Health and Care Bill Briefing: Cap on Care Costs for Charging Purposes- Clause 155

February 2022

Background to the proposed social care funding model

The Dilnot Commission[1] was established in July 2010 by David Cameron's coalition Government, tasked with making recommendations for changes to the funding of care and support in England. It published its recommendations on 4 July 2011, setting out the principle of a cap and floor model for sharing the costs of care and support between individuals and the state.

The Government's response to Andrew Dilnot's proposals was encapsulated in the Care Act 2014, adjusting the recommended cap and floor amounts, but accepting many of the principles set out by the Commission. In 2015 however, Government postponed the introduction of their reforms until April 2020. Further proposals announced during the 2017 General election to include the value of homes in the means test for those in receipt of domiciliary care were not well received and were eventually abandoned.

Health and Care Bill

In September 2021, the government published proposals to implement a cap on care costs, applying to all adults in receipt of adult social care in England, irrespective of their age. The proposed model is broadly in line with the original policy set out in the Care Act 2014, although there are some differences.

The proposals would introduce an £86,000 lifetime cap on care costs for all age groups – whereas the original Care Act policy proposed a more generous £72,000 lifetime cap on social care bills for all adults over 25.

The government also proposes that the lower threshold of the means test (the point at which the individual is no longer required to contribute to care costs from their capital assets) will rise from the Care Act's modest £14,250 to a more generous £20,000, and the upper threshold from £23,250 to £100,000 – this will mean that even more people should be eligible for state support towards the cost of care. The proposals also provide a mechanism through which individuals self-funding residential care can request local authorities to arrange their care, allowing them to access the local authority 'rate', which is often significantly lower than that which is paid directly to providers by self-funders arranging their own care.

In November 2021, the government published further details of their proposals. This included a change to the way in which care costs meter towards the cap. The change requires the Care Act 2014 to be amended and the government has therefore introduced Clause 155 to the Health and Care Bill. The problems and impact associated with the changes under Clause 155 are discussed below.

[1] Dilnot Commission on Funding of Care & Support (ageuk.org.uk)

How an assessment of needs and means should work

- An individual requests an assessment from the Local Authority, which then assesses need and means.
- For those identified as having eligible care needs the council should put together a care and support plan.
- For people who qualify under the means test, care is funded in line with the means test and charging guidance.
- Those who don't qualify for funding are provided with information and advice on purchasing their care, or they may request the local authority to arrange the purchase of their care package.
- In both cases, the individual's out of pocket care costs would begin to accumulate and these would begin to count cost towards the cap.
- Once care costs reach the cap, the state takes over, paying the care costs.

Under the proposals, individuals in residential care settings would still be responsible for their hotel costs, at a standard rate of £200 per week. Age UK does not consider this to be unreasonable, as those in receipt of home care would still need to cover the costs of their accommodation, food, and other daily living necessities. [2]

The problem with Clause 155

Age UK believes Clause 155 significantly waters down original proposals for the care cap at the expense of people with modest wealth and lower incomes. We would like to see the Government withdraw Clause 155. Any savings that the Government would make in implementing this Clause - which was not set out in the Bill as presented in September 2021 – will come entirely from those with less wealth and means, while leaving the better off more or less unaffected.

Under Clause 155, from the point that an individual has been assessed as having eligible needs, the meter will begin running, with costs accumulating until their out-of-pocket contributions towards the cost of meeting their assessed eligible needs hits the £86,000 cap. Although individuals will still qualify for means-tested financial support if their assets fall below £100,000, in practice, this will no longer act to protect people with more modest means and will simply see them contributing over a longer period.

An individual with assessed needs would start to receive support when their assets dropped to below £100,000, but initially, this would be a small amount of state support, with their own contributions metering towards the cap – as the person's assets diminish, the amount of state support would increase and the amount that they contribute towards the cap would diminish, until they hit the £20,000 floor and the state takes over.

For those who are assessed as requiring some state-funded support, that is to say, those with limited assets of between £20,000 and £100,000, only what they contribute towards their care needs will count towards the cap. **Crucially, means-tested support received from the state will be excluded from this calculation**.

[2] 2.4 In practice, big changes in how the cost of care is shared between the individual and state are likely to present challenges for those administering the process, and for older people trying to navigate an already complex system. Where conflict arises either in respect of the assessment of needs, or in the calculation of means, it is not clear how these will be resolved to ensure that those in need of care can access what they need without paying more than they should. Existing mechanisms are likely to be inadequate, and Local Authorities will probably require more resources in order to continue to assess and monitor the progress towards the cap of self-funders and those who are making a contribution towards their care costs.

For those of limited means, this represents a severely unhelpful change. It will take those people longer to hit the cap than someone who has accumulated more wealth or assets during their lifetime, (many people never will reach the cap) and it will mean that as a proportion of their wealth, those of modest means will contribute more.

This change is contrary to the system currently legislated for, but not yet implemented, in the Care Act 2014, and to that proposed in 2011 by the Dilnot Commission. Andrew Dilnot himself expressed concern with the introduction of Clause 155 in his evidence to the Treasury Select Committee on the 18th of November, shortly following the Government's announcements.

The change runs counter to the Government's levelling up agenda, favouring those in the South-East of the country over those in less wealthy parts of England where house values are typically lower and healthy life expectancy is also lower, increasing the likelihood of an individual developing care needs towards the end of their life[3].

The impact of Clause 155

Age UK has analysed the Government's impact assessment,[4] and have set out the care journey of two hypothetical people, Mrs A & Mrs B.

In this scenario, Mrs A has £200,000 in savings, and Mrs B £80,000,

This is just one example of how this change would impact those with lower income and less accumulated wealth but illustrates the unfairness baked into the metering change proposed under Clause 155.

Mrs A:

- Has an income of £239 a week and £200,000 in savings and assets to begin with (so is not eligible for any means-tested support)
- Moves into a care home costing £683 a week
- Accumulates £483 a week towards the cap (£683- £200 hotel costs) or £25k a year
- **Reaches the cap after 3 years & 5 months (179 weeks)**
- Has spent £122k of her own money by that point
- After reaching the cap, continues to pay £200 a week towards her hotel costs
- The Local Authority will now assume responsibility for meeting the cost of Mrs A's assessed care needs.

Mrs B:

- Has an income of £239 a week and £80,000 in savings and assets to begin with (so falls below the upper threshold of the means test)
- Moves into a care home costing £683 a week
- However, because local authority means tested support does not count towards the cap she does not accrue the full amount.

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[3] Health state life expectancies by national deprivation deciles, England - Office for National Statistics (ons.gov.uk)

[4] This analysis is based on the Government's own figures - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044903/adult-social-care-charging-reform-impact-assessment.pdf

    - In year 1 she accumulates around £12k towards the cap (£25k - £13k total mean tested support to date)
    - By the end of year 2 she has accumulated around £22k towards the cap (£50k minus £28k total means tested support to date)
    - By the end of year 3 she has accumulated around £30k towards the cap (£75k minus £45k total means-tested support to date)

- **After 3 years and 5 months, Mrs B is just over a third of the way towards meeting the cap (£33k accumulated), it would still take more than a further decade to reach the cap.**
- Mrs B has spent £69k of her own money, and will continue to use her income and eat into her assets until she hits the lower threshold of the means test, (£20,000) at which point she will continue to pay her whole income less the Personal Expenses Allowance (£24.90 per week) towards her care home fees, until she reaches the cap.
- Once the state have assumed responsibility for Mrs B's care costs, she will continue to pay £200 a week in hotel fees.

Older people have told us

We regularly hear from older people who are being impacted by catastrophic care costs

Man whose aunt has spent £80,000+ on care:
'She is spending just a little less than £9000 per month on care, plus all her other bills; food, Council Tax, gas, electric, etc. I have the heavy responsibility of managing her money and I am finding it very difficult.

I have to say that I always thought that the NHS looked after you from the cradle to the grave: no one ever suggested that you would be made to spend all your money before any help is provided. Whether that involves bankruptcy I am not sure. Why the Government cannot implement the Dilnot recommendations I really do not know.'

Woman whose mum had to sell her home for care:
The care home was also really expensive, I remember thinking that I could put her up in a really nice hotel for the amount the care home was costing. Yet the care she received was really poor. I can't believe it cost so much for so little.

I had to lie to my mum for three years because it would have broken her heart that we had to sell her lovely little house to afford her care home. She always talking about 'when I get home.' She always had hope that she'd be back there. To her It was the family home. That house was her life, she found out she was a grandma there and a great grandma. It was her secure happy place, all her happy memories were wrapped up in it.

I know this isn't what my mum wanted. She used to say to me that she didn't have much to leave but wanted the house to be sold to help us. She lived frugally deliberately because she wanted to support her family. She thought she would be able to help her grand-kids buy a house but the expense of her care means that won't happen. It makes you think that there is no point in saving – I won't be able to give it to my family anyway.

***Man whose mum spent* £265,000 by the time she died:**
I don't really think it's a fair price for the service they provide. The care home was in a nice location, but there were constant problems. On 100 days Mum had lack of/faulty heating and other utilities or on a few days she was banished from her room due to ongoing construction.

Get in touch

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