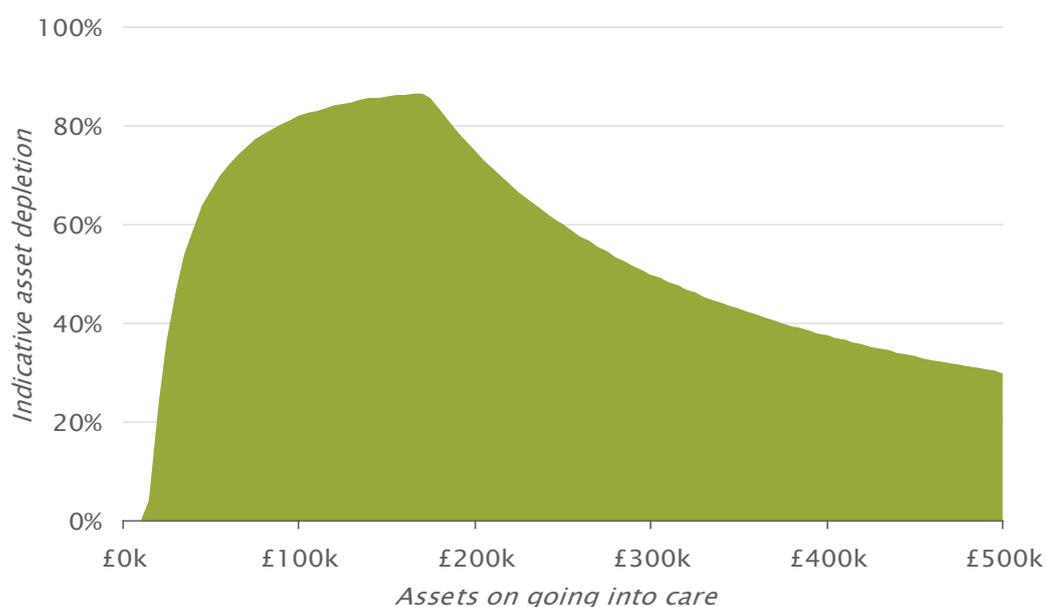


**Figure 1: Percentile distribution of expected lifetime care costs for people currently aged 65 (2009/10 prices). Source: Commission on the Funding of Care and Support**

6. Under the current system, if someone has a care need, their local authority will carry out an assessment of their financial income and assets to determine how much they should contribute to the costs of their care. If the person goes into residential care, their housing assets will also be taken into account, and they will

continue to pay for their care until they only have £23,250 left, at which point they will receive state support. Once someone qualifies for state support, their local authority will assess how much they can still afford to contribute towards the cost of their care.

7. Only a small proportion of people ever experience catastrophic costs. However, in the worst-case scenarios, people have had to sell their home or exhaust their life savings to pay for their care. People with low housing wealth can be particularly adversely affected (see Figure 2 below). Someone with a house worth £100,000 with indicative lifetime residential care costs of £100,000 would lose around 80% of their assets. Faced with the same care costs, an individual with a house worth £400,000 would only lose 25% of their assets.



**Figure 2: Indicative proportion of assets depleted under the current system for someone with very high residential care costs, by level of assets on going into care. Source: Commission on the Funding of Care and Support.**

8. The Commission on the Funding of Care and Support concluded that the heart of the problem is the lack of an effective way for people to protect themselves from catastrophic costs. Unlike in other areas of our lives – pensions, healthcare, home insurance – there is limited private insurance against high care costs. People cannot pool their risk through insurance, so they are exposed to unlimited costs and cannot use their savings effectively.
9. There is very little that people can do to effectively plan and prepare for their care needs in later life. In the worst case, people hoard assets to ensure they have enough for care needs, rather than using them to improve their health and wellbeing, including spending to prevent care needs or more generally to contribute to economic growth.
10. The Government agrees with the Commission’s view that people should contribute to their care costs where they have the ability to do so. However, the

current system does little to reward prudent financial management and forward planning: people may fear that with no limit on care costs, every pound saved could potentially be used to pay for care costs. The current system therefore creates uncertainty for all, and fear and distress for the worst affected, who also tend to be the most vulnerable and frail. Those who have saved throughout their lives can lose almost everything, including their house.

11. The problem of extremely high costs for care also applies to working age adults with care needs. The current system requires people aged 18 to 64 with care needs to contribute towards their care fees if they have the means. This causes distress to them and their families, as they are unable to financially plan in the usual way for the future, potentially impeding their quality of life.

## **Changes to the current system**

12. We accept the recommendations of the Commission and will:

- place a cap of £61,000 in 2010/11 prices (equivalent to £75,000 in 2017/18) on the costs an individual has to pay to meet their eligible care and support needs<sup>1</sup> for adults resident in England;
- set the cap for those who turn 18 with eligible care and support needs at zero, and set a lower cap for those of working age;
- for adults in residential care, set the upper capital threshold for means-tested support at £100,000 in 2010/11 prices (equivalent to £123,000 in 2017/18). This will be higher than for other types of care, to reflect the fact that the value of the person's home is taken into account when determining how much the person pays towards their care; and,
- for adults receiving residential care, increase the lower threshold for the means-test from its 2010/11 value of £14,250 in line with indexation, which subject to assumptions would mean a starting value of around £17,500.

13. The cap will provide financial protection for eligible needs for care and support. Individuals will remain responsible:

- for a contribution towards general living costs. In domiciliary care, people remain responsible for non-care expenses such as utilities and rent. In residential care, they will pay a contribution of around £10,000 in 10/11 prices (equivalent to around £12,000 in 2017/18) to help meet expenses associated with room and board; and,
- for the cost of paying for additional services, such as having a spare room for family visits in a care home.

14. The new system will come into effect from April 2017, subject to the passage of legislation. Due to the economic circumstances, we have chosen a cap slightly

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<sup>1</sup> A person's "eligible" needs for care and support are those needs which meet the national minimum threshold, to be specified in regulations.

higher than the Commission recommended. The reforms will still deliver certainty and peace of mind for people, as the Commission intended.

15. The Commission's report recognised that the care and support system should be sufficiently flexible and responsive to evolve over time. The Government accepts the Commission's recommendation each of the values should increase over time.
16. In summary, when the reforms take effect from April 2017, we estimate this will mean a<sup>2</sup>:
  - £75,000 cap;
  - £123,000 upper capital limit in residential care;
  - £17,500 lower capital limit in residential care; and,
  - Around £12,000 contribution to general living costs.
17. In addition, we have accepted the Commission's recommendations to introduce deferred payments and a national minimum threshold for eligibility. The Government has already committed to introducing these reforms from April 2015, subject to legislation.

### **Effects of the reforms**

18. A new system based on the cap and extended means-test, will define a clear and fair partnership between individuals and the Government, with shared responsibility for care costs. People will still have responsibility for their initial care costs, but if they are unlucky enough to need a lot of care, they will not face catastrophic costs.
19. The increase to the upper capital threshold for adults in residential care removes the cliff-edge in the current financial assessment. This will result in a gradual increase in state financial support. Adults with the least wealth will receive financial support towards their care costs and avoid the risk losing all their assets before they reach the cap.
20. The cost of meeting all people's eligible needs will count towards the cap – rather than their financial contribution. The additional financial protection provided by the cap and the increased upper capital limit will provide people with financial protection for their care needs, significantly reducing the proportion of assets they need to spend on care, as shown in Figure 3 below.

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<sup>2</sup> This is based on the latest HMT GDP deflator figures and assumes a long-term care cost inflation rate of 2.5%.

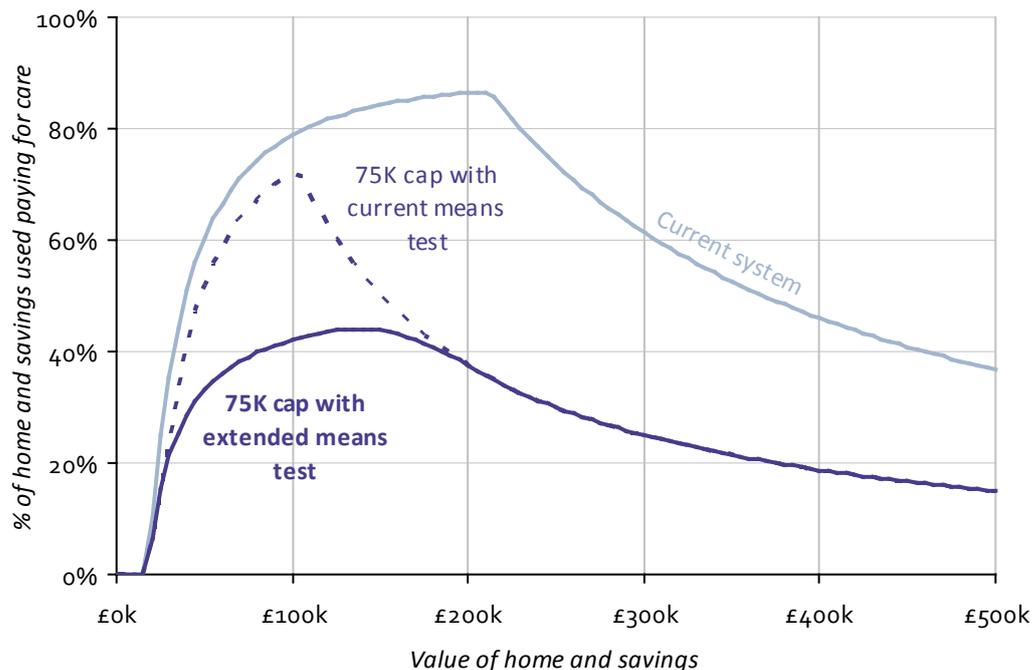


Figure 3: Possible asset depletion for people who enter residential care and have lifetime care costs of £150,000 with a £75k cap and extended means test of £100k. Source: internal DH analysis

## Benefits of the reform

21. There is significant consensus from the care and support sector that the cap will lead to greater peace of mind and a subsequent improvement in quality of life. Our work with the care and support sector confirms that, as the Commission itself suggested, the new model will also bring wider benefits in addition to greater financial protection.

### Improved well-being

22. The financial protection offered by the cap and extended upper capital limit will lead to increased well-being. Currently, people cannot protect themselves from high care costs as they might want. The reforms give people a fixed amount to plan for, such as they have when they buy car insurance with an excess for the first £250 of a claim, rather than facing the full cost of replacing the car. Having this smaller, known amount to plan for will help people feel protected against using most of their wealth to pay for care.

23. This will benefit everyone, not just the 16% of older people who need care who currently face care costs of £75,000 or more, by allowing them to plan on the basis of how much they might have to spend. People renew home insurance, even if they have not claimed on it the previous year, in order to feel protected against a financial loss. Some people will never claim on their home insurance, but will still buy it. The analogy applies to those who do not reach the cap, they still benefit from the cap as they feel protected against the cost.

### **Increased planning, preparation and prevention**

24. In the current system, some people delay buying care for as long as possible to mitigate the risk of losing everything by having to pay for care. Removing this risk by giving people a limited liability that they can realistically plan for will make it easier for people to buy care when they need it. Not only will this reduce unmet need, this can also prevent people's needs deteriorating and leading to more expensive care in the long run.

### **Space for financial services products**

25. Some people may choose to plan their finances by using financial products. The current options for people to protect themselves are limited to immediate needs annuities. The financial services industry support the reforms, since the limit on people's care costs will provide greater incentives to provide relevant products that people see the benefit of purchasing.

26. The Government expects the financial services industry to work creatively to amend existing products and develop new products that support people in making choices about how to plan for their care costs.

### **People make informed choices about their care**

27. In the current system, many people funding their own care will have very little contact, if at all, with their local authority. Many stakeholders view the introduction of a cap on care costs as a potential "game changer" because it will encourage people to make contact.

28. In the new system, people with care needs will need to contact their local authority, who will assess their needs and calculate the cost of meeting them. This will provide an opportunity for self-funders to access information and advice from their local authority and to make choices about the care services available in their local area.

29. This in turn will make care services more responsive and more personalised, helping to drive up quality and create a more diverse care market.

### **Reduced gaming of the system**

30. There are large incentives in the current system for people who would otherwise not receive financial support to hide their assets to gain access to Government support. Limiting the amount that people have to spend on care costs would reduce this incentive and make it more likely that people would pay their fair share.

31. The cap and extended means test are a significant improvement on the current system. Combined with other reforms we intend to take forward from 2015, people will be supported to make informed choices about the best care for them, which they can pay for in a way that best suits them. These reforms include:

- a national minimum threshold for eligibility, which will help remove the variation in access to care, depending on where people live;

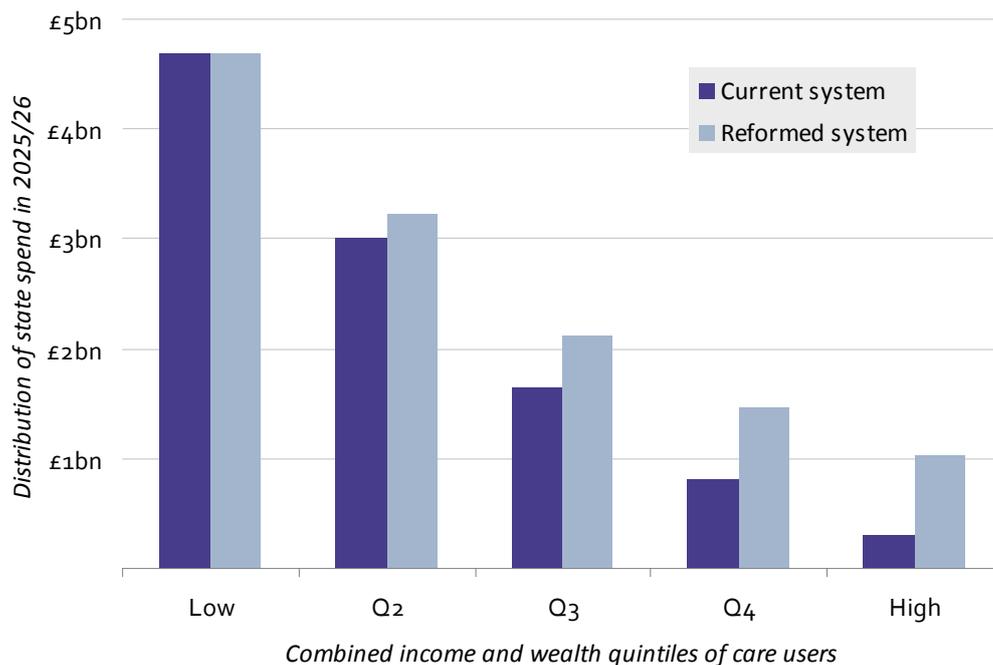
- universal deferred payment agreements for people in residential care, which will give people the peace of mind that they will not have to sell their home in their lifetime to pay for care; and
- information and advice on paying for care costs, which alongside a wider strategy to help people when care needs arise, will provide people with information and support to plan and prepare for their care costs.

### **Costs of the reforms**

32. The Commission recognised that implementing the cap and extended means-test will have a cost to Government. This includes the additional cost of services for all adults, the cost of local authorities carrying out more assessments and a change in the amount of disability benefits payments local authorities can use towards the cost of care (since people receiving state-funded residential care are not eligible for some disability benefits).
33. We anticipate the costs will be £1bn a year by the end of the next Parliament, and have set out our plans for meeting those costs in the next Parliament. We will work with authorities to ensure implementation is proportionate and fair to everyone.

### **Distributional impact of the reforms**

34. The Government has undertaken analysis to understand who benefits from the additional expenditure. Figure 4 demonstrates the distribution of current spending in the social care system, and the distribution of spending after the introduction of the cap.
35. The current system is highly progressive, as it provides support to those with less than £23,250. Care and support remains progressive following introduction of the cap and extended means test, with the most being spent on the lowest quintile.



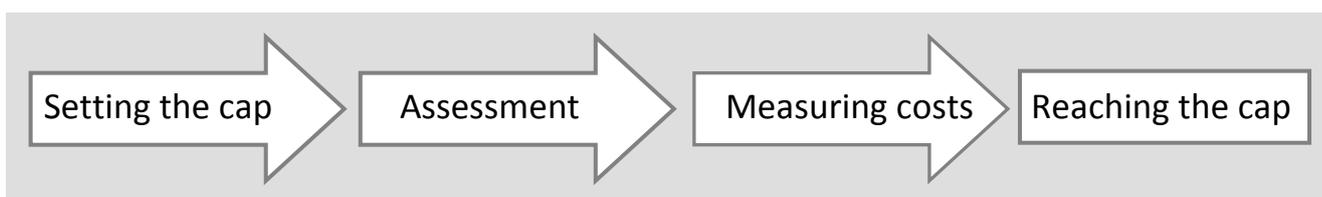
**Figure 4 – Public expenditure on care and support for older people by wealth quintile of care users (2012/13 prices). Source: DH internal analysis**

36. Adding the universal cap to the means-tested system necessarily leads to additional expenditure on people above the lowest quintile – these are the people who face the prospect of losing everything to pay for care.
37. In terms of welfare gain, it is the people who lose the greatest proportion of their assets that will see the biggest improvement in their well-being. These are the least wealthy home owners, those in the middle of the wealth distribution, as shown in figure 3.

## Section Two

### How the reformed system will work and the required legislation

38. The Government will need to establish the capped cost system in law, to set the framework for the reforms. In addition to establishing the cap itself, the process by which an individual enters the capped costs system, and how their progress towards the cap is measured and recorded over time, will need to be provided for. Finally, legislation should provide for what happens when a person reaches the cap.
39. Each of these stages, summarised below, will require primary and secondary legislation, necessitating a number of changes to the legal framework set out in Part 1 of the draft Care and Support Bill. This section of the document sets out our current thinking on legislation to inform pre-legislative scrutiny of the draft Bill.



40. Since the means-test threshold changes do not need any change to primary legislation, and the deferred payments provisions are already in the draft Bill, the detailed explanations in this section will focus on the provisions required to make the cap work.
41. This section sets out what happens for individuals in each of these stages and what may be required in legislation to enable this to happen.

#### Setting the cap level

42. The cap will enable individuals to plan and prepare for their care costs. The cap will be set at £75,000 in 2017 for those aged over pension age when it first comes into effect.
43. It is expected that the level of the cap would be specified in regulations. This approach would allow flexibility to amend the level of the cap over time, for example to reflect changes in the cost of care, without a requirement to amend primary legislation (see section on *care and cap indexation*). It is also envisaged that the Secretary of State would use these regulation-making powers to ensure that the scheme remains affordable and sustainable over time, following review at regular / fixed intervals.

44. The power to make regulations specifying the level of the cap would also provide a power for the Secretary of State to amend the cap, and to specify different levels of the cap for different age groups, by reference to the age at which a person first has eligible care and support needs. This would allow for different caps to be set for different age groups.

## **Assessment**

45. The process for assessing individuals can be split into four sections, each of which is explained below. Firstly, people would need to contact their local authority and for an assessment of their care and support needs, to determine what costs count towards the cap. Individuals would be able to choose how much support they want from their local authority to meet their needs, and have their finances assessed separately to see if they qualify for financial help. Everyone with eligible needs would have their needs monitored and their progress towards the cap reviewed over time.

### ***Assessment – Initial contact and assessing needs***

46. Individuals must have their care needs assessed, before they can enter the capped cost system. As now, an adult, or someone acting on their behalf, will contact their local authority to discuss their care needs. The local authority will carry out an assessment (under clause 9 of the draft Bill), and work with the individuals and their family to identify their needs and the outcomes they wish to achieve.
47. Under the provisions in the draft Bill, local authorities would assess people's needs against a national eligibility framework. If their needs are determined to meet the eligibility criteria (which will be set out in secondary legislation), then the person would enter the capped cost system. The local authority would be required to calculate the cost of meeting those eligible needs, based on what it would expect to pay for care and support (see section below).
48. People without eligible needs would not enter the capped cost system. However, they will still be able to receive universal services, such as preventive services, and information and support. They will also receive information and advice about how to meet the needs they do have, as is provided for in the draft Bill.
49. The process of monitoring the individual's care costs up to the cap will apply to all adults who have needs that meet the eligibility criteria, regardless of whether the local authority is actually meeting the person's needs. Where the local authority is not under a duty to meet the person's needs, these people would still have their costs measured in order to start (or update) their progress towards the cap. This might include, for instance, people who want to arrange their own care, or who have financial resources above specified limits (as set out in regulations under clause 15(6)).

***Assessment – Support from the local authority***

50. After their assessment, individuals will have information about their needs and the local authority's estimate of the cost of meeting their eligible needs. At this point, people will be able to make a choice about the level of support which they would like from the local authority in meeting their needs.
51. Some people will want to organise their own care and pay for it themselves, without any extra support from the local authority. In such cases, the person would not need to undergo a financial assessment. To support this, the legislation would need to allow for people to decline a financial assessment (or "means-test"), to clarify that this does not need to be undertaken where the person has asked for this not to take place. We expect that the local authority would also be required to inform the person of their ability to decline the financial assessment.
52. Other people may want additional help from their local authority to arrange their care and support. This could be financial or practical help. In order to receive financial help, the local authority will conduct a financial assessment of an adult's income and assets to determine whether they receive financial help towards meeting their eligible needs. This process is already provided for in the draft Bill (clause 15).
53. Financial support will be extended to those who have less than £100,000 (in 10/11 prices – rising to £123,000 by April 2017) in assets in residential care, depending on their income. These provisions will be made through regulations. Regardless of whether the adult receives financial support or not, or has chosen not to undergo a financial assessment, the costs of meeting all of their eligible needs will count towards the cap.
54. An adult might have a financial assessment and find that they are required to pay for their own care. In this case, they may choose to organise their own care, or they may choose to request the local authority to meet their needs, but fully funding their own care, as already provided for in clause 17(3). If they exercise the ability to request support, the local authority will be under a duty to meet their needs.
55. The local authority may or may not be under a duty to meet the person's eligible needs, depending on the person's circumstances and choices as above. However, in either case, the local authority would be required to provide the person with a personal budget, which sets out the amount which is calculated to be the cost of meeting their eligible needs:
- for people whose eligible needs the local authority is under a duty to meet (under clause 17), the personal budget will be included in the care and support plan, as in the draft Bill; and,
  - for people with eligible needs, but where the local authority is not under this duty, a personal budget would be provided separately, as part of the information which the person would receive following their assessment.

56. If the local authority is to meet the person's needs, the personal budget will be determined through the care planning process. It will therefore record the adult's current care costs, based on their eligible needs at that moment in time. However, there will be an adjustment if the amount specified in the personal budget includes an element of general living costs (see section on *General Living Costs*).
57. If the local authority is not to meet the person's needs, the personal budget would be ascertained by examining the individual's eligible needs and assessing what the cost of meeting those needs would be, if the local authority were to do so – or "notional cost" of meeting the adult's needs. The personal budget would reflect this "notional cost", with a similar adjustment if the amount includes an element of general living costs (see section on *General Living Costs*).

***Assessment – General living costs and additional costs***

58. If an individual's needs are met in residential care then they will be expected to pay a contribution towards their general living costs (for costs such as food, accommodation and energy)<sup>3</sup> of around £12,000 in April 2017. This amount will not count towards the cap, and would need to be specified in, and subtracted from, the amount in the personal budget.
59. The amount of general living costs will be set by the Secretary of State in regulations. A new regulation-making power will be provided for, and will enable both the amount to be varied (up or down) from time to time, and for different amounts to be set for different cases.
60. An adult would still be able to buy more expensive services. However, the amount that counts towards the cap will be the assessed amount to meet their eligible needs, to ensure that people in the same local authority area with the same needs reach the cap at the same time, regardless of their ability to purchase extra care.

***Assessment – Monitoring and reviewing progress over time***

61. A person's needs can change over time. To ensure that the individual continues to receive the right support, and that the costs that count towards the cap are an accurate reflection of their needs, the local authority would be required to keep personal budgets under review and reassess people's needs as required. For instance, if a person's care needs increase, and the cost of meeting those needs also increase, the amount that counts towards their cap also increases.
62. Where an adult's needs are being met and there is a care and support plan, clause 26 of the draft Bill contains provisions for keeping this plan under review; this includes a requirement to carry out a new needs assessment and reconsider the eligibility criteria where appropriate (clause 26(4)).

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<sup>3</sup> We expect these costs to be set at around £12,000 per year at the time of implementation consistent with £10,000 in 10/11 prices put forward as an option by the Commission, increased in line with care cost indexation.

63. We expect that a similar duty to review will be required for adults who have a personal budget, but whose needs the local authority is not meeting. The duty would be equivalent to the effect of clause 26. The local authority will have a power to reassess the person if it has grounds to believe that their needs might have changed, and it should also be required to respond to reasonable requests by the adult (or their representative) for a reassessment.
64. The local authority is to be required to review the personal budget at least annually, or on the reasonable request of the adult. In both cases, the local authority is to be required to consult the adult in deciding whether to revise the statement, and to provide a written explanation of any changes, or to confirm that no changes are to be made.
65. If an adult's care needs no longer qualify for the cap, or if the adult refuses a reasonable request by the local authority for a re-assessment, then progress towards the cap will be frozen. The local authority will retain the record of progress made towards the cap up to this point.
66. If the adult's care needs subsequently increase, and qualify for the cap again, then their progress towards the cap will start from where they left off, accumulating at the rate which meets their current needs.

### **Measuring care costs over time**

67. People will need to have their care costs monitored over time, to record their total accumulated costs and demonstrate progress towards the cap. Where care costs change over time, for instance as a result of uprating for indexation, the total of their accumulated costs will need to be amended accordingly, so that they are not disadvantaged. Both points are covered below.

#### ***Measuring care costs over time – the Care Account***

68. Individuals should be kept informed by their local authority of their total care costs that count towards the cap – providing an annual update – and of any changes to the costs that count towards their cap, whether they are under a duty to meet their needs or not.
69. Whether the local authority is meeting the person's eligible needs or not, where they have a personal budget, the local authority will also be required to keep an up-to-date record of total costs accumulated over time. This record – called a Care Account – must be updated at least annually, and the person provided with a written statement to notify the total amount.
70. A Care Account would also be provided to all people who have had a personal budget at any time since the implementation of the legislation, but who do not have either at the moment (for example, because they do not currently have eligible needs).
71. The local authority would have to retain the record of the person's Care Account until it is requested by another authority because the person's ordinary

residence has changed (see continuity of care below). If no request is received from another authority, the original authority must retain the record until the end of the person's life; or for 99 years.

***Measuring care costs over time – Care and cap indexation***

72. The price of care will change over time. To reflect this, the level of the cap and the amount in the Care Account that count towards people's cap will increase in parallel every year.
73. This increase will be applied in a way that will ensure people with a Care Account would not be disadvantaged; a person who is 50% of the way towards the cap will remain 50% of the way towards the updated cap. This will ensure that the real value of the cap remains constant and the partnership between the state and individual is stable.
74. It is envisaged that the legislation would provide for this to be automatically updated annually, according to a defined measure, though the specific index has not yet been decided. When the adult's Care Account has been increased this way, the local authority will be required to inform the adult as part of the annual review statement.

***Measuring care costs – Moving between local authorities***

75. If a person chooses to move to another area in England, the costs accumulated in their previous local authority should move with them and continue to count towards their cap.
76. The process of taking care costs between local authorities would be provided for by an addition to the continuity of care provisions set out in clause 31. Where the local authority is meeting the adult's needs, both the personal budget (i.e. the current accrual rate) and the Care Account (i.e. the total accumulated costs) would be required to be passed from the sending authority to the receiving authority. Such information would be included in the care and support plan.
77. Further provisions are likely to be required for the receiving authority to adopt the Care Account from the date of the person's arrival, and to continue to measure the adult's care costs at the same rate in the personal budget as provided for by the sending local authority. This requirement would continue until the receiving authority has carried out its own assessment and taken any other necessary steps, in accordance with clause 31(7).
78. Where the LA is not meeting an adult's needs, similar principles should apply. The process of notification of local authorities already set out in the draft Bill should apply, as should the requirements regarding provision of information and assessment.
79. In addition, we expect that a new requirement would be placed on the sending local authority to share the Care Account, as well as other relevant information, with the receiving local authority. The receiving local authority will be under a

duty to continue to record the accumulated costs in the Care Account from the same point, either on the basis of the sending authority's personal budget, or on the basis of its own assessment, once it has carried one out.

## Reaching the cap

80. When a person reaches the cap, the local authority would come under the duty to meet the individual's eligible care and support needs in accordance with clause 17, but may not charge for meeting those needs.
81. The person will only be entitled to receive free care and support to the extent that the actual costs of that care and support do not exceed the amount specified as necessary to meet their eligible needs in their personal budget. People will still be able to choose more expensive care, should they wish to do so, and would have to arrange to pay any additional amount above their personal budget.
82. In many cases where a person reaches the cap, it is likely that they will already be having some or all of their care and support needs met by the local authority, so the effect of reaching the cap will simply be that the authority is no longer empowered to charge for meeting those needs under clause 14(1). However, where a person who reaches the cap is not already having their care and support needs met by the local authority, the authority is to come under a duty to meet their eligible care needs at the point when the cap is reached.
83. The person will also be expected to pay the required amount towards their general living costs, where they are in particular types of accommodation (see section on *General Living Costs*). Therefore, the local authority should still be able to charge for this element of the total costs, where applicable, in cases where a person has reached the cap.
84. Once an adult's accumulated costs have reached the cap, the local authority should be under a duty to inform the adult.

## Additional notes

### Ordinary residence

85. The local authority would only be under a duty to measure a progress towards the cap, or to meet eligible needs once the cap has been reached, if the person is ordinarily resident in its area, or of no settled residence but present in its area. The ordinary residence requirement is currently covered by clause 17(1)(a) in relation to people whose eligible needs the local authority must meet.
86. The ordinary residence requirement should also apply to people in respect of whom there is no duty to meet needs but who are in the capped costs system (i.e. those who opt out before the financial assessment, or who do not meet the financial requirements and do not request the LA to meet their needs). This requirement will be clarified in new provisions relating to the preparation of the personal budget and Care Account, as noted above.