

# Local Government Association briefing

## Social care, Opposition Day Debate

### House of Commons

Wednesday 25 October 2017



#### Key messages

- Adult social care must be treated as a national priority. It is a vital public service that supports people with physical and learning disabilities, those with mental health issues and older people and their carers to live their lives in the way they want.
- The consequences of long term underfunding means we face an ever more fragile provider market, growing unmet and under-met need, further strain on informal carers, less investment in prevention, continued pressure on an already overstretched care workforce, and a decreased ability of social care to help mitigate demand pressures on the NHS.
- The extra money for social care announced in the Spring Budget was a step in the right direction, but it is only one-off funding which reduces each year and stops at the end of 2019/20. It is not a long-term solution. Even with £1 billion new funding this year (the first year of the Spring Budget £2 billion allocation over three years) adult social care still faces a funding gap of £1.1 billion in 2017/18.
- We estimate that the gap facing adult social care by 2020, including the pre-existing pressure on provider market stability, is £2.3 billion. This is why it is so important for the Government to use this year's Autumn Budget to take immediate action to address the adult social care crisis. We need the planned consultation to build a sustainable system for the future.
- In dealing with the pressures facing social care and health in the short and long-term, the Government must develop a balanced approach that does not give one part of the system primacy over the other. It is imperative that the Government urgently brings forward its consultation on how it will tackle the social care funding crisis.
- Councils are doing all they can to try and help people live independently in their communities and reduce demand on hospitals. Leaders in local government and the NHS, both at national and local level, need to work together to make sure we make the best use of our resources. Delayed transfers of care are a symptom of wider challenges within the health and care system. These problems will not be solved by focusing on them to the exclusion of other factors such as better care pathways, more effective action in hospitals and community-based support to keep people out of hospital in the first place.

# Briefing

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## **Adult social care**

The absence of additional funding for social care will have knock-on effects on the viability of providers and the sustainability of the NHS. As we have highlighted in our Budget submission, the continued underfunding of social care is making it increasingly challenging for local authorities to fulfil their legal duties under the Care Act, leaving the ambitions of the legislation on the brink of failing altogether and councils facing the prospect of court challenges.

There cannot be a sustainable NHS without a sustainable adult social care system. Adequately funding social care will deliver benefits for both vulnerable people in society and savings for the public purse.

The £2 billion announced in the Spring Budget for social care was a welcome step in the right direction and has allowed councils to deliver some improvements and additional capacity this year. According to the ADASS Budget Survey 2017, nearly half of this year's Improved Better Care Fund (iBCF) has been spent on meeting social care needs, such as purchasing additional reablement support, while a third is being spent directly on easing NHS pressures.

Our analysis also highlights how funding can expand social care capacity in order to ease NHS pressures and enable more people to be discharged quickly and safely from hospital. Likewise, other councils are investing in preventative services, including telecare or hospital avoidance schemes such as rapid response teams which mobilise quickly to treat someone in crisis in their own home rather than A&E.

The funding is not, however, sufficient to meet all funding pressures either short or long term. Social care services still face an annual £2.3 billion funding gap by 2020, which we recognised in our LGA Annual Conference report 'Growing Places'. Respondents to the ADASS budget survey highlight that the funding is not enough to both offset planned cuts, and deal with demographic and inflationary pressures. According to a survey conducted by Cordis Bright (2016), 8,000 care settings for learning disabilities employ staff that are not being paid the NLW for sleep-in shifts, and their most conservative overall cost estimate of back-pay liability in the sector is £400 million. The need to find a long term, sustainable solution to the social care crisis remains urgent.

Parliamentary polling undertaken by ComRes after the General Election in June 2017 showed that of those MPs polled, 90 per cent agreed that additional funding should go to councils' social care budgets. A similar poll was undertaken with Peers and this showed that 80 per cent of those polled agreed with the same statement.

### **Better Care Fund, Improved Better Care Fund and delayed transfers of care**

The LGA supports the original intentions of the Better Care Fund, to provide a pooled NHS and adult social care budget to drive forward joined up working and support people to maintain their health and independence. This in turn helps to reduce the pressure on NHS acute services.

We also welcome the additional £2 billion for councils through the improved Better Care Fund to provide much needed resources to support adult social care services, stabilise the increasingly fragile provider market and reduce pressure on the NHS. However over recent months we have become increasingly concerned with the narrowing focus of BCF and iBCF on reducing delayed transfers of care and the pressure on local health and social care leaders to accept national targets

for reducing delayed transfers of care that many consider unrealistic and unachievable.

Councils and their partners in CCGs and acute trusts have worked incredibly hard to develop ambitious but achievable targets for reducing delayed transfers of care by addressing pressure points across the whole health and care system. We are therefore deeply concerned that the national narrative is seeking to attribute blame for DTOCs solely to adult social care. The fact is that nearly 60 per cent of all delayed transfers of care are due to the NHS, as patients are waiting for other health services or assessments.<sup>1</sup>

The ADASS survey for iBCF funds showed that nationally 32 per cent of the additional £1 billion for 2017/18 was, in fact, being spent on reducing pressure on the NHS. There is some evidence to show that the additional money is already having an impact.

Recently, the Secretaries of State for Communities and Local Government and for Health wrote to the leaders of all councils with adult social care responsibilities regarding their performance on reducing DTOC. Though 17 councils were congratulated on positive progress, 102 were advised that their performance would be kept under review and a further 32 councils were informed that their performance was not good enough and that they should expect a review of progress that may impact on their iBCF allocation for 2018/19. Whilst we have been assured that the funding will remain available to adult social care, it is a concern that funding may be withheld or nationally directed for areas facing the greatest challenges in relation to delayed transfers of care.

Uncertainty over future funding could mean councils are forced to withdraw vital social care services that this money should be funding. These letters are hugely unhelpful at a time when local government and the NHS need to work together to tackle the health and social care crisis. Social care provides vital support to millions of people every day. It helps people live independently in their community and reduces demand on hospitals. We urge the Government and the NHS to focus equally on preventing people going to hospital as we are on helping people quickly to get out of hospital.

Leaders in local government and the NHS, both at national and local level, need to work together to make sure we make the best use of our scarce resources. Delayed transfers of care are a symptom of wider challenges within the health and care system. These problems will not be solved by focusing on them to the exclusion of other factors such as better care pathways, more effective action in hospitals and community-based support to keep people out of hospital in the first place.

### **Local government services**

Local government provides vital services to residents. Very often it is those who are most vulnerable and need support across a range of services to improve life chances that rely on local services the most. The fact that councils deliver more than 1,300 various statutory duties and responsibilities demonstrates how much we do as a sector.

For local government to maximise its potential, it must be made financially sustainable and truly independent. Despite receiving a 'flat cash' settlement underpinned by assumptions of sharp increases in council tax over the current

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<sup>1</sup> <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2017/06/August-17-DTOC-SPN.pdf>

Spending Review period, local government continues to face enormous financial pressures. It is estimated that councils are facing a funding gap of £5.8 billion by the end of the decade with an additional £1.3 billion to stabilise the adult social care provider market. It is essential that the new Government prioritises tackling the funding crisis facing local services, addressing the funding gap, as well as taking action to alleviate the immediate pressures facing the social care sector.

The next decade will continue to pose its own challenges, with inflation and demographic change putting further pressure on council budgets and on the services they provide. Growth in local tax revenue will be insufficient to deal with these challenges and the funding gap is likely to grow. The impact of this will depend on areas' differing ability to benefit from local tax increases and different spending pressures. Funding through the New Homes Bonus, which many authorities rely on to deliver services, is also reducing.

**Table:** Estimated funding gap by 2019/20 (Source: LGA Growing Places report and Autumn Budget Submission 2017)

<b>Service area</b>	<b>Funding gap by 2019/20</b>
Children's services	£2 billion
Adult social care (inclusive of the pre-existing pressure to stabilise the provider market)	£2.3 billion
Homelessness and temporary accommodation	£200 million
Other services funding from council core spending power	£2.4 billion
Apprenticeship levy	£200 million
<b>Total</b>	<b>£7.1 billion (£5.8 billion funding gap + £1.3 billion to stabilise the adult social care provider market)</b>

**Payment of sleep-in shifts in social care**

Social care providers and local authorities have previously relied on the National Minimum Wage (NMW) Regulations when calculating what to pay staff when they sleep at their workplace or in the home of a person who needs care (a practice called 'sleep-ins'). These specifically exclude time spent asleep for the purposes of calculating whether the minimum wage has been paid.

However in February 2015 and updated in October 2016, the Department of Business, Energy and Industrial Strategy issued guidance that stated workers in many circumstances are entitled to the national minimum or national living wage for the entire time they are at work, even though they are asleep. Several court rulings have found that providers should have been factoring in 'sleeping hours' when calculating whether they had been paying the national living wage or national minimum wage over the past six years.

The Government made a statement on 26 July 2017 that sleep-in hours should be included in the calculation. This is a complex issue, and the LGA has requested clear legal guidance for councils covering all the associated effects, including the impact on vulnerable people making direct payments for support via personal budgets allocated to them by their council.

HM Revenue and Customs has been undertaking enforcement activity against providers and some individuals who make direct payments via a personal budget

(though there has been a temporary pause until 2 October 2017) and investigating providers back payments over six years. Providers have therefore started to pay staff the national living or national minimum wage for sleep-ins and back-pay them with associated contributions for the past six years.

While the Government has commissioned work to identify the scale of the issue, initial calculations by providers, suggest the cost could amount to £400 million for backdating pay and up to £200 million a year in ongoing annual salary costs. Some providers are already increasing the costs to councils to pay for these additional costs, while others are contemplating administration and bankruptcy. Providers have informed the LGA that if Government does not cover their back-pay, they will be seeking the costs from councils.

This is a new burden placed on councils as a result of a change in government policy on the payment of the national living and national minimum wage. This policy change needs to be confirmed via the NMW regulations to provide legal clarity. We are calling on the Government to ensure that councils and providers are funded to cover the costs they now face. The aforementioned £2 billion for social care should not be regarded as a catch-all for any change to social care policy.

#### **Further information**

[LGA report: Adult Social Care Funding – State of the Nation 2017](#)

[LGA Budget Submission 2017](#)

[LGA Growing Places campaign and report 2017](#)