



Social care funding reform: FAQs

Standard Note: SN/SP/6863

Last updated: 15 May 2014

Author: Robert Long

Section: Social Policy Section

The *Care Act 2014* provides for a reformed system of funding social care costs. The Bill would establish a cap on care costs to limit what people would pay for care over the period of their lifetime, and for the level of that cap to be reassessed annually.

The *Care Act* does not set out in detail how the proposed reformed system for paying for social care would work. This would be provided for in regulations. A Government consultation on the detail of how the system would work, [Caring for our future: implementing funding reform](#), ran between July and October 2013. The Government has not yet responded to this consultation.

This paper provides answers to questions relating to the reformed care system and how it would operate. It has been written to assist Members with answering questions from constituents about the new system.

By virtue of the ongoing legislative process, many of the given answers are provisional, but are intended to provide the best current indication of how the reformed system is planned to work.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1	Background	2
2	The reformed social care funding system	3
2.1	Current system and position of the reforms	3
2.2	Frequently Asked Questions	3
	What is the cap on care costs?	3
	Will the cap include costs of domiciliary care and residential care, or just care home costs?	3
	Do all care costs count towards the cap?	4
	Who assesses the amount of such costs that count towards the cap? How is this calculated?	4
	Will people have a right to challenge the assessment of their eligibility and amount that can count towards the cap?	4
	Will the new rules take into account what people have paid before the new rules come in?	5
	How will the revised levels of eligibility for financial help operate?	5
	If a home is jointly owned, is it true that money cannot be taken from the value of the home?	6
	How would the revised deferred payments system work?	6
	Can interest be charged on a deferred payment arrangement?	7
	Would a deferred payments arrangement mean people are protected from having to sell their home?	8
	Would maltreatment in social care be covered by the Human Rights Act?	9

1 Background

Following the 2010 General Election, the Coalition Government appointed an independent Care and Support Commission to consider the issue of sustainable funding for long-term care. The Government announced that the review, and further work from a Law Commission project on reform of the law on adult social care, would inform proposals to be included in a subsequent Government white paper. Both reports were published in 2011.

In July 2012, the Government published a white paper on social care reform, a draft *Care and Support Bill* in response to the recommendations it had accepted from these reports that required legislative change, and also a progress report on funding reform.

Following pre-legislative scrutiny, the draft Bill was presented in the House of Lords as the *Care Bill* in May 2013. The Bill would consolidate existing adult social care legislation in

England and introduce reforms of the system, including funding reform. A consultation on how the reformed funding system would operate ran between July and October 2013.

More detail on the development of these reforms, and the *Care Bill* itself, is included in [RP 13/71](#), published ahead of the Second Reading of the Bill in the House of Commons in December 2013. A further paper, [RP 14/13](#), provides information on developments during Committee Stage in the Commons.

The *Care Act 2014* received Royal Assent on 14 May 2014.

2 The reformed social care funding system

2.1 Current system and position of the reforms

The Library has two standard notes that set out the respective existing systems for domiciliary care charges and financing charges for care home costs:

- [Domiciliary care charges: background and Department of Health guidance](#) (SN/SP/3774)
- [Financing Care Home Charges](#) (SN/SP/1911)

The Government consultation on the detail of how the proposed reformed funding system would work, [Caring for our future: implementing funding reform](#), ran between July and October 2013. The Government has not yet responded to this consultation. However, this consultation and the *Care Act*, taken together, provide a strong indication of how the reformed system is intended to work. The remainder of this note answers several questions asked by Members and their constituents about the system that is intended to be in place from April 2016.

2.2 Frequently Asked Questions

What is the cap on care costs?

The cap is a restriction on the amount that a person can pay in care costs over the course of their lifetime. The Government intends that this level would be set at £72,000 when the cap would be introduced in April 2016.

This cap does not include what are referred to as 'living costs'. This means that people in residential care would, in addition to the costs building towards the cap, be expected to pay for costs such as utility bills and food. This is in place to maintain consistency between those receiving care in their own home and those in residential care. People receiving care at home would still pay, for instance, for their rent and electricity bills, and this would be considered separate from their care costs. Separate charges for living costs in residential care keep this division in place. The Government proposes that these costs would be set at £12,000 per year from April 2016.

Will the cap include costs of domiciliary care and residential care, or just care home costs?

The cap would include the costs of care homes and the cost of domiciliary care, if that care meets the new national eligibility criteria intended to be introduced by the *Care Act* (see pages 22-23 of [RP 13/71](#) for further information on this clause). The national criteria is intended to be equivalent to the 'substantial' level of need in the system currently used (an overview of the current system is available in the Library standard note [SN/SP/6067](#)). A [discussion document](#) on the proposed national eligibility criteria was published in June 2013. A full consultation on the national criteria will be conducted later this year.

Do all care costs count towards the cap?

Not all the costs a person might pay for their care would count towards the cap. Only the cost of care assessed by a local authority as matching a person's needs would count. If a person, for example, wanted to spend extra money on a more expensive care home, that difference would not be included.

The Government's consultation on the proposed reforms, [Caring for our future: implementing funding reform](#), discusses which costs would count towards the care cap under the proposed system on pages 55-56. A key section states:

The total amount the local authority calculates it would cost to meet the person's eligible needs excluding any contribution to daily living costs will count towards the cap, regardless of whether the individual is solely paying those costs themselves, or whether payment is split between them and their local authority.

[...]

Only the costs of meeting eligible needs for care and support will count towards the cap.¹

Who assesses the amount of such costs that count towards the cap? How is this calculated?

Local authorities will assess the amount of care costs that count towards the cap. Currently, local authorities are able to set their own charges for domiciliary or home care services as long as the charging policy complies with the minimum standards set out in guidance issued by the Department of Health. The Library standard note on [Domiciliary Care Charges, SN/SP/3774](#), provides further information.

The Government's consultation on the proposed reforms, [Caring for our future: implementing funding reform](#), notes that:

The *Care Bill* enables a single overarching charging system which will give local authorities the power to charge adults for care and support where they choose to do so. [...] Where a local authority exercises discretion to charge it must carry out a financial assessment of a person's resources. The detail of these assessments will be provided in national regulations.²

These regulations have not yet been published.

Will people have a right to challenge the assessment of their eligibility and amount that can count towards the cap?

A system will be put in place for decisions made under the *Care Act* to be challenged.

During Committee Stage of the *Care Bill* in the House of Commons, the Government added a clause (currently [clause 72](#)) to the Bill, to provide for a regulation-making power to provide for appeals of decisions under Part 1 of the Bill, which deals with social care reform. The provision was broad, to allow flexibility to provide for a range of options that might be put in place by regulations. When tabling the amendment, the Care Minister, Norman Lamb, stated:

¹ Dept of Health, [Caring for our future: implementing funding reform](#)., p56

² Ibid., p28

First, we believe that it is best to have a flexible appeals system that works at a local level in a manner proportionate to the type of dispute, avoiding unnecessary bureaucracy and burdens on local bodies. Secondly, we have heard clearly through the consultation that an appeals system should have an element of independence from the local authority to give people confidence that the appeals process is fair and unbiased. Thirdly, the appeals system will clearly need to take account of the wider arrangements for complaints and redress that are already established in other parts of the health and care system, avoiding duplication and gaps. We are working actively with our various partners and stakeholders to develop our policy on this, and we will consult further, along with our wider programme of consultations on regulations and guidance, later [in 2014].³

Will the new rules take into account what people have paid before the new rules come in?

No. Only care costs paid after the reformed system was introduced would count.

The [consultation document](#) on the reform proposals states:

Costs incurred before a person is assessed, or before 1 April 2016, will not count towards the cap. This will ensure the reforms are affordable and practical, providing greater certainty around how much people will have to pay.⁴

How will the revised levels of eligibility for financial help operate?

The [consultation document](#) sets out the Government's proposals:

People receiving financial support contribute towards their care costs from their assets. This contribution is called the tariff income.

Currently people in residential care only receive financial support if they have less than £23,250 in assets. People are expected to contribute towards their care costs from their income. If they have assets greater than £14,250 then to take account of these assets they are expected to make a contribution of £1 from every £250 in assets between above £14,250 and below £23,250 every week towards the costs of their care. If their assets are below £14,250 then the person needing care is only expected to contribute from their income.

From 2016 these limits will be extended to £17,000 and £118,000 (when the person is receiving residential care and their home is included in the financial assessment of their available assets). Figure 15 below illustrates how the calculation of the contribution from a person's assets could be calculated if the current contribution of £1 for every £250 of assets is used when these new limits are introduced in 2016.⁵

Page 99 of the [consultation](#) includes a table [referred to as Figure 15 above] providing an illustration of how the tariff income might work.

If a care recipient's home is not included in the financial assessment, the Government intends to raise the level at which they could receive assistance from £23,250 in 2015 to around £27,000 in April 2016. This lower level would reflect that the value of the person's home is not being considered as part of their assets.

³ [HC Deb 4 Feb 2014 c585](#)

⁴ Dept of Health, [Caring for our future: implementing funding reform](#), p33

⁵ [Ibid.](#), p99

If a home is jointly owned, is it true that money cannot be taken from the value of the home?

Under the current system, when a person enters residential care on a permanent basis, the value of their home is disregarded from the means-test if it continues to be occupied, in whole or in part, by their partner, be they present or former except where the resident is estranged or divorced from the partner/former partner. The consultation document indicates that the Government intends for this position to remain the same.⁶

There are two related issues it may be helpful to bear in mind in connection with this general position. Firstly, if, for example, a husband entered residential care permanently while his wife remained living in their home, the value of that home would not be taken into account in assessing how much he should pay towards his care costs. However, if at a later date his wife entered permanent residential care separately, and their home became empty as a result, then the value of that home *would* be taken into account in calculating how much each partner would be liable to pay. This would be done based on how much each partner owned as a proportion of the home; if the couple each owned 50% of the property and would receive 50% of the benefit if the home was sold, then that proportion of the value would be taken into account when assessing each partner's capital for the purposes of paying for their residential care.

Secondly, this exclusion is relevant only to the property that a care home resident has previously occupied as their home. Any other property they owned would be taken into account when assessing their capital. (Again, it would be their beneficial interest in any other property that would be assessed; so, if a care home resident owned 50% of a property with another party, then that 50% share would be included rather than the whole value of the property.)

How would the revised deferred payments system work?

Since October 2001, local authorities have had the discretion to enter into 'deferred payment arrangements' with care home residents. Implementation, however, has been patchy. The *Care Act* will make this scheme available across England. This is intended to be in place from April 2015.

The [consultation document](#) introduces the proposed national system as follows:

For the first time, regulations under the Care Bill will require all local authorities to offer deferred payment agreements to ensure people do not have to sell their homes in their lifetime to pay for residential care. The proposed criteria are described below including:

- Who will qualify for a deferred payment
- What fees they can defer
- What other support people will receive
- Their rights and responsibilities, including interest and charges.

149. Taking out a deferred payment will not adversely affect entitlements to financial support or to the cap on care costs. People will progress towards the cap at the same rate, whether or not they have a deferred payment. Any amount that people defer will count as personal debt for the purposes of financial assessment and all things being equal they will qualify for financial support at the same time as someone who pays

⁶ Dept of Health, [Caring for our future: implementing funding reform](#), p30

directly for their care. The cap and extended access to financial support, along with the criteria we consult on below, mean it will not be possible for someone to defer excessive amounts they could not afford to repay.⁷

Pages 43-51 of the document go into more detail on deferred payments and each of the bullet points set out above (and associated consultation questions), and may be worth reading in full. The following sections are particularly relevant:

Who will qualify for a deferred payment?

We propose that people who meet all of the following criteria should be able to qualify for a deferred payment:

- Anyone who would benefit from residential care, based on a local authority assessment of needs which takes reasonable account of the person's preferences
- Who has less than £23,250 in assets *excluding* the value of their home (i.e. in savings and other non-housing assets)
- Whose home is not occupied by a spouse or dependent relative (i.e. whose home is not taken into account in the local authority financial assessment, and might need to be sold).

[...]

More generally, we also intend that authorities should have the discretion to provide deferred payments to people in residential care who do not necessarily meet all of the mandated criteria above. For example, if someone has slightly more savings than the £23,250 threshold but would qualify for a deferred payment soon, an authority might prefer to offer the option upfront. This will help authorities to respond appropriately to individual situations

[...]

What fees can someone defer?

158. People will be able to defer the full costs of their residential care and accommodation, up to the equity in their home (plus other assets). The deferred payment will cover the cost of any registered care home the person might want to choose. It is important that people are able to live in the care home of their choice providing they are willing to pay. The deferred payment will help them do this.

[...]

How long can the deferred payment last?

164. People should not have to sell their homes in their lifetime to pay for their residential care. Everyone will be entitled to defer their fees for their entire stay in care if they need to, and to repay from their estate. However, people who wish to repay sooner will also be able to do so at any point.

Can interest be charged on a deferred payment arrangement?

The [consultation](#) on deferred payments includes the following note on the charging of interest if a deferred payment arrangement is made:

⁷ *Ibid.*, p44

179. To cover the costs of lending and the risk of non-repayment local authorities will be able to charge interest during the lifetime of a deferred payment. It is usual for loans of any type to charge interest to cover these types of cost. The interest rate will be nationally set in regulations.

180. The deferred payment will be an affordable option for people. This is partly because the local authority will not aim to make a profit and partly because the deferred payment will operate like a draw-down mortgage (whereby the care fees are deferred in regular instalments) rather than as a lump sum. The Government will consider whether additional protection is needed to ensure interest payments are affordable for the most vulnerable. For example, assistance for people with modest means or a very long stay in care could include a guarantee that the deferred payment cannot exceed the value of the property and a lifetime cap on total interest payments.

181. We are not in a position to determine the interest rate that will apply at this time. This is because in practice the rate will depend on a number of factors, including who qualifies for the scheme and the fees they can defer. These are issues we are currently consulting upon.⁸

The table below, taken from the consultation document, shows for illustrative purposes, what people would pay if the interest rate were 4% per annum, a rate which could be sufficient to cover lending costs and a small rate of non-repayment.

<i>Fig. 10: Approximate interest payable on a deferred payment</i>	Deferred payment (excluding interest)	Deferred payment with 4% interest added
Duration in years		
1	£20,000	£20,400
2	£40,000	£41,600
3	£60,000	£63,750

Would a deferred payments arrangement mean people are protected from having to sell their home?

A deferred payment arrangement allows for the payment of care costs to be postponed until a date of a care recipient's choosing or, if they wish, until after their death. The scheme helps those whose property is taken into account by the means-test for residential care but who do not wish to sell their homes, or cannot do so, in order to meet their care costs. It means that a person's home would not need to be sold in their lifetime to pay for their care.

However, it does not mean that the value of a person's home is excluded from the means test or that care costs cannot be recouped from its eventual sale. If, when the deferred payment arrangement is finished, a person has outstanding care costs that cannot be recouped by other means, then it may be recouped from the sale of the home.

The cap on care costs is intended to protect people from 'catastrophic costs' and, once in place, would prevent as large an amount of a house's value being used to pay those costs than might happen prior to the cap's implementation.

⁸ Dept of Health, [Caring for our future: implementing funding reform](#), p49

Would maltreatment in social care be covered by the Human Rights Act?

This was a controversial area during the passage of the *Care Bill*. Discussion of the debates involved can be found in section 4.8 of the Library research paper prepared for the Bill's Second Reading in the Commons, [RP 13/71](#), and section 2.6 of the Committee Stage Report, [RP 14/13](#).

The *Care Act 2014* includes provision, added by a Government amendment during Lords' consideration of Commons amendments, that care providers who are regulated by the Care Quality Commission in England or by equivalent bodies in the rest of the United Kingdom, are exercising a public function for the purposes of the *Human Rights Act 1998* when they are providing care and support arranged or funded in whole or in part by local authorities. Purely private arrangements between care recipients and providers would not be covered by this provision.