MONITORING

Legislating for Adult Social Care Reform

A briefing that looks at possible legislative options for reform of the adult social care system

About the Authors

Dean Sabri is Dods Principal Political Consultant, focussing on: Health, Social Care and Welfare.
@Dean_Sabri

Joshua Grundy – Dods Senior Political Consultant: Housing, Communities and Local Government.

Alexandra Ming is Dods Political Consultant, focussing on: Health and Equalities.
@Ming_Alexandra

Contents

3 | Introduction
4 | Covid-19 highlights social care weaknesses
6 | Adult social care and local government
7 | Options for social care reform
11 | What action has the Government taken?
12 | Funding options

Introduction

The death of thousands of people from Covid in care homes across the UK in the past year has highlighted like never before the failure of successive governments to reform the country's underfunded and fragmented adult social care system.

Like his predecessors, Prime Minister Boris Johnson has pledged to tackle the sector's failings but has yet to produce a comprehensive strategy. He fuelled optimism of progress in his first speech as Prime Minister in July 2019 when he pledged that the Government would "fix the crisis in social care once and for all with a clear plan we have prepared to give every older person the dignity and security they deserve." But hopes of a quick announcement soon faded, and then the pandemic struck and monopolised the Government's attention. The Prime Minister's last word on the subject came in March this year, when he told the Liaison Committee that the Government would be bringing forward its proposals for social care reform "later this year", a commitment that was also in the 2021 Queen's Speech.

After years of inconclusive legislative proposals and reviews, experts and campaigners say a comprehensive reform and long-term funding strategy cannot come soon enough. Even before Covid had a catastrophic impact on care homes across the land, the UK's adult social care system was under mounting pressure from rising costs and growing demand from an aging and longer-living population. Research indicates that it could cost some £6bn simply to maintain the current level of provision in England until 2030/31, or as much as £14.4bn to offer services to the elderly for free.

This Dods Monitoring briefing examines how the pandemic has shone a light on the weaknesses in the adult social care system. It sets out how services are commissioned through local authorities and how the financial pressures on councils have impacted the provision of care. It also looks at some of the possible options for reforms, and lists the funding the Government has provided in recent years to paper over the cracks, in lieu of long-term reform. And it concludes with a look at possible funding options for how to raise the funds to support reform of the system.

Covid-19 highlights social care weaknesses

The devastating impact of Covid-19 on care homes has been well documented. The Government policy early in the crisis to ease pressure on hospitals by transferring older patients to adult care homes, in many cases without testing for Covid-19, has been widely blamed for increasing the spread of the virus among the vulnerable residents. The added pressure soon began to show on the already underfunded sector, with social care providers reporting difficulties accessing personal protective equipment and Covid tests as early as March 2020. Staff also complained of a lack of guidance for care home staff and residents.

Before long, it was clear that care homes were being acutely affected by the virus, with case numbers and death rates on the increase. In May, the ONS estimated that since March 2020, there have been over 27,000 excess care home deaths in England and Wales. This led to outcry in the sector, and numerous investigations into why the situation was able to deteriorate so rapidly.

The Health Foundation, an independent charity which campaigns for better health care, said in August 2020 that the Government's reaction to the impact of Covid on care homes was "too little, too late". It criticised the lack of an adult social care plan and support for the sector, and the Government's failure to initially classify care staff as essential workers.

MPs have also highlighted the sector's problems. The Health and Social Care Select Committee said in two reports, "Delivering core NHS and care services during the pandemic and beyond" in September 2020 and "Social care: funding and workforce" in October, that chronic underfunding and workforce shortages meant that social care providers were ill-equipped to respond to the virus. It also said the fragmented nature of social care commissioning created a complex picture which was more difficult to respond to in full.

The impact of Covid has been devastating, but many of the funding and systemic issues highlighted by the pandemic have plagued the social care sector for years.

Research has shown that fewer people are accessing social care than they were in 2009/10, while demand has continued to rise. Age UK, the leading charity for older people, estimated at the last general election that the number of people with an unmet need was around 1.5m and could rise as high as 2.1m by 2030. At the same time, the Association of Directors of Adult Social Services charity has reported that 75 percent of councils had told them that providers in their area had closed, ceased trading or handed back contracts in the last six months.

Some experts say that at the heart of the long-running so-called social care crisis is a failure of successive governments to put the sector on an equal footing with the wider healthcare system. While the NHS is free at the point of use and funded by the state, the provision of adult social care services is means-tested and funded by the state, local government and the individual. In February the Government published legislative proposals to join up health and social care services. More generally, the Government's response to Covid in the adult care sector has fuelled debate about ageism in the UK, while differing restrictions to prevent infection across the fragmented public and private care homes have also prompted questions about human rights.

There was dismay within the sector when the Government did not announce any plans in the March 2020 Budget for reform of the long-term funding of adult social care. Similar concerns were raised this March when Chancellor Rishi Sunak was again silent on the issue, despite the catastrophic year endured by care home residents and staff. The Government's new Health and Care Bill set out in the 2021 Queen's Speech does seek to address some of the issues facing the sector, however the Health and Social Care Committee has said it still does not address how to reform funding.

Adult social care and local government

The Covid-19 crisis has brought renewed urgency to the long-running debate at both a national and local level about how to provide sustainable long-term funding for adult social care. Currently, in England, Scotland and Wales, it is the responsibility of local government to provide adult social care services to local residents as set out by the Care Act 2014. Funding comes from central government each year in the form of the local government finance settlement. Local government also has the power to supplement that income with revenue raised from local taxes such as council tax and an adult social care precept. The NHS Better Care Fund also enables local authorities and clinical commissioning groups to pool budget arrangements to fund an integrated spending plan.

Although spending on adult social care has risen in recent years, there are signs that demand is outstripping supply and putting the sector under ever greater strain. NHS Digital, which operates data services for the health service, reported in March that local authority expenditure on adult social care had risen by six percent in real terms in the last five years to £19.7bn, following a period of decline after 2010. However, analysis by the King's Fund, a health charity that aims to shape health and social care policy, showed in 2019 that although more people were requesting care, less people were receiving it. It also said the average cost per week for residential and nursing care had risen 6.6 percent in real terms since 2015/16.

The Local Government Association (LGA) has long argued for reform of the system for funding adult social care, including a multi-year financial settlement. In December 2020, it published the provisional local government finance settlement outlining the funding arrangements for the 2021/22 financial year. It showed that while core spending had the potential to rise by 4.5 percent to £2.2bn, 85 percent of that increase would be dependent on councils increasing council tax by up to five percent.

The LGA said council tax rises, particularly the adult social care precept, should not be the solution to the long-term pressures faced by councils. "Increasing council tax raises different amounts of money in different parts of the country, unrelated to need," it said. The LGA has welcomed the commitment in the Queen's Speech to bring forward proposals for social care reform but said a timeline and concrete funding plans were needed.

Options for social care reform

Cap on the cost of social care

Under the current system, everybody is eligible for a free assessment of their social care needs, but how much you have to pay towards that care depends on your savings, assets and income. In England, people with less than £14,250 in savings, excluding the value of the home they own and live in, will have the cost of their social care met by the state. Those with between £14,250 and £23,250 in savings are expected to cover some of the costs, determined by a financial assessment, while those with more than the upper threshold must pay for their care themselves. The bands are set at different levels in Scotland and Wales.

The total cost of a person's elderly care for the local government varies depending on the services that the individual needs, from occasional support with household chores through to residential care in a nursing home. Consequently, these costs are spread unevenly across the population and geographical areas. However, the UK's ageing population and rising life expectancy means the number of people requiring prolonged adult social care has grown and so have the costs. The Health Foundation estimates that over one in ten people aged 65 already face lifetime social care costs in excess of £100,000.

To address this, the coalition government led by Conservative Prime Minister David Cameron set up the Dilnot Commission in 2010, chaired by economist Andrew Dilnot, to come up with ideas for reforming the funding of social care in England. Among its key recommendations, published the following year, was a plan to cap the amount of money an individual should spend on care over their lifetime at £35,000. After that, any additional costs would be met by the state. The Dilnot cap, which amounts to about £46,000 in today's money, would mean that an individual with extra care needs would pay for the first year of their stay in a nursing home, with the state meeting costs after that. A cap of £46,000 would cost the Government around £3.1bn in 2023/24, according to the calculations of the Health Foundation. The cross-party Health and Social Care Committee recently endorsed the Dilnot cap.

The benefit of the Dilnot recommendations is that they are already on the statute book. A cap on the costs of care was included in Section 15 of the 2014 Care Act and was set at £72,000. Section 15 was due to be implemented in April 2016, however, shortly after the Act came into law the timeframe for the cap on care costs was extended to 2020. Since then, reform has been postponed.

During the 2017 general election, the Conservatives unveiled a plan to replace the £14,250-£23,250 means test band for calculating social care costs with a single higher upper threshold of £100,000. However, the new plan included the value of the individual's home, regardless of whether they were receiving domiciliary care, and also removed the cap on care costs included in the 2014 Act. The proposals, which were dubbed the "dementia tax" by the tabloid press, were met with heavy criticism. Prime Minister Theresa May initially conceded that there would be a cap on costs, without giving further details, before the Conservatives eventually scrapped the plans altogether.

Free personal care

Some campaigners have argued that if many of the services that are provided for the elderly in England in their own homes were free—such as help getting in and out of bed, continence, diet, mobility, and simple treatments—it would encourage people to live independently for

longer. Many of these services have been provided free in Scotland since 2002. A report by the Independent Age charity published in 2020 showed that since then Scotland had seen a decrease in the number of delayed transfers of care, when a patient is ready to leave a hospital or similar care provider but is still occupying a bed. The report also found that in spite of an increased spend on social care, providing free personal care actually led to a lower overall spend on health and care for older people. The charity has said the impact on delayed transfers of care would be similar to Scotland if free own-home-based care was introduced in England and would help to further integrate health and social care.

For those in Scotland who receive care in a residential home rather than their own home, the local authority contributes to the cost at a flat rate, directly to the care provider. A limit of £180 per week is placed on funding for personal care, with a further £81 for people needing nursing care. If care costs exceed that, the person must use savings or assets to pay the difference. The Health Foundation has estimated that free personal care allowances currently only meet around one quarter of the weekly cost of a residential care home.

A 2018 joint report by the Health and Social Care and the Housing, Communities and Local Government committees recommended a gradual transfer of the responsibility for paying for an individual's social care needs away from the individual, making it free at the point of delivery, beginning with extending free personal care to those with 'critical' care needs. The report also noted that the Health Foundation and King's Fund had said providing free personal care would cost £7bn in 2020-21 and rise to £14bn by 2030-31. The current Health and Social Care Committee's 2020 report said that free personal care would simplify healthcare by putting social care on a more equal footing with the NHS, so all basic care needs are met free at

the point of need.

In Scotland, the introduction of free personal care appears to have resulted in increases in charges for other types of social care, for example help with shopping or housework. There has been some complexity around the definition of 'personal care', with local authorities in Scotland interpreting the legislation differently. The implementation of free personal care in Scotland has also raised a number of issues, including the administrative burden involved in determining the split between personal and non-personal tasks for all service users. Additionally, local authorities have experienced a loss of income and an increase in costs when free personal care was introduced, and the system has become increasingly expensive over time. Although analysis does suggest that the policy has led to a lower total government spend compared to the previous system.

Integration of health and social care

Currently there is a lack of parity between health and social care systems and their funding streams. Unlike the NHS, which is funded through general taxation, the social care system relies on either private funding from individuals or from local authority budgets, with councils retaining discretion over how much is actually spent. Who pays for what is a constant source of friction, with significant and often distressing impacts on individuals and families.

One way that Government departments and NHS England are trying to meet such pressure is through integrating health and social care services. The Kings Fund, a charity that works to improve health and care, established the Commission on the Future of Health and Social Care in England in 2013, also known as the Barker Commission - after its chair Kate Barker - to examine whether the post-war model of a publicly-funded NHS and a separate means-tested service remained fit for purpose. In its 2014 report, the Barker Commission recommended moving to a single, ring-fenced budget for the NHS and social care, with a single commissioner for local services. Supporters of the merger of health and social care believe it would lead to people receiving more streamlined care and no longer having to deal with an array of changing carers from different organisations, such as councils, care companies and NHS bodies.

In 2020, Baroness Cavendish, a former advisor to Cameron and known proponent of the integrated approach, was tasked with leading another review of social care funding. That exercise considered whether social care services could be commissioned by so-called integrated care systems (ICSs), new partnerships between organisations that meet health and care needs in a given area. One thing preventing this was the required legislation to give ICSs a legal standing. This now forms a key part of the planned Health and Care Bill announced in the 2021 Queen's Speech.

However, some stakeholders have warned against merging social care with the NHS. The Nuffield Trust, an independent health think tank, has raised concerns that ICSs "might be a bit remote to really understand what's going on in social care," and therefore risk making social care less joined up with other council services vulnerable people rely on, such as housing and public health. The IPPR think tank has warned that merging the two services would "decimate local government finances and without a significant uplift in spending and radical reform to the type of care delivered." And LGA Chairman, James Jamieson, has criticised the idea of the NHS "taking over" social care. He said that "Shifting responsibility for care is not the answer and will fail to address the fundamental issues that have pushed the system to breaking point," and called for "parity of esteem" between the two services.

Others, including the Health Foundation, have raised concerns that a model based on a single, shared budget does not in itself mean that health and social care service delivery would be more integrated or that there would be a more aligned approach to entitlement. It noted that pooled budgets run the risk that funding that is initially allocated to one part of the system could be later diverted to another, as is often the case in the NHS including last year when funding was diverted to emergency and acute care from other areas.

The Government last year denied reports that social care would be brought under the control of NHS England.

International examples

The Government may choose to look for inspiration overseas. The Health and Social Care Committee's inquiry examined the Japanese system, which was introduced in 2000 to deal with the pressures caused by an ageing population.

The Japanese system provides universal comprehensive social care packages for those who need them, which are co-ordinated by care managers. The system has increased access to social care, as well as resulted in a competitive market for providers, who compete on quality and reputation rather than price, which is set nationally. Under the system, service users pay between 10 percent-30 percent of their total care costs and those in residential care pay for accommodation and food – and these contributions are means-tested and capped. The system is funded through general taxation and 'premiums' paid by all people over 40 at a rate of one percent of income.

The German model is based on a long-term care insurance (LTCI) that is associated with an individual's statutory health insurance, paid through their payroll tax. This means only a small proportion of the population lacks the insurance to cover their social care needs. The LTCI benefit levels are well below those in Japan and do not cover the full costs of care. The entire system is built around the contributions of family as care givers and the algorithm used to assess the level of care awarded takes into account informal carers.

What action has the Government taken?

The lack of a long-term funding strategy has left successive Conservative governments needing to periodically provide additional funds to support the provision of adult social care in recent years. The spending decisions since 2015 have included:

- A social care precept, under which local authorities were able to increase council tax levels by up to two percent (above the referendum threshold) for each year between 2016/17 and 2019/20. In December 2016, the Government announced that local authorities could bring forward the social care precept, by raising council tax by up to three percent in 2017/18 and 2018/19.
- An improved Better Care Fund, which included additional social care funds of around £4.4bn between 2017/18 and 2019/20.
- An Adult Social Care Support Grant which provided £240m to local authorities in 2017/18 and £150m in 2018/19.
- A Social Care Support Grant of £410m in 2019/20 to support both adult and children's social care services.
- An additional £240m in both 2018/19 and 2019/20 for social care packages to ease NHS winter pressures.

At the Spending Round 2019, the Government allocated an additional £1bn grant for adult and children's social care in 2021/21 and gave local authorities the freedom to determine how to split their allocation.

The Government would consult on a two percent social care precept, which it estimated would enable local authorities to access a further £500m. This was confirmed in the local government finance settlement 2020/21.

The rolling-over of existing social care grants of £2.5bn into the 2020/21 financial year.

At the March 2020 Budget, the Government confirmed that the additional £1bn of funding for social care would continue for every year of the current Parliament. At Spending Review 2020, the Government set out the additional funding that would be provided for adult social care in 2021-22:

- An additional grant of £300m for adult and children's social care, on top of the £1bn announced at the Spending Review and maintained in 2020-21.
- Local authorities will be able to levy a three per cent adult social care precept.
- £2.1bn to local authorities through the improved Better Care Fund.

The 2021 Queen's Speech included the Health and Care Bill which seeks to further integrate health and social care services by legislating for ICSs. The Government said the Bill aimed to make it "easier for different parts of the health and care system, including doctors and nurses, carers, local government officials and the voluntary sector to work together to provide joined-up services." The proposed legislation will also include provisions to improve the oversight of how social care is commissioned and delivered, and provisions to allow the Government "to get much better data and evidence about the care that is delivered locally." Experts and campaigners hope this data will inform the Government's promised plan for social care reform.

Funding options

One of the key issues for reform of adult social care has always been how to pay for it, but that question may become even harder to answer following the huge public expenditures to tackle Covid.

Retaining the current system would involve minimal disruption to the administrative system, but it would still require additional funding. The Health Foundation has estimated that the system needs an investment of £6.1bn between now and 2030/31, to account for the rise in living wage and growing demand for care. The Health and Social Care Committee recommended this as the "starting point" to pay for an uplift in staff pay and protect people who face very high social care costs.

However, to meet future demand, improve access to care and provide more free care could require an additional spend of £14.4bn. There are several ways these costs could be covered, ranging from hypothecated taxation, to dedicated levies, or from general taxation.

Hypothecated taxes, where the revenue is earmarked for a specific purpose, have been historically derided by experts and avoided by governments. Nevertheless, reports indicated that when Conservative MP Jeremy Hunt was health secretary, he had considered ring-fencing National Insurance (NI) contributions to fund long-term social care. Another approach would be a 'salary sacrifice' scheme; an agreement to reduce an employee's cash payment, in return for a non-cash benefit.

The social care precept, introduced in 2016, is an example of soft hypothecation. This allows local authorities to increase council tax by a specific amount to raise additional funding for social care.

One of the key arguments in favour of a hypothecated tax for social care funding is that surveys have indicated it would have strong public support. The public sympathy for the cause might even make it easier to raise that tax in future.

However, public opinion about the national spending priorities is liable to change, and hypothecated taxes limit the Government's ability to move its expenditure with the times. Designing a tax solely to support the elderly also raises questions about intergenerational fairness and sustainability and may tax a declining working-age population to transfer resource to a better off older generation.

The Health Foundation suggested that implementing a social insurance model would be a major undertaking and a disruptive change, with high transition costs. The Kings Fund has said that ministers are likely to oppose a hypothecated tax because the "more tax that is earmarked for a specific area of public spending, the less flexibility there is in deciding on other public spending priorities."

Some have suggested the introduction of a new levy to raise funds to pay for adult social care. The Resolution Foundation think tank recently proposed a new Health and Social Care Levy consisting of a four percent annual flat rate tax on all incomes over £12,500, offset by a three percent cut in employee National Insurance and the abolition of Class 2 National Insurance contributions for the self-employed. These offsets would leave employees earning £19,500 and below better off, as well as self-employed workers earning less than £17,000. The think tank said the new levy would raise £17bn of funds £6bn of which should be used to address social care funding shortfalls.

Meanwhile, former First Secretary of State, Damian Green, recently penned a report with the Centre for Policy Studies think tank, which argued that social care provision should be modelled on the state pension, with taxpayers funding a flat-rate "universal care entitlement", which patients could supplement from their own funds. He suggested taxing the winter fuel allowance and redirecting any savings made in the recent spending review. He suggested that over-50s could be asked to pay a one percent national insurance surcharge, "in exchange for a guarantee that their personal finances will not be exhausted by the costs of social care, and that they will be looked after whatever their condition."

The Labour Party said that the proposal to ask over-50s to pay a national insurance surcharge amounted to a "tax on getting old".

Options for funding have explored revenue sources from within the general tax base. This varies from ensuring local authorities can retain 100 percent of business rates, to means-testing or even abolishing the winter fuel payment. Though, tax revenues and estimates of future funding are highly uncertain.

The Covid crisis means the funding and taxation landscape may look different by the time of the next budget. Nevertheless, health campaigners will be keen to see that reform of adult social care provision is not side-lined by the Government again.

Contact Dods Monitoring

To set up your free trial or find out more about our political intelligence services contact

customer.service@dodsgroup.com
+44 (0)207 593 5500