Age UK briefing on Government proposals for social care reform

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Introduction

On 11th July 2012 the Government published its plans to reform the care and support system. Its proposals included a White Paper, draft Social Care Bill and progress report on funding as well as responses to the Health Select Committee Report and the Law Commission’s proposals for legislative reform.

This briefing sets out Age UK’s initial analysis of:

- Caring for our futures: progress report on funding reform;
- Caring for our futures: reforming care and support (Social Care White Paper); and
- the draft Care and Support Bill

Age UK is clear that the policy proposals in the White Paper and the associated legal reforms are important and we warmly welcome them. Together, they have the potential to significantly improve the quality of care available and help create a care system that is fairer and more straightforward for older people and their families.

The White Paper sets out landmark changes to the way that care and support is provided. It envisages that in future people’s care and support needs will be met by: harnessing existing capacity within neighbourhoods and families to provide support; addressing people’s needs at an earlier stage and before the need for formal services; and through the provision of high quality state support based on clear national entitlements. Care and support will be more effectively joined up across all local services (particularly health and housing) and will work more collaboratively across local authorities, providers and other statutory organisations like the emergency services.

We are pleased to see that many of Age UK’s key calls have been taken forward by Government. We will continue to study the detail closely and will consult further over the next few months with older people and our partners to develop our response. We are also committed to working with all parties to ensure that the draft Bill that the Government has published delivers the change that is needed.

However, the potential of the proposals outlined cannot be fully realised until the Government faces up to, and resolves, the crucial issue of funding. Without adequate funding, this historic opportunity will be missed and increasing numbers of older people will be without the care they so badly need. The Government’s commitment to the Dilnot approach in principle is an important milestone, but without a clear plan for how they intend to deliver on that commitment there are no guarantees the Dilnot recommendations will be put into action soon, or possibly even at all. More than a year on from the publication of the Dilnot Commission’s report, we are left asking just how strong the Government’s commitment is to implementing his two key recommendations: to raise the means-test threshold and to set a cap on costs.

In the end, adequate funding will make or break the Government’s proposals, so we will be watching closely to make sure social care remains firmly on the Government’s agenda and is not marginalised during a comprehensive spending review that everyone expects to be tight.

The delay on a funding decision will undoubtedly have a devastating impact on those currently in need of care support today. There are already nearly 800,000 older people struggling to cope alone and that number is set to rise to one million by 2015. Many older people rely on social care to live with dignity and respect, and it is unfair to expect them to wait. Care reform and funding reform must go hand in hand and cross party political consensus must be achieved.
Key points summary

Key points:

- **Long term funding reform.** The Government has indicated its support for the principles of the approach recommended by the Dilnot Commission – a cap on lifetime contributions and an increase to the means test threshold. However, no clear commitments have been made on implementation. Instead the Government has stated it, ‘will work with stakeholders and the official opposition to consider various options for what shape a reformed system should take, based on the principles of the Commission’s model, before coming to a final view in the next spending review’.

Nor has the Government committed extra funds to address levels of unmet need or to close the current gap in funding (which we estimate is around £500m in 2011-12).

While we recognise that the Government’s commitment to the Dilnot approach is an important milestone we are concerned that, with no clear plan for how they intend to deliver on this commitment, there are no guarantees that the proposals will be put into action soon, or possibly at all. Care reform and funding reform must go hand in hand to be really meaningful and failing to address the funding question risks undermining the whole system.

- Government has published its **response to the Law Commission review of adult social care** and, based on this response, **the draft Care and Support Bill**. The intention is to consult on this draft before putting a Bill before Parliament in the next session.

The draft Bill is largely based on the Law Commission’s recommendations, which Age UK strongly supports. It retains and clarifies most of the current rights of older and disabled people and adds important new legislation, including rights to services for carers, and legislation to safeguard adults at risk of abuse.

- **Introduction of a new eligibility criteria and a national eligibility threshold.** These will be developed alongside a new assessment system to replace the existing Fair Access to Care Services.

Age UK welcomes the commitment to introduce a national threshold, signalling an end to the unfair postcode lottery. We have called on Government to ensure a new threshold is set at a decent minimum level (we believe this should be moderate or its equivalent in the new system) and that eligibility criteria are based on outcomes social care should achieve.

- **Measures to improved information and advice** at a local and national level. The Government has committed to setting up a single national online portal for information about health and care, and investing £32m in the development of local authority websites providing local information about care and support services.

Improved access to information and advice is a positive step forwards. However, we are concerned by the White Paper’s emphasis on online tools. Information and advice needs to be accessible to all those who need it and in a range of formats.

- **Age UK has welcomed measures to enhance coordination of care and promote between local authorities, health and housing services.** These will be underpinned by new legal duties on local authorities to promote integration and additional investment in integrated and coordinated care models.

- **Local authorities will have a new duty to incorporate preventative practice and early intervention** into care commissioning and planning. Commissioners and providers will be supported by a new national care and support evidence library.
We hope this signals a shift in focus from crisis intervention to prevention and early intervention. Supporting people to manage their needs at an earlier stage can reduce demand on the more intensive health and care services, as well as improving quality of life and maintaining independence and wellbeing.

- Government has reiterated its commitment to **personalised services** as the underlying principle shaping the provision of care services. This will be underpinned by: a new entitlement to a personal budget; a right to request a direct payment; and new duties on local authorities to promote diversity and quality in the provision of services and to provide access to independent advice and support for people eligible for local authority funded support.

  Age UK is pleased that personalisation remains a guiding principle for the care and support system. Improving the quality of managed personal budgets is particularly important for older people who do not choose a cash payment for their care. However, it remains vital that personalisation is seen in broader terms than simply rolling out personal budgets and direct payments.

- We are pleased that the importance of housing has been recognised in the White Paper through **improved access to housing aids and adaptations**, as well as **availability of extra care and sheltered housing**. In particular, we welcome measures to develop a greater variety of housing options, as well as allocate more support to ensure existing housing is suitable.

- Introduction of new **national minimum standards for workforce training** and a new **code of conduct both emphasising dignity and respect**. The White Paper also announces a new Chief Social Worker role and improved support for development of leaders in the sector.

  Age UK has welcomed the reforms to workforce and training. Through the Dignity in Care Commission we called for a review of the pay, status, training and regulation of care workers. We hope that Government intends to implement these proposals as part of a wider look at staffing in the care sector.

- Age UK has welcomed long overdue improvements to carers rights. There will be **increased legal rights for carers to both assessment and services**, significantly strengthening their entitlements to support.
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1. Caring for our future: progress report on funding reform

1.1 Care funding system and proposals for reform

Background

The social care system is in crisis. The most significant reasons for the crisis are a chronic lack of funding and the failure to reform. Earlier this year Age UK’s Care in Crisis report highlighted that:

- **There is serious underfunding of older people’s social care.** Public spending on older people’s care stagnated and then decreased between 2005-06 and 2011-12. Yet the number of people aged over 85, the age group who are most likely to need care, has increased by over 250,000 since 2004-05. As a result, each year, unmet need has increased as people are excluded from accessing services or see their care packages reduced.

- **Councils have cut back on their service provision.** In 2009-10 the total hours of support purchased by local authorities for older people fell from 2 million to 1.85 million.

- **Provision of care is more restricted than ever.** In 2005 half of councils provided support to people assessed as having ‘moderate’ needs, but in 2011 the figure fell to 18 per cent.

- **Many older people miss out altogether, remaining outside of the state care system.** Today, of 2 million older people in England with care-related needs, nearly 800,000 receive no support from public or private sector agencies.

- **The financial demands on older people who receive care are increasing.** In real terms, charges were £150 per year more in 2010-11 than in 2009-10 for each older person using local authority care services and £360 more than in 2008-09.

- **Funding for frontline services has not been protected.** Councils have reduced their spending on older people’s social care by £671 million in real terms in the year between 2010-11 and 2011-12. This is a decrease of over 8 per cent.

- **Additional money from the NHS has not filled the gap.** Even after adding the £330 million transferred from PCTs to the amount spent by local authorities, the overall effect is still a real decrease in spending on older people’s social care of £341 million, or around 4.5 per cent.

- **Taking into account growing demand as well the gap is even greater.** In order to maintain the care system at the same level as in 2010 (before current spending cuts) expenditure on older people’s social care should be £7.8 billion in 2011-12. But this year total spending is only £7.3 billion. Even making allowances for efficiency gains, this has left a total shortfall of £500 million.

Age UK has called for radical reform of social care to put in place a sustainable and fair funding system. Any reform needs to address the current gap in funding, ensure the system has sufficient resources to deliver good quality care to all those who need it, and provide a fair deal for those who can afford to contribute towards the cost of their care.

*The Dilnot Commission*

In July 2011, the Dilnot Commission published its final report setting out proposals for reforming the system of funding for adult social care. Their key recommendations were:
• setting a life time cap on the individual’s contribution towards the cost of their care. The Commission proposed setting this cap between £25-£50k, but suggested £35k would be the most appropriate level; and

• creating a fairer means test by raising the upper means test threshold from £23,500 to £100k.

Their proposals aimed to protect people from the risk of catastrophic care costs (1 in 10 people face lifetime costs of over £100k) and help people to plan ahead by setting out clearly what individuals would need to contribute and what help they could expect from the state.

These proposals have received widespread support from across the care sector, including organisations representing service users, local authorities, commissioners and providers of care services.

Age UK has supported the Commission’s recommendations and called on Government to set out a clear timetable for their implementation.

Key announcements

In the White Paper and associated documents, the Government has:

• indicated it ‘support(s) the principles of the approach recommended by the Commission’. However, no clear commitments have been made on implementation. Instead the Government has stated it, ‘will work with stakeholders and the official opposition to consider various options for what shape a reformed system should take, based on the principles of the Commission’s model, before coming to a final view in the next spending review’

• committed to introducing a universal system of deferred payments for residential social care; and

• announced it will establish an expert working group with the financial services and care sector to ensure the right information is available to help people plan ahead for later life.

Age UK’s response

The Government’s commitment to the Dilnot approach in principle is an important milestone. This issue of how to reform social care funding has remained unresolved for far too long. It is therefore welcome that we now have a stated direction of travel. However, with no clear plan for how Government intends to deliver on this commitment, there are no guarantees that the Dilnot recommendations will be put into action soon, or possibly at all. Care reform and funding reform must go hand in hand to be fully meaningful and failing to address the funding question risks undermining the whole system.

The Government’s decision to put off the challenging decisions about funding until the comprehensive spending review risk social care becoming lost in the melee. Yet there is a strong case for social care being at the front of the queue for additional investment, even in such tough times. Social care accounts for only about 1% of public spending and over recent years, even before the current era of austerity, it saw its funding stagnate and decline. At the same time demand for services has grown.

There are now nearly 800,000 older people in need of social care who do not receive formal help and that number is set to rise to one million by 2015. Any delays in reaching a funding decision will have a devastating impact on those older people who rely on social care to live with dignity and respect.

Proposals to establish a universal deferred payment scheme provides welcome clarification and strengthens the existing system. Some local authorities already operate a deferred payment
scheme, but many people are unaware of this option. However, these proposals will not
ultimately prevent older people from having to sell their property or protect them from the risk of
catastrophic costs. As a result, they do not go to the heart of the biggest problems with the
current funding system.

Overall, more detail is needed to assess whether such a scheme would in reality represent good
value for older people entering a care home. It also raises the question of access to appropriate
independent financial advice for people entering the care system to ensure they are able to
make the best financial decisions. This is an issue that we would expect the new expert working
group on financial information to address as part of its remit.

1.2 Related funding announcements

The Funding Review Paper also sets out a range of issues and options on funding reform and
the Dilnot recommendations that Government wants to consult on in more detail. These include:

- the level of the cap and the means test – whether this should be set between £25-50k as
  the Commission recommended or higher (e.g. £75k);

- opt-in vs universal system – whether a cap should only apply to people who choose to
  ‘opt-in’ to the system by paying a contribution or purchasing a financial product; and

- how the cap would operate and the best way to transition to a new system.

Age UK’s views on related funding announcements

Age UK has argued for the cap and means test to be set at the levels recommended by the
Commission (a £35k cap and £100k upper means test threshold). This offers optimum
protection to people on low and middle incomes while remaining affordable for the public purse.
Raising the level of the cap would fail to provide people with an adequate level of protection
from catastrophic costs. This would in turn risk undermining the wider impact of the system by
reducing people’s incentive to plan ahead and invest in preventative services.

The Department’s own analysis shows that an individual entering the care system with £100k,
representing a fairly modest amount of savings and assets, would stand to lose over 80% of this
in the current system. Setting the cap between £25k and £50k would ensure no one would lose
more than 40% of their money. However, raising the cap to £75k would mean people stand to
lose about 50%, while setting it at £100k would mean they could lose closer to 60%.

Creating an opt-in system may also defeat the purpose of the Dilnot approach as universality is
one of its underpinning principles. In designing their recommendations, the Dilnot Commission
recognised that the state needed to step in to pool risk across the population, as this was not
something the financial services industry had been able to do effectively on a solely commercial
basis.

Making the system voluntary carries the danger of creating: a risk pool that is too small and that
only people who feel they are at high risk will join; bringing about a system that excludes
precisely those people on modest incomes it was seeking to help (for example because people
would like to opt in but do not feel able to afford the payment or product that constitutes the
entry criteria); a system that is less progressive because by restricting the risk pool it does not
spread the cost of the new system; and, as we have seen in relation to pensions, it runs counter
to what we know works in encouraging people to save and plan ahead. Lastly it is unclear how
this would impact on people with pre-existing conditions and disabilities, and whether they
would be able to ‘opt-in’ at all. For all these reasons Age UK is clear that an opt-in system is
neither desirable nor viable.
2. Caring for our future: reforming care and support (Government White Paper)

2.1 Eligibility and Assessment

Background

Age UK has long called for a national eligibility threshold to end the social care postcode lottery. This would help ensure that all older people across the country, regardless of where they live, can have certainty about the level of care and support they are entitled to.

At the moment, although we have a national eligibility criteria framework (Fair Access to Care Services), it is up to local authorities to decide what level of need they will support. In recent years we have seen more and more local authorities restrict care to those with only the highest needs. In 2005 half of councils provided support to people assessed as having ‘moderate’ needs, but by 2011 the figure has fallen to 18 per cent.

Age UK has also called for care packages to be made portable. Currently, older people face real challenges in moving between local authorities as there is no guarantee that their new local authority will continue to provide support (if, for example, it only provides care to people with high assessed levels of need). People can also find themselves left without the help they rely on while they wait for a new assessment.

Key announcements

- Introduce a national eligibility threshold from 2015.
- Develop a new assessment framework and consider options for a new national eligibility criteria to replace the existing Fair Access to Care Services guidance.
- Make care packages portable by ensuring assessed needs continue to be met when people move from one local authority to another until a new assessment can be arranged.
- Allow care needs assessment to be carried out by new providers, including social enterprises and the independent sector.

Age UK’s response

We welcome the introduction of a single new threshold for care services, as this removes the existing postcode lottery difficulties (also see clause 13 on page 26 of this briefing). We have called for this to be set at ‘moderate’ (or its equivalent in a reformed system) to ensure that people with significant social care needs can maintain a decent quality of life and live safely with dignity. Portability of assessment is also a welcome proposal and something we have called for through our Care in Crisis campaign (also see clauses 31-33 on page 30 of this briefing).

The current assessment process is widely seen as confusing and bureaucratic. Therefore, a commitment to review the assessment process to make it more streamlined and transparent is a positive step forward. The draft Care and Support Bill establishes new provisions in relation to assessment, including providing for regulations that would set out the steps that should be followed in undertaking an assessment in future (also see clauses 9-12 on pages 25-26 of this briefing).

The proposals set out in the White Paper have limited detail about how a new eligibility framework will be developed. Age UK will be calling for any new criteria to be based on outcomes that social care should achieve for older people, including in such areas as community participation and social interaction as well as safety and personal care. We
anticipate that a working group will be set up by the Department of Health to develop further proposals.

Age UK has serious concerns about proposals in the White Paper (also see clause 51 on page 32 of this briefing) to allow third parties to carry out assessments. It is not clear whether these proposals would weaken the statutory obligations of local authorities.

2.2 Information and advice, advocacy and brokerage

Background

Access to good quality information and advice at the right time can make all the difference to individuals and carers in need of care and support, either as a result of a sudden crisis or a slow decline in physical or mental capacity.

For many it will be a new and distressing situation where they will not know where to start looking for information, and may find it hard to evaluate services on offer or find out about different options that may be of benefit to them.

Good access to information about how the care system works, entitlements and financial advice also makes it possible for people to plan ahead for care needs in later life. However, the complexity and uncertainty of the current system, combined with poor access to information and advice, makes it practically impossible for even the most conscientious of people to plan ahead or make informed choices when they need care.

Age UK has called for universal access to information and advice, free at the point of use. These services should cover accessing and arranging care, information about statutory entitlements and signposting to independent financial planning. Age UK has also argued that local authorities should ensure access to advocacy services and support to plan and co-ordinate care.

Key announcements

- Set up a national online information tool covering both health and care services, combined with new local websites providing information about local services – Government has allocated £32 million in support for local authorities.

- Improve access to independent advice and support for people eligible for local authority funded support.

- Extend local authority support in care planning to individuals funding their own care.

Age UK’s response

The commitments in the White Paper to improve the quality of information and advice, as well as making it easier for people to access, are long overdue. However, Age UK is concerned about the emphasis on online services at both local and national level. Information and advice must be accessible to everyone who may need it. This means Government must take steps in implementing these plans to ensure that information is made available through a variety of channels, including web-based, telephone and face to face advice.

The limited content in the White Paper on the importance of brokerage and advocacy services is disappointing. Age UK would urge local authorities to ensure that appropriate services are available to everyone who needs them as part of their wider obligations to ensure access to independent advice and support for people eligible for local authority help and their new responsibilities to support eligible self-funders to plan their care.

Further details of new local authority responsibilities to provide universal services, including information and advice, are set out in clauses 2-7 on pages 24-25 of this briefing.
2.3 Prevention

Background

Age UK has argued that services and strategies which lessen or delay the need for future care must be a key feature of a reformed care and support system. We know that older people value such services and in many cases there is evidence that investing in prevention and early intervention is a cost-effective way of supporting people with, or at risk of developing, care needs.

To deliver the maximum benefit, preventive support should be available at every stage of the care journey and we should recognise the role it can play in reducing the risk of crisis. This is why Age UK has called for local authorities to have a clear duty to invest in and commission preventive and early intervention services.

In order to support this call, we are clear there would need to be greater investment in developing and disseminating the evidence base and best practice around prevention. This should include articulating a clearer vision for prevention that takes into account a broad spectrum of activities and does not focus exclusively on financial gains.

Key announcements

- Legislate to introduce a clear duty on local authorities to incorporate preventative practice and early intervention into care commissioning and planning.

- Launch a national care and support evidence library in 2013 to support commissioning and provider practice.

- Building community-based capacity into local plans for provision.

Age UK’s response

We welcome proposals in the White Paper to place much greater emphasis on the role of prevention and early intervention. In particular, we are pleased to see that the Government has decided to take forward new duties for local authorities to incorporate prevention into commissioning and their plans to launch a national evidence library.

It is important that local authorities take a broad view of prevention and involve older people in designing services that work for them. Services should look beyond preventing health care needs and disability to ensure they include areas such as emotional and psychological wellbeing, practical support and that they tackle loneliness and isolation.

The emphasis within the White Paper on greater community involvement in commissioning decisions and the joint strategic needs assessment is also a positive step forward, as is recognising the contribution that communities and local organisations can make towards promoting health and wellbeing.

The overall emphasis in the White Paper is moving away from crisis interventions to greater support at earlier stages of need. However, it is not clear how investment in these services will be balanced with the increasing demand for services that meet intensive needs.

Further details of new local authority responsibilities to provide universal services, including prevention services, are set out in clauses 2-7 on pages 24-25 of this briefing.
2.4 Integration and care coordination

Background

Age UK believes the main aim of integration should be to achieve a seamless and coordinated service for the user. The system’s guiding principle should be a user journey free from confusion, duplication, error, or inexplicable cliff edges where services fail to connect. We know that too often poor care is experienced in precisely those circumstances - when plans and responsibilities are unclear, communication fails and older people fall through the cracks.

Ensuring the right care is provided at the right time would deliver huge benefits for both service users and the system by avoiding crisis situations and unnecessary complex and expensive treatments.

Better integration should deliver system level benefits for commissioners and providers. Better coordination of inputs and more effective deployment of resources should aim to deliver a more efficient service without compromising quality, even if this does not deliver cashable savings.

Unfortunately, despite significant focus on integration in recent years, progress has been patchy. Barriers to greater integration include: mismatched professional cultures; lack of leadership and shared vision; disincentives built into the current siloed systems; and poor involvement of service users and the public in commissioning and service design.

In order to address barriers to integration Age UK has argued that reforms need to introduce clear duties to integrate. Integrated working should not just focus on health and care. It is important to coordinate with other local services, such as housing and community services.

Age UK has called for improved care coordination at key transition points, such as discharge from hospital, and for access to care coordination services to be an early priority in moving towards greater service integration.

Key announcements

- Introduce a duty for local authorities to promote the integration of services, including within their own organisation between care and housing departments.

- Transfer an additional £300 million from the NHS to social care over two years to promote joint working between health and care (£100m in 2013-14 and £200m in 2014-15).

- Develop plans to ensure that everyone who has a care plan has a named professional with an overview of their case and responsibility for answering any questions they have.

- Developing models of coordinated care for older people across care and health.

- Improve access to primary healthcare in care homes through the NHS Commissioning Board and local CCGs.

- Use data and evidence gathered in existing palliative care funding pilot sites to investigate the possibility of offering free social care at the end of life.

Age UK’s response

New duties for local authorities to promote integration of services both between health and social care, as well as local authority care and housing departments, is a welcome step forward towards greater integration. The Health and Social Care Act 2012 sets reciprocal duties on clinical commissioning groups and health and wellbeing boards. We hope that, combined with new investment to promote joint working, it will encourage local authorities to work closely with new clinical commissioning groups and health and wellbeing boards.
Age UK would particularly like to see some of this additional investment targeted at improving transfers between care settings. We also think there is scope to set out regulations governing the process of assessment that refer specifically to the hospital discharge process in the Care and Support Bill.

We are pleased to see proposals in the White Paper to develop new models of coordinated care. Many older people live with multiple conditions and their needs cut across NHS and local authority boundaries. Evidence demonstrates that access to care coordination and/or a named coordinator can significantly improve service user experience and the outcomes of care\textsuperscript{xii}. However, in order to derive maximum benefit from proposals to ensure people have access to a named professional, it is vital that the NHS and care services invest in care planning to ensure that the process is meaningful and fully involves service users.

Age UK also welcomes the commitment to improving access to primary care for care home residents. There is clear evidence that older people living in residential care do not have adequate access to GP and other primary care services, such as dental care\textsuperscript{xiii}. The NHS Board and local clinical commissioning groups must take steps to ensure the needs of residents are fully accounted for in commissioning plans and contractual arrangements.

We are keen to see the results of the end of life care pilots and an assessment of the evidence in relation to providing free social care at the end of life. This would be a very welcome step for older people and their families if it can be put into practice. We are aware, however, that success depends on being able to assess when people are nearing the end of their life. This can be more problematic for older people who may reach the end of their lives with multiple and interacting conditions – this must not result in delays or difficulties in gaining access to end of life care.

Further details of new local authority duties to promote integration are set out in clause 6 on pages 24-25 of this briefing. Details of new provisions relating to hospital discharge are set out in Schedule 2 of the draft Bill and further information can be found on page 31.

**2.5 Personalisation, choice and control**

*Background*

Age UK supports a vision of care built around the needs of the individual, where services support older people to meet the outcomes that are important to them. This means giving people choice and control over their own care packages, including autonomy to set their own priorities and determine how their care can best be organised to meet their needs.

However despite progress towards personalisation in recent years, there are still substantial barriers to making personalised services a universal reality.

Age UK has long argued that personalisation should extend beyond the provision of personal budgets and direct payments to every element of care and all care settings, including residential care. This should include greater emphasis on involving service users, individually and collectively, in decisions about the design and management of care services. Rolling out personal budgets and direct payments should not be seen as the sole goal.

*Key announcements*

- Introduce the principle that care and support must support someone’s wellbeing.
- Introduce an entitlement to a personal budget and a right to request a direct payment.
- Pilot direct payments in residential care services.
- Making it more straightforward to combine personal health and care budgets.
• Exempt income people earn in employment from charging for residential care.

**Age UK’s response**

The Government’s continued commitment to personalisation is welcome and usefully reinforces the existing direction of travel. We will continue to push to ensure that personal budgets provide equal opportunities for people to exercise choice and control even where people do not wish to have a direct payment.

There are no new targets governing how many people use a direct payment although it is clear that this remains the Government’s preferred means of delivery – the White Paper reiterates the intention to provide all users with a personal budget by April 2013, preferably as a direct payment. Introducing an entitlement to a personal budget and a right to request a direct payment should help ensure that where older people prefer to manage their own care they are able to do so in the best way for them (see also clauses 28-30 on page 32 of this briefing).

Organising care around a principle of wellbeing is a good basis for provision of services. The draft Care and Support Bill sets a general duty on local authorities to promote wellbeing and defines relevant domains (see clause 1 on pages 23-24 of this briefing). The key will be in how this is interpreted by local authorities and how far the principle is enforceable. Age UK is keen to explore this in further detail as the legislation is developed.

Age UK is interested to see whether direct payments in residential care can deliver benefits for older people, we therefore welcome the pilot programme. It reinforces the legitimate role that care homes play in care and support. It is likely that the pilots will highlight the current disparity between standard rates paid by many local authorities for care home places and the amount self-funders are charged. It will also require a much stronger link between someone’s assessed care needs and the cost of the services that meet them.

There is little additional information about how personal health and care budgets will be joined up. It is a welcome development but we need to be cautious about whether it blurs the distinction between chargeable care services and free at the point of use health services. It is clearly important to retain a distinction to ensure that people are not inadvertently charged for services which should be provided free of charge. However, there is evidence that joint budgets will work well for some older people, particularly those on the threshold between high intensity social care and NHS continuing care. It is useful that for the first time personal budgets have been defined in legislation (see clause 25 on page 29 of this briefing).

Other proposals outlined in the White Paper mark a positive improvement in the way that older people are able to personalise their support. Better national and local sources of information and advice will help people make decisions and find out what is available locally. Direct payments will be made more flexible so that people can start with a small cash payment to meet some of their needs, combining this with commissioned services. Local authorities’ extended new duties towards market shaping will ensure there is sufficient capacity and choice of provision within local areas. These additional changes will help support older people to achieve better outcomes from their care and support, as well as help self-funders to use their own resources to pay for care services.

**2.6 Quality, workforce and training**

Over recent years there have been significant concerns about the quality of care provided to older people. The Equalities and Human Rights Commission report into homecare services in 2011 found evidence of neglect and mistreatment. It also found that age discrimination was a significant barrier to older people getting the care they needed and raised questions about the workforce, highlighting low pay, poor training and high turnover of staff⁴⁴.

Earlier this year the Commission on Dignity in Care, co-chaired by Age UK, published its report on standards of dignity for older people in hospitals and care homes. The report made a series
of recommendations including: a full review of the pay, status, training and regulation of care staff; greater recognition of, and investment in, the leadership role of care home managers; investment in quality improvement programmes such as My Home Life; greater emphasis by commissioners on dignity and respect in managing services; and better mechanisms to enable service users to find out about the quality of services. The Commission also highlighted the wider impact of ageism and age discrimination on the care sector xv.

**Key announcements**

- Ruling out ‘contracting by the minute’ by local authorities for services.
- Age discrimination in NHS and social care services will be unlawful from October 2012.
- All registered providers of care services will have a quality profile on the NHS and social care website. This will be supplemented in due course with user reviews and feedback on services. Quality ratings will be developed within a year.
- NICE will develop more quality standards and guidance to improve the quality of social care. Providers will be supported to audit their practice against the national quality standards.
- A national code of conduct and minimum training standards will be developed for care workers.
- Appoint a Chief Social Worker by December 2012.
- Support leaders in the care sector through a new Leadership Forum, development of a Social Care Leadership Qualities Framework in summer 2012, and by strengthening the status of registered managers as leaders and advocates for quality care.
- Creation of 100,000 new apprenticeships in social care over the next 5 years.

**Age UK’s response**

We are pleased to see measures to improve training and development for social care staff, in particular the emphasis on dignity and respect. Encouraging more people into the care profession by increasing the number of skilled leaders and routes into the profession through apprenticeships is a clear step forward. Through the Dignity in Care Commission we have called for a full review of the pay, status, training and regulation of the workforce and we hope that these proposals will be taken forward in the context of a wider review.

The Commission’s work also highlighted the huge importance of investing leadership skills for frontline managerial staff, including care home managers and senior care staff. We look forward to further discussions on how Government intends to work with the sector to take forward a new Leadership Forum and leadership framework. We hope that the new post of Chief Social Worker announced in the White Paper will enhance the status and professionalism of care.

Providing more training and development to personal assistants employed directly by care users is also welcome. This is a part of the care workforce that has previously not benefitted from standards or an expected level of skill.

Age UK has long argued that contracting by the minute is poor practice. A survey of UK home care providers found that nearly three quarters of homecare visits commissioned by councils are for 30 minutes or less, with one in ten visits rationed to 15 minute time slots xvii. It is therefore welcome that Government has indicated that it wants to change the focus of commissioners from ‘time and task’ to outcomes and value. However, many local authority commissioners operate under significant constraints, most notably inadequate resources to meet increasing
levels of need. There is little detail on how Government intends to promote changes in commissioning or tackle the constraints affecting decisions about provision.

It is useful that Government has confirmed that care services will not be exempt from a ban on age discrimination. Older people have lost out in the past when they have been offered lower levels of service or more restricted options than have been available to other groups. We hope that the ban will signal an end to such practice once and for all.

Improving access to information about the quality of care services will, we hope, significantly enhance service user choice and control. Steps need to be taken to ensure this information is widely accessible in a range of formats and includes both formal ratings, useful quality information that service users value and feedback from service users themselves. We are keen to work with Government and providers to ensure that older people have access to the information they need and want.

2.7 Carers

Background

Informal and family carers are the backbone of the social care system and provide the majority of the support that older people use on a day to day basis. There are around 960,000 people over 65 who provide unpaid care to a friends or family. Often carers experience their own health and wellbeing problems as a direct result of their caring responsibilities.

The current system frequently lets carers down and fails to provide the support they need. As well as problems they face in accessing carer specific support, such as respite care, carers often face additional stress caused by the complicated and underfunded care system, which can leave carers feeling abandoned and unrecognised.

Key announcements

- Extend rights to carers for assessment and provision of support service – eligibility for services will be set at a national threshold.

- Create stronger requirements for local health and social care organisations to coordinate efforts to identify and support carers.

- Commitment to publish a road map setting out how carers will be supported to remain in the workforce.

Age UK’s response

The new entitlement for carers to receive services as well as an assessment of their needs is extremely positive. These proposals significantly strengthen their entitlements to services and rights when challenging poor provision of support. We believe providing greater support for carers to manage their caring responsibilities and adequate levels of support in a crisis will help ensure that existing informal care arrangements are more stable.

This duty, however, is likely to have a significant impact on the amount of support local authorities provide to carers and will require additional investment in order to make these new rights meaningful.

Age UK is also pleased to see the acknowledgement that carers’ own health and wellbeing is important and should be placed on a par with the health of the person they care for.

Identifying and acknowledging the support that carers provide is a key part of valuing their contribution to society. Ensuring that local bodies coordinate their efforts to identify carers should mean support can be better targeted to ensure everyone entitled to support is able to
access it. We are pleased to see the responsibilities of health bodies extended as they are at the frontline of identifying carers and monitoring their health needs.

We welcome Government’s commitment to publishing a road map setting out how it will support more carers to remain in the workforce. Additional support is vital for people caring for older relatives or partners who may be juggling work, family and caring responsibilities. However we are keen to see more detail of what this may mean in practice.

The White Paper sets out proposals to give local authorities increased responsibility for shaping the market shaping and ensuring there are sufficient levels of service available locally, this must include carer-specific support. We also hope carers will benefit from the more comprehensive provision of information and advice about care services. This should include help to access carer-specific services as well as support for the person they care for.

Further details about new rights for carers are set out in clauses 9-12 on pages 25-26 and clauses 17-19 on pages 27-28 of this briefing.

2.8 Safeguarding

Ensuring that older people remain safe and free from neglect is a basic right and should apply to all forms of support someone uses, including but not limited to social care services. All service users and their families should be able to confident that services will uphold and promote these rights. Cooperation and coordination between local bodies is a key way to make sure that reporting and investigation procedures are joined up and effective.

As well as regulation against essential standards by the Care Quality Commission, one of the key ways to protect service users is by supporting them to speak out if they are worried about the support they receive.

Key announcements

- New legislation to require Local Authorities to convene a statutory Safeguarding Adults Board, with core membership to include Police and local NHS bodies – the Board will have powers to conduct reviews and enquiries and will publish an annual review of its activity.
- A consultation on the draft Care and Support Bill to seek views about whether local authorities require new powers to ensure access to someone who may be at risk of neglect or abuse.

Age UK’s response

Age UK has previously called for safeguarding arrangements to be set on a statutory footing, requiring local agencies to cooperate, share information and ensure a coordinated approach. This proposal is therefore extremely positive and will increase the accountability of local bodies for their safeguarding procedures and activity. Further details are also set out in clauses 34-38 on page 30 of this briefing.

The consultation about local authority powers to access someone at risk of neglect or abuse is also welcome. However this is a sensitive area which touches on issues of permission and complicity in neglect or an abusive situation. Careful consideration about how local authorities use these powers will be needed and widespread consultation with older people and carers. Further information about this consultation can be accessed at: http://www.dh.gov.uk/health/2012/07/safeguardingadults/
2.9 Social care market

Background

The social care market is shaped by a wider variety of factors than just competition and consumer choice. In the first instance the majority of care is still provided outside of the formal care market by family and friends. Other factors include the impact of regulation, local authority place shaping activity, individual and collective service user voice, public spending decisions as well as the interaction with other parts of the public sector.

As a result, Age UK has long argued that the social care system needs to be seen in this wider context. Even where market relationships determine how the care system works, older people are not always in a position to act as empowered consumers so markets are inherently imperfect. Principles that apply to other consumer markets — choice, information, access, redress and safety — apply equally in care markets. However, some specific characteristics of care make it inappropriate to treat it in the same way as other services.

Service users can be poorly placed to exert competitive pressure. People are often making decisions at a time of crisis or when they are in a poor state of health, services may also be purchased on their behalf by statutory agencies. There is also no single ‘care market’ and even when overall supply of services is acceptable there may be serious shortages in key locations or in specialist provision.

Age UK has called for local authorities to have much clearer responsibilities for actively shaping and overseeing the local market and using its role as commissioner to stimulate community capacity building.

Key announcements

- Local authorities will be expected take a leadership role in a local area rather than purchasing and providing care and support.

- Introduce a duty on local authorities to promote diversity and quality in the provision of services.

- Consult on further steps to ensure service continuity for people using care and support should a provider go out of business.

Age UK’s response

Local authorities play an important part in shaping the local market and ensuring sufficient supply of appropriate services. Age UK is therefore pleased that Government has decided to take forward proposals to clarify their role and responsibilities (also see clause 3 on pages 24-25 of this briefing).

We broadly welcome a consultation on steps to ensure service continuity. Any new regime should be proportionate, but firmly based around the risk of failure to service users. This should include risks to their social relationships and risk to infringement of their human rights. Age UK has called for new rules that require providers to demonstrate financial viability in order to operate. We have also called for new powers for regulators to demand information from providers and new duties on local authorities to report concerns about the viability of a provider to the regulator.
2.10 Housing and adaptations

Background

Accessing suitable housing and making existing housing more appropriate for changing levels of ability and mobility is a key way of supporting older people who are developing a need for care and support, but who are not in need of formal support. Aids, adaptations and equipment play a key role in preventing and reducing higher levels of need.

There is a shortage of housing built specifically for older people, such as sheltered and extra care housing, as well as general needs housing that complies with universal accessible design principles, such as the Lifetime Homes Standard. There is patchy provision of local authority support with aids, equipment and structural changes to housing. Many older people don’t know they are entitled to grants and so don’t apply. Demand for funding is also potentially much greater than the supply. This forces people to wait for essential improvements to their homes, or they might choose to pay privately for adaptations without always getting the best advice on what is available or suitable for their needs.

Key announcements

- Make a £200m investment in capital funding over five years (starting 2013-14) to encourage housing providers to develop new accommodation options.
- Extend Home Improvement Agencies services to people self-funding changes to their housing and/or seeking advice about available options.

Age UK’s response

It is very positive that the Government has recognised and made explicit the importance of housing to older people and the role it can play in maintaining independence and wellbeing, as well as the integration of housing with other local services.

The additional funding for development of housing is welcome and the Housing Learning and Improvement Network estimates it will build 6,000 new units. This is a good start but demand is still likely to outstrip supply in the future. Nor is it clear yet how this further funding relates to the Government’s overall investment strategy for extra care housing or how conditions can be improved in existing specialised housing.

Making sure that there is a range of support available for community housing needs will also be important in order to support older people living in general needs housing. We would like to see some of the resources used to promote the hub and spoke model, already provided through floating support in some areas under the Supporting People programme. This will help to ensure that older people who are not living in specialist housing are able to benefit from the additional resources for services and support to help them maintain their independence. However, this programme has experienced cut backs, which have resulted in reduced and inconsistent provision.

The White Paper mentions the provision of the Disabled Facilities Grant and we welcome increased expenditure in this area. However, the scale of demand means the additional funding will not cover the need for adaptations and grants are still delivered inconsistently. Annual funding shortfalls mean local authorities may run out of funding a short way through the financial year, preventing further grants being awarded.

The Government’s intention to boost information and advice services both locally and nationally will also benefit people who are exploring their housing options. We believe that suitable housing and the local environment are essential to the successful delivery of social care.
2.11 Social impact bonds

Background

Social impact bonds are ways to develop routes for private investment in public service provision. Returns are made when a service saves money by preventing or reducing demand for more expensive or intensive public services. It can be a way of ensuring greater investment in preventative or innovative services which might otherwise miss out on funding.

Key announcement

- Establish a number of trailblazer areas to develop models of investment in preventative services, particularly focusing on Social Impact Bonds – further details about the trailblazer sites will be announced in the autumn of 2012.

Age UK’s response

We think there is a great deal of scope to join up and provide health and care services in new ways, and that social impact bonds could prove to be a useful vehicle for this. We are currently testing our own pilot for social impact bonds in Cornwall. It is therefore encouraging that the Government intends to explore this further.

2.12 Community and capacity

Background

Supporting and encouraging community capacity is a key part of the Government’s overall strategy for local services, with a reduced or more specialist role for statutory provision of support. However, some existing services are not well connected to local communities. Care homes in particular can have limited contact with people from the surrounding community.

Age UK co-chaired the Dignity in Care Commission which recommended all care homes take steps to ensure that they are embedded in their local communities and actively encourage the contribution of volunteers and community groups.

Age UK also supports the My Home Life programme, which promotes an ethos of care that emphasises care homes as part of a caring community.

Key announcements

- Ensure care homes are better connected to their local communities, through partnerships with local schools, community groups, volunteering organisations and other care homes - this will be done by supporting the work led by My Home Life and other provider organisations.

- Invest in the growth and development of timebanking to further encourage local communities to volunteer and share skills.

Age UK’s response

We are extremely pleased that Government has endorsed the work of My Home Life and look forward to developing the programme further.

Investing in timebanking and other innovative ways to develop community capacity and networks is, of course, a welcome step. Such schemes are likely to be most successful where they connect people to low level support to help with practical tasks like shopping or getting a lift. However, it is important that these schemes are not seen as a substitute for the provision of a high quality social care service.
2.13 Telehealth and telecare

There is evidence that some forms of assistive technology can support people to maintain their independence at home and manage long term conditions and medication. For example, it can help users to increase their confidence and prevent or reduce the effect of falls.

The Department of Health has invested in whole system demonstrator pilots to evaluate the potential benefits of telehealth and telecare technology in terms of the outcomes for service users and cost benefits.

The most recent results of the evaluation and more information about Three Million Lives can be accessed here: [http://www.dh.gov.uk/health/2012/05/ltccompendium/](http://www.dh.gov.uk/health/2012/05/ltccompendium/)

**Key announcements**

- Accelerate the roll out of the *Three Million Lives* campaign to expand the use of telehealth and telecare in the NHS and social care.

**Age UK’s response**

We welcome the Government’s on-going commitment to investigating the potential benefits of investing in telehealth and telecare. There is already strong evidence in some areas that assistive technologies, such as pendant alarms, monitors and sensors, can improve the safety and care of older people.

Nonetheless the evidence on telehealth and telecare is mixed, with some studies showing that there may be less improvement in outcomes for people than anticipated. Further investment in services should be selective and evidence-based to ensure best value for money.

2.14 Older prisoners

**Background**

Age UK has previously expressed concerns that older prisoners with health and care needs do not receive adequate support. This is compounded by a lack of explicit policy or guidance on commissioning services, which results in confusion about where responsibility for support lies.

**Key announcement**

- Implementation of a new framework for the provision of care and support in prisons.

**Age UK’s response**

This is welcome and we hope will clarify which organisation or body is responsible for ensuring appropriate care and support is available for older prisoners.
3. Draft Care and Support Bill

Background

Alongside the Care and Support White Paper, the Government has published both its response to the Law Commission’s review of adult social care and a draft Bill. The intention is to consult on this draft before putting a bill before Parliament in the next session. There will be a ‘wide ranging consultation’ on the Caring for our future website, and scrutiny of the draft Bill by a joint committee of MPs and peers during the last 3 months of 2012.

The Law Commission is an arms-length public body which reviews areas of the law that have become unduly complicated, outdated or unfair and makes recommendations for change. The Commission was asked to conduct a review of adult social care law and published their findings in summer 2011. The review was largely intended to consolidate and clarify the current complex body of social care legislation that has evolved through numerous Bills since the National Assistance Act in 1948. As well as simplifying the legislation, the Commission proposed a more logical relationship between legislation, regulations and guidance, with the latter to be pulled together into a single code of practice.

However the Law Commission’s recommendations also contained some proposals for substantial new areas of law. These included adult safeguarding legislation to replace the current guidance, and a new right for carers to receive services that meet their needs identified by assessment.

We are pleased to see that the Government has largely accepted the Law Commission’s recommendations and we strongly support this legislation. People who use social care services can be among the most powerless members of society. Use of social care services can often involve loss of rights (such as to security of tenure if someone sells their home and moves into a care home) and can mean dealing with often large and sometimes opaque bureaucracies, such as local authorities and the NHS. It is therefore vital that the legal protections people do have are clear, understandable and effective.

Much of the detail of how this legislation would work in practice will be contained in guidance or regulation, so we strongly welcome the intention to simplify guidance into a single code of practice. At present there is a mass of guidance and the picture is further confused by superseded guidance, by non-statutory guidelines and by good practice guidelines issued by third parties that are sometimes wrongly seen as carrying legal weight because they are endorsed by the Department of Health.

This briefing sets out the key provisions of the Bill relating to social care provision for older people. Our initial response to the draft bill is based on issues that Age UK raised in commenting on the Law Commission’s proposals.

Summary of key provisions in the Bill

- Age UK strongly supports a new Bill to introduce much greater clarity and coherence into social care legislation, including consolidation of guidance in to a single code of practice.

- For the first time a Bill will set out long overdue measures in legislation to safeguard adults at risk of abuse.

- We welcome the new rights in the Bill for service users and carers, including: a right for carers to receive services following an assessment and a right for people who do not meet the eligibility criteria to access information and advice.
• Although we note that the white paper does include a commitment to implement minimum eligibility criteria in 2015, Age UK is disappointed to see that the Bill does not clearly define any minimum entitlement to care and support.

• The draft Bill retains the current entitlement to assessment, which applies to anyone who might need care and support, regardless of income or assets. There will also be new regulations which set out how the process of assessment and care planning should take place.

However, Age UK is concerned that provisions relating to assessment do not cover re-assessment and review or hospital discharge. Also, while the Bill makes clear that assessment should focus on outcomes desired by the service user, we believe it needs to make equally clear that people should not have to choose between outcomes which are essential to wellbeing and dignity.

• Local authorities will be given responsibility for developing diverse local care markets – something Age UK believes will benefit both personal budget users and self-funders.

• The Bill contains no requirements for local authorities to make advocacy services available.

• The Bill contains new responsibilities for local authorities to arrange care home placements for self-funders who request help. Currently the local authority only has to do this if the person is unable or has no one to do it on their behalf. However, local authorities might be able to charge for this service.

Although the Bill proposes to set all service users on an equal footing by giving people the same rights to care management regardless of whether they are moving into a care home or receiving care at home, we are concerned that it represents a reduction in support for domiciliary care users. People who are assessed as having to pay for services will still be able to obtain care management services on request, but this may no longer be free of charge.

• Provisions to enable local authorities to hand over statutory functions to an independent agency raise concerns for Age UK about whether local authorities would retain ultimate responsibility for ensuring that service user rights were respected.

3.1 Principles for social care

Key provisions

• Clause 1 of the draft bill sets out a general duty to on a local authority, in exercising any of the social care functions contained within part one of the draft Bill, to promote the overall wellbeing of the individual.

The draft Bill defines well-being as relating to:
  o physical and mental health and emotional wellbeing;
  o protection from abuse and neglect;
  o control over day to day life (including, over the care and support provided to the adult and the way in which it is provided);
  o participation in work, education training or recreation;
  o social and economic wellbeing;
  o domestic, family and personal relationships; and
  o the adult's contribution to society

The Bill also contains a set of principles, resembling those in the Mental Capacity Act, for ensuring that the person's own view of what constitutes wellbeing is at the centre of any
decision. These principles would appear to apply to decisions about people who might need care and support, but not to carers.

**Age UK’s response**

These principles are an important step forward. Where decisions about social care end up in court it is often because local authorities have failed to consider all aspects of an individual’s needs. These principles should help to ensure that this does not happen or that disputes can be resolved without the need for legal action.

The requirement to consider all of the areas of wellbeing listed in the Bill should help to combat discrimination against older people, in particular we hope it will counteract any tendency to assume that care for older people should have more limited objectives than care for younger adults. Age UK has suggested that these principles should also refer to dignity and equality.

We remain concerned, however, that in applying the principles, local authorities are expected to achieve a balance between the adult’s well-being and that of any friends or relatives who are involved in caring. In practice this is rarely a zero sum equation – if it is necessary to choose between compromising the wellbeing of either the person who needs support or the carer, it suggests that the care and support package is inadequate and should be reconsidered.

### 3.2 Universal services

**Key provisions**

- **Clause 2** sets out clear duties to make universal services, including advice and information, available to the whole population.

- **Clause 3** requires local authorities take steps to shape care markets to ensure quality, diversity and future sustainability.

- **Clause 4** includes responsibilities for local authorities to develop co-operation with other statutory agencies such as the NHS and the Police.

- **Clause 5** sets out a requirement for ‘relevant partner’ to comply with a request from a local authority to co-operate (for example in relation to safeguarding) unless to do so would be incompatible or would have an adverse effect on the discharge of its own duties.

- **Clause 6** requires local authorities to promote integration of care with health and ‘health related’ services, and ensure the availability of preventative services. Integration should be promoted where it would contribute to the general duty to promote wellbeing, where it would contribute to delaying or preventing the onset of care needs, and where it would promote better quality services.

- **Clause 7** imposes a general duty to make preventative services available to the population. In exercising this duty the local authority must consider the contribution that existing services or resources can make. The local authority must also identify those adults with care and support needs which are not being met. The Bill enables regulations that would allow local authorities to charge for arranging preventative services.

**Age UK’s response**

Age UK welcomes duties placed on local authorities to manage local care markets and provide universal services. Information and advice, and the availability of a genuine choice of high quality services, are important for personal budgets to work effectively, and to ensure a market that meets the needs of people who are not eligible for local authority care and support. Nor will personalisation become a reality if people do not have a choice of good quality services that they can purchase.
The collapse of the Southern Cross care home chain has also raised concerns about whether the market can provide older people with the continuity of care that they require, particularly if they are care home residents. The duty to manage local care markets should also include a duty to promote stability in that provision.

The duty to manage markets should be framed in stronger terms, it is only a duty to act ‘with a view to ensuring’ that anyone needing care and support would have a choice of good services, which falls short of an actual requirement to make such services available. Age UK is also disappointed to see that the draft Bill does not include any duties to make advocacy available.

The duty on ‘relevant agencies’ to respond positively to a request from a local authority to co-operate is particularly significant in so far that its scope extends beyond local authority adult social services’ departments. This duty is particularly welcome in conjunction with the draft Bill’s provisions for safeguarding adults at risk of abuse, which will require the development of multi-agency working.

Age UK welcomes provisions to place a duty on local authorities to promote integration. This mirrors the duties placed on clinical commissioning groups and health and wellbeing boards in the Health and Social Care Act 2012.

3.3 Meeting needs

Key provisions

- **Clause 8** includes a short list of services that could meet people’s needs but this is not exhaustive – the Bill does not attempt to define what is or is not a social care service.

A series of further clauses set out the service user’s journey through the system looking at: assessment; eligibility; local authority duties to people with eligible needs; and, for the first time to those who are not eligible for local authority support, care planning and review.

3.4 Assessment

Key provisions

- **Clause 9** sets out local authority duties to assess. The threshold for entitlement to assessment will continue to be broad, including anyone who might have a need for care and support, and the same entitlement applies to carers. The Bill is clear that the person’s income or assets cannot be used as a reason for not carrying out an assessment. Assessment will include a focus on, ‘the outcomes that the adult wishes to achieve in day to day life’.

- **Clause 10** refers to carers’ assessment, in addition to those duties to assess described above the local authorities will have additional requirements to consider carers’ wishes to participate in education, training or recreation. In carrying out an assessment, the local authority will for the first time have to have regard to the needs of the person’s family.

- **Clause 11** refers to the right of individuals to refuse an assessment. However, this does not apply where the person does not have capacity to refuse or where the person is thought to be at risk of abuse or neglect. If the person refuses assessment the local authority will be considered to have discharged its duty to assess, though the person will be able to change their mind. Also, if the local authority subsequently thinks circumstances have changed the duty to assess will still apply.

- **Clause 12** sets out proposals for regulations that would describe assessment procedures in more detail.

*Age UK’s response*
Age UK welcomes the focus on user and carer led outcomes, though with the proviso that people should not have to choose between outcomes, which are all essential to living with dignity and having an acceptable quality of life. It will therefore be important that assessment considers all aspects of wellbeing set out in the general duty to promote wellbeing.

The lack of any statutory requirements for the process of assessment was flagged up by the Law Commission as a deficiency in the current legislative framework. We are very pleased the draft Bill has accepted their recommendation and requires that regulations ‘must’ make provisions for the conduct of both financial and statutory assessment.

Setting out essential requirements of the assessment process in regulations is welcome. It should make assessment more consistent and, it is to be hoped, end poor practices such as telephone assessments carried out by staff with no professional training. Strengthening carers’ rights is also a positive step forwards.

### 3.5 Eligibility for care and support

**Key provisions**

- The current process whereby local authorities make a decision about eligibility for support on the basis of assessment against eligibility criteria is set out in guidance. **Clause 13** for the first time makes this a statutory requirement and requires that the process be set down in regulation.

- **Clause 13** leaves open the option of whether eligibility will be defined nationally or locally. However, the White Paper announces the government’s intention to introduce a minimum eligibility framework by 2015. The draft Bill requires that an eligibility framework is set out in regulations.

**Age UK’s response**

We welcome provisions in the Bill to clarify and strengthen the process local authorities use to make decisions about eligibility and to introduce a national eligibility framework. However, Age UK is clear that we want to see a national eligibility threshold and an end to a postcode care lottery. The White Paper commits to introducing a national threshold and we want to see this confirmed in legislation.

### 3.6 Charges for services

**Key provisions**

- **Clauses 14 and 15** set out proposals for charging for services. Local authorities will continue to be able to charge for services, but the Bill specifies that financial assessment for the purpose of means testing should only come after the local authority has decided to provide services to meet eligible needs. Charging would continue to be a matter for local discretion, with the Bill enabling regulations that would give local authorities powers, rather than duties, to charge.

**Age UK’s response**

Age UK welcomes the requirement that, as at present, local authorities should only carry out a financial assessment after they have decided that the person is eligible for care and support. This provides some safeguard against the person being refused assessment or support due to their income or assets.
3.7 Deferred payments

Key provisions

- **Clause 16** enables (but does not require) regulations that would set out how deferred payments schemes would operate enabling local authorities to defer payment of care charges until after a person has died. The White Paper has announced a new national deferred payments scheme, however, the Bill is framed in order to leave open the issue of whether there should be a national right to deferred payments. The local authority will also, for the first time, be able to charge interest and for the cost of administering the scheme.

Age UK’s response

The Government has already said that it will legislate to make it mandatory for local authorities to offer deferred payments. This is to be welcomed as the current statutory framework for deferred payments is a complete shambles, which provides ample illustration of why new legislation is needed. Currently local authorities can operate a deferred payment scheme, but do not have to, but the Department of Health ‘expects’ that they will and the Local Government Ombudsman has found that failure to offer deferred payments under any circumstances is maladministration. However, new powers to charge interest and for costs means we will need to see the detail of any new scheme to ensure it does genuinely represent good value to older people.

3.8 Local authority duties to meet care and support needs

Key provisions

- **Clauses 17 to 19** set out statutory duties to provide care and support (or in the case of carers, support).

  A local authority will have a duty to meet needs which both meet the eligibility criteria and where, after means testing, the service user or the carer does not have to pay towards the cost of care. This duty will also apply if the service user or carer can afford to pay for care but asks the local authority to arrange it, or if the person lacks capacity to arrange care and has no one to do it for them. The local authority will have powers to arrange care in other circumstances, for example, where it agrees to arrange care for someone who normally lives in another local authority or where there is an urgent need to arrange care without carrying out an assessment.

  Similar duties will apply where a carer is eligible for support following assessment. In this case the local authority will be able to meet the carers’ needs by providing services to the cared for person, even if the latter has not been assessed as needing those services. If the carers’ needs cannot be met in this way the local authority will still be under a duty to find ‘so far as it is feasible’ other alternatives.

  However, where a person who needs care or their carer can afford to pay for care but asks the local authority to arrange care on their behalf, the local authority will be able to charge for ‘putting in place arrangements for meeting those needs’.

Age UK’s response

At present there are confusing separate duties to arrange care depending on whether someone remains in their own home or moves into residential care.

In the case of domiciliary care the local authority has a duty to ensure that eligible needs for care and support are met regardless of the person’s income, although they may recover the cost through locally determined charges. In terms of residential care, if under the terms of the
national means test someone must fund their own car home place, and is able to arrange it or has someone to do it for them, the local authority has no responsibility to provide assistance.

The draft Bill sets out to create as single system. It proposes to retain the duty to arrange care and support for people who qualify for local authority funded care or receive care at home. However, this duty will be extended to included people who fund their own care in care homes.

If the person is not able to pay for their own care then the duty will be free of charge. However, if the person is means tested as able to make a financial contribution, the duty will have to be triggered by a request from the service user or in the case of carers’ support, the carer. In this case the local authority will have powers to charge for this support. This represents a huge change. At present local authorities cannot charge for carrying out statutory duties related to arranging and monitoring care.

These proposals mean that people who can afford to pay for care and who enter a care home will be better off in that they will be able to ask the local authority to arrange and monitor their care. However, people who receive care in their own homes and pay towards the cost will be worse off because they will no longer be entitled to have it arranged and monitored free of additional charge. Age UK will need to see the details of any scheme to ensure that it is fair to all older people using care and does not deter people from using the services they need.

It will be possible to meet carers’ needs by providing a service to the cared for person (if the latter agrees). This is a welcome step forward but more detail is needed on when this would be appropriate and when the services should be provided directly to the carer. It is important to ensure that carers have both unequivocal rights to their own services and that local authorities do not make decisions on the basis of which party is best able to pay.

3.9 Needs which local authorities cannot meet

Key provisions

- **Clauses 20-22** set out exceptions where social services do not have to meet needs if the person is subject to immigration controls, if the service needed is provided by the NHS or if it is something that local authorities are already required to do under the Housing Act or other legislation. Proposals in relation to immigration controls and NHS services reflect current legislation.

Age UK’s response

Age UK is concerned about the proposed bar on social services meeting housing needs (on the basis it is something the local authority is already required to do under the Housing Act) as it might reduce current entitlements to be rehoused to meet community care needs. This could mean people simply being referred to the local authority housing department in future, which we believe may be inappropriate if their care and support needs are urgent or require specialist expertise.

3.10 Care and support planning

Key provisions

- **Clauses 23 and 24** enable regulations to specify the content of a person’s support plan – this should include a statement of needs, which of those needs the local authority has agreed to meet, and what needs are the responsibility of the individual.

Having assessed the person, the local authority will be required to tell them what needs the local authority will meet and assist them in deciding how to meet those needs. At this stage the local authority will be required to inform the person or their carer of any entitlement to a direct payment.
If the local authority is not going to provide care and support services it must give the person: a written record of the assessment; a record of the financial assessment if one has been carried out; and information and advice about how they could meet their needs and/or prevent or delay the development of needs in the futures. Similar requirements apply following a carers’ assessment.

**Age UK’s response**

These proposals are extremely welcome and represent new local authority responsibilities to provide help and guidance to people who are not eligible for care. Although in the short term this may increase local authority workload, we anticipate that better information and guidance will ultimately reduce demand and increase uptake of services that help prevent or delay the need for intensive support.

### 3.11 Personal budgets

**Key provisions**

- **Clause 25** defines a personal budget as ‘a statement’ of the cost of meeting needs that a local authority has agreed to meet, including any service user contribution to that cost and how much the local authority will pay. The proposed legislation would also enable public money intended to meet housing, health or welfare or other needs to be included in a budget.

**Age UK’s response**

Personal budgets have been introduced without new legislation, with cash payments to buy care being made under existing direct payments legislation. Therefore this is the first legislation that explicitly refers to personal budgets and sets out how they should be formatted. The definition of a personal budget as a ‘statement’ will hopefully provide greater clarity to individuals and stop people from confusing personal budgets with direct payments.

### 3.12 Review of care and support

**Key provisions**

- **Clause 26** requires local authorities to keep those support plans prepared following assessment of a service use or carer under review. In doing so the local authority should have particular regard to the outcomes that the person wishes to achieve.

**Age UK’s response**

It is important that local authorities retain their current duty to ensure that care and support is meeting the person’s needs. Like an assessment, any review of care and support plans should focus on the needs that must be met and the outcomes that should be achieve. This clause does not, however, refer to powers to issue regulations setting out the process of review. Age UK’s view is that regulations setting out the process of assessment should also refer to the content of a review or a re-assessment in order to ensure that they retain this focus.

### 3.13 Moving between local authorities

**Key provisions**

- **Clause 31** sets out a detailed process which aims to ensure that where a person moves between local authorities their care is not disrupted.

- **Clauses 32 and 33** set out a process for resolving any disputes arising about which local authority is responsible.
Age UK’s response

These proposals are warmly welcome. Too often older people face huge challenges in moving to more appropriate housing or to be nearer family because it may mean losing access to care or struggling without the care they need day to day while waiting for a new assessment. However, true portability of services will only be possible if there is a national system of eligibility where all local authorities were expected to meet the same level of need. It is therefore a concern that the draft Bill leaves open the option of whether there will be national or locally determined eligibility thresholds.

3.14 Adult safeguarding

Key provisions

- **Clauses 34-38** set out for proposals for adult safeguarding legislation.

  The Bill establishes a duty for every local authority to establish an adult protection board, and includes detailed requirements for the conduct and composition of these boards.

  The current section 47 of the 1948 National Assistance Act, which enables a local authority to remove a person in need from their home, will be abolished.

  Alongside the Bill the Department of Health has issued a consultation on whether additional powers of entry are needed where a person might be at risk of abuse or neglect.

Age UK’s response

Age UK strongly welcomes the introduction of adult safeguarding legislation. At present the adult safeguarding duties of local authorities are contained in guidance only this does not always carry the same legal weight. Even where guidance is enforceable it only mandates local authorities and does not incorporate vital partners such as the Police and NHS.

It is also significant that the draft Bill includes a new definition of an adult at risk of abuse. The present definition contained in guidance is often interpreted as referring to people who receive local authority social care, but sometimes the most vulnerable people are those who are outside the system.

3.15 Enforcement of debts

Key provisions

- **Clause 45** states that a local authority can recover any expenditure incurred where a person in need of care or a carer fails to disclose any material fact relating to any of the provisions set out in the Bill. This includes costs incurred in recovering the money, and interest. These powers apply even if the person’s failure is not fraudulent.

Age UK’s response

This clause appears overly draconian. We are particularly concerned that it may apply to cases where the service user fails to disclose information due to an oversight.
3.16 Transfer of assets

Key provisions

• Where a person transfers assets to someone else in order to avoid charges for care the local authority can assess the person’s means as if they still owned those assets. Clause 46 retains this power.

Age UK's response

The current problem in the use of these powers is that decisions are very subjective. The local authority must make a judgement on what they think a person’s motive in depriving themselves of an asset is, and whether the motive is indeed to avoid care costs. The new legislation would not provide any greater clarity in this area.

3.17 Hospital Discharge

Key provisions

• The 2003 Community Care (Delayed Discharge) Act is being repealed. This Act sets out the current requirements for hospital discharge procedures and covers what should happen once it is safe to discharge a patient from hospital who requires appropriate care and support. Schedule 2 of the draft Care and Support Bill will replace it.

Age UK’s response

Hospital discharge and transition between health and social care is too often a time when plans and responsibilities are unclear, communication fails and older people fall through the cracks. Poor multi-disciplinary assessment (or indeed the lack of timely assessment) is often at the root of such problems.

In Age UK’s view regulations should set out how assessment and discharge processes should be conducted. Such regulations could either form part of schedule 2 or clause 9 of the Bill, which could be amended to specifically refer to hospital discharge.

3.18 Mental Health Act aftercare

Key provisions

• Clause 48 of the Bill largely replicates the current provision for mental health aftercare. The most significant change to existing legislation will give people the same right to a choice of accommodation that apply now to service users placed in a care home to meet social care needs.

Age UK’s response

The decision to retain existing rights to mental health aftercare in its current form is welcome. The Law Commission consultation considered introducing a new approach to make the need for mental health aftercare a gateway to mainstream social care provision rather than triggering a stand-alone duty. However, Age UK was concerned that this would have meant services would be means tested.
3.19 Delegation of functions

Key provisions

- **Clause 51** allows local authorities to delegate statutory functions, such as assessment or care planning, to other organisations.

*Age UK’s response*

This section of the Bill resembles the Parliamentary order that was used in 2010 to set up independent social work practices. At the time Age UK wrote to the Minister expressing our concern about the impact of this order on the statutory rights of people with social care needs.

In particular we were keen to clarify whether the changes meant an independent organisation would be carrying out an assessment on behalf of a local authority to meet the local authority’s duties or whether the duties themselves would be transferred to the independent organisation.

The latter would raise questions about whether a local authority retained ultimate responsibility for ensuring that statutory duties were met, and whether the independent organisation was a public authority subject to the provision of the Human Rights Act. The Minister’s reply to Age UK, along with the explanatory notes attached to the draft Bill, insisted that local authorities would retain statutory responsibility. However, this is not clear from the wording of the Bill. Age UK is keen to ensure that there is absolute clarity and sufficient protections in place to safeguard older people’s rights and ensure local authority’s maintain their responsibilities.

3.20 Other provisions of note

*Choice of Accommodation*

- People placed in residential care by a local authority currently have a right to a choice of accommodation. This right, currently contained in secondary legislation, is contained in the Bill itself (clause 27).

*Direct payments*

- **Clauses 28 – 30** set out entitlements to direct payments, including the right to request a direct payment and the conditions which apply to these rights.

*Register of sight impaired adults*

- There will no longer be any requirements on local authorities to maintain a register of disabled people, other than sight impaired or severely sight impaired adults. However local authorities will if they wish be able to keep, for planning purposes or for area monitoring, a register of any group who might have care and support needs (clause 49).

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1. Figure 1, page 6: Care in Crisis, Age UK (2012)
5. Forder and Fernandez (2011) The cost of social care for older people: the importance of unit cost growth. PSSRU report for Age UK
6. Figure 3, page 8: Care in Crisis, Age UK (2012)
7. 2011-12 prices calculated using the RPI (all items), averages for financial year 2010-11 and 2011-12 (to August 2011).
8. Analysing only spending by councils with adult social service responsibility (CASSRs), this decrease is 4.9%.
p27. ibid
xii How to deliver high quality, patient-centred, cost effective care: consensus solutions from the voluntary sector, The Richmond Group of Charities, ed. Maybin and Foot (The Kings Fund 2011)
xiii Age and Age Discrimination in Primary and Community Care, Clark et al, Centre for Policy on Ageing (2009)
xvi http://www.ukhca.co.uk/mediastatement_information.aspx?releaseID=230683
xvii Population Projections for Older People tool, Department of Health, www.poppi.org.uk/index.php?pageNo=328&PHPSESSID=rmdakldr048cl0k54g0d3otp10&sc=1&loc=8640&np=1m 2010
xviii Draft Care and Support Bill, part 1, clause 3(E)