

The Conservative Manifesto and social care

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Thoughts on the recent [Conservative Manifesto](#) proposals for social care funding reform.

It accepts, correctly, that our system of social care for older people is not working – that older people are ‘not getting the dignified and careful attention they deserve’. It fails, however, to mention that this is true for all people needing public social care – old or young.

It then makes the curious point that the quality of care a person receives depends on where they live and whether they own their home. There does not appear to be anything in the proposal of substance, that will change geographic variations in the quality of care, or variations in the quality between domiciliary care / care in a care home – so this is a throwaway sentence.

The manifesto refers to the action in the Spring 2017 budget which it states was ‘immediate action, putting £2 billion into the social care system and allowing councils to raise more money for care themselves from Council Tax’. This is the truth but not the whole truth. The funding is for two years – so in my simple economic mind it is only £1 billion pa. It is not, however, for social services to determine how it is spent: it is destined for the Better Care Fund¹ which is largely designed to ease the pressure on the NHS. The Fund is widely seen as a failure – as a [recent Public Accounts Committee](#) report noted: it has failed to achieve any of its key objectives and is ‘little more than a complicated ruse to transfer money from health to local government to paper over the funding pressures on adult social care’.

The Manifesto then unveils its two key changes to the current system:

- (1) to increase the capital threshold from £23,250 to £100,000 for both residential care and domiciliary care; and
- (2) to align the charging rules for residential and domiciliary care. This means that the capital value of a home would count for charging purposes for domiciliary care (which at present it does not).

The Manifesto states that where the value of a person’s home is the element that tips them over the £100,000 limit, they will be able to have a deferred payment arrangement (these already exist and involve the local authority placing a charge on the person’s home which is recovered (plus interest) once the person has died).

¹ Department of Health & Department for Communities and Local Government *2017-19 Integration and Better Care Fund Policy Framework* (March 2017).

Unpicking the two key changes:

Increasing the capital threshold from £23,250 to £100,000

This will be relatively expensive in the medium term and was considered by both the [Dilnot](#) and [Sutherland](#) Commissions. In the short term (ie the day it comes in) there will be a very substantial administrative and financial 'hit' for local authorities as tens of thousands of people 'self-funding' their social care will become eligible for local authority funded social care and will want to be assessed by social services.

For people in care homes the permutations are considerable. For those already on a deferred payment it will be a pleasant surprise – except the local authority may require them to move into cheaper / more meagre care homes. This negative impact could be avoided by amending the rule against self funder's 'topping up' – but if this happens, then the £100,000 cushion will be illusory. For those not on a deferred payment there is likely to be a rush to get onto one, as the new capital maximum appears to be a significantly better deal.

For people receiving domiciliary care there will be a major administrative impact for social services. Local authorities will have to start financially assessing everyone who is a homeowner and offering them a deferred payment. The administrative cost of keeping tally of the amount of each deferred payment liability is going to be considerable. This was always going to be a major (and overlooked) problem with the [Dilnot](#) proposals: recording the net weekly amount of each individual's personal budget; entering this on a ledger; updating it; inflation adjusting it; dealing with a myriad of complaints about this process and so on. The requirement that such home owning individuals now pay the full cost (albeit deferred) may deter many from receiving care (or prompt them to discontinue their local authority care) – with the knock-on impact that this will have on family, friends and the NHS when they reach crisis.

The administrative implications of this change strongly suggest that it will have to be phased in. As with the [last Tory Manifesto's](#) much trumpeted and now discarded 'cap on care costs' promise – this could not come into effect until the end of the next Parliament at the earliest. As I note below, it is doubtful, once the implications of these proposals are appreciated by MPs, whether they will ever make it onto the statute book.

In financial terms local authorities will take a cash flow 'hit' as many individuals will be able to (and will be advised to) opt for a deferred payment. Local authorities will need a significant cash injection from the Treasury to cover this 'hit': cash that will do nothing whatsoever to improve the quality or availability of social care for anyone.

People will have additional incentive to transfer their properties into their children's names, into exotic trusts and/or off-shore entities causing yet more major headaches for local authority legal departments.

Authorities will end up with debt portfolios of many millions. There will be a temptation to sell this debt or indeed the Government may be unable to resist the urge to privatise it (as is happening with the [student loans scheme](#)). This could have potentially disastrous implications for the public purse and for the individuals whose deferred payment arrangements then become mortgage debts owned by private sector venture capital funds – who may then be able to increase the interest rate,

add penalties and other imaginative additional charges. This might once have seemed farfetched, but no longer – look no further than the current [leasehold ground rent scandal](#).

Unifying residential care and domiciliary care charges

What does this actually mean?

The permutations are too great to consider here and until the detail is provided, the full merit of the scheme cannot be ascertained. The following scenarios are however worth considering.

If the proposal is that the current residential charging rules apply to people receiving domiciliary care – then this would mean that everyone with assets below £100,000 would be liable to be charged the full cost of their care (depending upon their income) – less a Personal Expenses Allowance (currently £24.90 per week). This seems unlikely for reasons that must be obvious. However one aspect that has not been discussed, but may well be part of the proposal, is that people in this situation will [lose their Attendance Allowance](#) / Disability Living Allowance / Personal Independence Payments (PIPs) care component payments (as currently happens for local authority funded residents in care homes). This would be a major income loss for such families, and would be a substantial saving to the Treasury. Changes of this nature to these allowances would run into £billions.

If the proposal is that the capital residential charging rules apply to people receiving domiciliary care services – but that the amount an individual retains is modified to be larger than the current £24.90 per week – this still opens the way for significant extra charges to be levied on people with assets below the £100,000 threshold. At present, all residents with savings below the current capital threshold (£23,250) have to pay a 20% annual ‘tax’ on their savings above £14,250.² If this lower band is retained, then someone with capital assets of £94,250 would be deemed to be deriving an income of £320 per week from this amount – all of which would be subject to charges (in addition to their ‘real’ income).

At present, if a person enters a care home the value of their home is ignored if occupied by (for example) their common law partner, their spouse or an elderly or frail relative. It is difficult to see how this exemption can be retained as it would result in some significant anomalies. If revoked, it means (for example) that when one spouse died (perhaps after a decade of intense informal care from his wife / daughter in addition to help from the local authority) the deferred payment rules would require that the home be sold. Presumably this is a spectre too awful for most MPs – so a raft of special exemptions / deferrals would then need to be drafted. In addition to the dreadful publicity that would ensue (while these exemptions are hammered out) these would further exacerbate the local authority cash difficulties.

Further thoughts

Nothing in the Manifesto proposal identifies where the desperately needed extra funding required by social care will come from. In the last eight years spending by

² Every £250 over £14,250 is deemed to yield a ‘tariff income’ of £1.00 per week.

English councils on social care per adult has fallen by 11% in real-terms³ and 26% fewer people receive local authority support⁴ which is the result of a £4.6b funding cut.⁵ In the last 10 years the NHS has [closed 20% of its overnight beds \(38,000\)](#) at a time when the number of frail elderly people in need of care is increasing dramatically. The NHS responsibility for the care that they would have received has now been shunted either to social services or to family carers. [Carers are predominantly women](#) of which a large proportion are in paid work – because they find it fulfilling and/or because they have to work in order to make ends meet.⁶

On the face of it, these proposals do not address the immediate problem of severe underfunding of social care. They do nothing to bring equity to the system – where some families face no costs and others face decades of unpaid care, lost earnings and consequent poverty, particularly in older age. This is a system that contains (in the words of Andrew Dilnot) [‘the most pernicious means-test in the whole of the British welfare state.’](#) As Martha Fineman⁷ has observed we have a system that punishes carers and rewards those who do not live with dependency – who can free-ride on the unpaid care they received as children and avoid having to contribute in any way to compensate today’s carers and people who find themselves in a situation of dependency.

These changes will be good for bureaucrats and lawyers, and cause further harm to a social care system already in crisis. An army of financial assessment officers will need to be recruited, lawyers paid to arrange deferred payment mortgages and lawyers paid by families to transfer houses and other assets beyond the reach of social services.

The Government has previously made much of its ‘cap on costs’ promise (now in the [Care Act 2014 section 15](#)). The betting must be that this proposal will go the same way once MPs wake up to the impact of the wicked detail.

There are many straightforward ways of dealing with this relatively minor problem (the current public funding of older people’s social care costs account for less than 0.7% of public expenditure⁸). [Richard Murphy](#) suggests capital taxation which makes more sense than the [Sutherland](#) Commission’s proposal that this be funded from an income tax. That said, the Sutherland Commission’s [1999 report](#) contains the most compelling proposal for social care reform - that it be free at the point of need. It is a proposal that has been largely adopted in Scotland and a report that deserves a reconsideration. Its adoption in England would of course come at a cost (as it has in Scotland) but since 50 per cent of older people (as ‘self-funders’) personally pay for all their care, it is a cost that is already being born – but unequally.⁹

³ [David Phillips and Polly Simpson One in ten councils have cut adult social care spending by more than a quarter](#) Institute of Fiscal Studies 2017.

⁴ R Humphries and others, *Social care for older people: home truths*, King’s Fund and Nuffield Trust, 2016, p2.

⁵ ADASS [Budget Survey 2016](#) p7.

⁶ Luke Clements [‘Does your carer take sugar?’](#) in Washington and Lee Journal of Civil Rights and Social Justice (2013) Volume 19 pp 397 – 434.

⁷ Martha Albertson Fineman *The Autonomy Myth* (The New Press 2005).

⁸ R Humphries and others, *Social care for older people: home truths*, King’s Fund and Nuffield Trust, 2016, p12.

⁹ For further analysis see Luke Clements [Community Care and the Law](#) Legal Action Group 2017 – Introduction.