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BRIEFING PAPER

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Social care: how the postponed changes to paying for care, including the cap, would have worked (England)

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Inside:

Contents

Summary

On 17 July 2015, the Government announced that it was postponing the introduction of a cap on social care funding, and the accompanying more generous means-test, until April 2020.

This note was written on the basis that the changes would be introduced in April 2016, as originally intended.

For more information on the 17 July 2015 announcement, see the Library Briefing Paper *Social care: Announcement delaying introduction of funding reform (including the cap) and other changes until April 2020 (England)* (SN07265).

This note set outs some of the key proposed changes to social care funding that had been due to be introduced as a result of the *Care Act 2014*.

In summary, from April 2016 it had been planned that:

- the means-test for financial support towards social care costs would be made more generous; the upper capital limit would increase from £23,250 to either £118,000 (for care home residents whose property is included in the means-test) or £27,000 (for others). The lower limit would rise from £14,250 to £17,000;
- the cap on social care costs would be introduced for older people at £72,000. Importantly, only costs incurred after the introduction of the cap would have counted, and only at the (often lower) rate that the local authority would have paid (rather than the actual rate an individual paid), meaning that for some people they would have paid in excess of £72,000 before hitting the cap. However, for those receiving financial support from their local authority, both their own and the local authority's contributions towards social care costs would have counted towards the cap, meaning that for some people the maximum amount they pay for their social care would have been lower than £72,000 before the cap was hit.

On 17 July 2015, the Government announced that these policies would be delayed until April 2020.

Further information on the background to the funding reforms, and on the announcement of the four-year delay to their implementation can be found in the following Library briefing papers:

- *Social care: background to planned funding reforms (including the "Dilnot Commission")* (SN06391); and
- *Social care: Announcement delaying introduction of funding reform (including the cap) and other changes until April 2020 (England)* (SN07265).

Information on the current social care funding system can be found in:

- *Social care: paying for care homes places and domiciliary care (England)* (SN01911)
- *Social Care: Direct Payments from a local authority (England)* (SN03735)
- *NHS Continuing Healthcare in England* (SN06128).

This note applies to England only.

1. Changes to the capital means-test

1.1 The means-test explained

There are two levels for the capital means-test:

- upper capital limit – for people with capital in excess of the upper limit, which can in certain circumstances include the value of their home, they do not require any local authority financial assistance in respect of their social care costs;
- lower capital limit – people whose capital is less than the lower limit receive financial support from the local authority towards the cost of their social care (although they must contribute any non-exempted income towards the costs);

Between the upper and lower capital limits, the same situation applies as for someone with income below the lower capital limit but they have to pay "tariff income" of £1 per week for every full or partial £250 of capital in excess of the lower capital limit.[1]

More information on the current means-test can be found in the Library Briefing Paper *Social care: paying for care homes places and domiciliary care (England)* (SN01911).

The limits during 2015/16 were set at:

- upper limit – £23,250;
- lower limit – £14,250.

These levels were last changed in January 2010;[2] the Coalition Government explained in January 2011 that in the "context" of the 2010 Spending Review, Ministers had decided not to make the capital limits more generous.[3] This policy persisted throughout the Coalition Government.

1.2 Changes proposed from April 2016 (now postponed until April 2020)

The previous Government proposed changes to the capital limits for a care home resident from April 2016 as follows:

- upper limit for those whose property is included in the means-test – £118,000;
- upper limit for other people – £27,000;
- lower limit – £17,000.

In respect of someone receiving domiciliary social care, the capital limits are proposed as:

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1 Department of Health, *Care and Support Statutory Guidance*, October 2014, p405, paras 3–4

2 Department of Health, *Charges For Residential Accommodation – CRAG Amendment No 29*, 19 March 2010, Local Authority Circular LAC(DH)(2010)2, Annex, p3, para 5

3 Department of Health, *Charges For Residential Accommodation*, 28 January 2011, Local Authority Circular LAC(DH)(2011)1, Annex, para 5

- upper limit – £27,000;
- lower limit – £17,000.[4]

In regard to the capital limits, the previous Government said that the more generous levels would "provide new financial help to those with modest wealth. This will ensure that people with the least money get the most support".[5] It added:

> 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 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.[6]

It also noted that "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".[7]

The Department of Health (DH) noted that some people who receive domiciliary care and rent their home would have been subject to the same £27,000 upper capital limit as someone who owned their home (the value of the home is disregarded from the domiciliary care means-test). The DH noted that for renters "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", and therefore suggested an upper limit of £118,000 in such cases; this was the subject of a consultation.[8]

4 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, p45, para 9.7–9.8
5 Department of Health, *The Care Act – reforming how people pay for their care and support*, Factsheet 6, p1
6 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, pp15–16, para 2.17
7 As above, p45, para 9.8
8 As above, p47, paras 9.13–9.14

2. The cap on social care costs

2.1 Introduction of the cap proposed for April 2016 (now postponed until April 2020)

Section 15 of the *Care Act 2014* placed the principle of a cap on social care costs onto a statutory footing, although it did not specify what the cap would be; this will be done through secondary legislation, which has the advantage of the being easier to amend that an Act of Parliament e.g. to amend the cap due to effects of inflation.[9]

The DH has stated that:

> 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%.[10]

The cap had been expected to be introduced in April 2016 but it has now been postponed until April 2020.

2.2 The different rates of the cap

The last Government proposed that the cap would be set at different levels depending on the age of the person in receipt of social care:

- for people above working age – £72,000;
- adults people whose care need developed when they were:
  - over 25 years of age – £72,000
  - between 18 and 24 years of age inclusive – zero (for the rest of their life)
- people turning 18 with eligible care and support needs – zero (for the rest of their life).[11]

The proposed caps for people of working age and below working age were subject to a consultation.[12]

It should be noted that the actual levels of the cap might not be £72,000 in practice – see sections 2.5 and 2.6 below.

[9] As the Government note: "Section 16 of the [Care] Act [2014] 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". [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, p22, para 3.17]

[10] As above, p22, para 3.18

[11] 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, p38, para 6.15

[12] 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

The DH also suggested that, "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 … [to provide an] incentive to save or plan and prepare for the future".[13]

2.3 What would, and would not, have counted towards the cap

The DH published the following table showing what would, and would not, have counted towards the cap (where IPB stands for "Independent Personal Budget" and applies to those people not receiving local authority support towards the cost of their care):[14]

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.

Some of the key issues are explored further below.

Social care payments made before the cap is introduced will not count

Social care payments made before the cap was introduced would not have counted.

The explanatory notes to the Act stated that "the funding provisions [for the cap] are expected to be commenced in April 2016, and eligible care costs will only start counting towards the cap from the date of commencement of the sections [of the Act]".[15] The DH reaffirmed this, stating in February 2015 that "costs accrued before 1 April 2016 will not count towards the cap".[16]

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13 As above, p38, para 6.16
14 As above, p21
15 *Care Act 2014–EN*, p18, para 130
16 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, p20, para 3.6

Social care payments (at the local authority rate) will count but not e.g. "hotel" costs or any top-ups

It should be noted that only the costs of care ("eligible needs and support costs") would have counted towards the cost – for people living in a care home, their "hotel costs" will not have counted towards the cap. The DH supported the rationale for this approach that was originally set out by the independent Commission on Funding of Care and Support, namely that it "is intended to ensure a level playing field [for care home residents] with those receiving care in their own home" who may have to pay, for example, utility bills, rent etc.[17]

2.4 Calculating progress towards the cap

For all people with social care needs, the costs paid that would have contributed 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)".[18]

A "care account" would have stated progress towards the cap based on the figures set out in either a personal budget or independent personal budget, as the case may be. The DH stated that:

> 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.
>
> 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.[19]

The Care Account would have allowed those paying for their own social care to discover the rate that the local authority would have paid for it; often, due to their greater bargaining power, local authorities pay less for the same care than individuals (see section 2.6 below) and so this measure would have introduced greater transparency as to how care providers set their rates.

2.5 Why some people might have hit the cap before paying £72,000

For some people, the actual amount they paid before hitting the cap would have been lower than £72,000. As noted in section 1, a means-test is used to calculate whether someone is entitled to local authority support for the cost of a care home place, or towards the costs of domiciliary care.

17 As above, p20, para 3.9
18 As above, p54, para 10.16 (original emphasis)
19 As above, p54, paras 10.19–10.20

For those for whom the local authority contributed towards the cost of their eligible needs, both the contribution of the local authority and the person's own funding would have counted towards the cap; the DH explained:

> 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.[20]

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.

2.6 Why some people would have paid more than £72,000 before hitting the cap

Where someone was self-funding, it would not have been the actual cost that they pay that would have counted towards the cap, but rather "what the cost would be to the local authority of care to meet the person's eligible needs".

It might be that the cost to the local authority would have been lower than the actual cost to the self-funder – Laing and Buisson's *Care of Older People – UK Market Report 2013/14* noted that "self-pay fees [for both care and hotel costs] are typically £50-£100, or more, higher per week than local authority fees on a similar service and similar amenity basis".[21] How the local authority rate should be calculated was the subject of a consultation.[22]

As such, someone might actually pay, for example, £100,000 in social care costs, but the same care might have only have cost a local authority £72,000 because of a local authority's greatest bargaining power. The person would therefore have hit the cap only after having paid £100,000 towards the cost of their social care.

In addition, any first or third party top-ups would not have counted towards the cap.[23]

20 As above, p5, para 15 and Table 1
21 Laing and Buisson, *Care of Older People – UK Market Report 2014/15*, p215
22 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, pp26–27, paras 4.19–4.21 and questions 2–3
23 As above, p52, para 10.7

2.7 What would have happened when the cap was hit

Where a care home resident's social care costs had exceeded the cap, the local authority would have funded all their future social care costs. The DH explained:

> 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.[24]

As noted above, an individual would still have been expected to continue to pay their "hotel costs" if they were residing in a care home, although this too would have been capped: they would have had "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".[25] In addition, "local authority financial support will remain available to people who cannot meet, or fully meet their daily living costs".[26]

The DH undertook a consultation on what would have been the best approach:

> 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.[27]

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[24] As above, p22, para 3.16
[25] As above, p5, para 9
[26] As above, p20, para 3.11
[27] As above, p40, para 7.6

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