Local Government Association (LGA) Briefing, House of Lords debate on the quality and viability of the residential care sector in light of the Government's decision to delay the implementation of the care cost cap

10 December 2015

Local Government Association

Briefing

Key messages

- Ahead of the Spending Review, the LGA called for further flexibility in the setting of council tax. The Government's announcement of the council tax precept for social care recognises the extreme funding pressures facing adult social care. It, along with additional funding pressures for social care through the Better Care Fund (rising to £1.5 billion by 2019/20), will go some way to alleviating the pressures facing the sector.

- Under the proposals, it will be councils who decide whether to exercise their discretion to use these new council tax powers. The extent to which councils benefit from the freedom will vary in accordance with their council tax base.

- We welcome the announcement that the Better Care Fund (BCF) will continue as this will support further integration between health and social care, building on the efforts to date. However, the additional funding for social care through the BCF announced in the Spending Review is back-loaded; there is no additional funding in 2016/17 and we assume the amount in 2017/18 may be small. This will leave at least one year, possibly two, of continued pressures at a time when services are already struggling.

- We will be seeking clarity from the Government on the source of the additional funding. This includes the relationship between the additional funding and the £800 million New Homes Bonus savings, and how adult social care will be supported in the immediate future.

- Although there has been positive recognition of the pressures facing social care in the Spending Review, we are disappointed that the funding saved from the deferral of Phase 2 of the Care Act has not been fully reinstated to support the sector.

Background

The LGA supports the principle of the cap on care costs and the extension of the financial means test thresholds as individuals should not be exposed to the lottery of high care costs. However, it would be damaging to press ahead with a costly and ambitious reform programme until the foundations of the system being reformed are sustainable.

Our call for a delay to the legislation was primarily motivated by funding concerns, rather than the timetable for reform. The earmarked monies for the Phase 2 reforms should be reinvested back into the care and support system to help address current pressures. So far the Government has retained all but £700 million of the £6 billion

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savings from postponing the Care Act.

Adult social care since the 2010 Spending Review

In the 2010 Spending Review an additional £7.2 billion was made available for social care through central government grant and the NHS transfer. It argued that this money, when combined with efficiency savings, was sufficient to prevent a funding gap opening up for social care over the Spending Review period.

This money has had a positive impact on councils, but due to wider budget reductions, it was not sufficient to cover the increasing social care costs facing local government. As a result, LGA analysis shows that councils had to deal with a £5 billion funding gap in adult social care. They were successful in doing so by reducing other council budgets by £2.5 billion and making savings and service reductions worth a further £2.5 billion within adult social care.

There are a number of cost pressures on social care, such as:

- The National Living Wage (NLW) suggests that the funding gap facing social care could continue to grow by at least £700 million a year. This is a 'minimum' figure because it does not take into account in full the costs of the NLW. This is a welcome and important development, but it will have significant financial implications. For residential and homecare contracts we estimate the pressure to be worth £330 million in 2016/17, growing to £834 million by 2019/20.

- Changes to Deprivation of Liberty Safeguards following last year's Supreme Court judgement present an additional pressure, with the Law Commission estimating that the annual cost of compliance is £172 million.

- There are also capacity pressures on the adult social care workforce as demand for services increases.

Providers

Within the care sector, there are concerns about the provider market. The ADASS Budget Survey shows that directors of adult social services report that only £32 million of efficiencies will be found through squeezing provider fees in 2015/16. This is equivalent to just 3 per cent of the overall savings target this year.

The survey also shows that 56 per cent of directors believe that providers are facing financial difficulties now and this rises to 62 per cent when considering what the situation will be like in two years. There are wider issues about provider viability and sustainability, and the quality, quantity and duration of commissioned care. Some have left the market already and others are moving to a quality and higher priced model only.

Under the 'duty to arrange'[1], a self-funder will be given an individual personal budget for their care as set out by the council. This will make more transparent the differential between council and self-funder rates and it is likely that providers will either have to accept and absorb lower fees or councils will have to increase their rates to providers. At this time, neither option is sustainable. Given the concerns it is helpful that the Government has delayed this element of the Act to allow time to better understand the cost implications involved.

The County Councils Network (CCN) report, 'County Care Markers: market sustainability and the Care Act'[2], shows that the current (2014) 'care home fee gap' stands at £236 million for the 12 councils who were part of the CCN study.[3] Extrapolating for all 37 CCN member councils the gap amounts to £630 million. Even with the delay to the 'duty to arrange' CCN still expect the care home fee gap to increase over the coming years.

Instability within the care market is creating increased risk. The announcement of the NLW precipitated a fall in the share prices of care providers and a pause in lending from some lenders. Many explained the delay in lending was due to the absence of funding to meet increased costs in a sector where approximately 75 per cent of employees are on (or are very close to) the existing national minimum wage.

We have seen increased signs of distress from the market in recent months including major providers disposing of supply that is funded predominantly by councils and the NHS, some suppliers exiting the market, and others writing business value down to zero.

The LGA will be working closely with central government to highlight these issues ahead of the local government finance settlement, as we aim to ensure that councils are able to meet their duties under the Care Act to promote a diverse, quality, efficient and effective provider market.

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[1] Under the Care Act, and now from April 2020, a self-funder will be given an Individual Personal Budget that sets out what their council would pay to meet their assessed needs (which then contributes to the cap on care costs). This will make more transparent the difference between self-funder rates and council-funded rates. The duty to arrange allows self-funders to request that their council, for a fee, arranges their care and there is an expectation that self-funders would request that they pay the council rate.

[2] 'County Care Markets: market sustainability and the Care Act', Council Councils Network, July 2015, http://www.countycouncilsnetwork.org.uk/countycaremarkets/

[3] The 'care home fee gap' is the difference between the 'care cost benchmark' (the Laing and Buisson benchmark fee level that balances sustainable cost and sufficient margins) and weighted average fees, multiplied by the number of residents. In short, it is the amount required to achieve market sustainability without resorting to self-funder cross-subsidies.