Department of Health

The Care Act 2014

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

February 2015

DH INFORMATION READER BOX
Title: The Care Act 2014: 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
Author: Social Care Policy and Finance - Funding Reform Team
Document purpose: Consultation
Publication date: February 2015
Target audience:
Contact details: Care and Support Funding Reform and Appeals Consultation Department of Health Room 313B, Richmond House 79 Whitehall London SW1A 2NS Web: www.careact2016.dh.gov.uk E-mail: careactconsultation@dh.gsi.gov.uk

Published to gov.uk, in PDF format only.

www.gov.uk/dh

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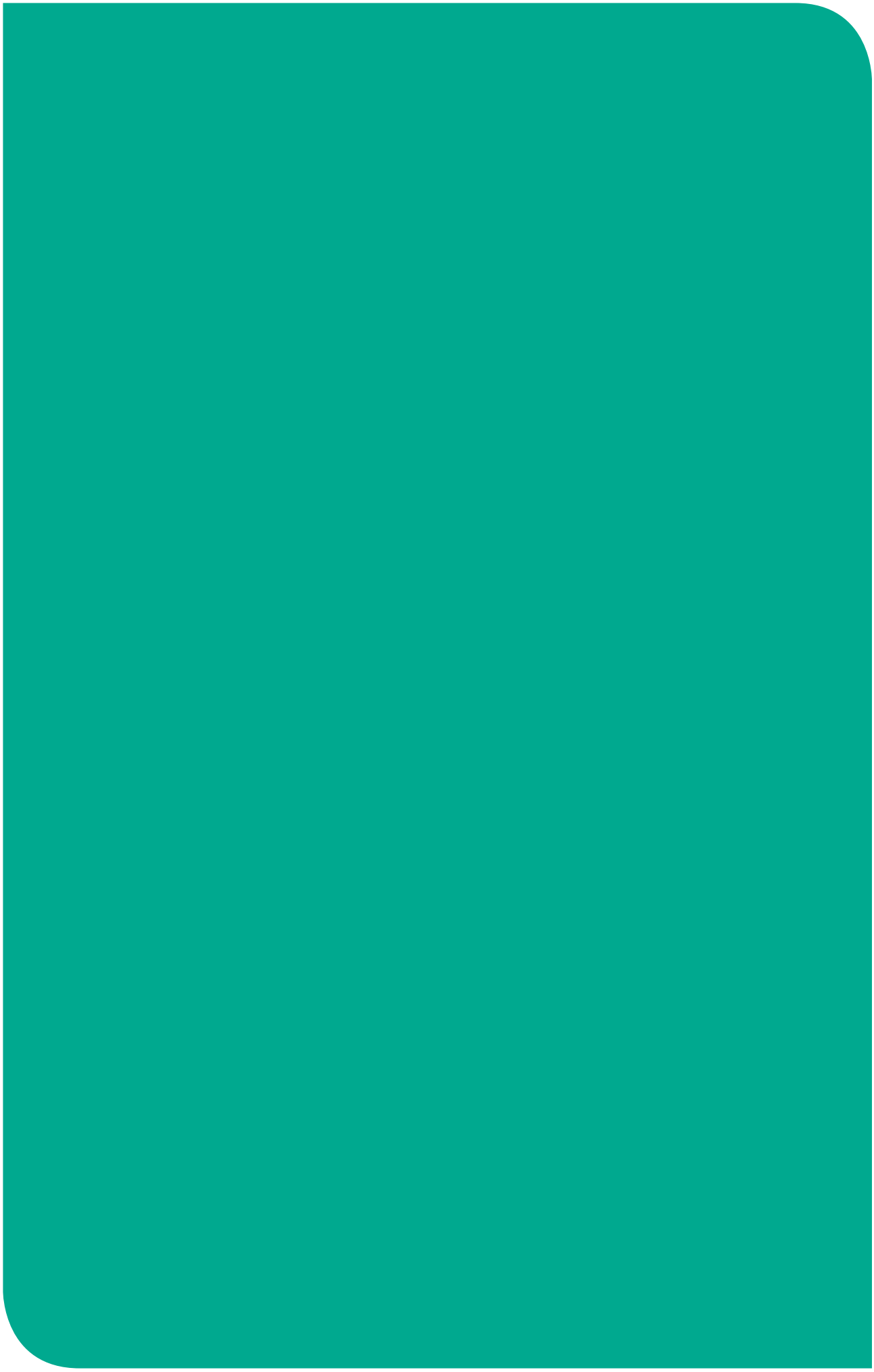
The Department of Health



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Ministerial foreword

Care and support is a vital part of the health and care system in England. However it is one that is often misunderstood. Care is about providing the support someone needs to live as independently as possible. Unlike health, care has never been free at the point of use and everyone has to contribute something towards their care costs. Yet understanding our choices and the costs of them can be overwhelming.

The care and support system has not been up to the challenge of meeting the needs of our population for too long. The passage of the Care Act marked a significant milestone in the creation of a modern legal framework that was long overdue. This consultation marks the next step in completing that journey by setting out the detail of the Care Act reforms that will come into force in April 2016 – the cap on care costs system and a proposed new appeals system.

How people pay for care and support has long been debated, but with little progress. This government is the first to tackle this issue and is doing so during one of the most difficult economic periods in recent history. In February 2013 we set out our commitment to introduce the proposals of the independent Commission on Funding of Care and Support on how people pay for care. The aim is simple: to protect people from the risk of losing almost all they have worked hard for during their lives simply because they need care and support over many years. Our reforms will mean that more people receive help with their care costs and everyone benefits from the peace of mind of knowing what costs they may face enabling them to plan and prepare.

We need to put the risk and fear of catastrophic care costs firmly where they belong: in the confines of history. But we are not there yet. This consultation represents another significant step in the journey, but we need to continue to work together to deliver these reforms.

Alongside the reforms to how people pay for care and support we are also introducing a new appeals system. As the Care Act made its way through Parliament a clear consensus emerged telling us that local means of redress needed to be strengthened. We are committed to ensuring that people can hold their local decision makers to account through a new care and support appeals system. In the 21st century, where decisions are made that have such a significant impact on quality of life the Government believes the right of appeal is fundamental to promote fairness and equity in the care and support system.

This consultation sets out the further detail of our reforms. For the cap system it sets out draft regulations and guidance. For the appeals system it sets out policy proposals. We need your views, your expertise and certainly your help to make these reforms a reality.

Norman Lamb MP

Minister of State for Care and Support

Executive Summary

The Cap on Care Costs

1. We are reforming the way people pay for care and support because the current system simply doesn't work for today's society. It is outdated, is becoming increasingly unfair and doesn't provide people with the protection and support they deserve.

2. Care and support has never been free and the current system for paying is based on laws written over 65 years ago, developed at a time when few people lived into their seventies, and fewer needed care and support.

3. Our society has changed a lot since then. Life expectancy is now 80 and rising. These extra years of life are to be celebrated and are one of the success stories of our NHS – but they also mean people are more likely to need more care and support and need it for longer.

4. As a result, many older people and people with disabilities can face catastrophic and potentially ruinous bills for their care and support. Whilst those unable to pay for their own care and support receive help from their local authorities, those who have worked hard throughout their lives to save up and buy their home may not be eligible for help and risk having to spend up to 80% of their assets to pay for their care. One in ten people face paying more than £100,000, and sometimes people have had no choice but to sell their home to meet these costs. The graph below shows how the cap will redress this by limiting the lifetime costs a person might face.

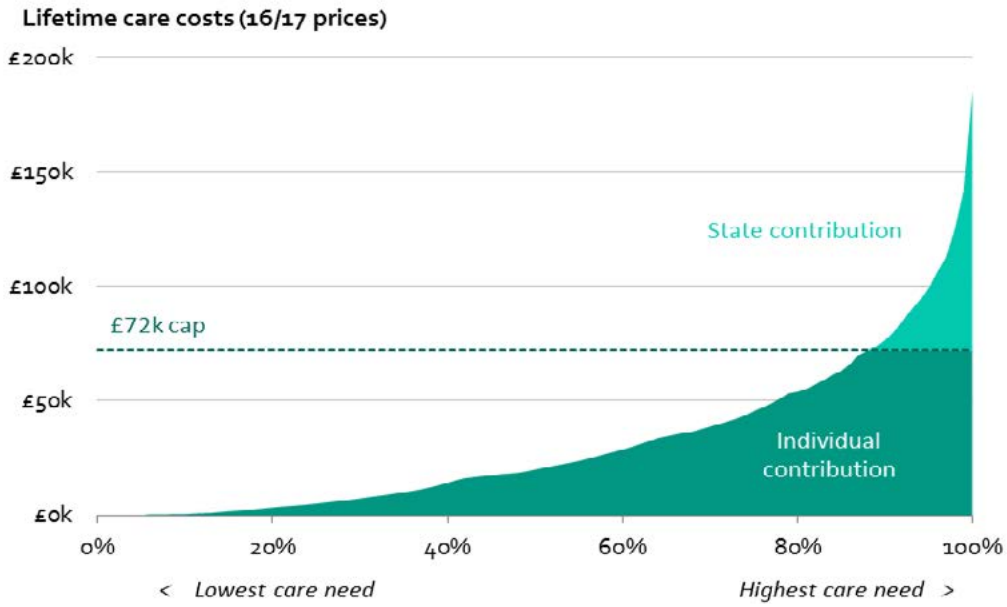

Diagram 1: Protection offered by the cap for those with the highest needs

Source: PSSRU modelling as published by the Commission on Funding of Care and Support uprated to 16/17. Lifetime care costs met by the individual and the state under a £72,000 cap, for people entering care, by percentile.

5. Recognising these problems, the government asked an independent commission, chaired by the economist Sir Andrew Dilnot, to look at care and support funding and come up with proposals for a better, fairer system. The Commission judged that the current funding system is not fit for purpose and needed to change.

6. The Government have listened to the Commission's advice, have acted, and are implementing many of its recommendations.

The Cap

7. For the first time, a cap on care costs will be introduced and set at £72,000. It will provide protection and peace of mind to every single person in England. 1 in 8 of us face care costs of over £72,000 but we don't know which of us that will be. The cap will therefore provide insurance to people who have worked hard all their lives so that they need no longer fear that they will lose almost everything just because they are unlucky enough to have the highest care needs. Up to 80,000 people will directly benefit financially by 2025-26 as a result. The benefits of the reforms are clear as the diagram below shows.

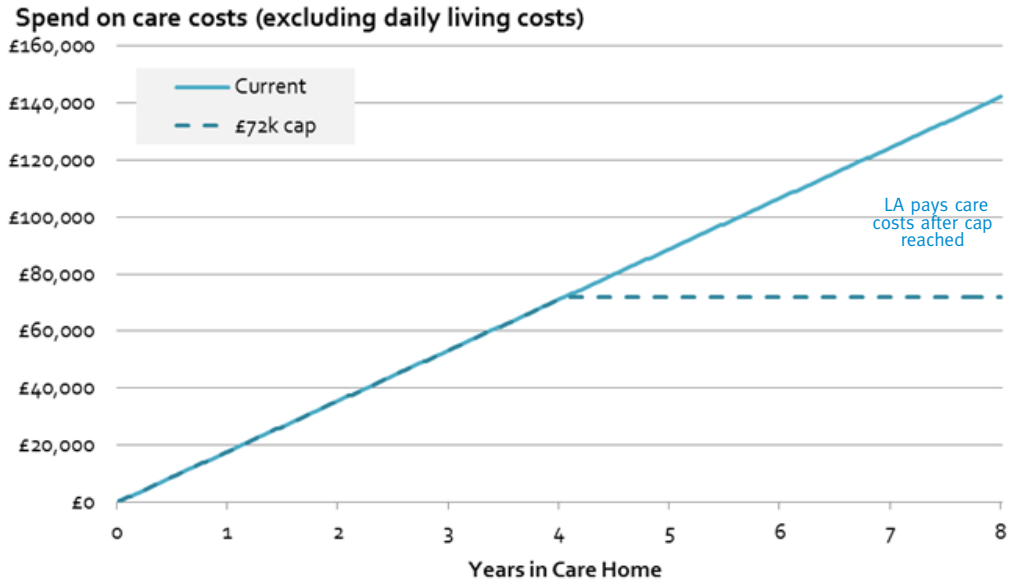

Diagram 2: Protection offered by the cap

Source: DH analysis. Figures on the x-axis assume care home fees of £570 per week.

8. The cap will place a limit on the costs of care that people will face to meet their eligible care and support needs. The cost per week used to calculate whether someone has reached the cap is the amount that it would cost the person's local authority to meet their needs if they were eligible for local authority support and is not intended to cover the costs of daily living or any additional costs relating to the accommodation elements of their care, for example to have a bigger room.

9. When a person reaches the cap the local authority will pay a contribution towards the person's care fees to cover the cost of care to meet their needs. This means that a person

receiving care in a care home will have to pay only a set amount for their daily living costs (£230 per week) and any additional amount they wish to spend on superior accommodation.

Means test

10. Local authorities already provide means-tested financial help to pay for care and support where a person cannot afford the cost themselves. The financial assessment takes into account what a person can afford from both their income and their assets, for example savings or property.

11. As well as introducing the cap on care costs, we are also extending means tested support so that more people will benefit from financial support while they are progressing towards the cap.

12. Under current rules, if a person has less than £23,250 in assets they will receive means-tested help – and they will contribute only what they can afford from their income if their assets are below £14,250.

13. Under the new system, people in a care home with less than £118,000 in assets will qualify for means-tested local authority help with their care costs - and they will contribute only what they can afford from their income if their assets are below £17,000. This means that, in 2016-17 alone, up to 23,000 additional people will receive support with their care costs.

14. The same means test will also apply after people reach the cap to determine what proportion of £230 per week they can afford to contribute towards their daily living costs.

15. Because the means-tested contributions from the local authority will count towards the cap people receiving means-tested support will pay less than £72,000 of their own money before they hit the cap, with the local authority making up the difference. This is illustrated in the table below.

Table 1: Total contribution to care costs according to initial wealth

Initial assets	*An older person's contribution to care costs before reaching the cap*
£250,000	£72,000
£200,000	£72,000
£150,000	£69,000
£100,000	£47,000
£70,000	£30,000
£50,000	£19,000
£40,000	£13,000
£17,000 or less	£0

Assumes care home costs of around £570 per week, with contribution to daily living costs of £230 per week from income.

Working Age Adults

16. The independent Commission on Funding of Care and Support recommended that a different approach may need to be taken for adults of working age with care and support needs to recognise the different challenges they may face in planning and preparing for their care costs.

17. Under the new system people who develop eligible care and support needs below the age of 25 will have a zero cap for life. For those who develop a care and support need from the age of 25, the cap will be set at £72,000.

18. Alongside this we are proposing to make a change to the means test to increase the amount of income someone of working age receiving care outside a care home is left with after charges so that it is in line with the amount pensioners are left with. This will need to be phased in, but when complete will mean that working age people will be over £50 a week better off.

Appeals

19. We also want people to be able to more easily challenge decisions about their care if they feel they are not right and to do so in a way that that doesn't cause delays. We are therefore also setting out proposals for a new appeals system. The proposals are at an earlier stage of development as they were introduced to the Care Act as a result of debates as it passed through Parliament. We are therefore seeking views on the need for a new system and on policy proposals rather than regulations and guidance in this consultation.

20. The new appeals system would sit alongside the current means of redress. This includes the complaints system and the option of going to the Local Government Ombudsman. The proposals are underpinned by the principles of early resolution, good communication, fairness, equality, independence, accessibility and proportionality.

Consultation

21. People often enter care at a point of crisis, and at a time of great distress. These reforms will create a better, fairer system, enabling people to grow old safe in the knowledge that they will receive the care they need without facing unlimited costs.

22. We would welcome views on all aspects of this consultation and in particular on how the new system will work and any areas of potential improvements or challenges.

1. About this Consultation

Introduction

1.1. This consultation continues the collaborative approach we have taken throughout the Care and Support Reform Programme and seeks views on the parts of those reforms due to come into force in April 2016. Part 1 seeks stakeholders' views on funding reform, focusing on draft regulations and guidance that will introduce the cap on care costs and other changes for 2016 building on the evidence we gathered as part of our 2013 consultation *Caring for our future: implementing funding reform*. Part 2 seeks stakeholders' views on appeals policy proposals for a new system of appeals for care and support under the Care Act 2014.

Part 1: Funding reform

1.2. This part of the consultation sets out draft regulations and guidance that will set the legislative framework for delivering the cap on care costs system. This is the first time the full details of the how the system will operate have been set out and the consultation document aims to clearly explain how the new system will work and invite views. Alongside this, the consultation describes some possible areas that we wish to explore further and invites views on their potential merits and challenges, bearing in mind the overall affordability of the reforms.

What are the draft regulations and guidance?

1.3. The Care Act brings together adult care and support law into a single clear statute and sets out the core legal duties and powers that underpin the care and support system. The Act also contains regulation-making powers which allow the Government to make secondary legislation (regulations) that provide more detail on how the system operates. The draft regulations which are the subject of this consultation set out the detail of how funding reforms should be implemented. Following consultation the final regulations will be laid before Parliament.

1.4. The statutory guidance is intended to provide local authorities with the information they need about how they should meet the legal obligations placed on them by the Act and the regulations. Local authorities are required to act under the guidance, which means that they must follow it unless they can demonstrate legally sound reasons for not doing so. Where the guidance uses the word "must" it is a reference to a legal requirement in the Act or regulations. Where it uses the word "should", it is a reference to expected best practice. Where it uses the word "may" a local authority has legal or general discretion to act as it chooses (in line with public law obligations to act lawfully).

1.5. The legislation and guidance will be used by local authority officers in making a reality of funding reform at the local level. They will also be used by people using care and support, their families, representatives, the voluntary sector and providers of care and support to help them to understand the new funding system, and by the courts in deciding whether a local authority has acted within the law.

What will happen to the existing regulations and guidance under the Care Act?

1.6. Most provisions in the Care Act will come into force on 1 April 2015 and a suite of regulations were laid before Parliament in October 2014 to come into force at the same time. This will complete the first step in setting a modern legal framework for care and support.

1.7. The draft regulations that we are consulting on here will not have any effect in 2015 and once in force (April 2016) will leave the regulations that implement the 2015 reforms largely unchanged. There are, however, two sets of regulations to which they will make changes, coming into effect in April 2016. These are the Care and Support (Charging and Assessment of Resources) Regulations 2014, which will be amended to extend access to means-tested financial support, and the Care and Support and After-care (Choice of Accommodation) Regulations 2014, which will be amended to provide greater flexibility for first person top-up payments. Details of these changes are explained more fully at chapters 8 (First party top-up payments) and 9 (Extension to means tested support) of this consultation document.

1.8. Statutory guidance on the 2015 care and support reforms was published in October 2014. This will replace all the current statutory guidance from 1 April 2015 and operate unchanged for 2015/16. However, this guidance will need to be expanded to provide guidance on the funding reforms that will apply from April 2016. In particular, there will be new chapters on the cap on care costs, independent personal budgets and care accounts.

1.9. Other consequential amendments to the guidance will also be required, particularly in the chapters on personal budgets, charging and financial assessment and the annex on choice of accommodation. This consultation seeks views on the substantive changes but to inform responses, the consequential changes that are likely to be necessary are summarised in the table at chapter 13 of this consultation document.

What is the purpose of this document?

1.10. The purpose of this consultation is twofold in relation to funding reform. Firstly it seeks views on the draft regulations and guidance that will govern the cap on care costs system. If this is to be successfully implemented, local authorities will need to fully comprehend and apply their core legal duties and powers under the Care Act. People coming into contact with the system will also need to be able to understand their rights and responsibilities. For that reason it is critical that the regulations and guidance are clear, comprehensive and easy to understand.

1.11. In developing the draft regulations and guidance, we have built on responses to our 2013 consultation and worked extensively with stakeholders, including an expert reference group. This group comprised local authority staff, voluntary sector organisations, care providers, financial services organisations, and national representative bodies, including those drawn from local government and those representing people with care and support needs.

1.12. In order to get the regulations and guidance right we will continue to use the same collaborative approach we have used in their development. We are keen to ensure that as many people as possible who interact with the care and support system have the opportunity to provide input to ensure that the guidance and regulations realise the Care Act's ambitions for funding reform.

1.13. We invite respondents to share their views about the approach we have taken to all aspects of the draft regulations and guidance. In considering and responding to the draft regulations in particular, respondents should look in parallel at the regulations and statutory guidance on the 2015 care and support reforms, as well as the relevant provisions in the Care Act. These are:

Section 15: Cap on care costs

Section 16: Cap on care costs: annual adjustment

Section 28: Independent personal budgets

Section 29: Care accounts

Section 71: Five yearly review by the Secretary of State

1.14. Secondly this consultation seeks to explore possibilities in some areas in more depth and invite views on their potential merits and challenges. These are areas that stakeholders have raised previously and we would welcome further evidence.

1.15. We also invite respondents to let us know of any examples of emerging best practice or tools that they think would be particularly helpful to local authorities to support implementation.

Part 2: Appeals

Background

1.16. Currently, the main way for a person to seek redress in relation to decisions made by a local authority in relation to care and support is via the local authority's complaints system. If the person remains dissatisfied with the local authority's responses they ultimately have the right to take the matter to the Local Government Ombudsman (LGO).

1.17. The lack of a formalised appeal structure within care and support was highlighted in evidence following the Law Commission's consultation on Care and Support as well as the Joint Committee in its report on the draft bill of the Care Act 2014.

The Care Act

1.18. As the Care Act 2014 progressed through Parliament, there was support for introducing a means of challenging local authority decisions made under the part 1 of the Care Act.

1.19. Section 72 of The Care Act provides the power to make regulations to implement a system of appeals to challenge decisions taken by local authorities in respect of a person when exercising certain functions under Part 1 of the Act.

The appeals policy proposals

1.20. As the provisions for appeals were introduced relatively late on during the passage of the Care Act, the time available to develop policy in this area has been limited in comparison to other areas of the Care Act to be implemented in 2016. As such it has not been possible to produce draft guidance for this consultation.

1.21. We used the time available to engage extensively with our stakeholders to develop appeals policy proposals for this consultation. During discussions it was noted that for some areas governed by Part 1 of the Act, seeking legal redress may be costly and in some cases take some time for a final decision to be reached. However, on other areas there is well-established expertise and an effective legal means of redress to determine a fair decision for the person and the local authority.

What is the purpose of this document?

1.22. The purpose of this document in relation to appeals is to seek views on the appeals policy proposals for the new system that will inform the development of statutory guidance. The proposals aim to set out a cost effective system for people to have their appeals heard in comparison to other legal means of redress, except where the courts are the most appropriate route for determining an appeal. They focus on achieving an early resolution between the person and local authority wherever possible. Where this is not possible, there is a review stage which is independent of the local authority, in which the appeal is considered by a third party with powers to make recommendations to which the local authority must have regard. The person would be able to take the matter to the Local Government Ombudsman (LGO) if they remain dissatisfied.

Responding to this consultation

1.23. We will be accepting written submissions to the consultation until 30 March 2015. The easiest way for you to do this is online at:

www.careact2016.dh.gov.uk

1.24. Making online submissions helps focus responses and helps us collate and consider them more efficiently. It also allows us to post responses to your comments online during the consultation.

Alternatively, you can submit your comments via e-mail at:

careactconsultation@dh.gsi.gov.uk, or by post to:

Care and Support Funding Reform and Appeals Consultation,
Department of Health,
Room 313B,
Richmond House,
79 Whitehall,
London,
SW1A 2NS.

Part 1: Funding Reform

2. Background to funding reform

2.1. As healthcare and living standards in our society improve, we are living longer and healthier lives and the number of older people in our society is increasing. The Office of National Statistics estimates that by 2030 the number of people aged over 85 will have more than doubled, accounting for 5 per cent of the total population.[1] This figure is expected to rise further as a quarter of all children born in 2012 are anticipated to reach their 100th birthday.[2]

2.2. However, as we get older, we are more likely to experience frailty, ill health and diseases such as dementia. The difference between life expectancy and healthy life expectancy is still stark, at an average of 16 years, meaning that whilst we are living longer, we are spending longer living in poor health or with disabilities.[3] And, with medical advances, people who develop care needs at a younger age are able to live long and fulfilling lives. This is of course something to celebrate but does mean that the need for care and support in our society is growing.

2.3. Throughout their lives people interact with the health system, usually accessing it free at the point of use through the National Health Service. By contrast people's experience of care and support is generally limited, with 61% of adults having had no contact with care and support services.[4] The first time many people come into contact with care and support is usually at a point of crisis. They are therefore unlikely to know that they may be charged for the care they need and even less likely to have prepared financially. The need to pay can come as a major shock and worsen what may well already be a distressing experience.

2.4. Whilst local authorities do already provide some financial support, this is limited to those with the least. For everyone else meeting the cost of their care may mean spending everything they have, until they only have £23,250 of assets left. After that point they receive some financial support from the local authority but continue to contribute to their care costs as far as they can afford to do so.

2.5. This requirement to spend down your assets is often seen as unfair, particularly by those who have tried to plan and prepare for later life. It also creates fear that may delay people

1 Office of National Statistics population projections http://www.ons.gov.uk/ons/dcp171776_258607.pdf

2 Khan H (2013) *Five hours a day: systematic innovation for an ageing population.* Nesta. Available at: http://www.nesta.org.uk/sites/default/files/five_hours_a_day_jan13.pdf

3 Institute of Health Inequalities (2010). *Fair Society, Healthy Lives* Available at: http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review

4 Ipsos MORI/DH *Public Perceptions of the NHS and Social Care Tracker Survey: Spring 2013 wave* Available at: https://www.ipsos-mori.com/Assets/Docs/Publications/sri-health-nhstracker-report-spring2013.pdf

getting the care they need at an early stage, as they try to preserve the assets they have to guard against the uncertainty of future care costs.

2.6. Many of us will need some form of care and support over the course of our lives but the amount we will be expected to spend will depend on the level of our needs. Some of us will be fortunate and only need to spend very little but 1 in 8 of us[5] will be unlucky enough to face the highest costs. There is no way to tell which of us it will be and what we need to plan for.

2.7. The basis of the current system for funding care and support was built in 1948 and has changed little over the last 67 years. By contrast, the population has changed significantly. In 1948 the average life expectancy was 68[6] and there was little need for care and support. The simple fact that people did not live as long meant that there was a much lower prevalence of long term conditions and co-morbidities and fewer people with diseases such as dementia that can require the highest levels of care and support over a long period of time. Alongside that, how we lived was different. Families tended to stay closer together, the average person did not own their own home and how we defined rich and poor was very different. In short, for the society of 1948 that had just won the huge victory of the creation of the National Health Service, care was simply not a significant issue or a priority.

2.8. 67 years on more people need care, particularly in later life. It is clear that the current system of charging for care and support is not able to respond effectively to the increasing demands of an ageing population and is long overdue for reform.

Paving the way for reform

2.9. In 2010 the Government recognised that the current system for funding care and support is unfair and unsustainable and established the independent Commission on Funding of Care and Support, chaired by the economist Andrew Dilnot. The Commission's aim was to look into how the system of funding care and support in England could be changed to make it fairer.

2.10. The Commission's report, published in July 2011, set out the problems with the current system and made proposals for reforms to address them. It identified that at the heart of the problem was the lack of an effective way for people to protect themselves from the risk of catastrophic care costs, as they would against other risks. For example, while it is possible to buy private insurance to protect yourself from the costs of catastrophic damage to your property, there are currently very limited options to insure yourself against the risk of needing a significant amount of care and support over a long period of time. This makes it extremely difficult for people to plan and make provision for future care costs with any certainty.

2.11. The Commission put forward three key proposals for reforming the way in which people pay for their care and support: a cap on the lifetime care costs that people face, supported by an extension to the threshold for means-tested financial support, and universal access to deferred payments.

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5 Department of Health (2015). *Social Care Funding Reform Impact Assessment.*

6 Office of National Statistics (2011). *Social Trends 41 Reference tables – Health data* HM Government. Available at: http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-218733

2.12. The Government accepted many of the Commission's recommendations, including the principles on which the cap on care costs is based, and in February 2013 set out plans to introduce reforms to respond to the recommendations.[7] To further demonstrate the Government's commitment to funding reform implementation was brought forward a year from 2017 to 2016 in the March 2013 budget.[8]

2.13. Starting soon after the Commission's report was published, we have engaged extensively with stakeholders on delivering the package of reforms. We began the conversation by seeking views on the Commission's proposals and on priorities for reform as part of the *Caring for our Future* engagement exercise. We then engaged stakeholders on the principles on which funding reform should be based and the practical detail of how they should be implemented and delivered locally in our consultation *Caring for our future: implementing funding reform,* launched in the Summer of 2013.

The foundations

2.14. A significant milestone in the Care and Support Reform Programme was reached in May 2014 when the Care Act received Royal Assent, laying the legal foundations for funding reform including the cap on care costs and its supporting elements. This was followed by the regulations and statutory guidance on the 2015 care and support reforms, published in October 2014.

The reforms

2.15. At the vanguard of funding reform is the universal deferred payment scheme, which will ensure that people should not be forced to sell their home during their lifetime to pay for care. The legislative framework to support this is now in place and will come into effect on 1 April 2015 as part of the first tranche of reforms under the Act.

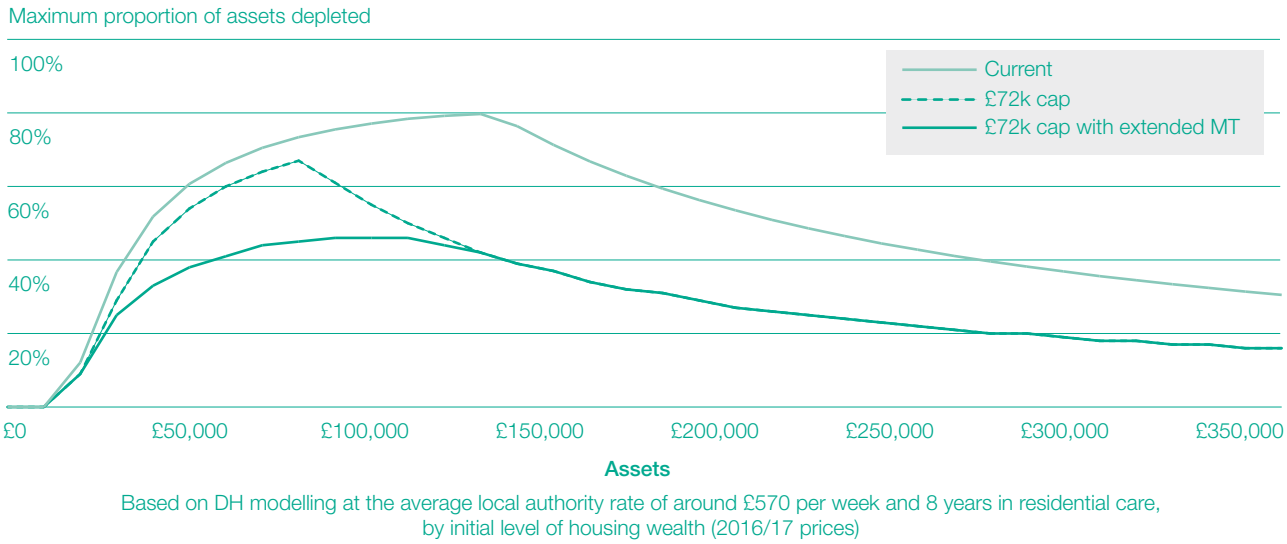
2.16. The bulk of the funding reforms will come into effect in April 2016, introducing a cap on eligible care costs that, for the first time ever, will limit the amount people will have to pay towards meeting their eligible care and support needs in their lifetime. The cap will be set at £72,000, but many people will pay less as a result of an extension to means tested support. This will provide people with more clarity about what they will be expected to contribute towards the cost of their care and what help they can expect from the state. This will not only bring much needed protection and peace of mind, but also certainty that will enable people to better plan, provide and prepare for possible future care needs.

2.17. To help more people with the costs of their care and support, alongside the cap we are increasing the point at which a person is eligible for local authority means-tested support. This means that from April 2016 the upper capital limit will rise to £118,000 for people in care homes whose property is taken into account in the financial assessment. For those in all other

7 Policy statement on care and support funding reform and legislative requirements https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217024/Policy-statement-on-funding-reform.pdf

8 HM Treasury (2013), *Budget 2013*. HM Government. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221885/budget2013_complete.pdf

settings or people in care homes whose property is not taken into account in the financial assessment the upper capital limit will be £27,000. Everyone will benefit from the peace of mind offered by the cap and up to 23,000 more people will benefit directly from increased financial support as soon as the reforms are implemented. By 2024/25 around 80,000 people will benefit from the combination of the extended means test and the cap.[9] Figure 1 shows the impact that these reforms will have on the level of asset depletion people will face to pay for their care (based on the amount of assets they have when they go into care). The three lines show the asset depletion people face under the current system, how it would change if we introduced the cap alone and how it changes if we introduce the cap and extend the means test by raising the upper capital limits (ucl) for means tested support.



Based on DH modelling at the average local authority rate of around £570 per week and 8 years in residential care, by initial level of housing wealth (2016/17 prices)

Figure 1: Maximum asset depletion over course of long care journey showing the impact of extended means test support

2.18. As a result of these reforms, more people will be coming into contact with their local authority, either because they qualify for help as a result of the extension to means-tested support or because they are progressing towards the cap. This provides a significant opportunity for them to access information and advice, and support to maintain their independence, remain active and connected in their communities and stay healthier for longer.

Delivery

2.19. The successful delivery of funding reform can only be achieved through partnership working and collaboration. Central government, local authorities, care providers, the voluntary and community sector, financial services organisations, people who need care and support, their families and their carers will all play essential roles.

[9] Department of Health (2015). *Social Care Funding Reform Impact Assessment.*

2.20. These reforms are significant in both size and scope. Local authorities will have a specific and important role to play, being responsible for delivering change at the local level. They will need to understand, oversee, and lead the changes in partnership with central government. The Local Government Association (LGA), Association of Directors and Adult Social Services (ADASS) and Department of Health are working in partnership to support local areas in implementation of the care and support reforms through the Care and Support Reform Programme.

2.21. Delivering these reforms will involve extensive planning and preparation. The Government has therefore provided £146m to cover the costs of preparing to implement the cap in 2015/16, including funds that will enable local authorities to begin early assessment of people's care and support needs before the cap is introduced.

2.22. The Commission on Funding of Care and Support gave us the overarching framework for reform. It is now time to start filling in the detail of how the new system will work.

3. Cap on care costs: Overview

Introduction

3.1. None of us can predict whether or not we will need care and support or if we will be unlucky enough to face the highest care costs. And at the moment, there is no means of protecting ourselves against that risk. The cap on care costs ("the cap") is a first step in redressing this balance and creating a framework that will meet the needs of our ageing population for the next generation. Quite simply it aims to provide reassurance and peace of mind that, even if we are among the 1 in 8 people in England[10] who currently face catastrophic care costs, those costs will be limited and clear and we will be able to plan and prepare in a way that has simply not been possible before.

3.2. This overview is intended to introduce you to the cap and familiarise you with its key features. It also signposts subsequent chapters of this consultation which set out aspects of the cap and other aspects of the proposed funding reforms in greater detail.

What is the Cap?

3.3. The cap on care costs will place a limit on the costs that people will face to meet their eligible care and support needs. Where the term 'care costs' is used in this document, and the draft statutory guidance, this refers only to the care component of any care package, not accommodation costs (see "What does and does not count towards the Cap" below). This will be based on what the cost is or, in the case of self-funders, would be to the local authority to meet the person's eligible care and support needs.

3.4. From April 2016 the cap will be set at £72,000. This means the maximum amount anyone will have to pay for care to meet their eligible care and support needs from April 2016 onwards will be £72,000. In many cases, particularly with the extension to the means test, people will pay less than this before they reach the cap. This is because those receiving help with their care costs from the local authority will not pay the full amount themselves, but the total cost of meeting their eligible needs will accrue towards the cap.

3.5. We are also consulting on a different approach for working age adults. Under our proposals from 1 April 2016 anyone who develops eligible needs before they turn 25 years of age will benefit from a 'zero cap' meaning that they will not have to pay the costs of care to meet their eligible care and support needs for life (see Chapter 6 of this consultation document: cap on care costs for working age adults).

[10] Department of Health (2015). *Social Care Funding Reform Impact Assessment*.

How the cap works

3.6. From 1 April 2016, anyone assessed by a local authority as having eligible care and support needs will begin to progress towards the cap. To enable this, the local authority in whose area the person is ordinarily resident will start a care account which will monitor their progress towards the cap. Before the cap comes into effect, local authorities will be working to identify people who currently meet their own eligible needs to ensure that they can begin progressing towards the cap from the point it comes into effect on 1 April 2016. Anyone who is assessed by the local authority as having eligible needs after that date will begin progressing towards the cap from the date they requested an assessment or the local authority identified that they might need one. Costs accrued before 1 April 2016 will not count towards the cap.

3.7. For each person with eligible needs, the local authority must provide either a personal budget, where the local authority is going to meet the person's needs, or an independent personal budget (IPB), where the person is meeting their own eligible needs. A person should not have both. These will set out the cost of meeting the person's eligible needs that will count towards the cap.

3.8. Everyone with a personal budget or IPB will have a care account which is maintained by the local authority and keeps track of their progress towards the cap. The local authority will provide each person with an annual care account statement setting out their progress towards the cap and other relevant information.

Daily living costs

3.9. The Commission on Funding of Care and Support recommended that, while it was right that people should not face catastrophic costs for **care** to meet their eligible needs, everyone should remain responsible for their daily living costs, just as they would in their own home and irrespective of whether or not they have a care and support need. By this, they meant things such as rent, food and utility bills. This approach is intended to ensure a level playing field with those receiving care in their own home. The Commission also recommended that daily living costs should not count towards the cap and should be a notional amount set nationally. We accepted this recommendation.

3.10. This is not meant to be a precise science and local authorities and providers are not required to calculate actual daily living costs for each person in a care home progressing towards the cap. Instead, in line with the Commission's recommendation the regulations will set a national, notional amount for daily living costs which will apply to anyone who receives care in a care home of £230 per week and people will remain responsible for their daily living costs throughout their care journey, including after they reach the cap.

3.11. Local authority financial support will remain available to people who cannot meet, or fully meet their daily living costs.

What does and does not count towards the Cap

3.12. The cap on care costs will place a limit on the costs that people will face to meet their eligible care and support needs. This will be based on what the cost is or, in the case of self-funders, would be to the local authority to meet the person's eligible care and support needs (for more detail see chapter 4: measuring what counts towards the cap). The following table sets out costs which do and do not count towards the cap.

Costs that count	Costs that do not count
The cost, or in the case of self-funders what the cost would be, to the local authority to meet a person's eligible care and support needs: • For a person receiving local authority financial support to meet their eligible needs this is the cost of meeting the person's eligible needs specified in their personal budget, less daily living costs if included. • For a self-funder meeting their own eligible needs this is the cost of meeting the person's eligible needs specified in their IPB, less daily living costs if included.	Costs of meeting eligible care and support needs incurred before 1 April 2016.
	Costs of meeting non-eligible needs, even where the local authority has chosen to meet those needs.
	For people who receive care in a care home, daily living costs at the level set in the regulations.
	For people receiving local authority financial support, top-up payments the person or a third party chooses to make for a preferred choice of accommodation.
	Costs of any service provided to the person which is not included in the personal budget or IPB, such as prevention and reablement services.
	Interest or fees charged under a deferred payment agreement.
	NHS-funded nursing care for people in care homes and Continuing Health Care.

Approaching the Cap

3.13. If a person's care account indicates that they are likely to reach the cap within 18 months of an annual statement being issued, the draft regulations require the local authority to notify the person of the date they are expected to reach the cap, the local authority should also provide the person with clear information about what will happen when they reach the cap and what action is needed. The local authority should then work with the person, or their representative, to ensure that they are clear about what will happen and experience a smooth transition to local authority support.

3.14. At a practical level, the local authority should help the person to decide in advance how they would like their needs to be met when the cap is reached. What happens to the

contract for any arrangements in place to meet the person's care and support needs will be dependent on what is best for that person and what they want. For example, a person who has been meeting their own care and support needs may choose to receive a direct payment from the local authority in order to continue arranging their own care and support. They may alternatively opt for the local authority to assume responsibility for arranging their care and support.

3.15. Where a person is receiving care in a care home and they or a third party has chosen to make a 'top-up' payment for a preferred choice of accommodation the local authority will need to make clear that the person or third party will continue to be responsible for meeting those costs if they wish to continue to remain in their current setting. Alternatively the person could choose to move to a setting that is within the cost of their personal budget.

Reaching the Cap

3.16. When a person reaches the cap, the local authority becomes responsible for meeting the person's eligible care and support needs and for paying the cost of the care to meet those needs. The person will remain responsible for meeting or contributing to their daily living costs and any 'top-up' payments they have chosen to make. Under the Care Act it is the responsibility of the local authority to inform the person that they have reached the cap.

Adjustments to the cap

3.17. The Care Act sets out clear parameters for how the level of the cap must be reviewed, but does not prohibit changes at other times. Section 16 of the Act provides for an annual adjustment to the cap where the Secretary of State considers that there has been a change in the level of average earnings. Section 71 of the Act requires the Secretary of State to carry out a detailed review on the operation of the cap and to publish a report on the outcome of that review every 5 years.

3.18. When the level of the cap is adjusted, the extent of a person's progress towards the cap will be maintained. For example, if a person is 50% towards the cap when the level of the cap is changed, adjustments will be made to ensure that the person's progress remains at 50%.

Questions for consultation

1. Do you agree that the draft regulations and guidance will provide a robust framework that will protect the 1 in 8 of us that will face catastrophic care costs? Please state yes or no along with any rationale.

4. Measuring what counts towards the cap

Introduction

4.1. The cap on care costs will introduce vital protections, but in order to be effective it needs to be clear what does and doesn't count towards the cap and how much progress a person has made towards the cap.

4.2. In designing the system we want to ensure that there is a level playing field between people progressing towards the cap whether they are meeting the whole of their costs themselves or receiving local authority support. For that reason, what counts towards the cap will be based on the cost to the local authority of meeting a person's eligible care and support needs or, in the case of a self-funder, what the cost would be to the local authority.

4.3. We also want there to be a level playing field between people who receive care and support in their own home and those who receive it in a care home. For that reason a person in a care home will remain responsible for their daily living costs (e.g. accommodation, food, utilities), just as they would in their own home. The application of daily living costs is not meant to be a precise science but a recognition that these are costs everyone faces, whether they have a care and support need or not. The regulations set a national, notional amount attributable to daily living costs which will apply to all people with eligible needs for care and support receiving care in a care home. Therefore daily living costs will not count towards the cap. Further details on daily living costs can be found in chapter 7 of this consultation document (Daily living costs).

4.4. To ensure clarity, everyone with eligible needs will be given a statement which sets out the costs that will count towards the cap. This will be either the personal budget, for people whose needs are met by the local authority, or the new independent personal budget (IPB) for self-funders. This chapter explains how personal budgets will work for the purpose of the cap and how policy has been developed in relation to IPBs, taking into account the responses to the 2013 consultation.

Personal budgets

4.5. Personal budgets already exist, and from April 2015 will be a statutory requirement under the Care Act, to enable those whose needs are being met by the local authority to exercise greater choice and take control over how their care and support needs are met. To do this the personal budget sets out the total cost to the local authority of meeting the person's eligible needs, as well as setting out the amount that the person will pay towards that cost and the remainder that the local authority will pay.

4.6. The overall approach to personal budgets will not be affected by the introduction of the cap and their core role will remain to support choice and personalisation. However, from April 2016, the personal budget will also provide the basis for a person's progress towards the cap. This is the only change to the role of personal budgets.

4.7. Where a person has a personal budget it is the total cost, including the amount paid by both the local authority and the person, of meeting their eligible needs that will count towards the cap, excluding any daily living costs and any top-up payments the person or a third party has chosen to make. Personal budgets may set out other costs, for example, if it includes services to meet non-eligible needs that the local authority has decided to meet or if the personal budget is pooled with that of another person or a carer. Personal budgets may also include other sources of funding available to the person. Only the cost of meeting the person's eligible needs for care and support will count towards the cap so this cost will need to be clearly distinguished within the personal budget.

Independent personal budgets

4.8. The new system should not unfairly advantage those who can afford to pay more and want to do so to reach the cap quicker. Therefore, to ensure fairness, how self-funders progress towards the cap will be based on what the cost would be to the local authority if it were to meet their eligible needs. This link is set out in section 28 of the Care Act.

4.9. A self-funder will receive a record that sets out what the cost would be to the local authority of care to meet the person's eligible needs. It will be this cost, less daily living costs where applicable, that counts towards the cap. The record will be called the independent personal budget (IPB).

4.10. However, we do not want to create a system that is difficult to administer or unduly intrudes into a person's life. It is therefore important that local authorities are able to take a proportionate approach to calculating these costs. For this reason local authorities are not required to undertake care and support planning with every self-funder who is progressing towards the cap, though it may be appropriate to do so in some cases.

2013 Consultation

4.11. In *Caring for our future: implementing funding reform* we consulted on the composition and calculation of personal budgets and IPBs for the purposes of progressing towards the cap. In particular, the consultation proposed that the calculation of the IPB should be based on the same principles as for personal budgets and that it should therefore:

- Support the overall outcome of promoting a person's wellbeing
- Be equitable to everyone who accesses local authority support, no matter whether they pay for their own care, or where they live
- Ensure consistency in the outcome of the calculation of the costs of meeting a person's needs according to their individual circumstances as if the local authority was under a duty to meet them

- Be transparent over the calculation and the basis for it
- Where needs are being met by a carer, reflect the carer's ability and willingness to care, and the impact of continuing to provide this support
- Reflect what it may reasonably cost a local authority to meet a person's needs according to their particular circumstances.

4.12. Responses were generally supportive of the above principles and particularly stressed the need for the calculation to be transparent and based on local costs. Another theme of the responses was the need for clarity about what does and doesn't count towards the cap. We agreed with these points and have used the information we received in responses to frame the draft statutory guidance on which views are being sought in this consultation.

How is the cost to the local authority determined for the purpose of the IPB?

4.13. One of the main challenges in measuring what counts towards the cap is determining what the cost would be to the local authority of meeting a self-funder's eligible needs. In drafting the statutory guidance our aim has been to try to achieve fairness in the way in which different people progress towards the cap, whilst also ensuring that local authorities are able to take a proportionate approach to determining that cost.

4.14. Local authorities already have to determine the costs of meeting a person's eligible needs when setting personal budgets for people whose needs they are required to meet. Specific guidance regarding processes and practice on the setting of personal budgets has already been published and will come into force in April 2015.

4.15. The personal budget is refined through the process of developing a care and support plan with the person affected and will reflect the actual cost to the local authority of meeting that person's needs, taking into account their preferences and the support available locally. When a person goes into a care home the cost to the local authority may also be affected by other factors, such as the availability of beds on that particular day or the status of any block contracts which may apply. This means that two people with similar eligible needs supported by the same local authority will not necessarily have the same personal budget.

4.16. We think that to seek to remove this variation in personal budgets would run counter to efforts to promote personalisation and is not necessary to create a level playing field for the purposes of the cap. We do, however, recognise that this variation may pose challenges for the calculation of IPBs in terms of balancing the need for personalisation with the need to minimise administrative burdens and meet the person's wishes.

4.17. In order for IPBs to reflect the cost to the local authority of meeting a person's needs as accurately as possible, we considered whether local authorities setting an IPB for a self-funder should be required to undertake a "dummy purchasing" process. This might involve engaging with a range of providers, as they would if they were arranging care for someone, to determine the cost of care on the particular date the IPB is set. After engaging with stakeholders we do not think this is a viable option as it would place a disproportionate administrative burden,

both on local authorities and providers, for limited benefit. It would also introduce arbitrary variation between IPBs as the factors which lead to variation in the rate that a local authority pays, for example contractual arrangements and bed availability, will not necessarily have the same effect on the amount self-funders pay when purchasing their care on the open market. This would lead to inequity if self-funders with similar eligible needs progress towards the cap at different rates as a result of a process which takes those factors into account. For example, if two self-funders in a care home had similar needs but one had a lower IPB because more beds had been available on the day their IPB was set, the person with the lower IPB would progress towards the cap more slowly. This would be unfair to that person who may be paying the same market rate as the person with the higher IPB.

4.18. We also considered whether local authorities should be required to set the IPB at the upper end of the range of personal budgets they set for people with similar needs. The intention was that in areas or settings where self-funders are likely to be paying more than the local authority to meet their needs, this might reduce the incentive for people to exercise their right to ask the local authority to meet their needs under section 18 of the Care Act for purely financial reasons. This right is not new for people receiving care outside of a care home, but the Care Act extends this right to people with eligible needs which would be best met in a care home. Stakeholders were concerned that the introduction of IPBs, bringing greater transparency around what the local authority would pay, might provide a greater incentive for people to come forward to the local authority. However, setting IPBs at the upper end of the range of personal budgets would create systematic unfairness in the system as self-funders would progress faster towards the cap than local authority-supported people with similar needs. We have therefore not reflected this option in the draft guidance.

4.19. We think that the fairest approach would be for local authorities to set IPBs by taking the average of the personal budgets the authority had given to people in that area with similar levels or types of needs. This approach would avoid introducing arbitrary variation between IPBs by evening out the effect of factors which may affect the cost to the local authority over time whilst also ensuring fairness between self-funders and local authority supported people. The guidance therefore reflects this expectation. The guidance does not seek to define the groupings for these averages as we think that local authorities will be better placed to make this decision based on the circumstances in their local area. However, we are clear that we do not want to re-introduce the concept of a “usual local authority rate” and would welcome views on this, and what implementation support may be needed as well as views on this approach more broadly.

4.20. We do recognise that using averages may not be appropriate in all cases. The guidance therefore requires local authorities to consider whether it is necessary to further tailor an IPB based on an average to a person’s individual circumstances, for example where a person has needs which are low-level, complex or costly to meet.

4.21. The guidance also sets out the principles which should underpin the calculation of any IPB. These are based on the principles which received broad support in responses to the 2013 consultation and mirror the principles of transparency, timeliness and sufficiency which are set out in statutory guidance relating to personal budgets.

Questions for consultation

2. Do you agree that independent personal budgets should generally be set according to an average of personal budgets allocated to people with similar levels of need? Please state yes or no along with any rationale.
3. Is the guidance sufficiently clear as to the principles for calculating independent personal budgets? Please state yes or no along with any rationale.

5. Care Accounts

Introduction

5.1. The cap on care costs will only work if a reliable and up-to-date record is kept of how far a person has progressed towards the cap. Under the Care Act local authorities will be responsible for maintaining this record for anyone ordinarily resident in their area with eligible needs for care and support. This will be known as a care account and will allow local authorities to keep track of when people are approaching the cap and to work with them to ensure a smooth transition to local authority support when the cap is reached. It will also ensure that a person's progress towards the cap is maintained should they move between local authorities.

5.2. The local authority will also be required to provide regular care account statements to keep people informed of their own progress towards the cap. This is vital if the cap is to provide people with the peace of mind that they won't be left facing catastrophic care costs and to support them to plan and prepare for the costs they will face with greater certainty. It also provides a channel of communication between the local authority and the person that provides an ideal opportunity to provide wider information and advice relating to the person's care and support.

5.3. Local authorities will be able to provide statements in any format which is appropriate for the person and must provide statements at least annually, as well as on the reasonable request of the person or their representative. In particular, we encourage local authorities to consider how they might provide people with secure on-line access to their care accounts so that they can access their information when it is convenient for them. This could also include other relevant information to their care and support creating a single port of call for those receiving care.

5.4. At a minimum the statements will need to set out:

a. the current level of the cap;

b. the current rate of progress towards the cap (the costs specified in the personal budget or independent personal budget that count towards the cap);

c. progress towards the cap to date i.e. the accrued costs; and

d. any amount attributable to daily living costs excluded from the rate above.

5.5. They will also need to make clear any adjustments which have been made to the accrued costs to date since the previous statement as a result of an adjustment to the level of the cap.

2013 Consultation

5.6. In our *Caring for Our Future: implementing funding reform* consultation we asked whether care account statements should include projections of when a person may reach the cap or qualify for financial support. We also asked under what circumstances it would be acceptable to give local authorities discretion around the provision of annual statements.

Projection of when the cap is expected to be reached

5.7. Responses to the consultation indicated wide support for the proposal that care account statements should include a projection of when a person would be expected to reach the cap. A number of responses highlighted practical considerations, particularly the need to include a clear statement of how the projection was calculated and the need to be clear that it would only be indicative, and many parallels were drawn with pension statements. Generally there was support for keeping projections simple, for example by assuming that a person's needs continue at the same level.

5.8. Further engagement with stakeholders highlighted that projections might not be appropriate in all circumstances, for example if a person had low-level or fluctuating needs. For that reason the draft regulations and statutory guidance allow the local authority to exercise discretion over when to provide a projection, with one exception.

5.9. The exception is that a care account statement must provide an indication of when the person would be expected to reach the cap if the date falls within 18 months of the statement being prepared. The intention is that this would be provided alongside clear information setting out what will happen as the person approaches the cap, what actions they might need to take and what actions the local authority will take, all of which will help to ensure a smooth transition to local authority support.

Projection of when a self-funder may become eligible for means-tested support

5.10. We also explored further with stakeholders the possibility of including a projection of when a self-funder may qualify for financial support. It was felt that there was a risk that such a projection would be misleading, as assumptions would need to be made about a person's spending, and that it was more important to provide clear information and advice about the changes in the person's circumstances that should prompt them to approach the local authority. For that reason this has not been included in the draft regulations or the draft statutory guidance.

5.11. However, we want to continue to be ambitious for care accounts and how they might be used to offer wider support to help people plan and prepare or to access information about their care journey. We think care accounts have the potential to be a useful tool to both the local authority and the person and would welcome views on how to set ambition here.

Flexibility relating to regular care account statements

5.12. Consultation responses also indicated support for flexibility to be given with regard to annual statements. In particular two suggestions emerged for scenarios where a person may not need to be provided with annual statements. These were when the person has already reached the cap and when the person is not currently receiving care.

5.13. Based on this feedback, the draft regulations provide a local authority with discretion not to provide a care account statement where the cap has been reached or where a person has not received any care and support or accrued any costs in the year since the last statement or does not have to pay towards the cost of meeting needs. We welcome views on these proposals.

Questions for consultation

4. Does the draft guidance provide sufficient clarity about the operation of care accounts to ensure consistency between local authorities and reduce the risk of challenge? Please state yes or no along with any rationale.
5. Can more be done to ensure that the care account is a useful tool to support people in planning for care costs?

6. Cap on care costs for working age adults

Introduction

6.1. The fundamental principle behind the cap on care costs is that older people have had an opportunity to build up a degree of wealth over the course of their working lives and to plan and prepare for the possibility of care and support needs in the future. For those born with a care and support need or who develop them earlier in life this may not be the case and it is difficult for a child or young adult to protect themselves against this risk. Alongside this, the need for care and support can impact opportunities for education, employment and training that can make it harder to plan and prepare in the same way as people who develop care and support needs in later life.

6.2. The Commission on Funding of Care and Support recognised this challenge and as a result developed proposals that reflected this assumption. They recommended that people who develop a care and support need during their working life should be assessed in broadly the same way as an older person under an overarching cap on care costs system, but should benefit from a lower cap which recognises their likely lesser ability to accumulate assets. The Commission also recommended that those turning 18 with an eligible care and support need should have a zero cap.

Building an approach

6.3. In our *Caring for Our Future: implementing funding reform* consultation in 2013 we looked at a number of illustrative options including the approach outlined by the Commission, and sought stakeholders' views.

6.4. Three options were included in the consultation along with a call for views on whether there were any alternative approaches. These are set out below and at Figure 2:

- A zero cap for life for people who turn 18 with eligible care and support needs or who develop such needs up to the age of 25. Cap for people who develop eligible needs from the age of 25 tapering up to £72,000 at state pension age and onwards.
- A zero cap for life for people who develop eligible care and support needs up to the age of 25. A cap for people who develop eligible needs from the age of 25, increasing in three tiers from £15,000 up to £72,000 at state pension age and onwards.
- The Commission's suggested approach: a zero cap for life for people who turn 18 with eligible care and support needs, or who develop such needs up to the age of 40. A cap for people who develop care needs from the age of 40 increasing in three tiers from £25,000 up to £72,000 at state pension age and onwards.

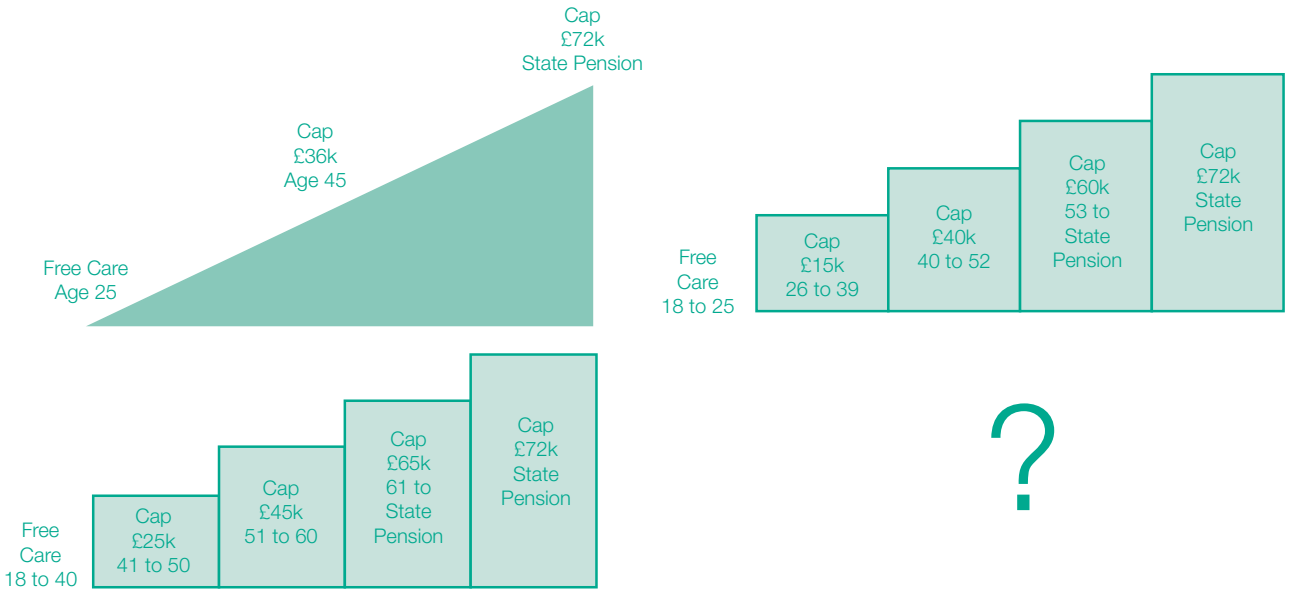


Figure 2 Possible approaches to a cap for Working Age Adults

Source: *Caring for Our Future: implementing funding reform* Department of Health Consultation (2013)

6.5. In order to assess the options, the consultation sought views on the principles that should underpin the approach to working age adults. These were:

- a similar contribution from people with similar circumstances;
- reflective of a person's ability to plan, prepare and build up savings;
- simple for people to understand and feasible to implement;
- to support integrated care and effective transition between services;
- to help people to live independent lives meeting their goals and aspirations; and
- sustainable in the long term.

6.6. Responses to the consultation on the issue of a different approach for people of working age were mixed. Whilst people broadly welcomed the principles there were questions raised, particularly with regards to: the idea of different levels of the cap; whether the age at which a person develops eligible care needs is a reliable or fair way of differentiating their ability to plan, prepare and build up assets; and whether it was right that working age adults with significant wealth should not have to contribute towards their care costs in the same way as older people. Responses also highlighted the need to create a system that is simple to understand and easy to communicate.

Stakeholder priorities

6.7. Since the 2013 consultation we have worked with stakeholders to consider these challenges and the possible different approaches, guided by the Commission's

recommendations, the responses to the consultation, and the principles set out above. The mixed responses to the consultation suggested that not everyone agreed with the rationale of setting different levels of the cap based on age. We therefore worked with stakeholders to identify what the priorities for working age people with an eligible care and support need might be. In considering this, stakeholders were clear that people born with care and support needs have no ability to plan or prepare and no means to protect themselves. They should therefore be subject to a zero cap for life, in line with the Commission's recommendations.

6.8. Whilst earnings are disregarded under the charging framework, a key concern was raised regarding the amount of income a working age person receiving care outside a care home is left with after charges – the "minimum income guarantee". Currently, this is lower for working age adults than people of state pension age and could differ by as much as around £50 per week or more. The difference arises because the minimum income guarantee is based on income support which differs according to age, amongst other factors, to promote employment, education and training for those of working age. Stakeholders felt that equalising this should be a priority as this would make a real difference to the lives of working age adults.

6.9. Stakeholders also recognised that in some circumstances people with an Education, Health and Care (EHC) plan under the Special Educational Needs and Disabilities (SEND) programme may remain in education and continue to receive children's care and support up to the age of 25. This is a key transition point for young people and was felt to be one that should not be forced, but managed in a way that is best for that young person. Aligning the offer of a zero cap for people with eligible care and support needs with the approach to transition could therefore create much needed space for young people to transition in a way that best supports their needs and avoid a perverse incentive to move to adult services sooner or later than might be appropriate.

6.10. Stakeholders felt that it was also important to support people with care and support needs who undertake work-based learning, such as an apprenticeship. It was noted that the number of disabled people in apprenticeships has tripled from 12,960 in 2002/3 to 42,850 in 2012/13.[11] Although there are no age limits, the majority of people in apprenticeships will be aged from 16-24 and employers with less than 1000 employees who employ apprentices within this age group may seek financial grants under the 'AGE 16 to 24' scheme. Given these two issues, it was felt that an offer of a zero cap for people with eligible care and support needs at least up to age 25 would help to avoid disadvantaging this group.

Building an approach

6.11. We considered, in collaboration with stakeholders, how to interpret these priorities in designing the detail of the reforms while also considering the overall affordability of the proposals. This was therefore a question of making trade-offs between different objectives.

[11] Gov.uk. *Disabled People in Apprenticeships Triples in 10 years.* (22 August 2014) Available at: https://www.gov.uk/government/news/disabled-people-in-apprenticeships-triples-in-10-years

6.12. The three options considered were:

(i) A zero cap for life for people turning 18 with eligible care and support needs or who develop eligible needs up to the age of 40. A tiered cap for people who develop care and support needs from the age of 40. No change to the minimum income guarantee for people receiving care outside a care home. This replicates the option produced by the Commission.

Element	Age when care needs develop			
	<18-39	40-49	50-59	60-Pension Credit qualifying age
Cap	Zero (For the rest of their life)	£21,000	£45,000	£65,000
Minimum Income Guarantee	N/A (As people are not charged for meeting their eligible needs for life)	No change		

(ii) A zero cap for life for people turning 18 with eligible care and support needs or developing eligible needs up to the age of 25 and a cap of £72,000 for people of all other ages. Equalised minimum income guarantee for people up to Pension Credit qualifying age receiving care outside a care home (an initial increase in April 2016 then phased increases over time) so that they would be left with the same income after charges as a person of Pension Credit qualifying age with eligible needs. When making the initial increases to the minimum income guarantee, the age bandings for single people of working age would be brought together to create a unified guarantee for this group, simplifying the regulations.

Element	Age when care needs develop	
	<18-24	25+
Cap	Zero (For the rest of their life)	£72,000
Minimum Income Guarantee	N/A (As people are not charged for meeting their eligible needs for life)	Initial increase for working age adults in April 2016 followed by phased increases to reach parity with the minimum income guarantee for people of Pension Credit qualifying age

(iii) A cap of £72,000 for everyone, but those under 50 not being charged for meeting their eligible care and support needs, and the amount being spent on that care accruing in their care account. If, at the point of turning 50, the cap has not been reached, the person would need to begin to pay for their eligible care and support needs with the amount they can afford to contribute being based on a financial assessment. The minimum income guarantee for people aged 50 up to Pension Credit qualifying age receiving care outside a care home would be equalised over time (an initial increase in April 2016 then phased increases) so that if charges begin at age 50, they would be left with the same income as a person of Pension Credit qualifying age with eligible needs after charges.

Element	Age when care needs develop	
	<18-49	50+
Cap	£72,000 But people not charged for care to meet their eligible needs up to 50 years of age	£72,000 Unless the person has reached the cap before the age of 50, they will contribute to their care costs
Minimum Income Guarantee	N/A (As people are not charged for meeting their eligible needs up to the age of 50)	Initial increase for working age adults in April 2016 followed by phased increases to reach parity with the minimum income guarantee for people of Pension Credit qualifying age

6.13. We evaluated these options against the priorities, broader concerns and the need to develop a workable solution. Option (i) would not deal with the second priority expressed by stakeholders of equalising the income allowances and has therefore not been set out in the draft regulations and guidance.

6.14. Option (iii) was considered to have several benefits, but also to have some real challenges. It would protect people born with care and support needs and those who develop needs at a young age, as they would most likely reach the cap before 50, and would offer a tapered level of support to those who develop needs close to the age of 50. However, it would be challenging to justify why someone whose care costs had been paid by the local authority previously might suddenly have to start meeting or contributing towards their care costs at a particular age should they have not have reached the cap by that point. Stakeholders felt that paying a person's care costs at, for example, the age of 48 then asking them to start paying on reaching 50 would be difficult to explain and justify, could be distressing for the person and may not be seen as supporting a fair partnership. Whilst we recognise the merits of such an option, we have not been able to identify how the significant communications issues could be overcome. We would be interested to hear any views stakeholders may have.

Option set out in draft regulations and guidance

6.15. Given these challenges, we have drafted the regulations and guidance that are the subject of this consultation on the basis of Option (ii). It protects those born with a care and support need or who develop one in early life, an essential priority expressed by both the Commission and stakeholders, and over time would eliminate the current inequality in the income people of working age are left with after charges compared with those of Pension Credit qualifying age. But in order to meet the constraints of the funding envelope it is not possible to combine this approach with a tiered cap as proposed by the Commission. However, there may be merit in moving away from that proposal as having caps set at multiple levels would not necessarily achieve our overall aim of giving clarity about the help people can expect to receive to pay for their care.

Helping people of working age save and plan

6.16. Whilst option (ii) was viewed by stakeholders as making real progress to support working age adults with a care and support need, it was noted that there were still challenges. The primary one identified was that the system would still not provide any incentive to save or plan and prepare for the future. Under the charging rules, any savings over the new lower capital limit of £17,000 will be taken into account when working out what someone can afford to pay, thereby limiting incentives to save. It was therefore felt that it would also be beneficial to explore ways of supporting working age adults with eligible care and support to save and plan for the future, just as they could if they did not have such needs. One approach might be, for example, a savings scheme that would allow working age adults to save money which would be disregarded in a financial assessment to determine what contribution a person has to make towards their care costs.

6.17. Whilst any such product would not be for Government to develop, we are interested to hear views on this and on any other approaches which would help support working age adults to save and plan. This will help us explore what the possibilities are in this area.

Questions for consultation

6. Do you agree that the preferred option best meets the principles and priorities identified? Please state yes or no along with any rationale.
7. What are your views on how people of working age can be supported further to enable them to save and plan?

7. Daily living costs

Introduction

7.1. The Commission on Funding of Care and Support recommended that everyone should remain responsible for the costs of daily life such as food, rent and utility bills, whether they receive care in their own home or in a care home. Their view was that these are costs that everyone faces, irrespective of a care need, and that this was an essential part of the new system in order to ensure a level playing field between care settings and to avoid any perverse incentive to move into a care home sooner than needed. It would be difficult to identify and agree the precise amount that makes up daily living costs within care home costs and any efforts to do so on a case by case basis could lead to inconsistency. We therefore accepted the Commission's recommendation that the level of contribution to daily living costs should be a notional amount set nationally. This will help make the system more transparent and easier to understand.

7.2. The principle of people contributing to their daily living costs throughout their care journey is enshrined in the Care Act 2014 which provides for the amount to be prescribed in regulations. This notional amount will apply to all people with eligible care and support needs receiving care in a care home and the local authority must provide financial support to people who cannot afford the full amount. Daily living costs will not count towards the cap and people in care homes will remain responsible for paying their daily living costs after they reach the cap.

7.3. In 2013 we announced that we were accepting the proposal of the Commission on Funding of Care and Support to set daily living costs at a fixed amount across the country and our intention to set the amount at around £12,000 per year or £230 per week, in line with the range proposed by the Commission. There was broad stakeholder support for the principle that a person should remain responsible for their daily living costs throughout their care journey, but it was felt that the notional figure proposed could be higher than the actual daily living costs faced by many people who receive care in their own home.

7.4. Stakeholders also indicated that if people were not able to meet daily living costs from their income they would need to make up the difference from their assets, even after they reached the cap. This may result in a person continuing to deplete any assets they have, even after they reach the cap. Although local authority financial support would be available in these circumstances, there was concern about how this fitted with the overall aims of the reforms.

7.5. Since the 2013 consultation we have worked with stakeholders to consider the challenges raised and explore the area further. These included considering the level at which

daily living costs are set and the rules around how daily living costs might be met after the cap is reached.

7.6. Under the Care Act financial support will be available to those who cannot afford to pay the full amount of daily living costs, on the same basis as the financial assessment for care costs. There could therefore be options within the financial assessment around how affordability for daily living costs is calculated. For example, for people who have reached the cap the financial assessment could disregard any remaining capital and only consider their income in determining how much they can afford to pay towards their daily living costs. This could potentially be more finely focused on people whose assets are below the relevant upper capital limit, ensuring support is targeted as those with the least. We would be interested to hear any views stakeholders may have on these approaches.

7.7. The level of daily living costs is a key lever in the system and will influence the rate at which someone progresses towards the cap. This consultation confirms the intention to set daily living costs at £230 per week, in line with the recommendations of the Commission, though we recognise the concerns that have previously been raised about affordability, particularly for those on lower incomes. We would be interested to hear views on how we might ensure the affordability of daily living costs. For example whether it might be appropriate to reflect the full weekly amount of the new State Pension that will be introduced in 2016 and any relevant benefits.

7.8. Any change to the level of daily living costs or the approach to how a person contributes to them will affect the overall affordability of the new cap system and strong evidence will be needed to support any such change. Should stakeholders see merit in further exploring the different approaches we would be particularly interested to hear the rationale and any supporting evidence.

Questions for consultation

8. Is there evidence to support further consideration of the level and/or approach to daily living costs? Please state yes or no along with any rationale and provide any evidence you may have to support the rationale.

8. First party top-up payments

Introduction

8.1. Where a person's care and support needs are being met by the local authority and the care planning process has determined that those needs are to be met in a specific type of accommodation, the person has a right to express a preference for particular accommodation of that type. This includes a preference for more expensive accommodation of the same type. Payments made to meet the additional costs associated with such choices are known as "top-up" payments.

Current arrangements

8.2. Currently, a person receiving care and support can only enter into top-up agreements themselves ("first party top-ups") when their property is subject to the 12-week property disregard or when they have entered into a deferred payment agreement (DPA). In all other circumstances, only third parties such as family and friends can enter into top-up agreements. In accordance with the choice of accommodation regulations, top-up agreements are subject to the person who makes the payments being willing and able to do so for the likely duration of the person's care journey in the preferred accommodation and subject to a written agreement with the local authority.

8.3. These arrangements will continue under the reforms that come into effect in April 2015.

Offering additional choice

8.4. When the capital limits for means-tested support are increased in April 2016, many more people will become eligible for, and begin to receive, local authority financial support. Others will become eligible for local authority financial support for the first time when they reach the cap on care costs.

8.5. We want to facilitate choice for everyone who receives local authority financial support and can afford to make additional payments for a preferred choice of accommodation, enabling them to spend their own money in the way they wish. We will therefore be lifting restrictions on first party top-up arrangements in the choice of accommodation regulations to allow people who want and can afford to do so to make affordable and sustainable ongoing top-up payments from their own financial resources for a preferred choice of accommodation that meets their needs. This will be the only change to those regulations.

Mitigating risk

8.6. It will remain important that everyone who enters into a top-up arrangement, including first parties under the new arrangements, makes an informed choice, that there is never any compulsion and that there is certainty and protection for both the person and the local authority. It will also remain particularly important that the person is aware of the potential consequences should they no longer be able to meet the costs associated with their choice.

8.7. During policy development, stakeholders indicated that, although the rules themselves will remain the same, the legislative framework and statutory guidance for top-up arrangements that will apply from 1 April 2015 will bring greater clarity and felt that that the principles in the guidance should apply equally to first party top-ups under the new arrangements. They felt that extending the legal requirement for written agreements to cover first party top-ups under the new arrangements would provide both people and local authorities with the necessary degree of certainty and protection.

The offer

8.8. The draft regulations will lift the restrictions on first party top-up arrangements that apply currently and under the 2015 reforms and require that arrangements are subject to the person being willing and able to meet the payments and a written agreement with the local authority. The scope of the statutory guidance will be expanded to cover first party top-ups under the new arrangements, as reflected in the table of anticipated consequential amendments in chapter 12 of this consultation document. The rules for top-up payments which apply currently will otherwise remain the same.

Questions for consultation

9. Do you agree that the extension of the existing requirements for third party top-ups to cover first party top-ups will provide both the local authority and the person with the necessary clarity and protection? Please state yes or no along with any rationale.

9. Extension to means-tested support

Introduction

9.1. The aim of the funding reforms is to create a fairer partnership between the person and the state to protect those with the highest needs from catastrophic costs and to offer everyone much needed peace of mind around the risks of needing care and support. The cap is key to achieving this, but it is not enough on its own. To truly meet this aim more financial support towards the costs of care is needed for those of modest wealth.

9.2. Means-tested financial support to pay for care and support is already available from local authorities and is determined by the amount of assets that a person has. However, under the charging rules which apply currently, and will apply under the 2015 reforms, only people with capital below £23,250 (the upper capital limit) qualify for financial help to meet their care and support needs although local authorities can choose to be more generous. This means that if a person has, for example, savings or property worth more than £23,250, irrespective of their income they do not receive any financial support with the costs of their care. Given the significant increase in the value of people's homes over recent decades this means nearly everyone who owns their own home is automatically excluded from any financial support for care in a care home, even if they have very little income.

9.3. This means that, even with the introduction of a cap on care costs, people in care homes with modest wealth could still face significant asset depletion. The Commission on Funding of Care and Support recognised this and therefore recommended that the point at which help becomes available should be extended. This will be done by raising the capital limits for means testing.

9.4. The Government accepted the recommendation and the capital limits will be increased alongside the introduction of the cap. Combined, these two measures reduce the level of asset depletion faced by people with modest wealth and create a fairer partnership between the person and the state. Figure 3 below illustrates the benefits of the reforms compared to the current system. It shows the level of asset depletion people will face based on the amount of assets they have when they go into a care home under the current system, how it would change if we introduced the cap alone and how it changes if we introduce the cap and extend the means test.

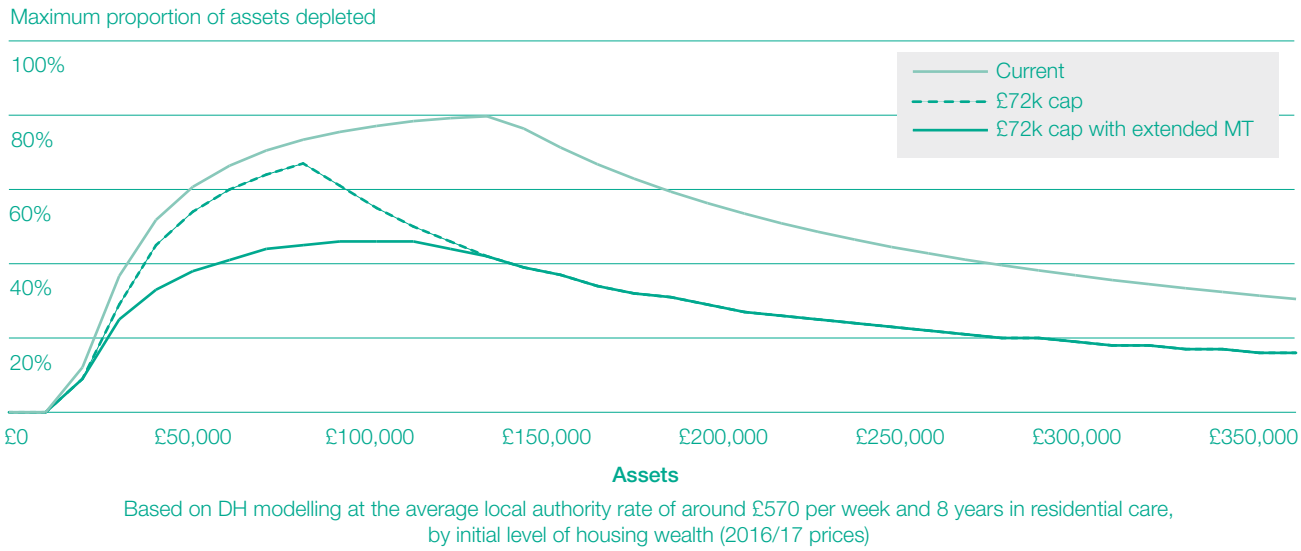


Figure 3: Maximum asset depletion over course of long care journey showing the impact of extended means test support

9.5. Indeed the combined effect of the cap and raising the upper capital limit means that many people will in fact have paid less than £72,000 before reaching the cap. This is because they benefit from local authority financial support that will count towards the cap. Table 1 illustrates the amount people with different levels of assets will be expected to contribute before reaching the cap.

Table 2: DH analysis of costs before reaching the cap

Initial assets	An older person's contribution to care costs before reaching the cap
£250,000	£72,000
£200,000	£72,000
£150,000	£69,000
£100,000	£47,000
£70,000	£30,000
£50,000	£19,000
£40,000	£13,000
£17,000 or less	£0

Assumes care home costs of around £570 per week, with contribution to daily living costs of £230 per week (see chapter 7 of this consultation document: daily living costs). Person has income to cover daily living costs and contributes from assets towards their care costs.

Operation of the means test

9.6. The means test for financial support will continue to work in exactly the same way as now. It works out what someone can afford to contribute towards the costs of their care by looking at the amount of assets and income a person has. The table below illustrates how a local authority applies the charging rules in order to determine a person's contribution.

Assets	What do you pay?
Above the upper capital limit	Full cost
Between the capital limits	What you can afford from income plus a means tested contribution from assets
Below the lower capital limit	What you can afford from income

Increases to capital limits

9.7. In order to extend access to means-tested financial support we are increasing the capital limits for means testing. We will increase the upper capital limit to £118,000 for people receiving care in care homes whose property is taken into account in their financial assessment. In all other circumstances, the upper capital limit will be £27,000. This includes people in a care home whose home has been disregarded from the financial assessment, for example where an eligible relative such as a spouse continues to reside in the property. This is because the property disregard already offers significant protection from asset depletion.

9.8. In addition we will increase the lower capital limit from £14,250 to £17,000 meaning that someone can retain more of their assets after charges. This means that if a person has assets below this lower capital limit they are only required to contribute to their care costs from their income. Table 2 below illustrates the new capital limits.

Table 3: 2016 Upper and lower capital limits

2016	Care Setting		
	Care Home		Other
Upper Limits	£118,000 where a property disregard does not apply	£27,000 where a property disregard applies	£27,000
Between the upper and lower limits	↑ TARIFF INCOME ↓	↑ TARIFF INCOME ↓	↑ TARIFF INCOME ↓
Lower limit	£17,000		

Tariff income

9.9. Means tested support is available on a sliding scale and tariff income is used to determine what contribution a person is asked to make towards their care costs from their assets in addition to a contribution from their income. As now, tariff income will continue to apply between the relevant upper limit and lower limit under the extended means test. This means that people who receive local authority support will continue to be asked to make a contribution of £1 per week for every £250 in assets which fall between the lower limit and relevant upper limit. People must continue to be left with a minimum amount of income after charges. For those in a care home this is known as the Personal Expenses Allowance (PEA) and in all other settings the Minimum Income Guarantee (MIG). Regulations set out the amounts.

Interaction with benefits

9.10. When a person in a care home begins to receive financial support from the local authority, payment of certain benefits will stop. These are Attendance Allowance, the care component of Disability Living Allowance or the daily living component of Personal Independence Payment. If, on the basis of the financial assessment, a person is able to afford the majority of their care home fees from their income and tariff income they will receive only a small amount of local authority financial support. If this amount is less than the amount of benefits they were previously entitled to, they may be worse off.

9.11. This may already affect a very small number of people with assets at or very close to the current upper capital limit of £23,250. When the new upper capital limit of £118,000 comes into effect people to whom it applies and who have assets at or very close to that limit will be expected to contribute more in tariff income than is currently the case. This might have meant that they would receive a level of local authority financial support which is lower than the level of benefits which they no longer receive as a result.

9.12. During the passage of the Care Act through Parliament, we committed to ensure that no-one is worse off as a result of the reforms. We have therefore included a provision in the draft regulations to ensure that anyone in a care home who qualifies for local authority financial support will get a minimum level of financial support. The draft regulations achieve this by requiring a reduction in charges for people receiving local authority financial support towards care in a care home that is the equivalent to the maximum amount that a person would receive in any of the above benefits. So for example, under 2014/15 benefit rates, a person moving to local authority financial support in a care home would receive a minimum amount of £81.30 financial support from the local authority (equivalent to the upper rate of Attendance Allowance). Alternatively we could seek to go further and ensure people are better off under the means test threshold. We would welcome views on whether this would help support the aims of the reforms.

People receiving care at home in rented property

9.13. People who receive care at home and own their property are subject to an upper capital limit of £27,000 but also benefit from the additional protection of a property disregard, meaning that their home is not taken into account in assessing what they can afford to pay. People who receive care at home in a rented property will be subject to the same upper capital limit but will not benefit from a property disregard. This means they could have to spend down their assets to £27,000 before they qualify for financial support, diminishing the protection the cap provides against asset depletion. The numbers that this might affect are difficult to assess, but with increasing numbers of people renting rather than owning a property, this could increase in the future.

9.14. If this was felt to be an issue, one potential way of responding would be to make people who receive care at home in a rented property eligible for the upper capital limit of £118,000. We would be interested to hear any views stakeholders may have on this approach.

Questions for consultation

10. Do you agree that the guidance is clear on how the extensions to the means test will work and that the draft regulations achieve their intended purpose? Please state yes or no along with any rationale.

Draft Guidance

This section sets out draft guidance that, once finalised, will form part of the Care and Support Statutory Guidance. Any reference to a specific chapter of guidance is a reference to the existing guidance that was published in October 2014.

10. Cap on care costs

(Proposed new chapter to be incorporated into the statutory guidance issued in October 2014)

This chapter provides:

- An overview of the cap on care costs and its operation
- The level of the cap
- Costs that count and do not count towards the cap

Introduction

10.1. The cap on care costs ("the cap") sets the basis of a new partnership between the person and the state. Its purpose is to protect people from catastrophic care costs by limiting the costs a person will face to meet their eligible care and support needs in their lifetime. As a result it makes clear the costs that a person will need to meet themselves.

10.2. From April 2016 the cap will be set at £72,000. This means the maximum amount anyone will have to pay for care to meet their eligible care and support needs from April 2016 onwards will be £72,000. This is based on what the cost is, or in the case of self-funders would be, to the local authority to meet a person's eligible care and support needs.

10.3. The cap aims to provide people with clarity about the costs they will face for their care and the financial support they can expect from the state. The certainty and peace of mind that the cap offers will enable people to better plan, provide and prepare for the possibility of future care needs.

Overview

10.4. A number of different elements support the operation of the cap. For each person with eligible care and support needs, the local authority **must** provide a statement setting out either what the cost is, or would be, to the local authority of care to meet those eligible needs. This will be the cost that counts towards the cap. This will be included in either a personal budget for people who receive local authority financial support or who have asked the local authority to meet their needs (see chapter 11 on personal budgets) or an independent personal budget (IPB) for self-funders whose needs the local authority is not meeting (see new guidance chapter on independent personal budgets). When they reach the cap, a person who has been meeting their own eligible care and support needs will be provided with a personal budget.

10.5. The local authority **must** also maintain a care account (see new chapter on care accounts) to keep track of the person's progress towards the cap. Drawing on information in a person's personal budget or IPB, a care account records the costs accrued towards the cap ("accrued costs"). It can also be a useful tool to help the person and local authority to plan and prepare.

10.6. Where they can afford to do so people who receive care in a care home will remain responsible for their daily living costs at the level set in regulations. These costs do not count towards the cap as a person would have to meet costs such as rent, utility bills and food irrespective of the setting in which they receive care or whether or not they have a care and support need. Financial support remains available to people who cannot meet, or fully meet, their daily living costs.

10.7. If a person is receiving care in a care home, any additional payments they or a third party chooses to make for a preferred choice of accommodation that meets the person's needs ('top-up' payments) do not count towards the cap. See Annex A: Choice of accommodation and additional payments.

10.8. When a person's accrued costs are nearing the cap, the local authority should ensure that the person understands the implications of reaching the cap and their options for meeting their needs after they reach the cap. The local authority should make preparations to ensure that there is a smooth transition and in particular that they are in a position to meet the person's eligible needs as soon as the cap is reached. When a person's accrued costs reach the cap, the local authority **must** inform the person and meet their eligible needs.

10.9. After the cap has been reached, the local authority **must** pay the costs of care to meet the person's eligible needs for care and support. The person will continue to be responsible for their daily living costs where they can afford them. The person, or a third party, may continue to make or choose at that stage to make top-up payments for a preferred choice of accommodation where they are willing and able to do so.

Amount of the Cap

10.10. For people who develop eligible needs for care and support before they turn 25 the regulations set a cap of zero. This is to reflect that people born with a care and support need, or who develop one in early life, have less opportunity to plan and prepare for the possibility of care costs in the same way as older people. Setting the cap at zero means that these people will not have to contribute towards the cost of care to meet their eligible care and support needs in their lifetime. They will still be responsible for meeting their daily living costs where these apply and where they can afford to do so.

10.11. For people who develop care and support needs from the age of 25 years onwards the regulations set a cap of £72,000.

Daily Living Costs

10.12. People who receive care in a care home will remain responsible for their daily living costs throughout their care journey, just as they would if they were receiving care in their own home.

10.13. The application of daily living costs for care home residents is not meant to be a precise science and local authorities and providers are not required to calculate actual costs for each person in a care home progressing towards the cap. The amount is a notional contribution set in regulations at £230 per week. This will apply to all people with eligible needs for care and support receiving care in a care home and the local authority **must** provide financial support to people who cannot afford the full amount.

10.14. Daily living costs will not count towards the cap and people in care homes will remain responsible for paying their daily living costs after they reach the cap.

What does and does not count towards the cap?

10.15. The following table provides a summary of what does and does not count towards the cap.

Costs that Count	Costs that do not count
The cost, or in the case of a self-funder what the cost would be, to a local authority to meet a person's eligible care and support needs: • For a person receiving local authority financial support to meet their eligible needs this is the cost of meeting the person's eligible needs specified in their personal budget, less daily living costs if included. • For a self-funder meeting their own eligible needs this is the cost of meeting the person's eligible needs specified in their IPB, less daily living costs if included.	Costs of meeting eligible care and support needs incurred before 1 April 2016.
	Costs of meeting non-eligible needs, even where the local authority has chosen to meet those needs
	For people who receive care in a care home, daily living costs at the level set in regulations.
	For people receiving local authority financial support, top-up payments the person or a third party chooses to make for a preferred choice of accommodation.
	Costs of any service provided to the person which is not included in the personal budget or IPB such as prevention and reablement services.
	Interest or fees charged under a deferred payment agreement.
	NHS-funded nursing care for people in care homes and Continuing Health Care.

Progressing towards the cap

10.16. The costs which count towards the cap **must** be set out in either a personal budget (for a person who receives local authority support), or an independent personal budget (for people who meet their own needs).

10.17. Where the local authority is meeting a person's needs the local authority must clearly set out in the personal budget what the cost is of meeting that person's eligible needs for care and support. This will mean clearly distinguishing this cost if, for example, the personal budget includes services to meet non-eligible needs, is pooled with the personal budget of another person or a carer or is combined with other sources of funding available to the person.

10.18. Whilst personal budgets fulfil other functions, an IPB exists solely for the purpose of determining the costs that will count towards the cap for a person who meets their own eligible care and support needs. Local authorities **must** prepare an IPB for each person ordinarily resident or present in their area who has been assessed as having eligible needs which the local authority is not going to meet. The IPB **must** set out what the cost to the local authority would be if it was meeting the person's eligible needs. Comprehensive guidance on personal budgets and IPBs can be found in chapter 11 on personal budgets and the new chapter on independent personal budgets.

Care Accounts

10.19. It is important that an up-to-date record is kept of the costs a person is accruing towards the cap. This record is called a care account and its principal purpose is to accurately record a person's progress towards the cap. A care account draws on information in a person's personal budget or IPB to record their progress towards the cap.

10.20. Local authorities **must** maintain a care account for each person ordinarily resident in their area who has been assessed as having eligible needs, whether or not those needs are met with local authority support. This includes people who previously had eligible needs, even where they do not currently have needs which are assessed as being eligible.

10.21. Except in a small number of specific circumstances, local authorities **must** provide anyone for whom they are maintaining a care account with a statement of that account at least annually to keep them informed of their progress towards the cap. They **must** also provide statements at other times where a person makes a reasonable request. There are a small number of exceptions to the requirement to provide annual statements which are set out in the new chapter on care accounts.

10.22. Comprehensive guidance on care accounts can be found in the new chapter on care accounts.

Continuity of Care/Cross-Border Issues

10.23. If a person moves from one local authority area to another, the first local authority **must**, for the purposes of the cap, provide the second authority with a copy of the person's

care account. They will also need to provide a copy of any care and support plan prepared for the person or, if they are meeting their own needs, a copy of their IPB and their most recent needs assessment. The second local authority **must** then assess the person's needs, prepare a care and support plan where applicable and determine what it would cost them to meet the person's eligible needs. The person **must** continue to progress towards the cap at the rate of the personal budget or IPB set by the first local authority until the second local authority calculates a new personal budget or IPB. More detailed guidance can be found at chapter 20 on continuity of care.

10.24. If a local authority arranges for a person to receive residential care in another local authority area, the person is deemed to continue to be ordinarily resident in the area of the first or 'placing' authority and will progress towards the cap based on the cost to the first local authority of meeting their eligible needs for care and support as set out in the personal budget. The first local authority will be responsible for maintaining the person's care account and notifying the person should they reach the cap.

10.25. If a person is meeting their own eligible needs and arranges residential care in another local authority to the one in which they lived previously they become ordinarily resident in the local authority where they are receiving care. It is therefore the responsibility of that local authority to maintain their care account and they will progress towards the cap based on what the cost would be to that local authority were it to arrange care to meet the person's eligible needs. This cost will be set out in their IPB.

10.26. If a local authority in England arranges for a person to receive residential care and support in another country of the UK the person will still be ordinarily resident in that authority's area and that local authority **must** maintain that person's care account and the person will progress towards the cap at the cost to that local authority of meeting their eligible needs. However, if a person living in England arranges their own residential care in another country of the UK they will not progress towards the cap.

10.27. Where a local authority in another country of the UK arranges for a person to receive residential care in England the person will not be ordinarily resident in England, the person will not progress towards the cap. However, a person living in another country of the UK who arranges their own residential care in England will normally become ordinarily resident in the local authority where they are receiving care. They will therefore be able to progress towards the cap.

10.28. Comprehensive guidance on inter-local authority and cross-border issues can be found in chapters 19, 20 and 21 on ordinary residence, continuity of care and cross-border placements respectively

Preparations for reaching the cap

10.29. Before a person's accrued costs reach the cap, the local authority **should** make preparations to ensure that there is a seamless transition to local authority support and continuity of care. In particular, the local authority **should** ensure that they carry out the necessary work in sufficient time to ensure that they are able to fulfil the legal obligation to meet the person's eligible needs as soon as the cap is reached. This will require the local

authority to plan ahead in conjunction with the person to decide how their needs are going to be met.

10.30. When a person is expected to reach the cap within 18 months of a care account statement being issued, that statement **must** include an indication of the date at which the person is expected to reach the cap. It **should** also clearly set out the steps for transition, including what action, if any, they need to take.

10.31. In particular, the local authority **should** ensure that the person has a clear understanding of the costs the local authority will meet when the cap is reached. If the person is receiving care in a care home this will include ensuring that they understand:

- that they will continue to be responsible for meeting or contributing to their daily living costs;
- that they or a third party will continue to be responsible for meeting any 'top up' payments for a preferred choice of accommodation already being paid should they wish to continue with a current arrangement; and
- if they are transitioning to local authority support, that they or a third party may choose to make top-up payments for a preferred choice of accommodation.

10.32. In respect of a person who is receiving local authority support, at an appropriate time before the cap is reached, the local authority:

- **should** ensure that they have an accurate overview of the person's finances and consider whether a new financial assessment is necessary;
- **should** prepare to provide the person with a revised personal budget when the cap is reached to reflect that the local authority will be responsible for meeting the cost of care to meet the person's eligible needs;
- **may** want to consider whether it would be appropriate to review the person's care and support plan in accordance with this guidance; and
- **should** consider any top-up payment the person or a third party proposes to make or continue to make and where appropriate make preparation for the arrangement to commence at the point the cap is reached.

10.33. In respect of a person who is meeting their own eligible care and support needs, at an appropriate time before the cap is reached and in accordance with this guidance, the local authority:

- **should** consider whether a new needs assessment or financial assessment is needed;
- **must** prepare a care and support plan;
- **must** inform the person which of their needs may be met by a direct payment should they wish to continue to arrange their own care;
- **should** explain the consequences of reaching the cap for any contractual arrangements; and
- **should** make preparations to provide the person with a personal budget when the cap is reached.

10.34. The local authority should agree with the person how they wish their eligible needs to be met on reaching the cap. If their eligible needs can be met by means of a direct payment the person may choose to receive one and maintain their contract with their existing care provider themselves. Alternatively the person may choose to ask the local authority to assume responsibility for contracting. Where the person does so the local authority should advise the person of the available options, including the option to make a "top-up" payment to remain in a preferred choice of accommodation or to move to a setting within their personal budget.

Reaching the cap

10.35. When a person reaches the cap, the local authority **should** ensure that there is a smooth transition and :

- **must** inform the person that they have reached the cap;
- **should** provide the person with a revised personal budget where the local authority was previously meeting the person's needs;
- **must** provide a new personal budget where a person was previously meeting their own needs; and
- **must** meet the person's eligible care and support needs in the way they have agreed with the person.

Adjustments to the Cap

10.36. The Care Act sets out clear parameters for how the level of the cap **must** be reviewed, but does not prohibit changes at other times. Section 16 of the Act provides for an annual adjustment to the cap where the Secretary of State considers that there has been a change in the level of average earnings over the review period. Section 71 of the Act requires the Secretary of State to carry out a detailed review on the operation of the cap and to publish a report on the outcome of that review every five years.

10.37. Where the level of the cap is adjusted, the extent of a person's progress towards the cap will be maintained. For example, if a person is 50% towards the cap when the level of the cap is changed, adjustments will be made to ensure that the person's progress remains at 50%. Any adjustments **must** be clearly reflected in the person's next care account statement,

Case Studies

10.38. The following section provides case study examples of how the new system will work for different people. Further examples are provided throughout the guidance.

Example of registering for the cap

Ted is 74 years old. He has Parkinson's disease and dementia and lacks capacity. He was receiving care at home provided by his wife with support from care workers from a private company. He was funding this care himself because he had savings in excess of the upper capital limit and therefore did not qualify for local authority support.

On 1 April 2016, Ted moves into a local care home at a cost of £900 per week. He has a property worth £430,000, but as his wife continues to live there it is disregarded for the purposes of the financial assessment. At this point, Ted has £50,000 in savings. As this exceeds the new upper capital limit of £27,000, he does not qualify for means-tested support. Ted will therefore continue to meet his care and support needs himself.

As Ted is a self-funder, his wife (who has lasting power of attorney) contacts the local authority on his behalf to register for a care account on 2 May 2016. The local authority conducts a needs assessment on 1 June 2016 and determines that Ted has eligible care and support needs which would continue to be best met in a care home. The local authority determines that the cost of meeting Ted's eligible needs, if they were required to do so, would be £750 per week including daily living costs.

The amount attributable to daily living costs for people in care homes set down in the regulations is £230 so the amount the local authority would pay for the care element to meet Ted's eligible care and support needs is £520 per week.

The local authority provides Ted with an independent personal budget reflecting these figures and creates a care account which tracks his progress towards the cap at a rate of £520 per week. Ted begins progressing towards the cap from the date his wife approached the local authority on his behalf (2 May 2016).

A self-funder registering for and reaching the cap

Joe is aged 80 and has recently had a stroke. He is assessed as having his needs best met in a care home.

He contacts his local authority and registers for the cap. He does not benefit from a property disregard but his assets are still above the upper capital limit. As a result he does not receive local authority support. He has assets of £250,000 and an income of £390 per week, including the new State Pension and Attendance Allowance.

Assets	Income
£250,000	£390 per week

The local authority determines that if it were meeting Joe's needs, they would be best met in a care home that costs £650 per week. The local authority provides Joe with an Independent Personal Budget which sets out that the cost of care to meet his needs would be £420 per week.

Joe chooses a care home which costs £800 per week and meets the full cost.

Counts towards the Cap	Doesn't count towards the cap	
Care costs (what the local authority would pay): £420	Daily living costs £230	Additional amount for preferred care home accommodation £150

Joe therefore progresses towards the cap at £420 per week. He reaches the cap in just under 3.3 years. His assets remain above the relevant upper capital limit of £118,000.

When Joe reaches the cap, the local authority becomes responsible for paying to meet his eligible care and support needs. Having previously discussed his options with the local authority, Joe chooses to maintain his contract with the care home and for his needs to be met by the local authority in the form of a direct payment at £420 per week. Joe continues to meet his daily living costs of £230 per week and chooses to continue to meet the remaining £150 per week as a top-up for his preferred choice of accommodation.

Local Authority	Joe	
Meets Joe's eligible needs with a direct payment of: £420	Meets daily living costs of: £230	Chooses to make a top-up payment for preferred choice of accommodation: £150

A local authority supported person registering for and reaching the cap

James is 85 and has been assessed as having eligible care and support needs that are best met in a care home. Following a care and support planning process, James is given a personal budget of £550 per week, including daily living costs and moves into a care home.

James does not own his own home but does have savings of £30,000. As a result he is eligible for local authority financial support. He also has a weekly income of £255.

James meets his daily living costs of £230 per week from his income, leaving him with the personal expenses allowance (PEA). Tariff income is applied to his savings which shows he can afford to contribute £52 per week towards the cost of her care, meaning the local authority pays the remaining £268 per week.

However, he progresses towards the cap at a rate of £320 per week – the cost of meeting his eligible needs for care and support set out in his personal budget, minus daily living costs.

He reaches the cap after 4.3 years, having spent £59,000 in total. After he reaches the cap he remains responsible for his daily living costs which he continues to meet from his income.

11. Independent personal budgets

(Proposed new chapter to be incorporated into the Care and Support Statutory Guidance issued in October 2014)

This chapter covers:

- What an Independent Personal Budget (IPB) is for and who they are for
- What counts towards the cap and how the IPB should be calculated
- Review and revision of the IPB
- What happens when a self-funder moves to local authority support

Introduction

11.1. The cap on care costs system offers protection from catastrophic care costs by limiting the costs a person may face to meet their eligible care and support needs. In order to measure a person's progress towards the cap, it needs to be clear what does and doesn't count towards the cap.

11.2. Everyone with eligible needs for care and support will be given a statement which sets out the costs that will count towards the cap. Where the local authority is meeting those needs, the cost of meeting them will be set out in their personal budget. There is specific guidance regarding processes and practice on the setting of personal budgets at chapter 11.

11.3. To ensure fairness a self-funder's progress towards the cap **must** be based on what the cost would be to the local authority to meet the person's eligible care and support needs, if it were required to do so. Where the local authority is not going to meet the self-funder's needs this cost will be set out in an independent personal budget (IPB), which exists solely for the purpose of determining what costs will count towards the cap. A person cannot have a personal budget and an IPB at the same time.

11.4. The purpose of this chapter is to provide guidance to support local authorities in setting a self-funder's IPB to ensure that that the approach is consistent, fair and proportionate.

Principles

11.5. Though the IPB is a new concept introduced by the Care Act, the principles underpinning it are the same as for personal budgets. It is vital that the process for setting an IPB is transparent, so that people are clear how their budget was calculated and what it means for them, and timely, to enable people to plan. The process should also ensure

that the IPB is set at an amount which would be sufficient for the local authority to meet the person's eligible needs and which reflects the cost of good quality service provision locally. This chapter provides further guidance on applying these principles to the calculation of the IPB.

Who is eligible for an IPB?

11.6. Anyone who is assessed as having eligible needs for care and support will be able to progress towards the cap. Where a local authority is meeting a person's eligible needs, that person will receive a personal budget as part of their care and support plan. If the local authority is not required to (and does not decide to) meet the eligible needs of a person ordinarily resident in their area the local authority **must** provide the person with an IPB, when requested to do so, and open a care account for them so that they can begin to accrue costs towards the cap.

Assessments for self-funders

11.7. Only the costs of meeting eligible care and support needs count towards the cap. Local authorities **must** undertake an assessment for any person who appears to the local authority to have any level of needs for care and support and determine which of their needs may be eligible based on the eligibility criteria. Local authorities **must** meet their legal duties when carrying out a needs assessment for a self funder who wants to start their care account as they would for a person whose needs they may have to meet. This includes identifying the person's needs, how these impact on their wellbeing and what outcomes they want to achieve. The local authority **must** also ensure that the person, their carer and anyone else they request are involved in the assessment. Local authorities **must** seek to ascertain whether the person is able to be involved in their assessment and consider whether they may have substantial difficulty in doing so. If a person does have substantial difficulty and there is no appropriate individual to support and represent the person, the local authority **must** appoint an independent advocate. (See chapter 7 on independent advocacy)

11.8. Local authorities have a duty to carry out an assessment proportionately. In doing this they will need to establish, at an early stage in the assessment process, the wishes of the person being assessed, taking into account their presenting need and their circumstances to ensure that the assessment is carried out appropriately and proportionately. Local authorities **must** also offer the person a supported self-assessment where they are able and willing to undertake it. Further detail is provided in chapter 6 on assessment and eligibility.

11.9. The local authority will also need to determine whether or not the person might qualify for financial support from the local authority. This will usually be done through a financial assessment. Where it appears very likely that a person's assets will exceed the threshold for financial support the local authority may consider a "light-touch" financial assessment. This approach enables a local authority to treat a person as if a financial assessment had been carried out where the local authority is satisfied of the person's ability to afford care fees. Guidance on how to undertake a financial assessment or a light touch assessment is set out in chapter 8 on charging and financial assessment. A person who has capacity may also opt

not to have a financial assessment in which case they are assumed to be a self-funder. An IPB will only be prepared when the local authority is not going to meet the person's needs.

11.10. Following the needs assessment the local authority **must** provide people with personalised information and advice about how to meet their needs and how to prevent or delay the development of further needs. The assessment process also provides an ideal opportunity to help the person plan for their future care costs and local authorities should consider what information and advice might help them to do this (see chapter 3 on information and advice). For example, it may be appropriate to talk to a person about their finances and how quickly they may become eligible for local authority financial support and what steps they will need to take to ensure a smooth transition.

Recording a self-funder's progress towards the cap

11.11. The Care Act sets out that self-funders **must** progress towards the cap at a rate based on what the cost would be to the local authority to meet their eligible needs. The decision about whether or not a self-funder's needs are eligible will be taken in the same way as if the local authority were required to meet their needs, based on the eligibility criteria and taking into account where needs are being met by a carer.

11.12. Everyone will remain responsible for their daily living costs, whether in their own home or in a care home. For people receiving care in a care home daily living costs will not count towards the cap. Further details on daily living costs can be found in the chapter on the cap on care costs. Where people choose a service that is more expensive than the cost specified in their IPB, this additional amount will not count towards the cap.

11.13. To help a person to understand what does and doesn't count towards the cap they **must** receive a record which specifies:

- what the cost would be to the local authority if it were to meet their eligible needs;
- if they are in a care home, what amount is deducted from the cost above for daily living costs; and
- the amount that will count towards the cap.

Progressing towards the cap

Catherine is 85 and has rheumatoid arthritis. Her family approaches her local authority to register for a care account. Following a needs assessment, which identifies that she has eligible needs, it is agreed that her needs would be best met in a care home.

Catherine owns her own home which is worth £300,000 and has an income of £360 per week which means she is not eligible for financial support. The local authority provides a statement which sets out that it would cost the local authority £550 a week to meet her needs. It also sets out that Catherine will remain responsible for her Daily Living Costs, just as she would in her own home, at the national rate of £230 per week.

Catherine and her family choose a care home that costs £700 a week. This means her costs break down as:

She contributes:		
Counts towards the cap	Doesn't count towards the cap	
Care costs	Daily living costs	Additional costs
£320	£230	£150

Catherine reaches the cap after 4.3 years.

Calculating the IPB

11.14. A person's IPB sets the amount that will count towards the cap. This **must** be based on the cost to the local authority of meeting their eligible needs, if it were required to do so. The process of setting the IPB **should** be proportionate, taking into account the complexity of a person's needs and whether individual circumstances are likely to have an impact on the cost of meeting them.

11.15. To ensure fairness the IPB should be calculated, as far as is practicable, on a consistent basis and it **must** be based on real costs. The local authority may allocate an IPB based on the average cost of meeting a similar level and/or type of needs. If this approach is chosen the average cost **should** be based on the personal budgets allocated by the local authority to people it supports with a similar level and/or type of needs. Local authorities may therefore need to calculate a range of averages for different levels or types of needs and keep these up to date through annual review.

11.16. The local authority **should** also consider whether it may be necessary to take a more tailored approach, based on the person's particular circumstances, to ensure that a person's IPB would be sufficient for the local authority to meet their needs. For example, it may be necessary to adjust an average where setting an IPB for a person with complex needs, low-level needs or needs which are comparatively costly to meet. In some cases it may be appropriate to support the individual to produce a care and support plan.

11.17. In determining how to apply the framework set out above local authorities **should** apply the same principles that underpin the calculation of personal budgets: transparency,

timeliness and sufficiency. Further guidance in relation to each is given below. Throughout the process of calculating the IPB the local authority **must** also have regard to the wellbeing principle.

Transparency

11.18. It is possible that self-funders approaching the local authority to register for the cap will have limited awareness of what will and won't count towards the cap and/or of the types of care and support to meet their needs and what these would cost. Therefore, it will be important that the local authority provides clear information and advice to enable the person to understand how their IPB has been calculated and on what basis. In particular the local authority **should** ensure that the person understands from the outset that their IPB **must** reflect what the cost would be to the local authority of meeting their needs, which may be different to the rate the person has been quoted or is paying. The person **should** also be made aware that they are able to challenge their IPB through the appeals system if they believe that the amount would not be sufficient for the local authority to meet their needs. The local authority **should** also provide information and advice to help the person to understand that their accrued costs will be backdated to the date they requested an assessment (or 1 April 2016 if the assessment was requested prior to that date) and that any costs incurred prior to that date will not count towards the cap.

11.19. The local authority **should** also provide information about reviewing the IPB including how often the person can expect their IPB to be reviewed, what can trigger a review and how they can request a review if they think one is needed.

Timeliness

11.20. Once an IPB has been set, a person's progress towards the cap will be backdated to the date on which they requested an assessment or the date on which the local authority identified that the person may have a need. However, local authorities **should** ensure that the IPB is finalised and communicated to the person within a reasonable time of the needs assessment being conducted. The process should not take longer than it would usually take to finalise a personal budget for a person receiving local authority support. The local authority **should** give an indication at the outset of how long the process might be expected to take in order to provide clarity for the person affected and reduce the number of enquiries that could be made about progress.

11.21. The local authority may also propose a period of time, following communication of the IPB, during which the person is invited to consider the IPB rate and contact the local authority with any queries. This would allow an opportunity for the local authority to provide any further information and advice or explanation and may as a result reduce the number of challenges relating to IPBs. However, for this to be a meaningful exercise the local authority **should** ensure that the person understands that the amount is determined on the basis of what the local authority would pay. The local authority **should** also make clear that this does not impact on the individual's ability to appeal.

Sufficiency

11.22. The local authority **must** have a reasonable expectation that the costs in a person's IPB would be sufficient to meet their eligible needs if the authority were required to do so. The IPB **should** therefore be consistent with personal budgets set by the local authority for people with similar eligible needs, and not simply reflect the lowest possible price for which the local authority might be able to purchase care to meet those needs on a given day. Local authorities **should** therefore ensure that the costs on which the IPB rate will normally be based reflect good quality local market provision and consider on a case by case basis whether there are factors which would make meeting that person's needs more expensive. In some circumstances it may be appropriate to consider the costs incurred in arranging their own care (e.g. the costs incurred in complying with legal obligations as an employer), in the same way as these would be taken into account when determining the amount of a direct payment.

11.23. Where the person has eligible needs that are being met by a carer at the time of the assessment the local authority **must** take into account the carer's willingness and ability to continue to meet those needs as well as the impact of continuing to do so. The local authority should record where needs are being met by a carer in the IPB, so that the authority is able to respond to any changes in circumstances (for instance, a breakdown in the caring relationship) more effectively.

Meeting needs

11.24. Though the local authority is not under a duty to provide a care and support plan for people receiving an IPB, they may nonetheless consider undertaking a process along similar lines to help the person to determine how their needs might best be met to achieve their desired outcomes. This may be particularly helpful in cases where setting an IPB rate according to an average may not be appropriate, for instance, where people have a need for specialist care and support that might be more expensive. If a care planning process is used it should follow the principles set out in chapter 10 on care and support planning.

11.25. Whether or not the local authority undertakes a care planning process with the person, the local authority **must** offer information and advice about the different types of care and support available and the choice of providers in the local area to help them to make an informed decision about their options for care and support (see chapter 3 on information and advice). The local authority **must** also consider whether the person concerned would benefit from any preventative services and provide information and advice about how to reduce or delay any needs (see chapter 2 on preventing, reducing or delaying needs).

11.26. Though local authorities **must** provide information and advice about ways to meet needs, a self-funder with an IPB is not under any obligation to meet their needs in any particular way in order to progress towards the cap. For that reason local authorities are not able to require the person to provide evidence of having made arrangements to meet their needs as they might where they provide a local authority supported person with a direct payment.

11.27. A person with an IPB is entitled to choose to meet their needs in a different way to the way the local authority would and may purchase additional care and support to meet non-eligible needs. The costs of this additional care do not count towards the cap. If the local authority has concerns about the sustainability of the way in which a person is choosing to meet their needs they **should** consider whether the person would benefit from financial information and advice, particularly that which is provided independently of the local authority.

11.28. It is possible that a self-funder may choose not to meet their needs either at all or in part. They are entitled to do so but the local authority **must** offer information and advice about how their needs can be met and how to prevent the development of further needs. The local authority will also need to be alert in their interactions with self-funders to any signs that the way in which the person is choosing to meet, or not meet, their needs arises from a situation that may require further safeguarding enquiries. This could include, for example, a situation where a family member is coercing the person into buying cheaper services that do not meet their needs or a situation where a person with care needs who is neglecting to care for their own personal hygiene, health or surroundings is fearful of buying any services that require someone to enter their home. See chapter 14 on safeguarding for further guidance.

11.29. The local authority will also need to be alert to any signs of financial abuse. Financial abuse is the main form of abuse investigated by the Office of the Public Guardian (OPG) and local authorities should not underestimate its potential impact on a person's health and wellbeing. Chapter 14 on safeguarding provides further guidance on the potential signs of financial abuse and when to inform the OPG or the Department of Work and Pensions. Most financial abuse is also capable of amounting to theft or fraud and so would be a matter for the police to investigate.

Communicating the final IPB

11.30. In communicating the final IPB the local authority should provide clear information regarding:

- the basis for the calculation;
- what does and doesn't count towards the cap;
- how often the IPB rate will be reviewed and what may trigger a review;
- the person's options if they are not content with their IPB;
- what changes in circumstances should be notified to the local authority;
- how their accrued costs will be recorded in the care account; and
- how often they will receive care account statements.

11.31. The local authority **should** ensure that the information above is communicated in a suitable format and in such a way that the person is able to understand it. In particular the local authority **should** have regard to the guidance regarding the accessibility of information (see chapter 3 on information and advice).

11.32. The local authority **should** also make the person aware that they can ask the local authority to meet their needs, particularly where the local authority has reason to believe that a person may have difficulty in arranging their own care. If the person chooses to ask the local authority to meet their needs then the local authority **must** do so. The local authority **must** make clear to the person that they may be liable to pay an arrangement fee in addition to the costs of meeting their needs (see chapter 8 on charging and financial assessment).

Review and revision

11.33. To ensure that the IPB rate continues to accurately reflect the person's eligible needs and what it would cost the local authority to meet those needs local authorities **must** keep the IPB under general review. In many cases it would be appropriate to do so annually in order to align it with reviews of needs and financial assessments but the local authority should consider whether they may need to do so more frequently if the person's needs are likely to change. The IPB **must** also be reviewed if the local authority becomes aware of a change in the person's circumstances that may affect the cost of meeting a person's needs.

11.34. The local authority **must** also review the IPB at the reasonable request of the person or someone acting on their behalf. This request may be made at any time. In considering a request for a review the local authority may wish to consider the guidance on reviews of care and support plans (see chapter 13 on review of care and support plans).

11.35. When the local authority is making the decision whether to revise the IPB they **must** involve the person, their carer (if they have one) and anyone else the person asks to be involved. Where the person lacks capacity the local authority **must** involve anyone who has an interest in the person's welfare, including any independent advocate who may have been arranged to support the person's involvement in the assessment or review process (see chapter 7 on independent advocacy).

11.36. If the local authority considers that the person's circumstances or care needs may have changed in a way that might affect the IPB, then they **must** determine whether they need to carry out a new needs assessment and revise the IPB. If a person refuses a reasonable request by the local authority to assess their needs, the local authority is not required to keep their care account up to date. However, it is important that the local authority considers whether there are other underlying reasons for the person refusing an assessment and makes enquiries where there is good reason to suspect there is a risk of abuse and neglect.

11.37. Following a review, the local authority **must** notify the person of the outcome, regardless of whether it has resulted in a change to the IPB. Where the IPB has changed the local authority **must** explain the reason for the change and should provide information about how the person can query the change if they wish to do so.

Appeals and disputes

11.38. The local authority **should** take all reasonable steps to avoid disputes regarding the calculation of the IPB. This should include involving the person as far as is practicable in the process. As with all aspects of care and support under the Act, local authorities **must** fulfil their responsibilities under the Mental Capacity Act, conducting a capacity assessment where appropriate, supporting individuals who may lack capacity to make a decision themselves (for example, presenting information in an easy to understand format) and, where the individual is lacking capacity in regard to the specific question, involving family, carers, advocates and any appropriate person to arrive at a best interests decision.

11.39. The local authority should also be able to reduce the number of potential disputes by providing information and advice that enables the person to understand how their IPB has been arrived at and by abiding by the principles of transparency, timeliness and sufficiency in determining the IPB rate.

11.40. The local authority should provide clear information at the outset about the process set out in this chapter, including an indication of expected timescales wherever possible. The local authority should also provide information about its complaints procedure and the person's right to appeal.

11.41. The decision the local authority makes regarding the level at which a person's IPB is set will potentially be within scope of the appeals system set up under the Care Act that we are consulting on. Local authorities **should** therefore keep a full record of the basis for the decision. Under the principle of transparency this should be shared with the person concerned.

Moving to local authority support

11.42. When a self-funder becomes eligible for local authority support, either because the value of their assets has fallen below the threshold for local authority support or because their accrued costs have reached the cap or because they have asked the local authority to meet their needs, they will move to local authority support and **must** be provided with a care and support plan and a personal budget. This will help the person to decide how their needs are going to be met and **must** include informing the person which of their needs can be met by a direct payment should they wish to continue to arrange their own care. Further guidance is provided at chapter 10 on care and support planning.

11.43. Where a person qualifies for local authority support as a result of reaching the cap the local authority **must** take all reasonable steps to ensure that the person moving to local authority support receives that support as soon as they become entitled to it. To ensure that the transition is as smooth as possible, local authorities should identify people nearing the cap early and take steps to begin the care and support planning process with them (see chapter 10 on care and support planning).

11.44. The local authority **should** also provide information and advice to help a person to understand what changes in their circumstances may mean that they qualify for local authority support through the means test. This will help to ensure that people come forward for a financial assessment at the appropriate time. The local authority **should** also inform the person that they have the right to ask the local authority to meet their needs at any time and explain what that would mean for the person.

Reaching the cap 1:

Eleanor is 80 and receiving care and support in a care home. Her IPB sets out that a care home place to meet her needs would cost the local authority £600 per week. It also sets out that she remains responsible for paying a notional amount for Daily Living Costs at £230 per week. Eleanor chose to enter a care home which charges £675 per week and progresses towards the cap at a rate of £370 per week.

As Eleanor approaches the cap the local authority alert her in her care account statement and approach her to discuss how she would like her needs to be met after she hits the cap. Eleanor decides that she would like the local authority to take over arranging her care and this is reflected in her care and support plan. As Eleanor has remaining assets of £120,000 the local authority also agrees that it is sustainable for Eleanor to pay a top-up to remain in the care home of her choice.

Eleanor hits the cap after just over 3.7 years and the local authority provides her with a personal budget based on the agreed care and support plan. The local authority takes contractual responsibility for Eleanor's care and pays her care costs of £370 per week. Eleanor remains responsible for paying her daily living costs at £230 per week and a top-up payment of £75 per week.

Reaching the cap 2:

Daniel is 75 and has been arranging care and support to meet his needs in his own home for a number of years. In his care account statement the local authority alert him that he is due to reach the cap within the next eighteen months and set out what needs to happen to ensure a smooth transition.

Six months before he reaches the cap the local authority gets in touch with Daniel to discuss in more detail how he would like his needs to be met when he does. The local authority explains to Daniel that his needs can be met by a direct payment if he would like to continue to arrange his own care. Daniel decides that he would like to do so and his request for a direct payment is recorded in a care and support plan.

When Daniel hits the cap the local authority assumes responsibility for meeting his needs and provides him with a personal budget based on the agreed care and support plan. To meet his needs the local authority gives Daniel a direct payment equal to his previous IPB which enables him to maintain the arrangements he had put in place before he reached the cap.

12. Care Accounts

(Proposal for new chapter to be incorporated into the statutory guidance issued in October 2014)

This chapter covers:

- What a care account is for and who is eligible
- What should be recorded in the care account
- What information needs to be provided in care account statements
- Adjustments to accrued costs and changes in circumstances
- Retention and portability of care accounts

Introduction

12.1. In order for the cap on care costs system to provide effective protection from catastrophic care costs it is vital that an up-to-date record is kept of a person's progress towards the cap. For this reason the Care Act requires local authorities to maintain a care account for each person who has been assessed as having eligible care and support needs, regardless of whether those needs are met by the local authority or by the person themselves. The care account enables a local authority to monitor a person's progress towards the cap and, when the person is nearing the cap, work in conjunction with them to ensure that the local authority is able to take responsibility for the costs of care to meet their eligible care and support needs as soon as the cap is reached.

12.2. The care account will also allow people to track their own progress towards the cap, giving them peace of mind and enabling them to plan their finances to meet their needs until such time as they reach the cap.

Who is eligible for a care account?

12.3. If a person's care and support needs are assessed as meeting the eligibility criteria and they are ordinarily resident in the area of a local authority, the local authority **must** open a care account for the person. This is regardless of whether the costs of meeting their needs are funded by the local authority or the person.

12.4. A person's care account should be opened at the point they receive a personal budget or independent personal budget (IPB) for the first time, which will determine the rate at which they progress towards the cap, but costs begin accruing from the point the person contacted the local authority to request a needs assessment or the local authority identified that they

might need one. If the person requested the assessment or was already receiving local authority support before the 1 April 2016 then their costs will accrue from the 1 April 2016. Any costs incurred before 1 April 2016 will not be included in their care account.

Components

12.5. The care account **must** record:

- the person's current rate of progress towards the cap;
- the total amount the person has accrued towards the cap to date;
- any amount attributable to daily living costs; and
- any adjustments to the accrued costs in line with adjustments to the level of the cap.

12.6. The person's current rate of progress towards the cap is taken from their personal budget or IPB which sets out the cost to the local authority of care to meet their eligible needs for care and support. Where a person has a personal budget it is the total cost of care to meet their eligible needs which counts towards the cap, regardless what proportion is paid by the local authority or the individual. In all cases the rate of progress excludes daily living costs and any top-up payments the person or a third party has chosen to make.

12.7. Personal budgets may set out other costs, for example, if it includes services to meet non-eligible needs that the local authority has decided to meet or if the personal budget is pooled with that of another person or a carer. Personal budgets may also include other sources of funding available to the person. Only the cost of care to meet the person's eligible needs for care and support will count towards the cap so this cost **must** be clearly distinguished within the personal budget.

Provision of statements

12.8. In order for the cap to provide peace of mind and support people to plan financially people will need to be aware of what counts towards the cap and how much they have progressed towards the cap to date. When a person has a needs assessment that identifies eligible needs the local authority will prepare a statement setting out what it would cost the local authority to meet the eligible needs. This will take the form of a personal budget, if their needs are to be met by the local authority, or an independent personal budget (IPB) for a self-funder. At the same time the local authority **must** open a care account for the person.

12.9. Once the person begins progressing towards the cap they will be kept informed of their progress by means of care account statements. The local authority **must** provide these statements at least annually from the point that the account is opened (subject to the discretion discussed below under "When care account statements are not required") or upon the reasonable request of the person or their representative. As a minimum statements **should** be provided in hard copy by post but they may be provided in any format appropriate for the person, including electronic formats where the person has agreed to receive their statement in that way. If the person has agreed to receive their statement electronically, for

example by secure email, it is not necessary to provide hard copy statements unless the person requests it at a later date.

12.10. People may want to access their care accounts online and local authorities are encouraged to provide a secure online method to allow this, for example through a citizen portal. Doing so would allow people to make full use of the information contained within their care account at a time that suits them to inform their financial planning and it may also reduce the administrative burden on local authorities by reducing the number of requests for statements. Providing online access does not, however, affect the requirement to provide annual statements.

12.11. To help a person to consider their financial position in the round local authorities should consider where possible combining care account statements with deferred payment statements. As a minimum it would be good practice to provide both the cap and deferred payment statements at the same time, though as deferred payment statements are provided every six months, a person may still receive at least one standalone deferred payment statement a year. When issuing a combined statement local authorities may wish to take the opportunity to inform or remind the person of the availability and potential benefits of taking independent financial advice (see chapter 3 on information and advice).

When care account statements are not required

12.12. In some circumstances providing annual statements may have little benefit to the person and cause a disproportionate administrative burden to local authorities. Local authorities are therefore not required to provide annual statements in certain circumstances, set out below, though they should always consider whether there may be other reasons why a person would benefit from receiving annual statements. In all cases the local authority **must** still maintain the care account and provide a statement if requested to do so by the person or their representative.

12.13. When a person has reached the cap the local authority should retain their care account as a record of their entitlement to local authority support but is not required to provide further statements unless requested to do so.

12.14. Where a person has not received care and support or accrued any costs towards the cap in that year, for example because they do not currently have eligible needs, an annual statement will not show any change in the person's progress towards the cap. The local authority may therefore consider whether or not to provide an annual statement. In doing so the local authority should consider how long a person's progress towards the cap has been stable and whether or not there are other changes of which the person should be informed.

12.15. If the costs of care to meet the person's eligible needs are already being paid by the local authority (for example, where a person is only contributing to their daily living costs) their progress towards the cap is likely to be of less relevance to their financial planning. In this circumstance the local authority may consider whether or not it would be beneficial to continue to provide regular statements. If there is a chance that the person's circumstances may change suddenly, for example if they stopped benefitting from a property disregard, it

may be prudent to continue to provide regular statements to keep the person informed of their progress towards the cap.

12.16. In all cases, the care account **must** still be maintained so that the person's progress towards the cap is up to date if they later become liable to pay their care costs, in which case regular statements should restart. Regular statements should not stop in cases where the local authority is fully meeting the person's needs for only a short period of time, for example where a person is receiving reablement services.

12.17. If the local authority thinks it may be appropriate to stop regular statements the person affected should be informed and given the opportunity to express their preference. This should be taken into account in the local authority's decision making.

Content of statements

12.18. In preparing a care account statement, local authorities **should** have regard to the guidance regarding the accessibility of information and advice (see chapter 3 on information and advice) to ensure that the person receiving the statement is able to understand easily where they are in terms of progressing towards the cap. This includes ensuring that the statement is provided in a suitable format.

12.19. The regulations set out the minimum information that **must** be included in a care account statement but local authorities **should** consider what opportunities there may be to provide wider information and advice relevant to the person's care and support in the statement (see the section "providing wider information" below).

12.20. The statement **must** set out:

- the current level of the cap;
- the person's current rate of progress towards the cap, i.e. the weekly or monthly costs specified in the personal budget or IPB that count towards the cap;
- the total amount of these costs the person has accrued towards the cap to date;
- any adjustment in the accrued costs; and
- any amount attributable to daily living costs.

12.21. The purpose of setting out daily living costs is to help make clear to the person receiving the statement that they remain responsible for paying these costs in a care home, just as they would at home, and to make clear that they are excluded from the costs accrued towards the cap. The amount of daily living costs specified in the statement **should** be the same as that specified in the person's personal budget or IPB, which may be a weekly or monthly amount. The local authority is not required to keep a running total of the daily living costs a person has paid.

12.22. The care account statement will also play an important role in ensuring the person's smooth and timely transition to local authority support when they reach the cap. For that reason, when a person is expected to reach the cap within 18 months of a statement being issued, that statement **must** include an indication of the date at which the person is expected

to reach the cap. It **should** also clearly set out the steps for transition, including what action, if any, they need to take.

12.23. Where it is appropriate to do so, for example where a person is progressing towards the cap at a relatively fast rate, the local authority may also consider including an indication of when a person might reach the cap in earlier statements to support the person in their financial planning. Whenever an indication is given of the date a person might be expected to reach the cap, an explanation **should** be given to ensure the person is able to understand how the date was arrived at and that it is an estimate only. It is likely that a simple approach, such as assuming that the person's care and support needs continue at the same level, would be most simple to explain.

12.24. The care account statement also provides an opportunity to make people aware of the different types of financial information and advice that are available to support them to use the information in their statement to plan for future care costs (see chapter 3 on information and advice).

Adjustments to accrued costs

12.25. The Care Act makes provisions for the level of the cap to be adjusted. Further detail on how the cap may be adjusted is set out in the new chapter on the cap on care costs. The care account statement provides an opportunity to inform people of any changes to the level of the cap and how it affects them. The statements **must** therefore clearly set out whether and how the cap has been adjusted since the last statement and what effect that has on the person's accrued costs. For clarity only adjustments which have been made in the period since the last statement **should** be shown.

12.26. Local authorities are able to adjust a person's accrued costs in other circumstances. For example, if the local authority becomes aware of temporary changes in a person's circumstances which resulted or would have resulted in a change to the cost to the local authority of meeting their needs for that period, the local authority will need to consider whether to reflect this in the care account by adjusting the accrued costs. Relevant changes in circumstances might include, for example, if a person has had a long stay in hospital or received free reablement services or begun to qualify for Continuing Healthcare. When a local authority becomes aware of changes in a person's circumstances they **should** consider whether the change led or would have led to a change in the person's care and support arrangements, taking into account any contractual obligations and any potential impact on the person's wellbeing. Consideration **should** also be given to the administrative burden of making adjustments to ensure they are only made where it is proportionate to do so. Generally, accrued costs should not be adjusted to reflect changes of less than six weeks in duration. The local authority may also adjust accrued costs in light of decisions relating to appeals or disputes which have an impact on the level of a person's personal budget or IPB.

12.27. Where any adjustment is made to the person's accrued costs the care account statement **should** provide a clear explanation of why and how the adjustment has been made and how the person can raise any queries they may have.

Changes of circumstances

12.28. From time to time, the person's circumstances may change. This might include, for example, a change in the level of their care and support needs, in the setting in which they receive care and support or in their financial circumstances. The care account statement **should** set out what responsibilities the person has to inform the local authority of any changes in their circumstances to help ensure that any changes are recorded, and where necessary reflected in the care account, in a timely fashion. This will also help local authorities to ensure that a person's care and support plan or their IPB is kept under review and revised as appropriate to reflect any changes in the person's eligible needs.

12.29. The local authority **should** also give an indication in the care account statement of when they would expect to review a person's needs and/or finances. This may be particularly relevant if a person has a deferred payment agreement and is approaching the limit of equity in their chosen form of security (see chapter 9 on deferred payment agreements).

Providing wider information

12.30. Although the primary purpose of the care account statement is to provide information on a person's progress towards the cap, it also affords an opportunity to provide wider information relevant to the person's care and support. In particular it provides a means to help the person better understand what they are responsible for paying in relation to their care costs. For example, where a statement is prepared for someone receiving local authority support, it may be helpful to include similar information as is set out in the personal budget. This might include information on the level of the local authority contribution to the costs accrued, any other amounts of public money the person is receiving or information regarding any top-up payments a person has chosen to make. Local authorities may also wish to combine the person's care account statement with a deferred payment statement. However, the local authority **should** consider how best to present any wider information, so that the person is able to clearly distinguish what does and doesn't count towards the cap.

12.31. Providing wider information and signposting to independent sources of financial information and advice (see chapter 3 on information and advice) could help the person to better plan and prepare for their ongoing costs and to take account of when they may be eligible for local authority support or may reach the cap.

12.32. Providing care accounts also offers an opportunity to provide access to wider information relevant to that person's care and support, for example it may provide an opportunity to make people aware of services that may help them to prevent, delay, or reduce development of their needs. Providing online access to care accounts may provide an opportunity to allow people to access wider information relevant to their own care and support via the same secure online service.

Retention of care accounts

12.33. Where a local authority which has been keeping a care account for a person but is no longer required to do so, for example because the person no longer has eligible needs, the local authority **must** retain the care account either for 99 years from the last day the account was updated or until the local authority becomes aware that the person has passed away.

12.34. After the person's death it is still possible that disputes could arise relating to the costs recorded in the care account. Therefore, in determining their local retention policy local authorities **should** have regard to the need to allow sufficient time to resolve such disputes as well as their duties under the Data Protection Act and common law. The local authority may want to consider a retention policy of up to seven years. If a dispute arises relating to a care account, that account **should** be retained until the dispute is resolved.

Portability of care accounts

12.35. People may choose to move across local authority boundaries. This could be for many reasons such as to be closer to family or simply because they live in a boundary area. Where a person has a care account with one local authority and they notify another local authority that they are looking to become ordinarily resident in their area, the second local authority will need to inform the first that it is satisfied that the person's intention to move is genuine. The first local authority **must** then provide the second local authority with a copy of the person's care account. They will also need to provide a copy of any care and support plan prepared for the person or, if they are a self-funder, a copy of their IPB and their most recent needs assessment. The second local authority **must** then assess the person's needs, prepare a care and support plan where applicable and determine what it would cost them to meet the person's eligible needs. The person will continue to progress towards the cap at the rate of the personal budget or IPB set by the first local authority until the second local authority calculates a new personal budget or IPB. More detailed guidance can be found at chapter 20 on continuity of care.

13. Summary of anticipated consequential amendments to the care and support statutory guidance issued in October 2014 to reflect 2016 funding reforms

Chapter	Additions/Amendments Required
3. Information and advice	**Paragraphs 3.41 (Financial information and advice) and 3.43 (Understanding Care Charges):** Update the forward-looking references to providing information on the cap on care costs from April 2016.
4. Market shaping and commissioning of adult care and support	**Paragraph 4.68 (Understanding the market):** Update the forward-looking reference to preparing for implementation of funding reforms from 2016/17. Update reference to self-funding people who are likely to move to local authority support in the future to include those projected to reach the cap on care costs. Update reference to people who are partly state-funded to include those who are likely to reach the cap on care costs.
8. Charging and financial assessment	**Preamble** ("This chapter covers"): Add bullet point on meeting eligible needs when the cap on care costs has been reached. **Paragraph 8.2:** Add reference to the local authority being required to meet a person's needs when the cap on care costs is reached. **Paragraph 8.11:** Update to refer to "…local authority financial support…". **Paragraph 8.12:** Update to reflect the new upper capital limits and lower capital limit. **Paragraph 8.13:** Update to refer to the "relevant upper capital limit". **Paragraph 8.15:** Update to refer to the "relevant upper capital limit". **Paragraph 8.20:** Update to reflect the new upper capital limits and lower capital limit. **Paragraph 8.23(a):** Update to refer to the "relevant upper limit". **Paragraph 8.24(a) and (b):** Update to refer to the "relevant upper capital limit". **Paragraph 8.37:** Update to remove the reference to top-ups being available to first parties only "in certain circumstances" to reflect the new first party top-up arrangements. **Paragraph 8.38:** Update to refer to the new statutory guidance chapter on the cap on care costs.

Chapter	Additions/Amendments Required
8. Charging and financial assessment *(continued)*	**After paragraph 8.48:** Insert new title "Where the cap on care costs is reached" and a paragraph to reflect that when a person reaches the cap the local authority must meet their eligible care and support needs as set out in their personal budget; that a person in a care home remains responsible for paying their daily living costs; that if such a person is unable to meet daily living costs from their income they are entitled to means-tested support from the local authority; that in such circumstances, the local authority must make a financial assessment of how much the person can afford to pay towards their daily living costs using the charging and assessment of resources regulations, and that only the person's income can be taken into account in this assessment and their capital must be disregarded. **Paragraphs 8.42:** Remove reference to income support + 25%. **Paragraph 8.46:** Remove references to income support + 25% and pension credit and replace with a reference to the minimum reference to the "minimum income guarantee" (MIG). **Paragraph 8.54:** Update to refer to the "relevant upper capital limit".
9. Deferred payment agreements	**Paragraph 9.1 (definitions of terms):** Make clear that people can defer daily living costs **Paragraphs 9.7(b) and 9.8(d) (Criteria governing eligibility for deferred payment agreements):** Update to reflect new upper capital limits for means tested support. **Paragraphs 9.16(a), (d) and 9.17 (situations where a local authority can stop deferring additional amounts):** clarify that a local authority can only exercise powers to stop deferring when the person qualifies for full means-tested support. **Paragraph 9.38 (How much can be deferred? Equity limit):** Update to reflect new lower limit for means-tested support. **Paragraph 9.40: (How much can be deferred? Equity limit) (Case study 3)**: Update to reflect new lower capital limit for means-tested support. **Case studies:** update to reflect changes to policy and current interest rate. **General:** Add reference to what happens to deferrals when people reach the cap. **General:** Clarify interaction between disposable income allowance and personal expenses allowance further to the extension to means-tested support.

Chapter	Additions/Amendments Required
10. Care and support planning	**Paragraph 10.9 (When to undertake care and support planning, and support planning):** Update to reflect that where a person who was arranging their own care and support reaches the cap on care costs, the local authority becomes responsible for meeting their eligible needs; that a care and support plan must be developed, and that a needs and financial assessment may also be required. **Paragraph 10.16 (What does it mean to "meet needs"?):** Update to reflect that the approach whereby a local authority meets a person's needs by "brokering" a service on the person's behalf may also be of particular use to a person who was arranging their own care and support would like to continue arranging their own care and support after they have reached the cap on care costs.
11. Personal budgets	**Paragraphs 11.2, 11.3, 11.7**: Update to reflect that the personal budget will determine the costs of care which sets the rate at which a person progresses towards to the cap on care costs. **After paragraph 11.9 (The personal budget)**: A new paragraph (11.10) to reflect that a personal budget must be prepared as part of a care and support plan for an individual who has been meeting their own needs and reaches the cap on care costs; that the transition may also require a needs assessment and financial assessment and that local authorities should begin planning with the individual before the cap is reached. The paragraph will also reflect the need to ensure that a person's needs continue to be met in a manner consistent with the person's views; that a person may prefer to carry on organising their own care and support, with minimal input from the local authority and that a direct payment could be the most beneficial way for a local authority to meet a person's eligible needs on reaching the cap and allowing the person to continue to meet their needs in an independent manner (provided the direct payment conditions are met). **After paragraph 11.10 (the personal budget):** A new paragraph (11.12) to reflect that where a local authority is meeting needs in a manner that includes daily living costs (for example for people receiving care in a care home setting), the personal budget amount must be broken down to show the amount attributable to daily living costs (set down in regulations) and the balance of the cost to the local authority.
12. Direct payments	**Paragraphs 12.46 and 12.47: (Long-term residential care):** Update to reflect learning from the trailblazer programme which is testing the use of direct payments in care homes.

Chapter	Additions/Amendments Required
16. Transition to adult care and support	**Paragraph 16.51 (On completion of the transition assessment – providing information and advice):** Update forward-looking reference to 2016 funding reforms in respect of people turning 18 years of age with eligible care and support needs.
20. Continuity of care	**Paragraph 20.21 (Preparing for the move):** Update bullet points to indicate that the first local authority must provide the second local authority with a copy of any independent personal budget prepared in respect of the person and a copy of any care account they have been keeping in respect of the person.
23. Transition to the new legal framework	The revised statutory guidance (reflecting the 2016 reforms) will be published in October 2015. Remove guidance on preparing for changes which will have come into force 1 April 2015. Update guidance on preparing for the 2016 reforms.
Annex A: Choice of accommodation and additional payments	**Paragraph 3:** Update to refer to people who reach the cap on costs. **Paragraphs 20 and 22 (Additional costs or 'top-up' payments):** Replace "…a third party, or in certain circumstances the person needing care and support…" with "the person needing care and support, or a third party…" to reflect new first party top-up arrangements. **Paragraph 39 (First person top-ups):** Delete paragraph to reflect that the restrictions on first party that are listed are being removed and top-up arrangements will be available to first parties, subject the requirements of the Choice of Accommodation Regulations.
Annex B: Treatment of capital	**Before Paragraph 1:** Insert new paragraph indicating that where a person has reached the cap on care costs, the local authority may not charge them for their care and support [and that they cannot charge people in care homes against their capital to cover their daily living costs once they have reached the cap]. **Paragraph 2:** Update to refer to the guidance chapter on the cap on care costs. **Paragraphs 3, 16 (Calculating the value of capital) and 24 (Capital limits / upper and lower capital limits):** Update to reflect new upper limits and lower capital limit for means-tested support. **Paragraphs 25 and 27 (Tariff income):** Update to refer to the "relevant upper capital limit". **Paragraph 27 (Tariff income):** Update to refer to the "relevant upper capital limit".

Chapter	Additions/Amendments Required
Annex B: Treatment of capital *(continued)*	**Below Paragraph 27 (Tariff income) – Example of tariff income:** Update to refer to the "relevant upper capital limit". Update to reflect new lower capital limit for means-tested support **Below Paragraph 31 (Notional capital) – Example of diminishing notional capital:** Update to reflect the new upper capital limits for means-tested support. **Below Paragraph 33 (Capital disregarded) – Example of disregarded capital:** Update to reflect the new lower capital limit for means-tested support. **Paragraph 45 (12-week property disregard):** Update to refer to the "relevant upper capital limit".
Annex C: Treatment of income	**Paragraph 1:** Update to indicate that where a person has reached the cap on care costs, the local authority may not charge them for their care and support and that a person in a care home remains responsible for their daily living costs for which a local authority may charge against the person's income subject to a financial assessment. **Paragraph 46 (Minimum income guarantee):** Update to reflect the phased increase in minimum income guarantees for working age adults (25-Pension Credit qualifying age) (to reach parity with the MIG for people of Pension Credit qualifying age from 2019).
Annex F: Temporary residents in care homes	Before Paragraph 2: Insert a new paragraph indicating that where a person has reached the cap on care costs, the local authority may not charge them for their care and support but that a person in a care home remains responsible for their daily living costs, in respect of which the local authority may, subject to a financial assessment, charge them out of their income.
Annex K: Repeals and revocations	Rename "Repeals, revocations and amendments". Retain list of legislation repealed/revoked and guidance cancelled at 1 April 2015 and provide details of the Care and Support (Cap on Care Costs etc.) Regulations and the amendments they make to the Charging Regulations and Choice of Accommodation Regulations in implementing the 2016 reforms.
Glossary	Include definitions relating to the cap on care costs including: cap on care costs / the cap, care account, accrued costs, care account statement, independent personal budget, daily living costs etc.
General	Update the index and references within the guidance to reflect insertion of new chapters and paragraphs.

14. Glossary of Terms: Funding Reform

Cap on care costs/the cap	A limit to the amount anyone will have to pay to meet their eligible care and support needs in their lifetime from April 2016. Based on what the cost to the local authority is, or in the case of self-funders would be, to meet a person's eligible care and support needs.
Personal budget	For people whose eligible care and support needs are met by the local authority, including those who have asked the local authority to meet their needs and those who have reached the cap. Sets out the amount the local authority pays towards meeting the person's eligible care and support needs and the contribution the person must make.
Independent personal budget	For people who meet their own eligible care and support needs. Sets out the amount the local authority would pay to meet a person's eligible needs if the local authority were to meet those needs.
Care account	A record maintained by a local authority to track a person's progress towards the cap, based on information from their personal budget or independent personal budget.
Care account statement	A statement provided by the local authority to a person providing information on the person's progress towards the cap and other relevant information.
Daily living costs	A notional amount, set down in regulations, as a contribution towards daily living costs (e.g. accommodation and food) for people in care homes.
Working age adult	A person aged 18 up to state pension age.
Upper capital limit	The level of a person's assets below which they become eligible for means-tested local authority financial support.

Lower capital limit	The level of a person's assets below which they are no longer required to contribute towards the costs of their care and support from their assets and contribute from their income only.
Tariff income	The contribution to care and support costs that a person must pay in respect of assets falling between the upper and lower capital limits.
Extension to the means test	Increases to the capital limits for means-tested financial support making more people eligible for local authority financial support.
Eligible care and support needs/ eligible needs	Care and support needs which meet the eligibility criteria under Section 13 of the Care Act 2014.
Financial assessment	An assessment carried out by a local authority to establish what a person can afford to pay towards the costs of meeting their eligible care and support needs.
Minimum income guarantee/ Minimum guaranteed income	The minimum amount a person receiving care outside a care home must be left with each week after charging for care and support.
Personal expenses allowance	The minimum amount a person in a care home must be left from their income after charging for care and support.
Top-up payments/"top-ups"	An additional amount that a person with eligible care and support needs who receives local authority financial support or a third party may choose to pay for a preferred choice of accommodation for the person.

Part 2: Appeals

This section should be read in conjunction with the appeals policy proposals document at chapter 16 of this consultation document

15. Appeals

Introduction

15.1. The appeals policy is at an earlier stage of development than the rest of this consultation and we are therefore seeking your views on the need for a new system and on policy proposals. The consultation feedback will inform the need for an appeals system and the drafting of the regulations and guidance as we work towards implementation in April 2016.

15.2. As the Care Act 2014 progressed through Parliament, there was support to introduce a means of challenging decisions made under the Act. In 2014, the Government introduced an amendment which consisted of regulation making powers which would in turn enable a system ("the appeals system") to be set up under which decisions taken by the local authority under Part 1 of the Act might be challenged and reviewed. This consultation process is part of continued engagement on the potential appeals policy.

15.3. The principles of this proposed appeals system have been set up to promote:

- *Early resolution*

The appeals system aims wherever possible, to promote early and quick resolution. The local authority should aim to work with the person to resolve issues early on and prevent an appeal escalating. The local authority should, through discussion, and being open and constructive, work with the individual to resolve any issues as early as possible. An appeal should only progress further where early resolution methods have been attempted and fully explored involving the person throughout.

- *Communication*

As part of the appeals system, clear and regular communication between the local authority and the person at every stage is important in promoting open dialogue. Effective communication will ensure that the local authority and the person are clear on how decisions have been reached, avoid misunderstandings and provide opportunity for the person involved to have their views heard. The local authority should listen to the person making an appeal to understand if there are any issues that were missed or require further consideration.

- *Fairness*

The appeals system will focus on providing fairness for those that wish to challenge specific decisions under part 1 of the Care Act 2014.

- *Equality*

A key principle is that the appeals process promotes equality in that all people regardless of their personal circumstance can use the care and support appeals system to appeal certain decisions.

- *Independence*

The appeals system provides that there is an independent review, by an impartial third party to review the local authority's original decision.

- *Accessibility*

The appeals system has been set up to promote accessibility for all people including those acting on behalf of appellants.

- *Proportionality*

Ensuring that the appeals system is not an overly burdensome process for people who use it or those who administer the process is vital for a proportionate, efficient appeals process.

15.4. The existing main means of redress for a person in the care and support system who wishes to challenge a local authority decision has been to utilise the complaints process.[12] Where a person or the person acting on their behalf wishes to challenge a decision, the local authority reviews the decision for early local resolution. If a person is not satisfied with the local authority's actions to resolve the complaint, they are informed of their right to take the matter to the Local Government Ombudsman (LGO) who can review the case on procedural issues. In addition, a person has the option of seeking legal advice.

15.5. The Government acknowledges there may be occasions where a formal legal means of redress may be more appropriate for a person wishing to appeal, such as matters involving contractual law.

15.6. There is not currently a formalised appeal structure within care and support which was highlighted in evidence following the Law Commission's consultation[13] on Care and Support as well as the Joint Committee in its report on the draft bill of the Care Act 2014. Given the importance of care and support decisions to enable people to achieve the life outcomes they want, we are consulting on the need for an appeals system and a proposed appeals system for care and support.

Questions for consultation

11. Do you think there is a need to introduce a new appeals system to allow people to challenge care and support decisions? Please state yes or no along with any rationale.

12 The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009

13 Law Commission, Adult Social Care: Consultation Analysis (2011) paras 14.20 to 14.31

15.7. The Government is committed to ensuring that accountability is a key part of the Care Act 2014 reforms. At a local level, a person could have the option to appeal certain decisions in relation to their care and support. The appeals system could strengthen local accountability, for certain care and support decisions, ensuring that local level decisions can be effectively reviewed and challenged.

Questions for consultation

12. Do you think that the appeals reforms are a priority for reforming care and support redress? Please state yes or no along with any rationale.

15.8. The Appeals policy proposals are for a 3 stage process, with the emphasis on early resolution, wherever possible:

a. The early resolution stage – where the local authority facilitates open and constructive dialogue with the person to attempt to resolve the issue locally and early.

b. The independent review stage – the local authority appoint an Independent Reviewer to review the local authority's original decision and make a recommendation.

c. The local authority decision – the local authority makes a decision considering the Independent Reviewer's recommendation.

15.9. The early resolution stage of the proposed appeals process is there to ensure that a person wishing to have a decision reconsidered can discuss this with the local authority. The local authority should listen to the person and determine if there is a solution and, wherever possible, work towards early resolution.

15.10. Where early resolution is not possible, the appeals system could provide a relatively low cost solution as compared with more formal legal redress. It is intended to cover specific care and support decisions under Part 1 of the Care Act 2014.

15.11. In instances where early resolution has been fully explored without resolution, the independent review stage of the care and support appeals system will provide a check and balance to the system. This stage will ensure a recommendation is made, by an impartial third party, having reviewed the person's appeal and the local authority's rationale in its decision making. The local authority must consider this recommendation in making its final decision.

Scope of the Appeals System

15.12. The government would welcome views on the scope of a potential appeals system. The scope shall determine which specific care and support decisions in respect of individuals, under part 1 of the Care Act 2014, will be included within a potential appeals system.

15.13. The care and support appeals system proposed is a not a formal judicial process. The appeals process proposed aims to encourage early resolution at a local level, wherever possible. The appeals process is there to promote an inquisitorial, as opposed to an

adversarial approach, taking account of the local authority decision, the relevant regulations, guidance and local policy.

15.14. An appeal under the proposed system would relate to a **specific care and support decision(s)** in relation to part 1 of the Care Act 2014. Please refer to paragraph 15.17 to see what would constitute an appeal under the proposed new care and support appeal system. Please refer to the case study examples to see examples of an appeal.

Appeal – case study examples

Please note: It may not be immediately clear that a person is seeking to make an appeal either because the word is not used or the person is not aware of the process. The local authority has responsibility to help identify when an appeal is being made.

Some examples of Appeals:

- "I believe the decision that I am not eligible for care and support is incorrect. I would like the decision reviewed."
- "I am not happy with my personal budget allocated in my care plan – it is not sufficient to meet my needs and I want to contest this."
- "I do not agree that the costs in my independent personal budget would be sufficient to meet my needs, I want this reviewed."

15.15. In the scope list, please see paragraph 15.17, we have specified the sections we are currently considering to be within the scope of the appeals system. The Government has worked with stakeholders to consider options of what should be included in or out of scope of the care and support appeals policy. The options considered were:

a. A broad scope appeals system that covered up to 16 areas under part 1 of the Care Act 2014 from a list of initial suggestions from stakeholders from our first engagement.

b. A narrow scope appeals system that included a narrow range of areas to appeal, e.g. just limited to issues around eligibility.

c. A reasonably broad scope for the appeals system that was focused on 9 key areas relating to care and support decisions under part 1 of the Care Act 2014. This was following further stakeholder feedback and input on the scope of the appeals system.

15.16. Option c is being proposed for this consultation; this presents a reasonably broad range of areas under part 1 of the Care Act 2014 but with a focus on key specific decisions within these areas. However, we are seeking further views to further develop our evidence base and would welcome feedback.

15.17. Set out in the table below are the areas that we have proposed to be in scope for the care and support appeals system. Please refer to the Care Act 2014[14] and explanatory notes to view each specific section referred to:

Section	Area of Appeal
Assessment (Section 9)	The local authority's decision as to the format of the needs or carers assessment eg. should it be face-to-face compared with a phone assessment
Eligibility (Section 13)	A decision by the local authority as to whether the person's needs are eligible for care and support or whether a carer's needs are eligible for support.
Care planning (Section 25)	The needs that the local authority is going to meet and how it is going to meet them
Direct payments (Section 31)	Decisions by the local authority for direct payments to the person or nominated/authorised person
Personal budgets (Section 26)	The amount that the local authority deems is appropriate to meet eligible needs
Independent personal budgets and care accounts (Section 28)	The costs which count towards the cap for a person meeting their own needs
Deferred payment agreements (Section 34)	Decisions about how much local authorities allow people to defer
Transition for children to adult care and support (Section 58)	The local authority's decision to refuse a transition assessment to a child, young carer, or child's carer
Independent advocacy support (Section 67)	Decisions by the local authority as to whether a person should have an independent advocate

Questions for consultation

13. Do you agree the areas identified should be within the scope of the appeals system? Are there any other areas under Part 1 of the Care Act 2014 that should be included?
14. Do you think that charging should be part of the adult social care appeals system? Please state yes or no along with any rationale.

[14] http://www.legislation.gov.uk/ukpga/2014/23/contents

Initial assessment of an appeal, or where a person expresses dissatisfaction

15.18. In keeping with stakeholder feedback, we propose that following the receipt of an appeal against a local authority decision, the local authority has 3 working days to send notification to the person that their appeal is being considered. The local authority should also provide generic advice, possibly by leaflet, on the appeals process to the person making the appeal.

Early Resolution

15.19. The early resolution stage is an opportunity for the local authority to:

a. Review the original decision to ensure it was reasonable with reference to relevant regulations, guidance, facts and local policy;

b. Satisfy itself that it is prepared to justify the original decision at the independent review stage, if the appeal progresses to this point.

c. Take action where it considers it should make some change to the original decision, to attempt to resolve the case early, thus avoiding the appeal going to the independent review stage. This may include revisiting an earlier stage of the care and support process (such as assessment).

15.20. The local authority should ensure that there is a culture of open dialogue with the person to talk through specific issues that may have arisen. The local authority should listen to feedback and clearly and simply articulate reasoning behind decisions to avoid misunderstanding. This process enables both the local authority and the person to discuss, listen and wherever possible, reach early resolution.

15.21. Where attempts at early resolution by the local authority and person have been exhausted, or the person making the appeal is not satisfied with an offer of early resolution from the local authority, the appeal should progress to the independent review stage on the next working day. If, however, the person making the appeal does not wish to proceed with the appeal they have the right to cease the appeal at any time.

Independent Review Stage

15.22. The independent review stage is where the local authority appoints an Independent Reviewer to review their decision. The Independent Reviewer's role is to review a care and support appeal between the person making the appeal and the local authority.

15.23. In collaboration with stakeholders we considered the person specification for the role of an Independent Reviewer. The options considered were:

a. Whether experience and a background in care and support would be most important to this role.

b. Whether the role should be carried out by a person with experience in reviewing and determining decisions.

c. Should this be another type of person specification but not option a or b?

15.24. We are seeking further evidence through this consultation to build our evidence base and would welcome views. As part of option a, proposed for this consultation, feedback from stakeholders suggested that some experience in care and support would be useful in carrying out the Independent Reviewer role. We are proposing that when appointing the Independent Reviewer, the local authority should consider if the Independent Reviewer:

a. Has no conflict of interest in reviewing the appeal. For example, the Independent Reviewer should not be related to, or have a relationship with person(s) who have made decisions relating to the appeal.

b. Act with impartiality and integrity in their conduct when carrying out a review of an appeal.

c. Has sufficient knowledge of the Care Act 2014 and care and support.

d. Is able to review and appraise matters and facts relating to an appeal to draw up recommendations.

Questions for consultation

15. Do you have suggestions as to the expertise, knowledge and person specification for the role of an Independent Reviewer?

15.25. In working with stakeholders, we considered who should be appointing the person carrying out the Independent Review role. The options considered were:

a. The local authority appointing the Independent Reviewer role.

b. Another body, not the local authority, appointing the Independent Reviewer role. Suggestions from stakeholders put forward a number of different bodies to appoint the Independent Reviewer role.

15.26. For this consultation we are seeking further views on who should be appointing the Independent Reviewer role. As part of option a, proposed for this consultation, the person specification sets out that the Independent Reviewer must act with impartiality and integrity in carrying out their review. The local authority must also ensure that the Independent Reviewer has no conflict of interest with any local authority decision makers and are appointed outside the local authority concerned.

Questions for consultation

16. Do you think the local authority or another body should be appointing the Independent Reviewer? If another body, please specify.

15.27. The Independent Reviewer must not have been an employee of the local authority for the past 3 years, prior to being appointed.

Questions for consultation

17. Do you think a 3 year gap in the Independent Reviewer's employment from the local authority concerned is sufficient to provide independence, or should this period be longer, or should they never have been previously employed by the local authority concerned?

15.28. The Independent Reviewer may, where necessary, call upon relevant professional expertise, such as medical or social work expertise to assist them in reaching their recommendation. We are proposing that the Independent Reviewer has 2 options when reviewing an appeal:

a. To review the case on the papers presented.

b. Where the Independent Reviewer deems there is merit in having a meet in person review with the local authority and person making the appeal, the Independent Reviewer can request both parties attend the review.

15.29. The Independent Reviewer has discretion to request a meet in person review with all parties present be held, based on:

a. A demonstrable value in a meet in person review that could not be just as effectively reviewed on paper.

b. Whether the Independent Reviewer has sufficient information already to determine their decision and therefore a meet in person review is not required.

c. Due consideration of whether the person making the appeal or local authority have requested to meet in person to review the appeal with the Independent Reviewer.

d. A consideration of each of these factors should enable the Independent Reviewer to determine whether a meet in person review is required.

15.30. Working with stakeholders, we considered the Independent Reviewer's role in determining their recommendation and we are seeking further views through this consultation. Following stakeholder feedback, it was suggested that given a significant element of decisions are likely to have been related to professional judgement, that the Independent Reviewer's role is to review the local authorities decision to ensure it was reasonable with reference to:

a. Relevant regulations and guidance

b. Facts of the appeal being considered

c. Take account of local policy

Questions for consultation

18. Do you agree that the Independent Reviewer's role should be to review decisions with reference to relevant regulations, guidance, facts and local policy to ensure the local authority's decision was reasonable?

15.31. Working with stakeholders we posed the question as to how we can promote consistency in decision making. Stakeholder responses suggested that Independent Reviewers could work in pools, to check for consistency. We are using this consultation to seek further views on how we might be able to promote consistency in decision making and would welcome your feedback.

Questions for consultation

19. How do you think we can promote consistency in decision making for care and support appeals?

Appeals Timescales

15.32. Following a range of stakeholder views on the appropriate timescales to process appeals the options considered for each review stage were:

a. Greater than 30 working days
b. 30 working days with option to extend for complex cases
c. Less than 30 working days

15.33. We are proposing option b for this consultation. There are 6 weeks for each stage with the option to extend for complex cases providing a framework with some flexibility where necessary. We are proposing as a general principle that the local authority should aim to resolve an appeal in the shortest practical timescale while ensuring they have taken sufficient time to effectively review all information presented. There may be some appeals that necessarily require further time to adequately explore and resolve. Where the local authority or the Independent Reviewer believes their review stage will require more than 30 working days each, they must:

a. Explain to all relevant parties why the case is complex and further time beyond the 30 working days is required to review the case.
b. Seek to work with all relevant parties to agree the shortest timescale possible to review the appeal.
c. Write to all relevant parties to indicate when they can expect a response.
d. Consider the individual's circumstance and whether they are practically able to shorten timescales and review information effectively, if the person's distress or condition may indicate an expeditious response is required.

15.34. We are seeking further views as part of this consultation, with the following timescales proposed to process appeals:

a. Initial assessment of an appeal or where a person expresses dissatisfaction – the local authority has 3 working days to send notification to the person expressing dissatisfaction that their dissatisfaction is an appeal.

b. Early resolution stage – 30 working days for the local authority to resolve the case early or, where it's clear early resolution is not possible for the appeal to progress without delay to the independent review stage. This can be extended by the local authority where the person's involvement is delayed or the appeal is complex.

c. Independent review stage – 30 days for the Independent Reviewer to review the appeal and with an option, where necessary, to have a meet in person review before the end of this time period. This can be extended by the Independent Reviewer where the person's involvement is delayed or the appeal is complex. The Independent Reviewer then has
10 working days to consider, write and make a recommendation on the appeal.

d. The local authority then has 5 working days to consider the recommendation and write to the person making the appeal and the Independent Reviewer to notify them of the outcome.

e. The proposed system is that appeals can be considered within 12 months of the decision with discretion for the local authority to go beyond the 12 months if they feel there was a valid reason for the appeal not being lodged within this time period from when the Appeal policy commences.

Questions for consultation

20. Do you think the timescales proposed to process appeals are right? If not, which timescales would be more appropriate?

Funding

15.35. A key objective of introducing the Appeals system is to save time and money for both the person and local authority, particularly when compared with legal means of redress in resolving disputes in adult care and support. Instead, the appeals system encourages a non-adversarial alternative to legal dispute resolution with a specific emphasis on avoiding potential cost accumulation by encouraging early resolution.

15.36. The administration of the appeals system will be funded by the Department of Health which will sit alongside funding for care and support to Local Authorities for meeting the local population's care and support needs. Where an appeal results in overturning the original decision, the local authority should be responsible for any remedial action. Remedying any such shortfall in meeting the local authority's existing duties would not be a new burden and it would not be appropriate for central Government to provide additional funding for these costs. To do so would in effect duplicate funding where a local authority has not met their statutory

duties, having already received funding to meet the local population's care and support needs.

Questions for consultation

21. Do you feel that the Appeals system, as set out, will aid the early resolution of disputes and thus help avoid costs and delays associated with challenging decisions in the courts? Please state yes or no and any rationale.
22. In the accompanying Impact Assessment we have set out the costs to administer the Appeals system. We would welcome your comments on this and any evidence that you are able to provide.

Appeals Policy Proposals

16. Appeals Policy Proposals

These appeals policy proposals have been drafted with input from a range of stakeholders, representing different groups, working collaboratively. This document has been presented in the style of guidance to structure the appeals policy proposals and facilitate comments. However, this is not the final policy but rather appeals policy proposals setting out principles and proposals to invite comment as part of our first consultation on the appeals policy. We have also posed some questions in the appeals consultation document where we would welcome your views. We have indicated the stakeholder feedback in this document but further detail on options considered is contained within the consultation document. Your feedback will inform and help to develop the appeals policy.

This section covers:

- Introduction;
- Explanation of the terms we have used in this document;
- Overview of the appeals process;
- Scope of the care and support appeals system

Introduction

16.1. The principles of the appeals system have been set up to promote:

- *Early resolution*

The appeals system aims wherever possible, to promote early and quick resolution. The local authority should aim to work with the person to resolve issues early on and prevent an appeal escalating. The local authority should, through discussion, and being open and constructive, work with the individual to resolve any issues as early as possible. An appeal should only progress further where early resolution methods have been attempted and fully explored involving the person throughout.

- *Communication*

As part of the appeals system, clear and regular communication between the local authority and the person at every stage is important in promoting open dialogue. Effective communication will ensure that the local authority and the person are clear on how decisions have been reached, avoid misunderstandings and provide opportunity for the person involved to have their views heard. The local authority should listen to

the person making an appeal to understand if there are any issues that were missed or require further consideration.

- *Fairness*

The appeals system will focus on providing fairness for those that wish to challenge specific decisions under part 1 of the Care Act 2014.

- *Equality*

A key principle is that the appeals process promotes equality in that all people regardless of their personal circumstance can use the care and support appeals system to appeal certain decisions.

- *Independence*

The appeals system provides that there is an independent review, by an impartial third party to review the local authority's original decision.

- *Accessibility*

The appeals system has been set up to promote accessibility for all people including those acting on behalf of appellants.

- *Proportionality*

Ensuring that the appeals system is not an overly burdensome process for people who use it or those who administer the process is vital for a proportionate, efficient appeals process.

Explanation of the terms we have used in this document

16.2. In these appeals policy proposals, both the person making the appeal and an appeal made on behalf of the person are referred to as 'person making the appeal' for ease of reference. The individual may appeal in person with or without support; or the appeal may be made on their behalf by someone else: a family member, a friend, or anyone who has the consent of the person (if they have capacity to consent), or who are doing so in their best interests (if they lack capacity). An independent advocate as referred to under section 67 of the Care Act 2014, and may also be the person making the appeal on behalf of the person being cared for.

16.3. An "appeal" is a process to review a decision made by a local authority that affects an individual in relation to part 1 of the Care Act 2014 that falls within the scope of the appeals regulations (see paragraph 16.6) from April 2016 onwards.

16.4. "Independent reviewer" is the person appointed by the local authority to review the decision and then make a recommendation to the local authority. The Independent Reviewer may, where necessary, call upon relevant professional expertise, such as medical or social work expertise to assist them in reaching their recommendation.

Overview of the appeals process

16.5. The Appeals policy proposals are for a 3 stage process, with the emphasis on early resolution, wherever possible:

a. The early resolution stage – where the local authority facilitates open and constructive dialogue with the person to attempt to resolve the issue locally and early.

b. The independent review stage – the local authority appoint an Independent Reviewer to review the local authority's original decision and make a recommendation.

c. The local authority decision – the local authority makes a decision considering the Independent Reviewer's recommendation.

Scope of the care and support appeals system

16.6. We are seeking views as part of this consultation on the scope of the Appeals system, please refer to questions 13 and 14 in the consultation document, we would welcome your views. We are proposing that the appeals system will cover appeals of individual decisions relating to the following sections of the Care Act 2014 (please refer to the Care Act 2014 explanatory notes for an explanation of each area):

Section	Area of Appeal
Assessment (Section 9)	The local authority's decision as to the format of the needs or carers assessment eg. should it be face-to-face compared with a phone assessment
Eligibility (Section 13)	A decision by the local authority as to whether the person's needs are eligible for care and support or whether a carer's needs are eligible for support.
Care planning (Section 25)	The needs that the local authority is going to meet and how it is going to meet them
Direct payments (Section 31)	Decisions by the local authority for direct payments to the person or nominated/authorised person
Personal budgets (Section 26)	The amount that the local authority deems is appropriate to meet eligible needs
Independent personal budgets and care accounts (Section 28)	The costs which count towards the cap for a person meeting their own needs
Deferred payment agreements (Section 34)	Decisions about how much local authorities allow people to defer

Section	Area of Appeal
Transition for children to adult care and support (Section 58)	The local authority's decision to refuse a transition assessment to a child, young carer, or child's carer
Independent advocacy support (Section 67)	Decisions by the local authority as to whether a person should have an independent advocate

This section covers:

- Accessibility and advocacy;
- Information and advice on the appeals system;
- Who may lodge an appeal?

Accessibility and Advocacy

16.7. Stakeholders emphasised the importance of ensuring that the appeals system is accessible and provides advocacy services where necessary. We are proposing that the local authority must ensure all accessibility and advocacy requirements of the Care Act 2014 related advocacy guidance and statute are applied[15] equally to the appeals process.

16.8. In addition, flexibility in raising an appeal was raised as important to a person considering appealing. We are proposing that the local authority must provide a variety of means to lodge an appeal that takes into account the person making the appeal's individual circumstance and way in which they might appeal.

Information and advice on the appeals system

16.9. Feedback from engagement with stakeholders indicated the importance of effective communication for the appeals process. As part of the appeals policy we are proposing that effective communication between the local authority and the person should be an integral part of the appeals process. This is to ensure that at every stage there is the opportunity for open dialogue and resolution. Effective communication will help to facilitate a mutual understanding of a situation and promote early resolution before views become entrenched.

16.10. The importance of the provision of information and advice was emphasised by stakeholders to inform people using the care and support process. We are proposing that Local authorities must provide information and advice about decisions that can be subject to appeal (i.e. about what is in/out of scope) and on the appeals process and opportunities to support early resolution. The information and advice must be provided in an accessible format for anyone who may make an appeal. An accessible format may include information provided on the council's website, leaflets or other suitable material, such as 'easy read' formats.

[15] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf (please refer to chapter 7)

The information and advice provided by the local authority should include both generic and specific advice and should be clear and easy to understand.

16.11. Where a person presents themselves to the local authority to appeal or are dissatisfied and not knowing it may be an appeal, we are proposing that the local authority should use this opportunity to start an open dialogue with the person. The local authority may arrange to meet with the person to discuss any issues further in an open and constructive way once an appeal has been identified. As far as possible, simple, clear and early communication will help to promote an understanding of the real situation rather than the perceived situation.

16.12. The local authority should also provide information on the appeals process, helping to explain this as necessary to assist the person in understanding the process. The individual's needs or requirements must be taken into account so that the appeals documentation is accessible to people with sensory impairments, people with learning disabilities, and people for whom English is not their first language.

16.13. Feedback from engagement with stakeholders emphasised the importance of involving others, such as loved ones, in the appeals process. We are proposing, given that appeals are often made during a time that is demanding for an individual and their loved ones, that the local authority must ensure that the person making the appeal is kept informed about their appeal throughout the process and informed in writing at each decision making stage. The local authority must write explaining the outcome of their appeal as well as a rationale explaining the reasoning for the decision. The local authority may wish in addition to either meet with the person or offer to call a person making the appeal to inform them of the outcome of their review after each decision point within the appeals process.

16.14. Carers and families often assist people in making decisions about their care. The local authority should therefore provide carers, independent advocates or anyone else the person reasonably requests to have all the information that would otherwise be given to the person making the appeal.

16.15. The local authority should ensure that the person making the appeal is aware they have the right to withdraw their appeal if they wished to do so at any time during the process, they are not bound to continue until the appeal goes through the full process.

Who may lodge an appeal?

16.16. Engagement with stakeholders suggested that there should be a range of people that could access and present an appeal on behalf of a person. We are proposing that the appeal system is open for any individual that comes into contact with the local authority and has a decision made under a section of the Care Act 2014 that falls into scope of the care and support appeals regulations (see paragraph 16.6). This means recognising that people with dementia and people with learning disabilities, people in care homes and house-bound people living in the community all can access the appeal system. It must be inclusive and as easy to access as possible.

16.17. An appeal may be made in person with or without support; or the appeal may be made on their behalf by someone else: a family member, a friend, or anyone who has the consent of the person (if they have capacity to consent), or who are doing so in their interest

(if they lack capacity). An appeal may also be made by an independent advocate. This may be an advocate appointed under section 67 of the Care Act 2014 for people who have substantial difficulty in being involved with assessments, care planning or care reviews; it may be an independent advocate appointed under the Mental Capacity Act, or any other independent advocate.

This section covers:

- Lodging an appeal;
- Initial assessment of an appeal, or where a person expresses dissatisfaction

Lodging an appeal

16.18. A person can lodge an appeal regarding a decision made by the local authority that is specified in the scope of the appeals system (please see paragraph 16.6). Local authorities should encourage people to come forward with an appeal as soon as possible following a decision that is in scope of the appeals regulations. For example, the local authority should advise people of their appeal rights after each applicable decision. We are proposing that the appeals process should consider cases from within 12 months of the original decision that falls within scope of the regulations.

16.19. The local authority may exercise discretion to consider cases beyond the 12 month period should the local authority consider that a person making the appeal had good reason for not appealing within the 12 month period.

Initial assessment of an appeal, or where a person expresses dissatisfaction

16.20. Broadly speaking, there are two possible routes to initiate an appeal. Firstly, where a person has made clear they wish to appeal a specific decision. Secondly, where a person has expressed dissatisfaction but is not overtly aware the dissatisfaction may be an appeal.

16.21. The importance of capturing information correctly and first time was raised by stakeholders. We are proposing, where an appeal is identified it's the local authority's responsibility to explain this to the person and suggest the person capture their grounds for appealing against a decision reached by a local authority, for example this could be achieved by supplying a standardised template to collect the necessary information. The local authority should consider the person's needs and that any appeals documentation is accessible to the sensory impaired, people with learning disabilities, and people for whom English is not their first language. The local authority may also offer to record the information that is presented by the person making the appeal.

16.22. The local authority must ensure that they obtain the necessary information early in the process to consider how to respond to an appeal. Stakeholder engagement on this emphasised the importance of flexibility in capturing an appeal. We are proposing capturing

an appeal could be achieved using a standardised form or template to collect information. However, the local authority should ensure they remain flexible in how they receive the information for an appeal, whether it's over the phone, electronically, in writing (using a standard template or not) or in person. The specific reasons for an appeal should be explored and captured. The form should include a written statement from the person making the appeal setting out specifically what reasons a person is dissatisfied with what local authority decisions and why. This could involve the local authority asking, for example, what are the specific elements of care plan a person is dissatisfied with and what the underlying reasons are. This will help to capture not just dissatisfaction but what is causing the dissatisfaction. The local authority should prepare a written statement setting out its position in relation to the appeal.

Appeal – case study examples

Please note: It may not be immediately clear that a person is seeking to make an appeal either because the word is not used or the person is not aware of the process. The local authority has responsibility to help identify when an appeal is being made.

Some examples of Appeals:

- "I believe the decision that I am not eligible for care and support is incorrect. I would like the decision reviewed."
- "I am not happy with my personal budget allocated in my care plan – it is not sufficient to meet my needs and I want to contest this."
- "I do not agree that the costs in my independent personal budget would be sufficient to meet my needs, I want this reviewed."

16.23. The local authority should ensure that as far as possible they have checked the records relating to the appeal are of sufficient detail to be processed at the early resolution stage. For example, that the local authority is satisfied that they have captured the specific reasons for an appeal to review its original decision.

16.24. A written notification should be sent from the local authority to a person expressing dissatisfaction within 3 working days notifying them if their dissatisfaction is an appeal. The local authority may wish to provide generic advice in this letter, such as an accompanying leaflet outlining the appeals process.

This section covers:

- Early resolution;
- Independent review stage;
- The local authority resolution stage;
- Appeals policy commencement

Early resolution

16.25. The local authority, as part of its specific duties under the Care Act 2014 and associated guidance, should already be implementing processes designed to minimise dispute, and one that pro-actively seeks to resolve differences locally as part of day-to-day business. The appeals process should be seen as last resorts for redress, after exhausting every other opportunity to resolve any issues. Stakeholder engagement indicated that early, local resolution where the local authority involves and works with the person is vital in promoting an effective early resolution appeal system.

16.26. Following feedback from stakeholders we are proposing, for the early resolution stage, the local authority should appoint a suitably empowered individual within the local authority to review the original decision. This individual should not be the original decision maker. This appointed person should review statements from both the person making the appeal and the local authority and should have appropriate knowledge related to social care to review the original decision. For example, this could be someone from a different social work team that made the original decision. The early resolution stage is an opportunity for the local authority to:

- Review the original decision to ensure it was reasonable with reference to relevant regulations, guidance, facts and local policy.
- Satisfy itself that it is prepared to justify the original decision at the independent review stage, if the appeal progresses to this point.
- Take action where it considers it should make some change to the original decision, to attempt to resolve the case early, thus avoiding the appeal going to the independent review stage. This may include revisiting an earlier stage of the care and support process (such as assessment).

16.27. Engagement with stakeholders on timescales suggested a range of timescales to process appeals; we are seeking further evidence in this, please refer to the consultation document, question 20, to put forward your views. We are proposing, as a general principle the local authority should aim to resolve an appeal in the shortest timescale that is practically possible to effectively review the information presented. The local authority should aim to resolve the early resolution stage within 30 working days, wherever possible. However, there may be some cases that necessarily require further time to adequately explore and resolve or the person's involvement may be delayed for reasons such as ill health. Where the local authority believes the early resolution stage will require more than 30 working days, they must:

a. Explain to the person making the appeal why the case is complex and further time beyond the 30 working days is required to review the case.

b. Seek to work with the person making the appeal to agree the shortest timescale possible to resolve and write to explain to the person making the appeal when they can expect a decision.

c. Consider the person's circumstance and whether they are practically able to shorten timescales and review information effectively, if the person's distress or condition may indicate an expeditious response is required.

16.28. If the local authority decides to attempt to resolve the appeal early, either partially or fully, it should make every attempt to complete this within the 30 working day period, except for complex appeals (see paragraph 16.27 above).

16.29. We are proposing, when the early resolution process is complete, the local authority should:

a. Notify the person in writing of the outcome of the early resolution stage, fully explaining the decision reached. In addition, the local authority may wish to follow up the written letter to explain in person or by telephone to the person making the appeal to explain the decision at the early resolution stage.

b. In cases where the local authority makes an offer to seek early resolution; the local authority should offer the proposed resolution to the person within the 30 working day deadline. For example, the local authority may decide to offer either a partial or significant change to its original decision. The local authority should communicate with the person making the appeal to establish if they are content with the proposed resolution, having exhausted all attempts at resolving the appeal, or whether they wish to proceed to the next stage of the appeal process.

c. Where the appeal is confirmed to be progressing to the independent review stage, the local authority should inform the person making the appeal what they can expect. This includes providing information on what the independent review stage may require of the person making the appeal. This can include an optional meet in person review with the Independent Reviewer or via video teleconference, requests for further information where necessary to help resolve the appeal, as well as a date for the case to be presented to the Independent Reviewer.

d. Explain to the person making the appeal that there is a potential meet in person review with the Independent Reviewer. The local authority should make clear that the Independent Reviewer takes the ultimate decision on whether there will be a meet in person review. This is not mandatory but offers the person making the appeal the opportunity to put their view forward directly. The local authority should ask the person making the appeal if they would like a meet in person review and add this request to the papers submitted to the Independent Reviewer.

16.30. Where the local authority was unable to resolve the appeal at the early resolution stage or the local authority chose to proceed to the independent review stage, the local authority must then appoint an Independent Reviewer to chair the independent review stage. Stakeholder feedback suggested the importance of good records that will enable the Independent Reviewer to make an informed recommendation. The local authority should ensure that there is some level of check or assurance process that the information in the written statements and other relevant material to be sent to the Independent Reviewer, is sufficient for the Independent Reviewer to make a recommendation on.

16.31. The local authority should assume that the appeal progresses to the independent review stage unless the person making the appeal has confirmed that they do not wish to progress with the appeal.

Independent review stage

16.32. We are proposing that where new written information is presented at the independent review stage that was not considered at the early resolution stage, the appeal and information should be sent back to the early resolution stage to consider this new written information. However, information presented orally at the meet in person review emerging from questions from the meet in person review does not need to be sent back to the early resolution stage.

16.33. Feedback from stakeholders suggested that pooling Independent Reviewers may help to provide consistency in decision making. Please refer to the consultation document and question 19, where we would welcome your views. We are proposing that local authorities may consider working with other local authorities to setup pools of Independent Reviewers. In recruiting Independent Reviewers, local authorities should consider the potential appeals that may emerge and recruiting suitable expertise for the role, for example retired social workers or other roles as appropriate.

16.34. We are seeking further views as part of the consultation; please refer to question 16, on who appoints the Independent Reviewer. We are proposing that the Independent Reviewer is appointed by the local authority and should not have been a current or past employee of the local authority for 3 years prior to being appointed. We are asking a question on this in the consultation document, please refer to question 17 in the consultation document.

16.35. We are seeking views as part of the consultation on the person specification for the role of Independent Reviewer; please refer to question 15 in the consultation document. We are proposing, when appointing the Independent Reviewer, the local authority may wish to consider if they have relevant experience to the appeal being considered and ensure the Independent Reviewer:

a. Has no conflict of interest in reviewing the appeal. For example, the Independent Reviewer should not be related to, or have a relationship with person(s) who have made decisions relating to the appeal.

b. Act with impartiality and integrity in their conduct when carrying out a review of an appeal.

c. Has sufficient knowledge of the Care Act 2014 and care and support.

d. Is able to review and appraise matters and facts relating to an appeal to draw up recommendations.

16.36. As part of this consultation we are seeking your views on the appropriate timescales for the appeals process. Please refer to question 20 in the consultation document. We are proposing as a general principle the Independent Reviewer should aim to resolve an appeal in the shortest timescale that is practically possible to effectively review information presented. The independent review stage should be completed within 30 working days, wherever possible. However, there may be some cases that necessarily require further time to adequately explore and resolve or the person's involvement may be delayed for reasons such as ill health. Where the Independent Reviewer believes the independent review stage will require more than 30 working days, they must:

a. Explain to the person making the appeal and the local authority why the case is complex and further time beyond the 30 working days is required to review the case.

b. Seek to work with the person making the appeal and local authority to agree the shortest timescale possible to complete the independent review stage.

c. Write to explain to the person making the appeal and the local authority when they can expect a decision at the independent review stage.

d. Consider the individual's circumstance and whether they are practically able to shorten timescales and review information effectively, if the person's distress or condition may indicate an expeditious response is required.

16.37. Within the first 5 working days of the 30 working days, the Independent Reviewer should satisfy themselves that they have sufficient records and information to review the appeal. Local authorities should ensure during initial assessment and early resolution stages that the necessary information and records are collected. However, if the records provided by either party are deemed inadequate, the Independent Reviewer may request further records or further clarification from either the local authority or the person making the appeal.

16.38. Stakeholders emphasised that the local authority should support and assist the Independent Reviewer in carrying out their duties. We are proposing that the local authority should provide appropriate support for the Independent Reviewer, including making accommodation available for a meeting in person review if necessary, providing timely information and assisting the Independent Reviewer in any reasonable requests to facilitate the smooth running of the independent review stage.

16.39. We are proposing that the Independent Reviewer at the meet in person stage is solely responsible for reviewing the facts of the case and the original decision, and then making a recommendation to the local authority. Furthermore, that the Independent Reviewer has 2 options when reviewing an appeal:

a. To review the case on the papers presented.

b. Where the Independent Reviewer deems there is merit in having a meet in person review with the local authority and person making the appeal, the Independent Reviewer can request that both parties attend this meeting.

16.40. The Independent Reviewer may, where necessary, call upon relevant professional expertise, such as medical or social work expertise to assist them in reaching their recommendation.

16.41. As part of this consultation we are proposing that the Independent reviewer has the discretion to request a meet in person review with all parties present be held based upon:

a. A demonstrable value in a meet in person review that could not be just as effectively reviewed on paper.

b. Whether the Independent Reviewer has sufficient information already to determine their decision and therefore a meet in person review is not required.

c. Due consideration of whether the person making the appeal or local authority have requested to meet in person to review the appeal with the Independent Reviewer.

d. A consideration of each of these factors should enable the Independent Reviewer to determine whether a meet in person review is required.

16.42. At the meet in person review the Independent Reviewer should review the information presented and ask any further questions to clarify the appeal as they feel necessary. The meet in person review can, if both the local authority and the person making the appeal agree, make use of video technologies to facilitate the meet in person review where appropriate. The local authority should offer access to video teleconference facilities to the person making the appeal where the local authority has this capability. Where the person making the appeal, the local authority and Independent Reviewer agree, the parties involved may hold the meet in person review in a setting such as a care home or a person's own home if this is appropriate and all safeguarding concerns are satisfied.

16.43. The intention of the meet in person review is that this is an inquisitorial rather than adversarial process. This is an opportunity for the Independent Reviewer to hear from the person making the appeal and the local authority. Ideally, no party will feel the need to be legally represented in this process given it's not a judicial process and is focused on an inquisitorial, not adversarial approach. The Independent Reviewer can ask questions to both the person making the appeal and the local authority to help inform their recommendation. If either party is being adversarial in their approach, the Independent Reviewer should emphasise that it is not a judicial process and is intended to be inquisitorial, not adversarial in determining a recommendation. The meet in person reviews are held in private to maintain the privacy and confidentiality of those at the independent review meet in person stage.

16.44. The meet in person review should take place within the 30 working day period. The Independent Reviewer then has up to 10 further working days to consider the case before they should write to the local authority and the person lodging the appeal informing them of their recommendation.

16.45. In addition to a final recommendation the Independent Reviewer should deliver an anonymised case summary to the local authority and the person making the appeal. The case summary will help the local authority to identify any key issues that may emerge to improve or refine services or learn key lessons from their service provision.

16.46. We are seeking further views as part of this consultation on how the Independent Reviewer reaches their recommendation. Please refer to question 18 in the consultation document. We are proposing, given a significant element of decisions are likely to have been related to professional judgement, the review of decisions by the Independent Reviewer should be to review the local authorities decision to ensure it was reasonable with reference to:

a. Relevant regulations and guidance

b. Facts of the appeal being considered

c. And taking account of local policy

The local authority resolution stage

16.47. The recommendation must be considered by a local authority at a suitable level to review the appeal. If the view is that the recommendation should not be accepted or only accepted in part then such a decision must have been agreed with appropriate senior agreement and sign off from senior staff or with legal advice to satisfy themselves that their decision is reasonable.

16.48. The local authority should, within 5 working days upon receipt of written notification from the Independent Reviewer of its decision, write to the person making the appeal and the Independent Reviewer, to explain the final decision of the local authority. The letter should also provide information on what they can do if they remain dissatisfied.

16.49. This is the final stage of the appeals process. There is no further redress from within the local authority administered appeals system. Once an appeal has been heard once it cannot be heard again. The appeal outcome cannot be the subject of an appeal.

This section covers:

- Interactions with other systems;
- Reporting and accountability

Interactions with other systems

16.50. Where the care and support system overlaps with other redress systems the local authority should refer to statutory requirements to determine whether the appeal should be considered as part of the care and support appeals system or another existing redress system. If the local authority is unsure which system the appeal should be processed under, the local authority should seek legal advice from local authority lawyers in the first instance to determine under what redress system the appeal should be processed.

16.51. Where it is unclear which authority or system should process an appeal after referral to statutory obligations the local authority should work with other relevant authorities to determine who should take responsibility to process an appeal. The local authority should consider the eligible needs of each case and how to address these, whether there is a change that infers the case should now be processed under care and support appeals or whether the appeal should be processed through another redress system.

Reporting and accountability

16.52. The local authority should ensure it is capturing and monitoring data relating to the appeals process to ensure there is accountability and transparency in the volume, type and outcomes of the appeals system at each stage of the process.

16.53. The local authority should publish anonymised case summaries that fully comply with data protection and other relevant statute. They should be published so that no person is

personally identifiable and comply with data protection and other statutory requirements, this should include the Independent Reviewer's recommendations and the final outcome of the appeal.

16.54. The local authority should consider carrying out a consistency check of decisions made. This should include a review of what decision each Independent Reviewer has delivered to identify patterns and investigate further data where necessary to promote impartial and effective decision making.

This section covers:

- Local authorities delegating a function;
- What if an appeal is accepted?
- Appeals policy commencement

Local authorities delegating a function

16.55. This appeals system applies even where the local authority has delegated an appealable function to a third party. In circumstances where a person is appealing a decision made by a third party, the appeal is the responsibility of the local authority as they retain accountability for delegated functions under Section 79 of the Care Act 2014.

16.56. The local authority should ensure that the contract with a third party allows timely information to be exchanged in the event of an appeal. The local authority should ensure that all information collected by the delegated third party is sufficient in the event of an appeal being made.

What if an appeal is accepted?

16.57. Pending the outcome of the appeals process, the local authority's original decision prior to the appeal and any associated financial arrangement shall remain in place.

16.58. If the local authority determines, after an appeal, a different decision from their original decision relating to a person's care and support, the local authority should consider any implication on the individual and the appropriate action to take. This should also include consideration of any financial loss the person may have suffered as a result of the original decision (for example, the person may have been paying for their own care). In this circumstance, the local authority should look at appropriate reimbursement.

Appeals Policy Commencement

16.59. The intention is that the policy will commence from 1 April 2016, this means only appeals from 1 April 2016 onwards can be reviewed. For any issues that emerge prior to this date, a person shall be able to use the existing complaints system.

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of Health

2903104 Produced by Williams Lea for the Department of Health