

## ► 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

### ► Response from London Councils

London Councils represents London's 32 borough councils and the City of London. It is a cross-party organisation that works on behalf of all of its member authorities regardless of political persuasion.

#### KEY ASKS OF GOVERNMENT

##### Funding

- i. Implementation of the Care Act must not distract the next government from addressing the wider, long-term underfunding of adult social care as a priority in the Comprehensive Spending Review.
- ii. Implementation of the Care Act 2014 must be fully funded in 2016/17 and beyond, in line with the new burdens commitment.
- iii. The approaches being developed to monitor the cost of the reforms in 2015/16 must be extended to cover the implementation of the further reforms from 2016/17 and the next government must commit to recompensing local authorities for any shortfall in funding in 2015/16 as well as reflecting true costs in future allocations.

##### Cap on Care Accounts

- iv. The funding allocations formulae must take into account the impact of regional differences in costs of care.
- v. To reduce the risk of challenge, the government must run a clear public information campaign on the cap and its real-world implications so that people understand that they will still face some costs.

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**Independent Personal budgets**

- vi. Clarify and simplify the legislation on independent personal budgets to prevent local authorities being subject to challenges and additional bureaucracy.
- vii. Where both an individual and local authority are contributing to care, metering towards the cap should not include the local authority contribution it should just count the person's contribution.

**Working Age Adults**

- viii. Government should not put in place different care cap thresholds based on age. There should be one threshold for all ages. London Councils therefore supports option 2 – a cap of £72 000 for both working age and those over 65 years of age.

**The Appeals System**

- ix. We seek further evidence to justify the introduction of a new appeals system.

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### 1) Overview

London Councils welcomes the principles on which the Care Act is based. As we begin to move into the implementation phase of the Act from April 2015 and April 2016 it is important that the Act is not undermined by other factors including:

- Inadequate funding: under resourcing the reforms could seriously undermine them and could result in local authorities facing judicial reviews and challenges. Government needs to ensure that the reforms are fully funded – see additional details below.
- Short timescales: There is concern about the time local authorities will have to develop and test systems adequately in preparation for 1st April 2016. Local authorities could have less than 6 months to implement the new measures and this is in addition to on-going work pressures. The short time scale could mean that some areas are not ready to implement the reforms. We would suggest that implementation should be a minimum of no less than a year after publication of the final guidance and regulations for the 2016/17 elements of the Care Act – or possibly a delayed to April 2017.
- Uncertainties in take up - it is difficult to estimate the level of take up for the changes being introduced by the Care Act. Government needs to have a plan in place should actual take-up be far higher than anticipated.

Please find London Councils detailed response below.

### 2) Funding Social Care

#### Addressing the long term social care funding gap

Although London Councils has generally welcomed the Care Act, an on-going concern has been the need for councils to be fully funded to implement the new legislation.

By 2019-20, London local government is facing a reduction in core funding of close to 70 per cent in real terms compared with 2010-11. Combined with a rapidly increasing demand for local services, London's local authorities face a funding pressure of up to £3.4 billion by the end of the decade.

Demand on adult social care budgets is growing and is forecast to continue to grow significantly. Between 2014 and 2030 the key adult social care populations are forecast to grow at the following rates in London:

- Over 65s: 44%
- Working age people with learning disabilities: 15%
- Working age people with physical disabilities: 21%
- Working age people with a mental health problem: 14%

The ADASS budget survey of 2014 found that despite everything that is being done to prioritise adult social care – the cash invested in these services reduced by a further 1.9% (£266m) in 2014-15 to £13.68bn across England. This represented the third year of continuing cash reductions and the fifth year of real terms reductions in adult social care spending. This has come at a time when the population of those looking for support has increased by 14%. This is leading to fewer people receiving support, with councils over the last 4 years having made efficiency savings to Adult Social Care budgets totalling £3.53bn.

These reforms come in addition to other growing pressures on social care, for example in the last year local authorities have faced additional pressures:

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- From the Cheshire West Supreme Court judgement of 19 March 2014 on Deprivation of Liberty Safeguards (DoLS) estimated to have put an additional cost pressure in the region of £98 million nationally and £10 million in London. There has been no commitment made to fund these additional cost pressures so far.
- From the additional demand for services over the winter months. Winter pressures were higher than expected this winter resulting in an additional £37 million funding allocation to local authorities. This was tacit recognition by government of the real implications of current funding pressures in social care. This was a one off funding commitment for this year, this needs to be incorporated into baselines budgets as winter pressures will remain an issue for local authorities next year and will require additional resources.

Introducing the reforms in this current scenario without fully funding them would put more stress on the sector and potentially undermine the successful implementation of the reforms as well as having knock-on implications, including in to the health sector.

The Care Act reforms cannot be allowed to divert attention from the long-standing and growing cost pressures on adult social care more widely. This must be addressed in parallel to addressing funding and implementation challenges for the new duties.

### 3) Funding the reforms

#### Funding the reforms in 2015/16

The government has committed to fund all new burdens – but this is not happening in practice yet. London Councils estimates that new burdens from implementing the Care Act in 2015/16 would be £84.9 million. £34 million of this was allocated to London boroughs through the December 2014 local government settlement, and they are estimated to receive a further £21.2 million through the Better Care Fund.

We therefore estimate that there is already a shortfall in allocated funding for the Care Act in 2015/16 of £29.3 million which local government will have to meet from their own, already stretched budgets.

London Councils will work with ADASS and the LGA to ensure clear information is gathered on the actual cost of implementation in the capital in 2015/16 and seeks assurance from government that it will recompense boroughs for any underfunding in that year as well as reflecting this in future funding baselines.

#### Funding the reforms 2016/17 and beyond

In 2016/17 and beyond, councils will incur even greater costs. With the exception of the changes for carers, the extension of the means test and the introduction of the cap will incur some of the highest costs.

A study commissioned by London Councils estimated that there are around 12,400 over 65 self funders in residential care who could potentially be eligible for local authority funded care through the means test threshold changes and the care cap, the study also estimated home care self funders of between 20,400 and 32,400. Early attempts at modelling the impact of the reforms suggest that the over 65s impact alone could lead to additional costs of around £1.3 billion in London over the 10 year period from 2016/17 to 2025/26.

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There is much more uncertainty within the working age self funder groups which has been acknowledged in the impact assessments.

Everyone who has attempted to quantify the costs acknowledges there is significant uncertainty and several assumptions have to be made. Key variables arise in how one estimates of the number of self funders, the behaviour of self funders and the amount of housing and non-housing wealth held by self funders. It is widely accepted that there is very little robust data available on each of these areas. It is therefore impossible to be 100% certain about the actual costs of implementation. This uncertainty increases the risks to local authorities.

London Councils is currently refining its analysis on the potential costs of the Care Act in 2016/17 and will continue to work with boroughs and other partners as they gain a better understanding of the impact.

One issue on which we are clear is that regional variations in the costs of providing care have a material impact on overall costs. It is critical that these variations are properly reflected in future funding allocations.

### Monitoring the costs

Due to the significant risks and uncertainty in the current assessment of costs, monitoring the true costs of the reforms in both 2015/16 and 2016/17 will be important. We are aware that plans are already in place for 2015/16 - monitoring the costs in 2016/17 will also be critical.

Ideally national monitoring of costs should occur as soon as the measures come in, and as more self funders come forward for assessment. However the full financial effect of the cap is only likely to begin to have an impact on councils in London in three or four years' time, and in some other regions in 6- 7 years time. Therefore monitoring should go on for at least the first 8 years until the Act is well embedded into the system and the implications of people reaching cap has been understood across all regions.

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### Key Asks

- i. **Implementation of the Care Act must not distract the next government from addressing the wider, long-term underfunding of adult social care as a priority in the Comprehensive Spending Review.**
  - ii. **Implementation of the Care Act 2014 must be fully funded in 2016/17 and beyond, in line with the new burdens commitment.**
  - iii. **The approaches being developed to monitor the cost of the reforms in 2015/16 must be extended to cover the implementation of the further reforms from 2016/17 and the next government must commit to recompensing local authorities for any shortfall in funding in 2015/16 as well as reflecting true costs in future allocations.**
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#### **4) Cap on Care Accounts**

##### Reflecting variations in the costs of care

The introduction of a cap on the costs an individual has to pay towards their care continues to be welcomed by London Councils. However, the government needs to recognise that this will have different impacts in different parts of the country, driven by variations in the costs of care.

In London costs are far higher than other regions. A residential care home costs on average £32,500 per year, and a care home with nursing costs on average £42,900 per year - this is 14% more than the England average.

This means that people in London are likely to reach their cap much sooner than those in other regions - in some cases almost three years sooner. In some regions the likelihood of service users ever reaching their cap is very low. London Councils' analysis found that on average a person in a residential care home in London would take approximately 3.5 years to reach their contribution cap. In contrast, a person living in a care home in the north east of England where care is least expensive would take nearly 5.5 years to reach their cap, when the local authority would have to take over their care costs.

A study on length of stay in care homes<sup>1</sup> found that around 27% of people stay in a care home for more than three years and only 10% stay for more than 6 years, showing that not only will people reach the cap sooner in London, but far more people will reach the cap, exacerbating the variation in regional costs further.

##### Standard national rate for living costs

The decision that living costs should not count towards the cap adds complication to the cap on care policy. Media reports are reinforcing our concerns that the public is not clear about this – with many people thinking the cap will mean that once they have spent £72,000 on care, they will then be entitled to have the full costs of their care met. Such a lack of understanding will increase the costs of implementation for local authorities – and increase the risks of challenge. The government must take active steps to reduce these risks, including through a clear public information campaign.

To minimise complexity and on grounds of fairness, London Councils supports the proposal that a standard national rate should be set for the living costs that will be deducted in measure a person's progress towards the cap on care.

However, the government must recognise that this will have an impact on the costs faced by local authorities in London, because of the higher costs of living and of care in the capital. While the costs of a care home in London are 30% higher than in the North West, once a standard living cost is deducted, the costs in London are 58% higher than in the North West. The application of a standard national rate for living costs magnifies regional cost variations.

This contributes to our calculations of the expected increase in people whose care costs will fall to the local authority in London. It also means that London councils will, in practice, have to fund some of what would be defined as 'living costs' in other parts of the country. Regional variations must be

<sup>1</sup> <http://www.pssru.ac.uk/archive/pdf/3211.pdf>

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properly reflected in the allocations formulae for distributing the new burdens funding for these new responsibilities.

### Key Asks

- iv. **The funding allocations formulae must take into account the impact of regional differences in costs of care.**
- v. **To reduce the risk of challenge, the government must run a clear public information campaign on the cap and its real-world implications so that people understand that they will still face some costs.**

### 5) Independent Personal budgets

#### Calculation of Independent Personal Budgets

Independent Personal Budgets have the potential to be a contentious issue with self funders as they will set out how much a local authority would have paid had they been paying for that person's care. It is therefore critical that to avoid any potential conflicts or challenges the guidance should be clear on how they should be calculated. Current proposals are overly complex and may cause confusion for both self funders and officers implementing them.

#### Metering towards the cap

A further concern regarding how people will 'meter' towards the cap is the proposal to include both the local authority contribution and the self funder contribution in calculating how much has been used towards the cap. The cap was introduced as a way of limiting what people pay from their own resources so that they do not pay what the government refers to as "catastrophic costs." If both the local authority contribution and the self funder contribution are counted as part of the care account it means the cap is actually lower than the £72000.

Calculation of how a person meters towards the cap should only include what a person has paid from their own resources and should not include the local authority contribution as this will make the reforms even more costly to implement.

### Key Ask

- vi. **Clarify and simplify the legislation on independent personal budgets to prevent local authorities being subject to challenges and additional bureaucracy.**
- vii. **Where both an individual and local authority are contributing to care, metering towards the cap should not include the local authority contribution it should just count the person's contribution that is counted.**

### 6) Working Age Adults

We believe that differentiating between working age adults and pensioners will make an already very complex system even more complex and increase confusion for the public as well as adding costs to systems within local government.

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Anecdotal evidence from London boroughs shows that they do not anticipate the number of people that will benefit from having a lower working age threshold is very minimal. Feedback from boroughs has been that the majority of working age people with eligible needs do not have sufficient resources and are therefore likely to only be contributing minimal amounts that would make minimal difference to their overall cap and that majority are likely to already be receiving free care. Only in a handful of cases will working adults for example as result of accidents or illness require support after they have accumulated some wealth.

Access to social care support is means tested – allowing people who can afford to, to pay for their care. The means test is a fair way to assess a person's ability to pay. The current system which enables everybody regardless of age to pay for the care system is fair and does not discriminate against service users on the basis of age.

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### Key Asks

- viii. **Government should not put in place different care cap thresholds based on age. There should therefore be one threshold for all ages. London Councils therefore supports option 2 – a cap of £72 000 for both working age and those over 65 years of age.**

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### 7) Appeals System

London Councils supports the principle of people having the opportunity to appeal when they feel that they have not been treated in line with the legislation. Local authorities have existing complaints structures and procedures in place to enable people to do this.

We seek further justification and clarity regarding how the proposed appeals system would work in relation to existing structures. The proposed appeals system appears to be a duplication of existing complaint procedures.

Furthermore the proposal for independent reviewers has some challenges. A requirement for an independent reviewer to not have worked for that local authority is overly restrictive. In London the workforce is very mobile with people having worked for several authorities through their work life. A requirement to not have worked for an authority would therefore lead to workforce and recruitment issues.

Similarly, a three year gap requirement since a reviewer worked for that council will also make it more difficult to find independent reviewers in London.

There is no evidence that has been provided to justify a new appeals system in social care.

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