

Local Government Association (LGA)

Debate on human rights for older people, and their comprehensive care, House of Lords

Thursday 16 November 2017



Key messages

- Adult social care must be treated as a national priority. It is a vital public service that supports working age disabled adults and older people with often high levels of need. It also promotes the wider wellbeing and independence of many of our residents.
- The consequences of long term underfunding means an ever more fragile provider market, growing unmet and under-met need, further strain on informal carers, less investment in prevention, continued pressure on an already overstretched care workforce, and a decreased ability of social care to help mitigate demand pressures on the NHS. This is having a significant impact on many of those supported by adult social care and support services.
- The extra money for social care announced in the Spring Budget 2017 was a step in the right direction. However, it is only one-off funding which reduces each year and stops at the end of 2019/20. It is not a long-term solution. Even with this injection of funds adult social care faces a funding gap of £2.3 billion by 2020, including £1.3 billion to sustain the provider market which is an immediate and annually recurring need.
- Parliamentary polling undertaken by ComRes after the General Election in June 2017 showed that of those MPs polled, 90 per cent agreed that additional funding should go to councils' social care budgets. A similar poll showed that 80 per cent of Peers agreed with the same statement.
- We are calling on the Government to ensure that councils and providers are funded to cover the costs they now face, including appropriately supporting those who have self-funded care or pay for care out of the personal budget allocations they receive. Councils also require legal clarity and guidance regarding the payment of sleep-in shifts in social care as this is a new burden placed on councils.
- Despite significant work undertaken by the LGA and the Law Commission to review the Deprivation of Liberty Safeguards (DoLS), the LGA remains concerned by the lack of progress on reforming DoLS.
- A number of other council services including housing, transport and culture support older and disabled people and improve their wellbeing. In our Budget submission we set out the need for a stable funding environment for councils to ensure they can continue to deliver on these priorities for their residents. LGA research shows that councils have had to address adult social care funding pressures in part by making deeper than planned reductions to other services. This is counterproductive given the role these universal services play in supporting people's wellbeing.
- Given the important role that social care services play in supporting older and disabled people, it is crucial that the Government uses this year's Autumn Budget to take immediate action to address the adult social care crisis. The Government also needs to publish its planned consultation on

Briefing

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proposals for the sustainability of social care so we can start building a sustainable system for the future.

Further information

The role of local government in providing adult social care

The commissioning and provision of adult social care is a vital council service that can transform people's lives. It is a vital public service that supports working age disabled adults and older people as well as promoting their wellbeing and independence. Despite major funding pressures, councils have worked hard to preserve adult social care outcomes:

- In 2015-16, 85.4 per cent of service users in England reported that the services they received helped make them feel safe and secure. This is a statistically significant increase compared to the 84.5 per cent reported in 2014-15.ⁱ
- The proportion of people who use services who say they have control over their daily lives has remained stable (76.6 per cent in 2015/16 compared to 77.3 per cent in 2014/15).ⁱⁱ
- Overall satisfaction of people who use services has remained stable (64.4 per cent in 2015/16 compared to 64.7 per cent in 2014/15).ⁱⁱⁱ

Adult social care is framed in legal terms by the 2014 Care Act, a landmark piece of legislation that brings together numerous separate laws and policies into a single, modern statute. At the heart of the legislation is a duty on councils to promote people's wellbeing, which is purposefully defined in broad terms. Included in the definition (alongside more 'typical' defining features, such as personal dignity and protection from abuse and neglect) is 'the individual's contribution to society' and 'domestic, family and personal relationships'.

Funding adult social care

It is impossible to consider the state of funding for adult social care without first considering the state of local government funding overall. The LGA estimates that English councils will have managed reductions to their core funding from central government totalling £16 billion between 2010 and 2020. To put that into perspective, budgeted expenditure for adult social care for this financial year, 2017/18, stands at £15.6 billion.

As we have highlighted in our 2017 Budget submission, the continued underfunding of social care is making it increasingly challenging for local authorities to fulfil their legal duties under the Care Act, leaving the ambitions of the legislation on the brink of failing altogether and councils facing the prospect of court challenges. More concerning still is that by 2025 there will be another 350,000 people needing high levels of social care from councils.^{iv}

There cannot be a sustainable NHS without a sustainable adult social care system. Adequately funding social care will deliver benefits for both older and disabled people in society and savings for the public purse. For example, funding an expansion in social care capacity would alleviate NHS pressures and therefore enable more people to be discharged quickly and safely from hospital.

Councils are also investing in preventative services, including telecare or hospital avoidance schemes, such as rapid response teams which mobilise quickly to treat someone in crisis in their own home rather than A&E. However, evidence from the ADASS Budget Survey shows that spend on prevention in 2017/18 forms 6.3 per cent of adult social care budgets, or £890 million. This is a smaller proportion of

the budget than last year (7.1 per cent), and a decrease in cash terms from last year (£954 million).^v

The situation is now critical and our care and support system is in crisis. This is not just the message from local government, it is the message from across the wider care and support sector.

LGA analysis of statistics from the Department of Communities and Local Government on local authority revenue expenditure and financing, and local Better Care Fund spending plans, estimates that:

- Council-funded adult social care reduced from £16.6 billion in 2010/11 to £15.6 billion in 2016/17, a real terms reduction of 6 per cent. In cash terms, there has been an increase from £14.4 billion to £15.6 billion.
- When NHS transfers are included, spending increased from £16.6 billion in 2010/11 to £17.5 billion in 2016/17, a real terms increase of 6 per cent. In cash terms, spending increased from £14.4 billion to £17.5 billion.

This demonstrates that the work councils have undertaken to be able to protect adult social care spending in cash terms has been relatively successful. However, our latest analysis on the funding gap faced by councils show that this approach is not sustainable:

- Since 2010, councils have dealt with a £6 billion funding gap in adult social care services. This has been met through £3.4 billion of savings to adult social care and £2.6 billion taken from additional savings to other services.
- The LGA estimates that local government faces a funding gap of £5.8 billion by 2020. £1 billion of this is attributable to adult social care and includes only the unavoidable cost of demography, inflation and the National Living Wage. This figure excludes other significant pressures, including addressing unmet need.

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

Better Care Fund, Improved Better Care Fund and the £2 billion Spring Budget allocation

The LGA supports the original intentions of the Better Care Fund (BCF) to provide a pooled NHS and adult social care budget that drives forward joined up working, supports individuals to maintain their health and independence, and improves outcomes. Integration is also designed to help reduce the pressure on NHS acute services.

We also welcome the additional £2 billion allocated to councils through the improved Better Care Fund (iBCF) in the Spring Budget 2017 to provide much needed resources to support adult social care services, stabilise the increasingly fragile provider market, and reduce pressure on the NHS including reducing delayed transfers of care (DTC) from hospital. However, over recent months we have become increasingly concerned with the narrowing focus of BCF and iBCF on this third priority, and as a result of this, the pressure on local health and social care leaders to accept national targets for reducing DTC that many consider are unrealistic and unachievable.

Councils and their partners have worked incredibly hard to develop ambitious but achievable targets for reducing DTC by addressing pressure points across the whole health and care system. We are therefore deeply concerned that the

national narrative is seeking to attribute blame for DTOCs solely to adult social care. Even more concerning for councils is the suggestion that failing to achieve these targets may have an impact on councils' iBCF allocations for 2018/19. The fact is that more than 55 per cent of all delayed transfers of care are due to the NHS, as patients are waiting for other health services or assessments.^{vi}

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

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

Funding for the payment of sleep-in shifts in social care

Recently, there has been a great deal of confusion and concern over whether 'sleep-ins' should be considered as time spent working, and as such attract the NLW/NMW.

The uncertainty stems from conflicting positions set out in NMW regulations (sleep-ins should not attract NMW) and BEIS guidance following Employment Tribunal judgements (sleep-ins should attract NMW).

The Government made a statement on 26 July 2017 that sleep-in hours should be included in the calculation. This was followed by the publication of a new voluntary compliance scheme on 1 November. Should employers sign up to this, they will not have to settle any back-payment for sleep-in costs until March 2019. This buys some much-needed time to further understand the size and potential impact of the historic liability on providers, councils and individuals.

Councils remain concerned about how employers will meet the significant cost of six year back-payments, which are expected to be significant. For example, for adults with learning disabilities alone, the cost of back-payments has been estimated to come in at a minimum £400 million.^{viii} We need Government to make additional funding available to enable employers to meet the back-payments. We therefore welcome discussions with the European Commission to determine whether any support, if deemed necessary, would be subject to EU state aid rules.

However, a state aid exemption will not help self-funders or the many individuals who are in receipt of a direct payment from the council that is used to employ personal assistants. Resolving back-pay issues for them is an immediate priority so they are not placed in personal financial difficulty and unable to pay for their care.

Employers also face future funding pressures that will arise from the ongoing need to pay the National Minimum/Living Wage for sleep-in shifts, against a background of increasing demand and reduced funding. We would welcome working with Government to improve our understanding of future costs.

We are calling on the Government to ensure that councils and providers are funded to cover the costs they face now and in the future, including appropriately supporting those who have self-funded care or pay for care out of the personal

budget allocations they receive. The £2 billion for social care should not be regarded as a catch-all for any change to social care policy. In the absence of new funding, there is a significant risk that we will see care providers going out of business, more contracts being handed back to councils, and care workers losing their jobs.

Deprivation of Liberty Safeguards and the Law Commission

The LGA has worked jointly with the Law Commission on its review of the Deprivation of Liberty Safeguards (DoLS). A Supreme Court judgment from March 2014 has meant that thousands more people will need to be assessed under DoLS.

We want to work with the Government so that the costs of new burdens including DoLS are fully funded and vulnerable people's rights can be maintained. A Law Commission impact assessment concluded that on-going and unfunded costs to local authorities of authorisations under DoLS were around £172 million per year, with authorisations outside the DoLS around £341 million per year to local authorities and NHS.^{ix}

However, the 2017 Queen's Speech made no reference to this work, and the Law Commission has not been asked to consider interim measures. We remain concerned by the lack of progress on reforming deprivation of liberty safeguards.

Social inclusion: housing, transport and culture & sport

Housing

It is important that national policy and local action meets the need for good quality, accessible homes for our ageing population, and that plans to increase housebuilding cover all types of households. The Government should support partnership efforts by developing a viable long-term strategy and funding model that enables local housing and health partners to increase the mix of quality, specialised, and supported housing options, to rent or buy, for older and vulnerable people.

People willing and able to stay in their own homes may need adaptations to make them fully accessible. Councils play a key role in providing information, advice, and support with property repairs and adaptations. The Government could help councils provide this essential service by creating a more stable funding environment for housing adaptation.

Transport

Councils have a statutory duty to provide free, off-peak travel for elderly and disabled residents through the concessionary fares scheme. This provides a vital lifeline to some of the most vulnerable residents to help them go shopping, attend health appointments, or socialise.

The LGA has estimated a gap of at least £200 million a year in the funding that councils get from central government to administer the scheme. As the scheme is a statutory one, councils are forced to divert resources from other transport budgets, including supported bus services that they buy in as well as support for community transport, to fund the national scheme.

The Bus Services Act 2017 failed to devolve powers or further funding for bus services to local authorities leaving vital bus services under threat and those who rely on the bus network unsupported.

Culture and sport

Councils remain the biggest public sector investors in culture, sport, and physical activity, spending over £2 billion per year (excluding capital spend). Since 2013, when the responsibility for public health transferred to councils, many councils have started to integrate their sport, cultural and physical activity provision within the council's public health work, in order to reduce demand for costly health and social care interventions.

Councils have worked hard to ensure that cultural facilities and activities are accessible to everyone in their communities. In particular, library services have been at the forefront of introducing measures to make people with mental and sensory disabilities welcome.

Many museums and libraries are now designed to be autism and dementia friendly, and others are rapidly following suit; while almost all libraries have disabled access or provide a home delivery service for those who are unable to visit the library. However, reductions in local government finance (as set out above) have meant that some facilities and services have had to be reduced, and this will have impacted on disabled people in those areas, despite attempts to mitigate the effect.

LGA reports

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

[LGA Budget Submission 2017](#)

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

ⁱ For further information please visit: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/557886/meas-from-asc-of-eng-1516-Report.pdf

ⁱⁱ As above.

ⁱⁱⁱ As above.

^{iv} For further information please visit: <http://www.ncl.ac.uk/press/news/2017/08/cfasresearch/>

^v For further information please visit: www.adass.org.uk/media/5994/adass-budget-surveyreport-2017.pdf

^{vi} For further information please visit: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2017/06/Sept-17-DTOC-SPN-ght5u7.pdf>

^{vii} For further information please visit: <https://www.adass.org.uk/media/5994/adass-budget-survey-report-2017.pdf>

^{viii} For further information please visit: <https://www.mencap.org.uk/press-release/future-learning-disability-care-uk-hangs-balance>

^{ix} For further information please visit: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/08/cp222_mental_capacity_impact_assessment.pdf