PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CARE BILL [*LORDS*]

Fourth Sitting

Tuesday 14 January 2014

(Afternoon)

CONTENTS

CLAUSES 12 to 16 agreed to.
Adjourned till Thursday 14 January at half-past Eleven o'clock.
Written evidence reported to the House.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 123) 2013 - 2014

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 18 January 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: †Hugh Bayley, Andrew Rosindell

† Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Burstow, Paul *(Sutton and Cheam)* (LD)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Griffiths, Andrew *(Burton)* (Con)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Kendall, Liz *(Leicester West)* (Lab)
† Lamb, Norman *(Minister of State, Department of Health)*
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Morris, David *(Morecambe and Lunesdale)* (Con)
† Morris, Grahame M. *(Easington)* (Lab)
† Munn, Meg *(Sheffield, Heeley)* (Lab/Co-op)
† Newton, Sarah *(Truro and Falmouth)* (Con)
† Penrose, John *(Weston-super-Mare)* (Con)
† Poulter, Dr Daniel *(Parliamentary Under-Secretary of State for Health)*
† Reed, Mr Jamie *(Copeland)* (Lab)
† Shannon, Jim *(Strangford)* (DUP)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Stephenson, Andrew *(Pendle)* (Con)
† Wheeler, Heather *(South Derbyshire)* (Con)
† Wollaston, Dr Sarah *(Totnes)* (Con)

Fergus Reid, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 14 January 2014

(Afternoon)

[Hugh Bayley *in the Chair*]

Care Bill [*Lords*]

Clause 12

Assessments under sections 9 and 10: further provision

2 pm

Liz Kendall (Leicester West) (Lab): I beg to move amendment 87, in clause 12, page 11, line 47, at end insert—

'() require joint working with organisations with appropriate expertise in exercising local authorities' functions under sections 9, 10 and 11.'.

Thank you, Mr Bayley, and welcome back to the Chair. I will try to be brief. Amendment 87 would ensure that local councils must work with organisations with appropriate expertise when exercising their function under clauses 9, 10 and 11, which deal with how adults who need care and family carers are assessed. I touched on those matters in my comments before lunch. The reason why local councils must work with other local organisations with relevant expertise is that we know that many community and voluntary groups—including the Alzheimer's Society, Age UK, disability organisations such as Scope and Mencap and organisations such as the National Autistic Society and the Royal National Institute of Blind People—have local branches in or close to our constituencies. They have a huge wealth of expertise on which local councils must draw when they assess the people who use services and the needs of family carers.

I think the Minister will agree that that is important, and we wanted to specify that the forthcoming regulations will include that in the guidance. Many councils already try to do so. I know from my experience that local councils are under a lot of financial and time pressure, but unless we ensure that the regulations and the guidance that accompanies them specify that they should work with local organisations, I am concerned that some councils—not my own, of course—will take a quick-fix approach and try to do everything themselves without drawing on the wealth of local expertise. That is the point we are making in amendment 87, and I hope the Minister will agree that the issue should be covered in the regulations and guidance.

The Minister of State, Department of Health (Norman Lamb): Thank you, Mr Bayley. It is so good to be back after our brief sojourn in the Chamber for Health questions. I hope the shadow Minister accepts the genuineness of my position when I say that I am completely with her regarding the sentiment of the amendment, but we believe that the Bill already provides for what it argues for.

We agree that it is important to encourage local authorities to work alongside all the brilliant organisations that she referred to in the third sector that can contribute to the assessment process. As drafted, the clause provides for a power in regulations that requires local authorities to carry out assessments jointly with an expert or a person of any other specified description in specified circumstances. These will include assessments of deaf-blind people, but we are consulting on what further groups or circumstances the power should apply to. It will ensure that local authorities use relevant expertise to support effective assessments.

Paragraph (f) also provides for a further power allowing local authorities to work jointly with or consult an expert or person of any other specified description before or during the assessment process. That will allow local authorities to engage with individual experts from third sector organisations to assist them in the assessment process. More generally, in clause 78, the Bill allows local authorities to delegate their functions to third parties. Sometimes, outside organisations might be better placed than the local authority itself to carry out some of its care and support functions. For instance, an outside organisation might specialise in carrying out assessments for certain disability groups where the local authority does not have the in-house expertise.

A combination of those provisions already offers sufficient scope to ensure the joint working that the hon. Lady rightly argues for. Indeed, our provisions would go further by being able to require joint working in specified circumstances, rather than providing a more general requirement to work together as in the amendment. That will achieve partnership approaches more focused on the issues and individuals of greatest importance. I therefore hope the shadow Minister agrees that the Bill's existing provisions meet the objective she seeks and will withdraw the amendment.

Liz Kendall: I thank the Minister for his comments. I am grateful for his putting on the record that local councils should draw on expertise from relevant organisations that work with old and disabled people. As long as that is properly reflected in the guidance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Clause 13

The eligibility criteria

Paul Burstow (Sutton and Cheam) (LD): I beg to move amendment 37, in clause 13, page 13, line 31, leave out subsection (7) and insert—

'(7) Needs meet the eligibility criteria when—

(i) there is, or will be, an inability to carry out several personal care or domestic routines and/or

(ii) the individual will be unable to maintain control over several aspects of their day-to-day life or;

(iii) involvement in several aspects of work, education, training or recreation cannot or will not be sustained; and/or

(iv) several domestic, family and personal relationships cannot or will not be sustained; and/or

(v) there is a risk of abuse or neglect,

(a) they form part of a combination of needs described in paragraph (a).'.

The Chair: With this it will be convenient to discuss amendment 94, in clause 13, page 13, line 36, at end add—

'(9) The regulations in subsection (6) are subject to the affirmative resolution procedure.'.

Paul Burstow: Clause 13 is a pivotal part of the Bill's architecture. It is the mechanism by which this and future Governments will determine the line that will be drawn on eligibility and access to state support for care needs. It is a critical part of the Bill, and we need to focus on getting it right now and for the future. We must also bear in mind the interaction of the clause with clauses 10 to 12, which deal with the shift that was set out in the White Paper and reinforced by the Bill and a number of changes made after Joint Committee scrutiny and during consideration in the Lords. They recognise that the assessment process and eligibility need to be focused on how we achieve the right outcomes, and how that is centred on a person's well-being. This is much more about focusing on people's strengths and their support networks and so on.

Clause 13 provides that legal power for setting the eligibility threshold that represents the minimum requirement for access to state-funded support. It marks an important shift from a system where eligibility was determined locally with reference to statutory guidance, but was none the less an environment in which it was clear that access was a lottery. Different authorities made different choices, some perverse, some rational; but as a result, determining whether one got state support for social care needs was a lottery. Integration of NHS services with social care was made that more complicated. We are moving to a system where the threshold is set at a national level with reference to regulations.

The second volume of the Dilnot commission report makes the following statement about the current eligibility criteria, which were put in place in February 2010:

"It is our view that there are problems with the current FACS scale, and we believe that it should be replaced in the future with a more objective scale—one which can be the basis of a clearer, fairer and more coherent social care system."

That is what I seek to debate through the amendment. I want to raise a number of issues that have been brought to my attention—and, I am sure, that of other Members—by charities, not least Scope, but also others in the Care and Support Alliance. They are concerned about how we ensure that the eligibility system works well for those they represent.

How do we set in place a new way of judging eligibility that reflects the well-being principle in clause 1? Let me give some context. In 2005, 76 local authorities set their eligibility rules at the moderate level, and around 70 set it at the substantial level. That was out of the 152 local authorities in England that have social services responsibilities. By 2009, things had shifted significantly—from 76 to just 38 at the moderate level, rising to 108 at substantial. The trends were there and the lines were crossed between 2005 and 2009.

In 2008, the Commission for Social Care Inspection identified a number of trends and challenges. It mentioned tightening eligibility criteria as not being an effective way of managing demand for support, and produced evidence to show that doing so did not manage demand very well.

Grahame M. Morris (Easington) (Lab): Will the right hon. Gentleman give way?

Paul Burstow: Let me just finish my point and I will be more than happy to give way to the hon. Gentleman. I thank him for putting his name to the amendment.

The Commission for Social Care Inspection also said that an eligibility-based framework increases the likelihood of front-line staff assessing for bands and services, rather than assessing people's situations according to need and risk to independence. That is another thing the Bill is trying to change.

Grahame M. Morris: I am grateful to the right hon. Gentleman for giving way. He is making some important points about trends and the pressures and demands, not least because of a growing elderly population and the effect that has on core mobility for some. Does he recognise that since 2010, substantial reductions in allocations to local authorities have affected their ability to deliver social care and support? According to the figure cited today in Health questions, £1.8 billion has been cut from social care budgets since 2010.

Paul Burstow: I certainly acknowledge the point about that trend continuing. As I understand it, whereas in 2009 we had reached 38 local authorities providing services at the moderate level, the trend has meant that today the figure is 16. From memory, 138 local authorities have now set the eligibility level at substantial. The trends are there and will clearly reach a point where the vast majority of authorities have set the level at substantial.

Bill Esterson (Sefton Central) (Lab): I completely agree with the right hon. Gentleman on the need somehow to find a way of setting the criteria at moderate. Does he accept the figure cited by the London School of Economics—that some £2.8 billion would need to go back into local authority social care in order to achieve that objective?

Paul Burstow: There are a variety of estimates. The Personal Social Services Research Unit has produced an estimate based on the work it has done for Scope, which I was going to come on to. If I may, I am going to develop that point, because it is important in considering how we solve the conundrum of working within the Government's spending limits and the implications such limits have for how the policy is taken forward.

The Dilnot Commission argued that an urgent review of eligibility was needed that looked at the views of users and carers, at academic research and at international experience. Clearly, that will take time. A review has already been started, about which I hope the Minister will be able to say a little more in a moment. The Dilnot Commission recommended setting eligibility at substantial as a temporary measure, pending the full review that it will recommend in its report.

When the draft Bill Committee considered the Dilnot Commission's proposals, particularly the recommendation on changing the nature of eligibility and how it is assessed, we strongly supported that recommendation and made a number of our own in our report. In fact, we called for the early publication of the regulations setting the first national eligibility threshold, and for a consultation on the draft. I was grateful to the Government for publishing the regulations, and the consultation

[Paul Burstow]

ended in November. It would be good if the Minister told the Committee what the next steps are on the formulation of a set of new eligibility criteria.

2.15 pm

Also, I thank Scope and members of the Care and Support Alliance for the work that they have been doing to highlight eligibility, which I think is the reason why so many hon. Members—on both sides of the Committee—have signed the amendment. Those organisations have commissioned some very detailed work from the Personal Social Services Research Unit, which reveals the impact of tightening eligibility during the past decade and the impact of future generalised tightening of eligibility. Rightly, Scope points to the economic modelling by Deloitte that suggests that earlier intervention at what is currently called the moderate level would make better use of resources. Indeed, Deloitte estimates that central Government would save £700 million and that local authorities and the NHS would save a further £570 million if there were intervention at that point.

Norman Lamb: I do not know whether my right hon. Friend has had a look at the Deloitte study, but it is clear that its costings are pretty speculative. They are based on very small case studies, and on comparing different studies and trying to conflate them. That is not to suggest in any way that it is not a valuable piece of work, but we have to treat it with some caution.

Paul Burstow: The Minister is absolutely right to treat the study with caution and the Treasury would be even more likely to do so; I understand that only too well. However, that gives rise to a question: why has the Treasury, regardless of administration, not done the work to establish a model on which we could base decisions about investment in preventive social care? We had recommendations from Derek Wanless when he did work for the previous Administration to build the case for increased investment in the NHS, which said that there should be a similar piece of work done for social care. That was never commissioned, but it is something that we need, because it would provide a more objective basis for some of these debates about funding social care.

Norman Lamb: I completely take my right hon. Friend's point about the need to understand better the impact that one can have by investing more in preventive care. I hope that he will be pleased to hear that there will be a thorough scientific evaluation of the integrated care pioneers, so that we can see clearly the effects of this very different model of care that is being used in those areas.

Paul Burstow: I am not pleased—I am delighted to hear that that is the case. Again, I congratulate the Minister on his leadership in this area, not least because we have a very different approach with the pioneer programme. It is not piloting, but implementing measures, at scale and pace, in several areas, and then using them to pull the rest into the change of approach that we want to see through the better care fund. That is absolutely right and I welcome that evaluation.

Amendment 37 attempts to blend the well-being principle in clause 1 with the approach taken in the current fair access to care services guidance about the definition of "moderate needs". Back in 2008, the Commission for Social Care Inspection argued for a change of approach. It proposed a shift of thinking, away from a narrow focus on FACS criteria to—again—an asset or strength-based approach. Its report said:

> "Decisions about eligibility should primarily be based on barriers to people's dignity and quality of life."

In other words, decisions should be based on people's well-being.

The Commission for Social Care Inspection proposed "three priorities for intervention". They were:

> "Immediate intervention: required when without immediate support a person's wellbeing would be seriously threatened. Early intervention: where problems are likely to develop and threaten a person's independence within six months….Longer-term intervention: where people's independence would be threatened within the year without intervention."

In other words, it proposed changing the focus to maintaining independence rather than supporting increasing dependency. Unfortunately, that approach was not adopted in the guidance that was issued in February 2010, although that guidance took some important steps forward.

The Dilnot commission said:

> "FACS is a blunt tool for adjusting the generosity of the system."

It points to the work by the Audit Commission that found that FACS levels used by local authorities actually had little effect on average social care spend. There are other factors at play when it comes to how much local authorities are choosing to pay in social care spending. I am sure that we will debate those in Committee.

We have already established that the prevention duty in the Bill is not contingent on the eligibility threshold set out in clause 13, but that clause gives people access to a number of legal rights around care planning and personal budgets. Prevention duty does not do any of that. It is a duty that stands on its own, so I would be grateful if the Minister commented on how the Government intend to ensure that the prevention duty is made real on the ground, and is not just something that continues to have lip service paid to it.

In drawing my remarks to a close, I want to ask the Minister what work has been done to understand how the draft regulations compare with the existing substantial threshold in the current guidance governing eligibility criteria. My own local authority has done just that. It has examined the draft regulations, compared them with its current understanding of the extant guidance and concluded that they are not the same: that the regulations are more generous than the old "substantial". I gather that the Association of Directors of Adult Social Services has concluded much the same.

That does not invalidate the arguments that Scope and others have made, but it points up the difficulties. I hope that the Government will continue to engage with Scope and other charities on these issues. I also hope that the Minister will seriously consider a complete overhaul of eligibility, to link it directly to the well-being principle and build on the work that the Commission for Social Care Inspection undertook. It is particularly important that it is made clear that the Government are open to this ongoing evolution of the way in which eligibility is to be assessed in the future. In a way, the

regulations that have been published so far are just a staging post and they ought to be a short-term staging post to something that is much better and that much more genuinely reflects the Bill's spirit and intentions.

My purpose in securing the debate through the group of amendments is to probe the Government's intentions and seek further clarity about how they intend to use the regulation-making power and what guidance they intend to have sitting around it to ensure that the spirit of the Bill is translated into practice on the ground.

Liz Kendall: I want to speak about amendment 94 and make some wider comments about clause 13 and the critical issue of eligibility criteria.

Amendment 94 essentially seeks to ensure that the regulations that set out who will be eligible for care under the new system should be subject to an affirmative procedure. I understand that this means that, when the regulations are published, they must be approved by a Committee in both Houses to become law. Without this amendment, the regulations might be subject only to a negative procedure, which would mean they would automatically become law unless there was an objection from either House. We have tabled the amendment because how we set the eligibility criteria will be absolutely central to the new care and support system and to the so-called cap on care costs—that is, the future funding of social care. It is essential that Parliament properly considers this before the regulations are introduced.

Paul Burstow: The hon. Lady is absolutely right that this should be subject to affirmative procedures. Does she therefore feel that this is adequately covered by clause 121(4)(a), which appears to provide for affirmative procedure for the eligibility part of the Bill?

Liz Kendall: I hope the Minister will explain. I hope that the right hon. Gentleman does not expect me to explain or justify the Government's measure. I hope that the Minister will do that.

The Chair: Order. It may help the hon. Lady to say that, when she has concluded her remarks, she could obviously look at this particular point and, if she was minded to speak again, she could do so.

Liz Kendall: Thank you, Mr Bayley. I hope that the Minister will respond to that in his comments. My point is that this is such an important issue that the regulations, which will set out the eligibility criteria, must have greater scrutiny. We are being asked to agree a Bill that will have implications for hundreds of thousands of elderly and disabled people before we have had a chance to scrutinise properly the eligibility criteria. That is the purpose of our amendment. I will say more about that later, but I want to make some wider comments, as the right hon. Member for Sutton and Cheam has done, about the eligibility criteria, which, along with the clause on the so-called cap on care costs, is at the core of whether the Bill will succeed in delivering care and support to the people who really need it.

The eligibility criteria and the cap on care costs are intimately related, but unfortunately many people have not yet realised that. I noticed that, when I said that on Second Reading, the Secretary of State turned to the care Minister and asked, "Is that the case?" It certainly is. Unless and until people are assessed as having eligible care needs, the money they spend on their care will not count towards the so-called cap. That means that hundreds of thousands of elderly and disabled people who are not defined as having eligible care needs because their care needs are not substantial will be paying out for home care and other types of care, and the money they spend will not count towards the cap. It will count towards the cap only if they meet the eligibility criteria. It is important that all hon. Members and, more importantly, members of the public realise that.

We need to be clear that the capped-cost model is essentially about helping people retain more of their savings and assets when they pay for their care—residential care, in particular—and protecting their savings from being wiped out by catastrophic costs. The eligibility criteria will ensure that the people who need care and support actually get it. How those criteria are set will determine whether older and disabled people get the help they need to remain living independently in their own homes and whether they can take part in family and community life. Crucially, the criteria will prevent problems from escalating. That is the key challenge for the future—for people who want to remain healthy and living in their own homes and for the public finances. Unless we keep more people fit, healthy and living in their own homes for longer, so that they do not have to go into expensive residential care or use expensive hospital services, the public finances will be under increasing pressure.

We are discussing health and care settings, but it is interesting to read the Office for Budget Responsibility's fiscal sustainability report—it has published two so far. It says that the primary pressure on public finances in the future will be from our ageing population. We are all aware of the pressure of pensions on the public finances, but the OBR says that there will also be pressure from the NHS and social care. Unless we stay fit, healthy and working for longer, pressure will be put on the NHS and social care budgets, which, the OBR says, is the primary medium to long-term risk for the public finances. Opposition Members are determined to ensure that we have a decent care system and that our public finances are properly dealt with, and NHS and social care spending is absolutely essential.

Bill Esterson: I completely agree with my hon. Friend; it is crucial that we get the funding right. Does she agree that the Government should be calculating the financial impact of setting the eligibility criteria at different levels, looking at whether there is a long-term invest-to-save prospect, and at what level the eligibility criteria should be capped to achieve that? That is something that should come out of the Bill and, in particular, this amendment.

2.30 pm

Liz Kendall: I agree that, if we are to get the fundamental changes we need in our health and care system to improve care for those who use it and get better results for the public finances, we need to take not a short-term, salami-slicing approach, but a longer-term view about how we can get the best value for money for taxpayers. Later—possibly not today—we will come to some of our proposals on how we could achieve that by working with the Office for Budget Responsibility, because it could play an important role. My hon. Friend's point, however, is essential.

[Liz Kendall]

Opposition Members welcome the proposal for clearer national eligibility criteria. That was included not just in the Dilnot commission's report: the previous Government's Green Paper on social care before the general election also called for clearer national eligibility criteria to be introduced to help reduce the difference in interpretation between different councils and the postcode lottery in services and support. I have a brief example from my constituency that brought that home to me.

A constituent came to me because his wife had had diabetes. She had ended up having her foot amputated, which is, unfortunately, all too common for people with diabetes. She was assessed by the council as needing some grab rails so that, essentially, she could hop into the bath to wash. They waited and waited for the grab rails to come. During that wait, which took nine months, her condition worsened and she ended up going into hospital. When she came back out, she found it difficult to move around at all and her daughters had to come round to wash her, which she found humiliating and her husband was upset by it.

Her needs escalated so much that the grab rail was no longer good enough. The council then said, "Okay, now you need a wet room," which was much more expensive than a grab rail. It finally came around with the equipment to make the wet room, but that was four days after she had died. That was incredibly distressing for the family and I was extremely concerned about what on earth was going on.

When I spoke to the council, I was told that the woman had been defined as having substantial needs, but, even within that category, she was not a priority; that was terminally ill people, blind people and incontinent people. Different councils may interpret "substantial" differently, but the need for much clearer eligibility criteria is essential.

Norman Lamb: Does not the shadow Minister's case study describe awful, dysfunctional care? I am not disagreeing with her about the absolute need for clearer criteria, but plenty of areas around the country achieve that joined-up care and do not end up letting people down in the miserable way that she described.

Liz Kendall: I absolutely agree that some councils are better than others. Actually, the point I make is to welcome clearer national eligibility criteria, which are important. We called for them when we were in government, the Dilnot commission called for them and now the Government seek to provide them in the Bill. I welcome that, but we also need to ensure that the eligibility criteria are set in the right way and at the right level. That is essential to achieving our goals, which the Government claim they want to achieve too.

Dr Sarah Wollaston (Totnes) (Con): Will the hon. Lady please clarify that in the shocking case she has set out, the lady was already eligible? It was not an issue about her eligibility for care; it was more an issue of poor practice on the part of her local authority. If the hon. Lady were to visit Torbay—perhaps she already has—she would know that the policy of putting such things in place within 24 hours makes an enormous difference. That is why Torbay is very good at reducing avoidable admissions.

Liz Kendall: I have visited Torbay and seen what they are doing there, which is excellent. There are issues of eligibility criteria and poor practice. However, I want to come to the key point about national eligibility criteria. Those are not the only thing that will deliver decent systems of care and support—it is important to have the criteria, but the practice matters too. It also matters at what level we set the eligibility criteria.

Clause 13 states that the new minimum threshold will be set out in regulations. The Government have published the draft regulations, with a proposed threshold broadly similar to the definition of "substantial need" that is currently in use. I cannot over-emphasise the real concern that exists. As Members will have read in most of the briefings they received, the big question raised by organisations that work with older and disabled people is about eligibility criteria. That is their key concern with the Bill. It is essential to be clear about those concerns.

Ministers in the other place have said that setting eligibility criteria at the level of substantial will not stop councils providing care and support to people with moderate needs. However, in reality, many councils will provide care and support based on those eligibility criteria. They will fulfil their statutory responsibilities, and the real concern is that people with moderate needs will lose out.

Andrew Griffiths (Burton) (Con): Everyone in the room supports the hon. Lady's objective to cascade care and make it available to more people. We all want to see those with moderate care needs getting the support that they so desperately need. However, we also recognise that things have to be paid for in the real world. Is she genuinely saying that there is not a cost involved in cascading care down to those with moderate care needs? If she is not saying that, can she tell us what she thinks it would cost to change the eligibility criteria from serious to moderate?

Liz Kendall: The hon. Gentleman will know that there is a cost in not providing up-front care and support, which I will come to. If we do not help people to stay at home, keep fit and live independently, they end up in more expensive residential or hospital care. We need to look at these matters in the round.

Andrew Griffiths: If that is the case, just so that I am clear, is the hon. Lady saying that if a criterion of moderate needs does not end up in the Bill, she would make it a manifesto commitment for her party at the next election?

Liz Kendall: I am not saying that at this stage. We are concerned about the care that people are getting, but we are not making spending commitments. I am trying to make the point that we need to have a much clearer understanding of the costs and benefits of setting the eligibility criterion at substantial. That is the issue most raised by our constituents and the organisations, and it is only right to cover it in Committee.

The right hon. Member for Sutton and Cheam rightly said that we were already seeing a trend under the previous Government towards more councils delivering care only at substantial level. However, I think that trend is accelerating. Since the election, we have seen a 60% reduction in the number of councils providing care

for people with moderate needs. Nine out of 10 councils provide care only to people with substantial needs. I believe the right hon. Gentleman was at Health questions earlier when my hon. Friend the Member for Worsley and Eccles South (Barbara Keeley) said that Salford council had unfortunately had to reduce the support it provides, which will affect more than 1,000 people in her constituency. That is an issue of concern.

Norman Lamb: Does the shadow Minister accept that the majority of councils that are at substantial were at that level by 2010? To follow on from the comments of my hon. Friend the Member for Burton, I understand the point about the manifesto commitment, but is the shadow Minister and the Opposition arguing now that the criterion should be set at moderate?

Liz Kendall: If I said, "I want the criterion set at moderate", it would be a spending commitment, which we are not making at this stage. I am making a case that has been raised with us by our constituents and organisations.

Members of all parties need to be honest about what is really possible in the Bill. It has some laudable aims that we support, such as moves towards prevention and well-being, but such moves are already extremely difficult and will become more so in future as local council budgets are further reduced. I am a strong champion of reform, and I believe that there is much reform that can be done. The Government proposals for integration do not go far enough. Integrating only £3.8 billion of a total NHS and social care budget of £120 billion is depressingly unambitious. We should not believe that the laudable aims in the Bill can be achieved through the package of reforms the Government are putting forward alone. We need to go further on integration and a whole load of other issues. At the moment, the aims of the Bill risk being meaningless unless the bolder reforms are put in place.

Debbie Abrahams (Oldham East and Saddleworth) (Lab): One of my constituents came to my surgery on Saturday. Rebecca has been blind since birth. She is in her 20s and has had her care package cut from 13 hours to eight hours. She said to me, "As soon as I finish my meeting with you, my personal assistant will have to go home. I will not see anybody until Monday. I will not have any contact with anybody until Monday. I will not have any support from anybody until Monday." Those are the practical considerations. She also mentioned her concerns about disability living allowance, which we talked about earlier. Does my hon. Friend agree that these things are happening to our constituents?

Liz Kendall: As I said at last week's sitting, we need to look at the context, particularly when we are thinking about working-age disabled people. That means looking not only at what the Bill says and does but at the Government's other changes, particularly welfare reforms. Their combined effect on people has been profoundly concerning.

Another reason why I am emphasising the point about eligibility criteria is that it is essential for working-age disabled people. We need to remember that for them, the cap on care costs has never been the issue and is not now. Any extra funding from the cap on care costs will not benefit the vast majority of working-age disabled people, because for them the issue is about access to care and support. It is not about protecting their assets, their incomes or their savings in their homes.

Norman Lamb: It may be.

Liz Kendall: But not for most—the vast majority—and we need to be aware of that. The Government's proposals in the Bill on the capped care cost model will benefit older people who have more substantial savings and assets in their home. When we debate a later clause, we will set out why we support any move that caps catastrophic care costs, but eligibility criteria are essential for working-age disabled people.

2.45 pm

As Baroness Grey-Thompson said in the other place, the criteria and how they are set will mean the difference between disabled people getting the support they need for the basics of daily life—getting up, getting washed, dressed and fed, being able to get out and about in their community, being able to get skills, training and employment, and having a full and independent life with the same chances and choices as everybody else—or being trapped and isolated in their own homes.

Scope and other disability organisations say that four out of 10 disabled people already say their care does not meet their basic needs, and they have warned that if the threshold and the eligibility criteria are set too high, at substantial, as the Government currently plan, more than 100,000 disabled people will be shut out of the system and prevented from living independent lives with dignity.

We need to be aware of the choices that are being made in the Bill. Any extra money going into social care from the cap cost model will not benefit working-age disabled people. Let us not forget that a third of social care users are adults with a disability. We need to think about both issues together, but we should be clear about where the benefits currently lie.

Norman Lamb: I am absolutely with the broad thrust of the hon. Lady's remarks about the need for a big shift towards prevention and much earlier intervention, but I want to test whether there is anything between us. When I intervened on a speech that she was making on Thursday, asking her whether she was arguing for more money, she said it was a question of using the money more effectively and bringing health and care together—the integration argument. I agree with her on that. When challenged earlier by my hon. Friend the Member for Burton and by me, she made it clear that she was not making a commitment on the moderate level of need, so are we not in the same place? We all recognise the constraints on public finances, and that it is all about how we use the money more effectively to achieve better care and more preventive care, not about throwing more money at it—because there is none.

Liz Kendall: I hate to disappoint the Minister, but before the next election we will present our proposals for health and care. Our job as Opposition Members is to scrutinise the Government's proposals, to be clear about what they will and will not achieve, and sometimes, if the Minister does not mind my saying so, to point out what we believe to be the reality of the care system and to say whether we believe the Government's objectives,

[Liz Kendall]

as set out in the Bill, can be achieved. I am sure he will agree that that is part of our job as an effective Opposition. We will come forward with more proposals before the next election.

The difference between us is that Opposition Members have already put forward proposals for much bigger and bolder reforms—the full integration of health and social care. A £4 billion integration budget is unambitious. We would go far further. That would enable us within existing resources to get better care and better value for money for taxpayers. As I am sure the Minister would expect me to say, this Committee, fabulous though it is, is not the place for us to set out our full proposals for the next manifesto.

Paul Burstow: Will the hon. Lady give way?

Liz Kendall: I shall make progress. I have taken many interventions, and at this stage the right hon. Gentleman is not going to get me to say more about our proposals.

It is not just disabled people who are affected. We know that there are concerns about whether older people are getting the help and support they need to stay living at home. Age UK says that 800,000 older people have a care need but currently get no support. We are starting to see the impact of reductions in social care for older people manifesting itself in more elderly people being rushed to A and E, being admitted to hospital, and getting stuck in hospital because they cannot get the help and support they need at home. Last year, £225 million was spent on keeping people in hospital because they did not have the care they needed in the community or at home. That money could have paid for a year's worth of home care visits for more than 30,000 older people.

That spending has a range of causes. The Government's big reorganisation has taken the health service's eye off the ball, and local council social care budgets are having an impact. That is not good for families, for older people or for taxpayers. In the other place, the Minister understandably talked about the costs of providing care for people with moderate needs, but there are also costs of not providing up-front preventive care and support.

The right hon. Member for Sutton and Cheam mentioned Deloitte's economic modelling on investing to save. Deloitte says that for every £1 invested in supporting a working age disabled adult with moderate needs, £1.30 is generated in return as people go back to work and contribute more through taxes and as benefit bills are reduced. Deloitte's work is not new. Members may have forgotten the previous Government's partnerships for older people—POPs provided preventive services for older people—which were brilliant initiatives proposed by my right hon. Friend the Member for Birmingham, Hodge Hill (Mr Byrne). Those projects showed that sometimes very low levels of help and support make a big difference to people and provide a big saving to the public purse.

In 2007, the DWP's Office for Disability Issues and Bristol university considered the economic benefits of home adaptations and equipment. One example they gave was of how such things could reduce falls among elderly people and reduce the need for much more expensive hospital care. Members may be aware that the average cost of a hip replacement, which is common after a fall, is £29,000 to £30,000. That is almost five times higher than the average cost of a major housing adaptation and 100 times the cost of fitting a hand rail or grab rail. The Audit Commission's "Fully Equipped" report states:

> "If a drug was discovered with a similar cost-profile, it would be hailed as the wonder-drug of the age."

The problem is that Government Departments still have too much silo mentality. We are taking too short a view of how to make best use of taxpayers' resources. Whatever the Government claim about the changes they are making, for many on the ground it is simply the short-term salami slicing of services and support, which ends up worse for people and costs the taxpayer more. We need a much bolder response. Over the medium to long term, we need to consider the joint budgets for the NHS and social care, and we need a Treasury that gives longer time scales to get better outcomes. We did not achieve all that in government, and this Government certainly are not achieving it, either, but that is what we should be trying to do.

On the eligibility criteria and the cap, it is essential that the Government make it clear that, if someone has low or moderate needs—such as needing help getting up, washed, dressed and fed, needing help with the shopping or needing a grab rail, even if they are only a little bit wobbly—and they pay for that help, it will not count towards their cap. The Government have not been publicly explicit about that, which is a real concern for the public. If people are told that their care costs will be capped but that a lot of the up-front prevention on which they and their family are spending money will not count towards the cap, they will be not only disappointed but genuinely and rightly angry. They will feel conned and that the cap is not a cap.

Before I sit down, I will return to amendment 94. We need proper scrutiny of the regulations, because the eligibility criteria are crucial to what the Bill is intended to achieve. That is why we tabled amendment 94, which I hope the Minister will accept. We need to have a hard dose of reality about whether the Bill will achieve what it says it will achieve if councils' statutory responsibilities do not ensure that they shift the focus towards prevention and early intervention.

Sarah Newton (Truro and Falmouth) (Con): It is a pleasure to serve under your chairmanship, Mr Bayley. I rise in support of the amendment tabled by my right hon. Friend the Member for Sutton and Cheam and supported by a number of colleagues. While no one in the room would not be genuinely concerned by the individual cases that have been raised by Opposition Members, it is disappointing to hear no commitments about anything that we can do about it. Government Members are left to deal with the reality that we find in our country today and to take the necessary and difficult decisions to do something about it.

The Committee will be pleased to know that I will make a very short speech about some specific points. I hope that the Minister will lay out for us his vision—I have heard it before and it is a very compelling one—for what we will do not just in this Bill, but in a whole range of measures that the Government are bringing forward, to support people with disabilities to play a full part in our society. There cannot be anybody in this room who does not want to see people with disabilities playing their full part in our society.

To digress for a moment, I was privileged to have been at meeting recently where I shared a platform with Lord Coe. We were reflecting with a large number of organisations representing people with disabilities on the terrific legacy of the Paralympics and how those games changed the nation's understanding of what people with disabilities can contribute. We debated what more we can do to keep that legacy alive and challenge some negative assumptions about disability and what more we can do as a society to enable people to play their full role. There was tremendous support in that room for the whole range of things that we are doing, particularly in enabling people who want to work to do so and to overcome any barriers to employment.

For too many years people with disabilities were cast to one side, not really helped to get into education and employment or to participate in voluntary work. We are seeing a real sea change from a whole range of things that the Government are doing. I support the amendment because I am concerned that when we set the eligibility criteria we have a one size fits all. We are looking at the needs of frail and vulnerable elderly people at the same time as those of young, determined people with disabilities who really want to be able to work. It seems incredible that we could come up with eligibility criteria that would meet such a diverse group of people. I would like to see the individual needs of people of working age with disability explored to ensure that they can fully participate in society and benefit from all the other reforms that we are putting in place, particularly enabling them to work.

An unintended consequence if we do not get the eligibility criteria right is that we will have supported someone with disability to get a job, perhaps through the Work programme or one of the other excellent schemes that we have in place, only for them to be held back because they are not supported with their social care package. They might have a physical disability and need help to get out of bed in the morning and dress themselves ready to go to work. It would be a lack of joined-up policy making if we did not have in place the right level of social care support for someone who, with that level of support—perhaps a moderate level—could leave their home, go to work, participate in education or volunteer. They are all things that the Government want, and what people living with disabilities want to be able to do.

3 pm

The assurance that I am seeking is on how the Minister proposes to enable working-age people with disabilities to receive the support that they often need so that they can work or join in education or volunteering opportunities.

Bill Esterson: I am pleased that the hon. Lady supports the amendment calling for the eligibility criteria to be set at the right level, which is what the debate is all about. However, does she recognise that, at a time when local social services departments have seen 20% of their funding cut, it is becoming increasingly difficult to achieve the right eligibility criteria and the right level of service that she quite rightly says is needed? Does she support putting back the money that is needed based on the sort of assessments and analyses that have already been mentioned in this debate?

Sarah Newton: I have been a councillor myself. I know that councillors are now facing tough choices about how they are going to spend the money that they have raised themselves locally or the money that is given to them by the Government. All of us, whether a parish councillor, a district councillor, a councillor in a unitary authority or a Member of Parliament, are elected to make difficult decisions and to prioritise.

For me, the case is absolutely clear cut. What could be more important to a local authority than protecting the most vulnerable people in our society? I condemn councils that cut their social care budgets, because it is the wrong thing to do. There are councils around the country that are not making those choices. They are protecting the most vulnerable people in their community and providing good services. The issue is about choices. I am not saying that they are not difficult choices, but they are choices. Of course, the Government have made extra money available to councils' adult social care budgets to help them better integrate their services with the NHS. Opposition Members cannot have it both ways. If they support and believe in reform, they should support the Bill, because it will enable the breaking down of silos and the innovative work, which we so desperately need, to happen. There are pioneer parts of the country that have been doing that. We want to ensure that all councils across the country are as good as the best, such as the council in Torbay. It has not waited for the Bill; it has, frankly, got on with it, because it has understood its clear responsibilities to the most vulnerable people in their communities. The Bill will ensure that all other councils take a similarly responsible view.

Grahame M. Morris: There is so much to respond to. I am trying to be nice—

The Chair: Order. Is it an intervention on the hon. Lady's speech?

Grahame M. Morris: Yes. It is an intervention on an earlier point about the other care crisis—that for young adults. I am keen that we can produce a piece of legislation that will help the frail elderly and working-age disabled people. My concern is that, although we have worked effectively, this is a critical clause. The Paralympic legacy, referred to by the hon. Lady in such glowing terms, may well be that 100,000 working-age people will be denied the support and care that they require if we set the eligibility criteria at substantial rather than moderate. That is the reality. We should be honest about that.

Sarah Newton: I support the amendment to ensure that working-age people with disabilities receive the support that we all want to see them have and which they richly deserve. That is why I hope the Minister will lay out for us how the Bill and other measures that the Government are introducing will enable that to happen.

Liz Kendall: Has the hon. Lady done the figures on how much her amendment would cost?

Sarah Newton: I have met the same organisations that you will have met and read the various research papers that have been published on this matter. As we debated earlier, there is a range of numbers. However, I honestly

[Sarah Newton]

believe that the Minister, in his response to amendment 94, will be able to describe to us how the needs of working age people living with disabilities will be met.

Liz Kendall: The hon. Lady will know that her amendment and that of the right hon. Member for Sutton and Cheam pretty much follows the description of moderate care needs under the current FACS system. So if Government Members have asked Opposition Members whether we are committing to that and what the costs would be, it is only right that we ask the same question of the hon. Lady and the right hon. Member for Sutton and Cheam.

Sarah Newton: Unfortunately, I am not a Minister in the Government, so that is not a question for me. I am sure that the very capable Minister in the room this afternoon will, in responding to this debate, be able to communicate to everyone's satisfaction how that will be done.

Norman Lamb: My understanding is that setting the eligibility criteria at moderate would cost £2.7 billion for both adults of working age and of older age. That is the cost of setting it at that level.

Sarah Newton: I had finished my contribution, but if there are any more interventions, I would be happy to take them.

The Chair: Let me make one brief comment from the Chair. Quite a number of Members from both sides of the Chamber have been using this troublesome word "you", when exchanging views between each other. "You", in the context of the Committee, refers to the Chair and I decline all responsibility for the accusations that have been going backwards and forwards. Please try to use, as you do most of the time, the formulation "the hon. Member".

Meg Munn (Sheffield, Heeley) (Lab/Co-op): I am sorry to say that I found the contribution of the hon. Member for Truro and Falmouth rather disappointing. The idea that we are here to set out what a Labour Government would do is just nonsense. This is a Committee, looking in detail at a Bill that your Government—not your Government, Mr Bayley.

The Chair: Someone is listening—hooray!

Meg Munn: Certainly not your Government, Mr Bayley.

—that the hon. Lady's Government are putting forward. That is why we need to look at this issue. I take issue with a number of things that the hon. Lady said, which I shall cover briefly because what I have to say is far more important. However, the idea that some councils are willingly cutting their services and are struggling just because they are a bit silly or not doing as well as somebody else is frankly nonsense. I can hardly contain my anger when, by 2016, my local authority will have suffered a 50% cut of its whole budget. This is happening to local authorities particularly in the north, in those areas where they have a lot of need. It does not become the hon. Lady to stand there and pontificate the way she did.

This is a fundamental clause in the Bill. It is also a fundamental concept that people in social care services across the piece have struggled with and will always struggle with. The need to respond to low level needs to prevent greater needs arising is universal among all people who need social care services. However, there is no bottomless pit, no endless supply of money, and there never will be. Therefore there has to be some way of judging who can get help and support, and eligibility criteria are supposed to be the fairest way to do it.

On the ground, it will always be difficult to do this. I want some general commitments about the principle from the Minister, specifically on an aspect of the amendment concerning domestic, family and personal relationships being damaged by the failure to provide care. That is an enormously important part of amendment 37. I want to understand the overall intention around maintaining independence. Do the Government view the need for eligibility criteria to be holistic, and therefore give discretion about what is provided in order to maintain that independence? Or is there a view that as part of an assessment certain needs are eligible and others are not?

I will give an example to explain what I mean. Many people are cared for at home by a partner, a close relative—a daughter, a son—and they provide a wide range of care, sometimes often quite personal. After a period of time, they are struggling and things are getting more difficult and they need additional help. The help they may need is not for the most intimate care. It may be that what they need to relieve the pressure on the household, to support the person who is doing the personal care, is cleaning or someone to sit with the person. It may be a very low-level care service and relatively cheap. It could be seen as meeting low-level needs. It is not absolutely necessary but it is what enables the much more personal and greater care needs to be continued by an informal carer.

Is that dealt with in the Government's approach to the eligibility criteria? To me that is fundamental. If we get to the point where somebody who is offering a very high level of care to a relative is told, "You can't have shopping, cleaning or whatever, because they are not care needs that we will meet because they are low-level," the Bill will fail. Because to refuse a little bit of help of that nature for somebody, who in all other respects would have high-level needs, could well be the straw that breaks the camel's back, and then there will be much greater needs to be met, perhaps through residential care.

That is what I am concerned about. It is the holistic approach that will allow people on the ground to make those judgments in individual cases about how they continue to lever in the informal and family care that I talked about on day one of the Committee. The Minister graciously said he very much agreed with me about how we should envisage the process. Is that the Government's intention? It is fundamental to whether the Bill can deliver on its intentions.

Grahame M. Morris: Although we have had a lengthy debate covering many points, there are a couple of things I want to raise. Clause 13 and the amendments go to the heart of the Bill. We have to be honest about what the Bill will do. We are establishing a framework and recognising principles, but are we putting in place the mechanism to solve the care crisis? I regret that in

my opinion if we set the eligibility threshold at substantial rather than moderate, I do not think we are addressing the care crisis.

3.15 pm

I want to say a few words in support of that argument. Earlier today we had Health questions. I do not know whether I am allowed to refer to that during the debate; I did earlier and did not get called to order, so I will try again. Many Opposition Members are concerned that the problem of increased pressure on accident and emergency departments comes in no small part from, first, the cuts to social care in local authorities such as my own and, secondly, the increased pressure on and demand for social care. The eligibility threshold is not an abstract issue; it is directly related to the present crisis. It is older and disabled people with moderate care needs whose needs are going to escalate and who are going to rely more on emergency care if they are shut out of the social care system because the threshold is set too high.

When I raised that issue at Health questions, the Minister replied that it is not a new phenomenon or an escalating crisis. However, what is new is that we have an ageing population and an increasing number of people with interlinked conditions and co-morbidities, which is placing more intense demands on services. Even without the cuts in funding and changes such as the reorganisation of local authority services, the demographic change will put growing pressure on social care. We must tackle that crisis. Older and disabled people with moderate needs rely on social care to help them wash, dress and cook healthy meals. Those things contribute to people's personal dignity and allow them to have control over their day-to-day lives.

There is a clear and present danger if we set the eligibility criteria too high. There will be a problem if the cap means that only the people with the most substantial needs are eligible. Those people will not go into care, but will get worse in their own homes and will present at A and E. It is a false economy, because it will create a great demand on resources. My hon. Friend the Member for Leicester West tabled an amendment to an earlier clause that would have placed a duty on local authorities to promote the independence of disabled people. Unfortunately, it was not accepted. However, this amendment would help to address that important issue.

I am concerned that setting the eligibility criteria at substantial will undermine the principle of prevention and early intervention, which we debated at length under clause 1. We need to give disabled and older people the support they need to live independent and fulfilling lives. It is clear that older and disabled people with moderate needs rely on social care to live worthwhile lives and have personal dignity and control over their day-to-day lives. It is therefore essential that the national eligibility threshold be set at a lower level than that in the current regulations. I understand the financial pressures and the costs involved.

A report entitled "The other care crisis" was commissioned by a raft of national charities, including Scope, Mencap and Leonard Cheshire. It found that four in 10 respondents said that social care services currently do not meet basic needs of the kind I have outlined. If the new eligibility system continues to exclude younger, working-age adult disabled people from the care system, the Bill will not achieve the aim of promoting the well-being of care users.

It is clear that setting the threshold at substantial will fail to make the Bill's well-being principle, which we debated under clause 1, a reality. Does the Minister accept that, and if not, will he explain why?

Dr Wollaston: I support the amendment in the name of my right hon. Friend the Member for Sutton and Cheam. I shall not reiterate the points made by my hon. Friend the Member for Truro and Falmouth, as those are exactly the reasons why I lent my name to the amendment.

In the draft Care Bill Committee, the issue of well-being was at the heart of our discussions, particularly the emphasis on prevention and the opportunities in the Bill to achieve that. I know that not a single member of the Committee does not recognise that that is the ideal we strive for and that funding is the main issue. The trouble, as the Minister will know, is that the incentives are all related to admitting to hospital, and none of the incentives are linked to prevention because for local authorities that are already hard pressed, there is no benefit in offering extra care.

I very much welcome the better care fund. At a hearing during our evidence sessions on the draft Care Bill, the evidence was that such funding drove integration in practice. We cannot legislate for integration. We must clear the barriers away and put in place the opportunities and the drivers—financial drivers in particular. I recognise that that is the intention, but when he responds, will the Minister set out the concerns expressed by many about the integrated better care fund, as it is now known, and tell us how many claims there are on that resource already? We know, through the passage of the Bill, some of the new obligations on councils in relation to assessments. Those are planned to come out of the better care fund.

Will the Minister set out in detail the spending timetable for that fund? Concern has been expressed in the Health Committee that there is only a relatively short time to spell out how that will be spent. Because the focus today is on the amendment and the issue of prevention, will the Minister tell the Committee who is leading on how the prevention aspect of the Bill will be driven forward to use the fund in the most appropriate way and as was intended?

Mrs Emma Lewell-Buck (South Shields) (Lab): I support amendment 94. In the light of the comments of my hon. Friend the Member for Sheffield, Heeley, I should like to point out that my local authority is the seventh hardest hit in the country, yet we have a higher than national average number of social care clients. As the lead member on my council for adult social care prior to entering the House, I had to make some very difficult decisions and had to face the people directly affected by them. I wonder how those on the Government Benches would fare if they were faced with such cuts and such levels of demand.

On amendment 94, I echo the comments of my hon. Friend the Member for Leicester West regarding clearer eligibility criteria and their scrutiny. Unless we set out the mechanisms by which a person is eligible for care, how can we move on to meet their needs and achieve the

[Mrs Emma Lewell-Buck]

aim of the Bill to get better support for social care clients? My local authority, like many others, is able to offer care only to those who meet the "critical" and "substantial" criteria for fair access to care, but the situation is far worse than that because within those criteria local authorities have scope to state what "critical" and "substantial" mean. Consequently, as budgets become smaller, criteria tighten, fewer people qualify for support, and fewer people have their needs met.

It is little wonder, then, that the Royal National Institute of Blind People reports that 43% of blind people have fallen out of the system, or that Age UK reports that 250,000 fewer people aged over 65 were in receipt of care and support in 2012-13 than in 2007-08, and that the overall number of people receiving social care has fallen by 347,000 since 2008. These are worrying trends. It is good that we have been successful in ensuring that people—including people with health conditions and those with disabilities—live longer. Age UK in my area reports that an increasing proportion of the people it speaks to are aged 90 and above. It is clear, though, that as the population ages, care needs will inevitably be greater.

I am realistic, and I understand that money is scarce, but setting a high eligibility threshold that denies people care is not a long-term solution. The condition of people with moderate needs often deteriorates if they are left unsupported. When they then hit a crisis, the point of acute care is a far greater burden on the taxpayer. It is therefore imperative that we get this right and that thorough scrutiny of the eligibility criteria be afforded.

The criteria are fundamental to the Bill. They differentiate between those who are deemed to require support and those who are not. As such, they should be subject to approval by both Houses. Our amendment may give some small peace of mind to thousands of current and future adult social care clients. I urge the Minister to listen to what has been said in today's debate.

Bill Esterson: I want to add Sefton council's comments about the eligibility criteria. It currently spends about £93 million a year on services to adults, which is 40% of its controllable budget. It also says that, as we debate this measure today, councils are starting to consider their budgets for future years. They face the prospect of having less to spend on such services, and the situation worsening. I think we are all aware of the Local Government Association's graph of doom, and the prospect that the demand for social care will exceed the funds available for all council services within a few years unless something changes.

Heather Wheeler (South Derbyshire) (Con): Surely the announcement of the £3.8 billion and a further £1.1 billion means that councils can forward-plan, join up on well-being committees and link acute hospitals and social care from the two different tiers of councils? Was that not the whole point of making that announcement early on? That is the biggest amount of money—really chunky money—ever announced.

Bill Esterson: Yes, and it would be fantastic news if it was new money and not being taken from existing budgets, which is the reality.

Heather Wheeler: It is £3.8 billion from the NHS.

Bill Esterson: It is not new money overall. The reality is that it is taken from a budget elsewhere in the system.

Andrew Griffiths: Will the hon. Gentleman give way?

Bill Esterson: I will not give way, because we will not agree. That is the reality. The point that Sefton and other local authorities make is that they find it extremely difficult to balance the budget with existing resources.

Andrew Griffiths: On that point, will the hon. Gentleman give way for a very short intervention?

Bill Esterson: No, I will not give way. The hon. Gentleman can sit there and demand as much as he wants, but I am dealing with the original point. The money announced is an important step in the right direction to integrate health and social care, absolutely, but unless there is new money for new services to replace what is being delivered at the moment, that will not achieve what is needed.

Liz Kendall: Many Government Members do not realise that not only is the better care fund not new money, but many of the costs of implementing the capped cost model—new assessments, setting out the metering system and the care accounts—will come from that. In other words, money that is currently spent on users in the NHS and on social care will be taken away to set up a new system of care accounts and the capped cost model. That is what will come out of that fund.

Government Members should be aware that many councils are concerned that those costs will be far higher than the Government claim. Money is being taken off existing users to fund a new system. People must be aware of that when the Government make their claims about the better care fund.

Bill Esterson: My hon. Friend is in a strong position, given her background, to comment on such things. Given the costs of reorganisations of one sort or another, there is a danger that the money is not used effectively and that service users, within social care or the NHS, do not see the benefits of the funding. Such damage was done by the £3 billion reorganisation, when eyes were taken off the importance of patient care. The reality is that such reorganisations and rebadging do not benefit patients or service users.

Paul Burstow *rose—*

Sarah Newton: Will the right hon. Gentleman give way?

Bill Esterson: I am not right hon. I will give way to the right hon. Member for Sutton and Cheam.

3.30 pm

Paul Burstow: I am very grateful. This has been an interesting exploration of the concerns of the hon. Gentleman and his own local authority. My understanding is that Sefton spends about £236 million a year. That is its budget. Currently, according to its accounts, it has

about £200 million in its reserves. That seems an extraordinarily large amount of reserves and suggests that the council is not necessarily using its own money to protect services.

Bill Esterson: The right hon. Gentleman is trotting out the line of some of his coalition colleagues, which they have been trotting out since 2010. If he looks at the budget headings on the reserves, he will find that they are all earmarked for significant capital projects, including some extremely expensive regeneration projects. Also, some of that money can be spent only on those projects. "If only it were that simple" is my answer to him.

Sefton and other local authorities have raised concerns about the long-term budget. In its submission to the consultation stage of the Bill, Sefton asked that consideration be given—

Sarah Newton: Will the hon. Gentleman give way?

Bill Esterson: Not yet. I am just getting to the point that Sefton raised with me. Its point was that changes being made in the Bill have significant further financial implications. The amendments we are debating now are rightly probing what the eligibility criteria should be, which I think Sefton would broadly support. But they cannot do anything without resources. The Department for Communities and Local Government's budgets suggest that the money will not be there, which will make it very difficult for the council to deliver services to social care users and users of other services. I will now give way to the hon. Member for Truro and Falmouth.

Sarah Newton: I am very grateful to the hon. Gentleman. Perhaps it is just me, but it seems a thoroughly confused situation. I was director of Age Concern, responsible for campaigning and fundraising, and then director of the International Longevity Centre, before I came to this place. When I held those positions, I recall that the Labour party agreed with me that it was unfair that the NHS had considerable increases over many years and the councils did not. The Labour party argued long and hard that councils should be given NHS funds to enable them to meet the needs of people in their communities and to enable them to integrate, arguing that there would be considerable savings by doing so.

The Chair: Order. I have to interrupt. The clause does not go back over the history of funding of local government and the NHS. I hear what the hon. Lady says, but we ought to stick to the eligibility criteria, which is what the clause is about.

Bill Esterson: My hon. Friend the Member for Leicester West dealt with the point very well in her intervention earlier when she expressed concerns about moving budgets around and the impact on other service users. That comes to the heart of some of the points she was making around additional costs being generated unless we get the eligibility criteria right at this stage, because it is about investing for the long term.

I was extremely concerned by the comments of the hon. Member for Truro and Falmouth, condemning councils that have cut their social services budget. When the Government cut councils' budgets overall by 40%, as they did with local authorities across Merseyside, it is impossible for the social services budget to remain untouched, so instead of condemning councils, the hon. Lady should reserve her comments for central Government.

Grahame M. Morris: On the better care fund, which has been mentioned by a number of Members on both sides of the Committee and which was previously the integration transformation fund, is there a risk of creating an unrealistic expectation in authorities such as Durham county council and in Sefton, Truro and Falmouth that this money is available to assist with this issue, when it seems to be earmarked to assist, at least initially, in reconfiguring in the community services that were previously hospital-based? It seems that there will be huge demands on the fund across the country.

The Chair: Order. Before I give the floor back to the hon. Member for Sefton Central, let me say that we will have opportunities to debate care costs and budgets in subsequent clauses. It is reasonable for Members on both sides to make the point that if the eligibility criteria for care are broadened, there will be a cost implication, but we have probably heard enough now about eligibility criteria and costs, and we should look at the question of the power of local authorities to determine eligibility and the eligibility criteria themselves.

Bill Esterson: I am, of course, guided by you as Chairman, Mr Bayley, although my hon. Friend the Member for Easington made the point that Sefton council has made to me, expressing grave concern about conflicting demands for this and other funds and the danger of raising expectations among care users and carers. It is a point well made.

My final comments are about the cap. This is the link with the eligibility criteria, which are the subject of the amendment. My hon. Friend the Member for Leicester West pointed out that people may think their care costs count towards the cap when they do not, and that if people are not assessed as eligible because of how the eligibility criteria are set, that is one source of concern, and there are others. I raised the issue of top-up fees with the Minister of State in Health questions earlier, and there is also the issue of so-called hotel costs, including food costs. The combination of those factors is why getting the eligibility criteria right is so important when it comes to expectations and people's understanding of what care costs are going to be.

There need to be clear explanations to the public of what they can expect. That is why it is important that we get right the balance between national and local decision making. I, like everybody else, would like to see eligibility criteria set at a lower level. That is why amendment 37 is so important. I look forward to the Minister's response. He mentioned a figure of £2.7 billion to achieve that. Perhaps he can tell us whether that is the Government's intention. That would go a long way to resolving confusion, meeting expectations and above all meeting the care needs of people in the coming years.

The Chair: Given that many Members on both sides have raised the cost implications of the eligibility criteria, it would be reasonable for the Minister to respond to those points. However, I remind him and those who might make interventions that a series of clauses on

[The Chair]

local authority charges and the cap on care costs are coming up. Anyone wishing to debate those matters would be better off raising them when we come to those clauses.

Norman Lamb: Thank you for that helpful guidance, Mr Bayley.

I shall start by responding quickly to the shadow Minister's wider points. I was reminded of the Labour party's response to the Dilnot recommendations when they were first published. The then shadow Secretary of State, the right hon. Member for Wentworth and Dearne (John Healey), said:

> "Our concern is to protect the one in ten of us who have to pay over £100 000 for the costs of care in older age, as well as those hardworking people on modest incomes more likely to care for relatives and less likely to get help in doing so. And we must also protect people from the lottery of where they live not what they need determining their care assessments and level of support."

That constructive, mature view completely mirrors the Government's position on Dilnot.

My slight fear—misplaced, I am sure—is that it was convenient for the Opposition to support the Dilnot report strongly the moment it was published, when they perhaps felt that the Government would not implement it. When, unexpectedly for the Opposition, the Government announced that we would do what Dilnot recommended—and that is fantastic—the Opposition's tone suddenly changed to one of less enthusiasm: criticism that the recommendations do not go far enough and are limited in what they can achieve.

My plea to the Opposition and the shadow Minister, for whom I genuinely have a great deal of respect, is that we should recognise that the reform in question is very significant. Let us be absolutely clear and honest about what it does and does not do and combine to make sure that we make the very most of it, so that it becomes embedded and leads to the behaviour change that we are all after.

Liz Kendall: The Minister has been uncharacteristically unfair. We have always supported anything that stops people facing, through no fault of their own, catastrophic care costs and the loss of the savings and homes for which they have worked hard all their lives.

The Minister did not take part in the few and rather thin cross-party talks on social care. Andrew Dilnot had clearly said that the baseline issues on funding, as well as reform for the future, had to be addressed. It is right for us to scrutinise the Government on that and say that there has to be enough money in the system as well as reforms for the future. I have a lot of respect for the Minister, too, but he has been uncharacteristically unfair about Opposition Members, who have rightly been raising concerns.

Norman Lamb: I thank the hon. Lady, who accuses me of being uncharacteristically unfair. She is absolutely right in saying that the Opposition's duty is to challenge and scrutinise, and there is a challenge in respect of the proposal to set the criteria at something equivalent to substantial. I would characterise the Opposition's contributions as being strong on the wringing of hands but not that strong on any solution. As some Government Committee members have said, the Government are getting on with fundamental reforms. The £3.8 billion better care fund sets a bottom line. Any area can be much more ambitious than that if it chooses to, and I encourage them to do so, but this is the first time it has happened. As my hon. Friend the Member for Totnes made clear, it is all about the incentives. Until now, as I am sure the shadow Minister will agree, the incentives within the NHS have incentivised activity in acute hospitals through the payment by results system, rather than effectively incentivising prevention of ill health. This is the first substantial shift of resource from repair to preventing ill health, and it should therefore be strongly welcomed.

3.45 pm

Liz Kendall: It is simply not true to say that nothing had been done before. First, we legislated for care trusts, which brought together all the care for local authorities and NHS budgets, and which the Government's Health and Social Care Act 2012 scrapped entirely. Secondly, there were huge initiatives to bring funding together, including joint budgets, pooled budgets and partnership for older people projects, which brought about huge shifts in provision. On the tariff, before we introduced it, the NHS had no idea what it paid for any kind of care. We always said that the tariff was a first step and needed to be reformed, but under previous Governments, before we introduced it, no one knew what the NHS paid for care. I strongly refute the Minister's claims.

Norman Lamb: I am grateful to the shadow Minister for that helpful intervention. I simply make the point that I was talking about financial incentives. This is the first big financial incentive to shift action towards the prevention of ill health. That is enormously to be welcomed.

Paul Burstow: Does the Minister agree that it is possible to count on the fingers of one hand the number of care trusts that were actually established, and that the scale and ambition of pooled budgets under the last Government's legislation amounted to a fraction of what the budget that he is establishing will achieve?

Norman Lamb: I agree. I strongly supported the care trusts' complete openness and straightforwardness about that. It was wonderful that some areas chose to do that, but the numbers were tiny.

Meg Munn: The integration of health and social care has been a holy grail for a lot longer than anybody here is discussing. Twenty years ago, under the previous Conservative Government, a great deal more was done. Work was done on the ground; when I was in social services 20 years ago, I worked in an integrated care team to do it. Labour legislated for local authorities to pay into the health budget when people were kept in hospital instead of being discharged. It has been going on for a long time. Can we get on with moving forward instead of rewriting history? It really is terribly boring.

Norman Lamb: The Opposition seek to challenge and scrutinise; that is absolutely their duty. Surely it is fair for me to respond and to be clear that what this Government are doing is radical and substantial. A lot of people in

the King's Fund and across the health and care system are absolutely thrilled that at last, they are able to do what they have wanted to do for a very long time.

Moving on to the key points raised by hon. Members, my right hon. Friend the Member for Sutton and Cheam made a specific point about the work to make the process of assessing eligibility a bit more sophisticated and nuanced. The White Paper first raised the potential to do so, and I am keen that we should put a lot of emphasis on developing that more interesting approach. There is a risk that setting the criteria high will send out the message that people must get sicker and more disabled before any help will be available.

I will come to why I think there are lots of things in the Bill that seek to prevent that, but if we can make the process of assessing eligibility more nuanced and if we can assess people as eligible for help much earlier, that makes a lot of sense. Hon. Members will understand that this is quite complex, and it requires a lot of work to get it right. We are committed to working with those parties that have an interest, including organisations such as Scope, to get it right. That is not something that can be done overnight, but I am interested in trying to make progress.

Let me address some of the other points that were raised. The Bill provides the power for the Secretary of State to set, for the first time, national eligibility criteria for care and support. That is one of the key changes that the Bill will make and addresses the concerns we have heard from stakeholders about the lack of transparency and the variability in decisions made by local authorities on whether a person is eligible for services. My right hon. Friend the Member for Sutton and Cheam recognises the importance of the national minimum threshold. His amendment would set the eligibility criteria in the Bill, rather than in regulations. It would also appear to prescribe in guidance a level of national eligibility close to the level of "moderate needs" described in the current framework.

The significance of the national minimum threshold is undisputed. Consultation has demonstrated almost universal support for a national approach. There can be little consistency in the current system between local authorities on what needs are eligible. Local authorities can set their own thresholds for eligibility and change them over time. That results in uncertainty and can even lead to reductions in services if, for instance, the local authority decides to change its eligibility criteria. We have heard in lots of contributions about the extent to which authorities under both Governments—that is the truth of it—have changed from "moderate" to "substantial" over the last few years.

It has therefore been the Government's goal from the outset to overcome those problems by introducing a national minimum threshold. The best way to achieve that is by setting the threshold—which, incidentally, the Dilnot commission recommended setting as substantial—in secondary legislation, as recommended by the Law Commission. If we were to set out the eligibility criteria in the Bill, as suggested, future changes to the threshold would be possible only through primary legislation, which would be cumbersome and time consuming.

Moreover, the amendment seems to prescribe a level of eligibility broadly equivalent to moderate in the existing framework. That is contrary to the policy set out in our draft eligibility regulations, which propose a threshold equivalent to that in use in the vast majority—more than 85%—of local authorities. The intention behind our policy for national eligibility, together with funding announced in the spending review, is for local authorities to be able to maintain access to care and support when the new framework comes into effect. This is a minimum standard; authorities may be more generous.

My right hon. Friend the Member for Sutton and Cheam talked about whether what we had consulted on met the substantial level, as currently defined. We have heard from local authorities that the current draft of the criteria is too low, while in part the voluntary sector has said it is too high. We will continue to work with stakeholders in local government and the voluntary sector, and with the assessment and eligibility task and finish group, of which Scope is a member, to get the wording right. We will consult on the next version of the regulations in May. I hope that helps.

I caution against looking at clause 13 in isolation—this goes to the heart of the issue that my hon. Friend the Member for Truro and Falmouth raised—as the Bill also includes new duties to provide preventive and other universal services intended to delay or reduce needs in the first place. For instance, under the duty in clause 2 for preventive services, it may well be appropriate for a local authority to decide that helping disabled working age people back into work would achieve good results for the individual in terms of their central duty of well-being under the Bill, but would also, as the argument goes, reduce costs in the longer term for the local authority, so that everyone gains. That is one example of how the provisions in the Bill are much broader than just the eligibility criteria.

In addition, Torbay has a formal eligibility criterion of "substantial", yet we know from the way in which it works—in a highly integrated way, focusing on prevention—that its interventions, in very many cases, on a community-wide basis, are made at a level that is much lower than substantial. The Bill of course enshrines that approach—intervening early to reduce or delay ill health further down the line. That is backed up by the better care fund, with the complete focus on outcomes—on achieving results for people. We are putting money with the legislative provisions; the two go hand in hand. I am talking about legislative provisions that focus on prevention, together with money to incentivise and facilitate new ways of working, bringing local government and the NHS together in a way that we have never seen before, other than in those pockets of excellence around the country.

We can add to that the whole focus of the Bill on an individual's well-being, on their assets as individuals and on the importance of helping people to build their resilience and their families' resilience in order to be able to manage conditions of disability or ill health. This whole approach is designed to achieve the objectives and to assist and support people at a much earlier stage.

There is also the work that was alluded to earlier. The shadow Minister made the very good point about the DWP working closely with the Department of Health. There is this long-overdue shift towards pooling the public resources. In some areas, that is done through the experiments with community budgets. Deploying the enormous resources of the DWP together with the resources available in health and care can achieve so much more than having them in isolated silos. That is

[Norman Lamb]

the Bill's big objective. There are the duties of co-operation, together with the duties of integration and prevention. The power of this is potentially enormous. As I have said in response to the hon. Member for Sefton Central many times already, legislation on its own is not enough, but this measure creates the foundations for a much more rational approach.

I am sure that we would all ideally like the minimum threshold to be set at a lower level. However, independent research has shown that the cost of setting the threshold at moderate would be £2.7 billion a year. That is a huge amount of additional money to find in the current financial climate. Although the Deloitte report points to the potential for savings, which I completely accept—the whole thrust of my argument is for a much more preventive approach—the argument and analysis is quite thin in terms of reliability, and Governments have to find, if they commit to that, the money up front. It was noticeable that, although there were contributions from the hon. Members for Sefton Central, for Easington and for South Shields specifically calling for "moderate", that was not met with support ultimately from the shadow Minister, who does not commit to it, and rightly so in my view. That is the Opposition's position: they are not committing to the moderate level as the eligibility criterion. We all need to be clear on that.

Liz Kendall: Does the Minister think it was right for the coalition to impose the biggest cuts of any Department—a third in total—on local councils if we want to improve care and support for older and disabled people? Does he think that was the right decision?

4 pm

Norman Lamb: I have two views—first, that we took the decision to compensate for that in terms of social care with £7.2 billion over the spending period. Some local authorities sought to use the money for its proper purpose. Not all did, but that is the responsibility of local authorities, not of this Government. Analysis by the King's Fund demonstrated that if the money was applied to social care and if local government sought to achieve the efficiency savings that were possible, services could be protected. Some local authorities have chosen not to commit all of that resource to social care, and we see the consequences of that.

Secondly—I give this as a personal view—there is enormous scope in local government to achieve substantial savings from different ways of working. The tri-boroughs in London, for example, have reduced the bureaucratic administrative burden, freeing up resources for the front line. That is the sort of innovative thinking that has to go on in local government, and there are many in local government who recognise that and I applaud them for it. I think the shadow Minister accepts, even if some others do not, that the whole purpose these days is to make better use of the available resource, because there ain't any more money available, given that we are still spending £100 billion more than we are bringing in in taxes every year, trying to sort out the deficit that we inherited.

It is important to get the eligibility criteria right, otherwise we risk destabilising the care and support system. Therefore the Government have already engaged with service users, carers, voluntary organisations and local authorities on the wording of draft regulations to make sure the language is correct. Amendment 94 would require regulations made under clause 13(6)—in relation to making eligibility determinations—to be subject to affirmative resolution. However, we do not think that is necessary, and I shall try to explain why.

The regulations that set the eligibility criteria under clause 13(7) are already subject to affirmative resolution. My right hon. Friend the Member for Sutton and Cheam made this point earlier. Since these regulations describe the national eligibility threshold, we believe it is right that this is the case. In practice, we do not anticipate that the powers in clause 13(6) and (7) would be disaggregated. Regulations would cover both matters together, the criteria and any matters about how the determination should be made. There would be a single set laid together and that would be subject to the affirmative procedure.

I can confirm that we have no intention of making regulations using the power in clause 13(6) alone. However, if Government were ever to use clause 13(6) alone, this would be solely for procedural matters around making the eligibility determination, which would not affect the threshold itself. Such regulations would not normally be required to be made under the affirmative procedure.

We are all agreed that the national minimum threshold is of the utmost importance. I hope, therefore, that we agree on the value of making regulations under the affirmative procedure so that Parliament will have the opportunity to scrutinise them before they are introduced, as well as any future changes to them.

Paul Burstow: We have had a full debate on probably one of the most important provisions in part 1. I am grateful to hon. Members who have taken part—those who supported the amendment and those who challenged it—because there is undoubtedly a public expenditure challenge to it, which I will briefly address in a moment.

Clause 13, more than anything else, brings to the surface at national level a debate that has been bubbling away for decades about something that has been contracted out to local decision making and local debate, allowing Governments to absolve themselves of responsibility in determining access to social care. Although future Governments may consider it an incredible millstone, it is an incredibly good thing that this Government are preparing to say that there should be national eligibility. That elevates the debate to a national one. It is right that we also debate the financial aspects.

I have said that eligibility criteria are a poor way of managing demand. We have had plenty of examples of that on both the negative and the positive sides, Torbay being the best example of the positive. None the less, it is setting its criteria at "substantial" and managing some of the pressures in the system in a way that demonstrates that it is not just eligibility criteria that give rise to those pressures in the first place. We have learned from the debate some interesting things about the evolution of policy on both sides of the Committee. We await the emergence of more policy from the Opposition with bated breath, not least whether there will be a manifesto commitment on fair access to care criteria.

I was disappointed in one regard, because I had hoped that the debate would lift its sights beyond just talking about the current FACS criteria and the current

draft of regulations, both of which are still locked in a deficit view of the world. I hoped that we would talk a bit about how we might do what the Minister suggested could happen in future, but perhaps that can be for another time.

We are told that the cost is £2.6 billion. The Minister said that local authorities say that the current draft regulations would result in a more generous set of criteria than the old "substantial", and NGOs claim it is the other way round. That sounds like the old decimalisation debate and how to compare—*[Interruption.]*

The Chair: Order.

4.7 pm

Sitting suspended for a Division in the House.

4.22 pm

On resuming—

The Chair: Fifteen minutes have elapsed, so the Committee is back in session. Paul Burstow was on his feet; I invite him to continue his speech.

Paul Burstow: Before the Division I was talking about decimalisation and the context of "substantial" and what it means. As we have heard, the consultation revealed that NGOs are worried that the draft regulations are drafted too tightly and that local authorities are worried that they are too generous. My local authority seems to reflect what the Local Government Association says more generally. That comparison—how we compare one old penny with one new pence or how we compare the old "substantial" with the new "substantial"—is an important part of getting the regulations right and ensuring that we know what the new system will do in practice. On the basis of the current draft regulations, the cost might not be as high as £2.7 billion, because I suspect that the costing was done on existing FACS criteria. Therefore, the gulf might not be as big as suggested.

I want briefly to pick up some comments about the impact of an ageing society on this debate and some comments from the Office for Budget Responsibility and members of the Committee about ageing being the biggest drain and driver of care costs. I want to say two things about that. First, I do not think that is true. The evidence points to multi-non-communicable disease being the principal driver of health care costs, along with the increase in the number of people dying and where they die. If they die in hospital, the cost is massively greater—we will come to that in a moment. We have seen a phenomenal increase in life expectancy, and we have a fixation on the dependency ratio, which is misleading and exaggerates the scale of the problem. If we take into account the fact that people live healthily for longer, a different picture is revealed. I suggest that people look at some of that evidence, because that might remove some of the panic.

The Minister said that he was keen to make progress on developing a more sophisticated way of determining eligibility. I welcome that. He rightly said that this is a complex area and that we need to work with NGOs and others that have a stake in it. Will he undertake to give the Committee a letter setting out the timetable and the scope of the work? We need to know how long the eligibility criteria that he is currently consulting on will be the basis for access to the new, reformed system, and when something better will be put in their place.

Norman Lamb: I am happy to write to the Committee to set out in more detail what the work is about and its scope, although I cannot be precise about the time scale. I share my right hon. Friend's view that age-related cost pressures are only part of the overall picture.

Paul Burstow: I am grateful for that intervention. The amendment was always intended to be probing and to enable a debate to take place. The debate has been revealing and informative. It is useful to have the Minister's undertaking about the future direction of travel and the fact that there will be further consultation. Although it was right to use the amendment as the fulcrum of the debate, the idea that one would put such detail on the face of the Bill is something that would give pause for thought to everyone who wants to see the right level of eligibility set. It is right that there is flexibility in the regulations.

Liz Kendall: It is right that the right hon. Member for Sutton and Cheam intends to withdraw his amendment. He and the hon. Members for Truro and Falmouth and for Totnes have tabled an amendment that could have big cost implications, and it is only right that they should say where the money would come from. The amendment does not do that. Opposition Members would not table amendments unless we could say how they would be paid for.

When we tabled amendment 94, we took advice from one of the Clerks about whether it would go further than the provisions currently in the Bill. If adopted, it would indeed go further, because it would require that regulations made under subsection (6) be subject to the affirmative resolution procedure. It is essential that we fully scrutinise the regulations on eligibility in the way that amendment 94 suggests. We therefore intend to press it to a Division.

Paul Burstow: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 94, in clause 13, page 13, line 36, at end add—

'(9) The regulations in subsection (6) are subject to the affirmative resolution procedure.'.—*(Liz Kendall.)*

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 12.

Division No. 5]

AYES

Abrahams, Debbie	Munn, Meg
Esterson, Bill	Reed, Mr Jamie
Kendall, Liz	Shannon, Jim
Malhotra, Seema	Smith, Nick
Morris, Grahame M. *(Easington)*	

NOES

Burstow, rh Paul	Lamb, Norman
Griffiths, Andrew	Morris, Anne Marie
Jones, Andrew	Morris, David

Newton, Sarah	Stephenson, Andrew
Penrose, John	Wheeler, Heather
Poulter, Dr Daniel	Wollaston, Dr Sarah

Question accordingly negatived.

Clause 13 ordered to stand part of the Bill.

4.30 pm

Clause 14

POWER OF LOCAL AUTHORITY TO CHARGE

Paul Burstow: I beg to move amendment 38, in clause 14, page 14, line 9, at end insert

'and in assessing the cost a local authority incurs, it must (unless either Condition 2 in section 18, or either Condition 2 or Condition 4 in section 20, is met) ignore the cost it incurs (directly or indirectly) in assessing that need under sections 9 or 10.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 39, in clause 14, page 14, line 9, at end insert—

'(4A) Where a local authority that meets an individual's needs under sections 18 to 20 is satisfied that the individual's means are insufficient for it to be reasonably practicable for the individual to pay the amount which would otherwise be charged, the authority shall not require the individual to pay more for it than it appears to them that is it reasonably practicable to be paid.'.

Amendment 98, in clause 14, page 14, line 29, at end add—

'(9) A local authority should publish on its website the current cost that the local authority incurs for particular services for which it may make a charge.'.

Paul Burstow: Clause 14 covers charging for services where they have been provided to a person with eligible needs. Amendment 38 seeks to clarify what I believe is an unintended consequence of the current drafting. As drafted, the clause would allow local authorities to charge for social work assessments. That is not something that local authorities can do at present. Because the clause permits assessments to be delegated—clause 78 provides for delegation of functions in a number of ways—it sets up the possibility that the assessment process can be subject to reimbursement to those undertaking the assessment for their costs. It will be possible for that to be passed on as a charge to the individual. My amendment would simply put beyond doubt that the local authority or someone delegated to do the task should ignore the costs incurred directly or indirectly in assessing the person's needs.

Amendment 39 returns to an issue raised during the joint scrutiny of the Bill—the legal limits to charges. At present, the primary statute that governs this is section 17(3) of the Health and Social Services and Social Security Adjudications Act 1983. They really knew how to name Acts in those days. That contains a provision that prohibits domiciliary care charges that are not "reasonably practicable" for a person to pay. That protection—or long stop—is not found in the Bill. Although it may be replicated in regulations—indeed we have had similar assurances to that effect—the Department of Health has not so far addressed the concern raised in Committee. I hope it is an area on which the Minister can give us further comfort.

My point is that this is a matter for primary legislation. It is an essential principle that would underpin regulations and guidance. When we took evidence on this, we were told that the courts and the local government ombudsman found that this test of "reasonably practicable" in primary legislation was of value to them when they came to make their determinations. While the regulations may set out a process by which charges are calculated and may, as Ministers have said so far, have a goal of a fair charging system, that leaves open the possibility that that could be changed in regulations in future.

There will be cases that are out of the ordinary. This is about testing legislation to ensure that it is flexible enough and has principles that enable the out of the ordinary circumstance to be taken properly into account. In those circumstances, there might be someone who does not have sufficient resources to pay a charge, even when they have been financially assessed as able to do so.

There are court cases that have determined on the matter and have used the test of "reasonably practicable". There are ombudsman cases. Indeed the ombudsman has considered several cases over the years and found the current long-stop test an important aspect when coming to a judgment in favour of one party or another. It is that safeguard of "reasonably practicable" that my amendment would maintain in law to allow for the possibility that no matter how good the regulations are, or indeed the guidance, life can throw up something that is not anticipated, and we ought to try to make sure the primary legislation deals with that.

Grahame M. Morris: I fully understand the right hon. Gentleman's sentiments and support his efforts. It was one of the 10 points of contention in the Joint Committee. If I may ask a stupid question, what does "reasonably practicable" mean—in practical terms?

Paul Burstow: That is a very good question, although an obvious one. In considering this in the Joint Committee, we had the benefit of the advice of Professor Luke Clements as our adviser on the care aspects of the legislation. He drew our attention to existing case law using this phraseology from the Act—I will not repeat the full title—as being an important way to ensure that attempts to capture various different scenarios in regulations did not leave out individual circumstances.

For me, this is about making sure the individual circumstances can be properly factored in when a decision is being made. Drawing up a set of criteria can never capture all individual circumstances, so the amendment would give that additional comfort—that back-stop—that enables people to challenge local authority decisions about charges. So what I want to hear from the Minister is why he thinks moving that from primary legislation to regulations is satisfactory and why putting similar language in regulations would not itself suggest that it would be better to maintain the status quo in this particular area.

When I was drafting the legislation—I am surprised no one has asked me this question so far—such a consideration was not put to me in the advice I received. I regret the fact that I did not ask the question. I took the opportunity as Chair of the scrutiny Committee to revisit such questions. On the advice that we received, I think the Government should pause, reflect and consider making this small and modest change.

Liz Kendall: Amendment 98 would require local authorities to publish on their websites and in other places the costs that the local authority incurs for the services that it charges for. We tabled the amendment because it is important now and will be increasingly important in future that local councils are clear about their care costs. The two things I most have in mind are their costs for home care and for residential care.

Imagine someone does not live near their family—their mum or dad. Many of us have been in such a situation. Perhaps our mum or dad are reaching the point at which they need care and support. In such cases, we think about moving closer to mum and dad, or we think about mum and dad moving closer to us so that we can be there to help them if they need care. It is often the case that someone needs home care, but also residential care. If someone's mum or dad—someone they love—is going into a care home, that can be a really distressing experience. People might want their parents closer to them so that they can go and see them. People might also think their parents will need help getting up, washed, dressed and fed, and the son or daughter might want to help out. That can be done more easily if the parents are closer rather than miles away. Some families may want to do that whatever the costs are, but it is important that we think about this issue. Charges for home care, particularly for those in private residential care homes, are increasing.

We recently did a freedom of information survey about home care charges that showed that they have increased by quite a bit since the election. If someone gets 10 hours of home care a week and five meals on wheels, which is the average profile of a care user, it now costs on average £7,900 a year, which is up almost £740 since the general election, or £15 a month. Charges for meals on wheels have increased by a fifth and community transport charges have almost doubled.

The key issue, however, is the huge variations in what councils charge. While home care remains free in Tower Hamlets, it costs more than £20 an hour in Cheshire East. The hon. Member for Harrogate and Knaresborough might like to know that home care costs £17.30 an hour in his area and it costs £16.80 an hour in the constituency of the hon. Member for Weston-super-Mare.

Therefore, someone with a family member who lives in Tower Hamlets—and therefore got free home care—might think, "Actually, my mum or dad should move closer to where I live," but they could be charged quite a lot if they moved to another area. It is important that families know about the costs of care so that they can use that information when making their decisions.

That is also really important in residential care, as the rate that the local authority pays for that will determine the cap on care costs. Often, in the slightly better-off areas of the country, such as those represented by the Secretary of State for Health or, indeed, the Prime Minister, the amount councils pay for residential care might be less than £400 a week, but the private care homes charge much more: £800 a week or even more. The gap between the council rate and what people are charged can be really big and people will have to pay that themselves. Families therefore need to know what the real charges are for care in their area, not because that would stop them from making decisions on where their loved ones get care and support, but because it would allow them to think through the financial implications of the care and support.

The information is hard to get. We had to issue freedom of information requests to get the data. When we rang up the councils and asked them, they often said, "No, we're not going to tell you—you have to do an FOI." That is not right. Councils should be open about what they charge so that people can properly plan for the future. That is why we tabled amendment 98.

Norman Lamb: Amendment 38 intends to prevent a local authority from charging an adult or a carer for carrying out an assessment of their care and support needs, unless the adult is paying for their own care but exercising the right to require the local authority to meet their eligible needs. However, as is the current situation, the Bill does not give a power to local authorities to charge for carrying out a needs or carer's assessment in any circumstances.

We believe that a needs assessment should be provided free of charge to ensure that people are not discouraged from approaching their local authority to get their needs assessed. Clause 14 gives local authorities powers to charge for meeting an adult or carer's care and support needs under clauses 18 to 20.

Grahame M. Morris: I fully appreciate that local authorities should not be able to make a charge for an assessment. My understanding is that the current law includes a power to charge for meeting the needs of carers—not the assessment, but meeting their needs. Does the Minister think that it would be simpler and beneficial simply to scrap charges for carers altogether?

4.45 pm

Norman Lamb: That is not what we are talking about now. To deal with the hon. Gentleman's specific point, in most circumstances, I think councils take the view that it is not appropriate to charge, and I share his view. There may be circumstances, for example organising a trip on a minibus and covering the cost, in which everyone takes the view that a charge is reasonable. However, in most circumstances, I share his view. Here, we are talking about whether there should be a charge for the assessment, and I am making it clear that that is not to be the case.

Clause 14, as I have said, gives authorities powers to charge for meeting an adult's care and support needs under clauses 18 to 20. In addition, it ensures that such charges may only cover costs incurred by the local authority in meeting those needs.

Under clause 14(1)(b), a local authority may also charge an arrangement fee in the case of a person who is paying for their own care, but that relates only to a charge for putting in place the arrangements for meeting those needs. It does not enable a local authority to charge for assessing those needs; assessment will always be free. I trust, therefore, that my right hon. Friend the Member for Sutton and Cheam will feel able to withdraw the amendment.

Amendment 39 seeks to ensure that, where a local authority arranges a person's care and charges them for it, the local authority will not charge the individual more than it appears to the local authority would be reasonably practicable for the person to pay. I agree that the person should not be charged more than they can afford to contribute. For residential care, it has long

[Norman Lamb]

been the case that that is determined through regulations and guidance, with which the shadow Minister will be familiar.

Under the Bill, local authorities will be required to assess how much people can afford to contribute towards their care costs according to regulations, in all care settings. In particular, regulations under clause 14 will set out the minimum income that people must be left with after charges. That is potentially an important protection for people, which ensures that people are not charged more than is affordable.

Local authorities will carry out a financial assessment in accordance with the regulations, subject to their other duties and responsibilities, including their duty to promote individual well-being and to act reasonably. The duty to promote the individual's well-being, as we have made clear and which my right hon. Friend the Member for Sutton and Cheam has often talked about, is at the heart of every decision in this legislation.

The aim is to promote greater transparency and fairness by setting rules that prescribe a consistent approach to charging in similar circumstances where appropriate. However, in other circumstances, it may be necessary to prescribe flexibility to respond to different local circumstances to ensure fairness and promote innovation.

To reiterate, regulations will set a specific amount of money that people must always be left with after charging to ensure that they can afford those charges. That is, in my view, a stronger and clearer protection than a provision based on what the local authority considers to be "reasonably practicable". The risk—I speak as an ex-lawyer—is that what is interpreted as reasonably practicable by one official and one local authority may be different from what is interpreted by another official or authority. Having a sum of money that the individual must be left with after all charges seems to be a stronger protection. Given that, I hope that my right hon. Friend will feel able to withdraw the amendment.

Regarding amendment 98, we believe that it is vital that people are provided with the information that they need to make informed choices about their care. I agree with the shadow Minister when she talks about having to pursue freedom of information requests. I instinctively favour transparency and openness, and if such an approach is taken, better decision making results. As part of making information available, local authorities should be transparent about the costs of care that they face, which is important in ensuring that the system works in a clear and transparent way. Currently, local authorities often provide guide prices on how much it costs them to purchase care. We would expect that to continue as it provides important information to help people make informed decisions.

The costs of meeting an individual's needs for care and support, however, will depend upon their specific circumstances. That is why, under the reforms, everyone with eligible needs will be entitled to a personal budget or an independent personal budget. That will provide people with clear and up-to-date information on what it would cost the local authority to meet their individual needs. Even if it were practicable, it would not be appropriate to require local authorities to publish all their costs in all circumstances. If only one individual is using a service, for example, publishing its cost would ultimately be an unwarranted intrusion into their private life. There could be that unintended consequence.

Local authorities may also be constrained by commercial confidentiality, at least initially, with regard to historical agreements, for example. When it comes to the deployment of public money, contracts should whenever possible include clauses that provide for openness. None the less, commercial confidentiality is always a consideration. Guidance will make it clear that local authorities should give people the information that they need to make an informed decision about the best way to meet their needs. I therefore urge the shadow Minister not to press amendment 98.

Paul Burstow: I am grateful to the Minister for his reassurances, in particular on amendment 38. He has made it clear that charges may only cover the cost of meeting need, which is helpful and will be important for future interpretation.

On amendment 39, the Minister said that the intended regulations will stipulate in all cases a specific figure that a person would be left with. It would be useful to be sighted on those regulations and how that would work in practice at the earliest opportunity. There is, however, still the possibility of difficult individual cases that do not fit the normal rules. If the rules are so constrained, it could still leave someone with sufficient means to have an existence after charges on paper, but not in practice.

In conclusion, we need within the legislation some form of mechanism—it may be light touch—that allows for redress and for decisions to be challenged. I hope that the Minister will continue to think long and hard about that. I will read what he said today about amendment 39, because I still do not feel entirely at ease with it.

Norman Lamb: I will also reflect on what my right hon. Friend has said as I want ultimately to ensure that we get the legislation right. The overall duty of well-being, combined with a specific sum that is protected income, is a stronger protection than exists at present.

Paul Burstow: With that additional undertaking, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Liz Kendall: I just want clarify for the record that our amendment would not require local authorities to provide the details of everything that an individual was charged, and I do not see any commercial confidentiality issues. Having said that, as the Minister said that the guidance will make it clear that local authorities should freely provide information about what they charge, I shall not press my amendment to a Division.

Clause 14 ordered to stand part of the Bill.

Clause 15

Cap on care costs

Liz Kendall: I beg to move amendment 99, in clause 15, page 14, line 33, leave out 'cap on care costs' and insert

'set level above which an adult starts receiving financial assistance with the costs of their care'.

The Chair: With this it will be convenient to discuss the following:

Amendment 100, in clause 15, page 15, line 6, leave out 'cap on care costs' and insert

'the set level above which an adult starts receiving financial assistance with the costs of their care'.

Amendment 101, in clause 15, page 15, line 27, leave out 'cap on care costs' and insert

'the set level above which an adult starts receiving financial assistance with the costs of their care'.

Amendment 102, in clause 15, page 15, line 22, at end add—

'(9) The Secretary of State must report to Parliament—

(a) in advance of this section coming into force with the Government's assessment of the likely impact of the set level above which an adult starts receiving financial assistance with the costs of their care; and

(b) annually once the section is in effect, with the Government's assessment of the impact of the set level above which an adult starts receiving financial assistance with the cost of their care, in particular its distributional impact across different levels of income.'.

Liz Kendall: We now come to another critical clause. Amendments 99, 100 and 101 change references to the cap in the Bill to

'the set level above which an adult starts receiving financial assistance with the costs of their care',

and amendment 102 requires the Secretary of State to report annually on the impact of the cap. I shall explain the amendments further in my comments.

I reiterate that Opposition Members welcome the principle of any cap on care costs. Protecting people who face catastrophic care costs and risk losing everything that they have worked for and saved for—even their homes—is an important step forward. I have always said that, and I continue to say it. However, Committee members need to be clear about how the Government's proposals are different from the original proposals made by Andrew Dilnot and his long-term care funding commission, and we should be aware of the risks of using the word "cap".

I understand that the issue is fundamental to the Dilnot proposals. During the cross-party talks, I raised it with Mr Dilnot, saying, "The problem, Mr Dilnot, is that the cap isn't really a cap; it won't feel like a cap to people." It would not be fair of me to give his response, other than that it was an economist's best way of expressing it, to put it diplomatically.

My real worry is that what happens with complicated areas of policy is that something gets reduced to a word and the public, when they see the results, will think, "Hang on a minute; I thought my costs would be capped at this amount," when in reality they are not. I shall come to that in a minute.

I remind hon. Members that the Dilnot commission proposed that a cap on care costs should be set between £25,000 and £50,000, recommending £35,000 as the best figure. The commission's report said:

"Anything above £50,000 could mean people with lower incomes and lower wealth would not receive adequate protection…moving outside the range of £25,000 to £50,000 could mean that the overall reforms would fail to satisfy our criteria on fairness and sustainability."

Bill Esterson: I want to make a brief point about the regional effects of the cap. There will be a skewed effect. Far more people in the south-east in particular will tend to benefit, because wealth, particularly in housing, is far greater there, especially in London. Does my hon. Friend agree?

Liz Kendall: I was about to come to that point. If the so-called cap were set at £72,000, many of my and my hon. Friend's constituents could see all their homes, or a large and substantial chunk of their homes, go. The effect will be differential, depending on house prices across the country. Dilnot proposed a carefully balanced package. He recommended that the cap be set at that level because he thought that that was the right balance between fairness and sustainability.

5 pm

Paul Burstow: Does the hon. Lady agree that the Dilnot recommendations were based on 2010 prices and that the proposals for the cap being introduced in 2016 will effectively be at the prices of the time? With the benefit of that period of time having elapsed, even Andrew Dilnot would accept that £50,000 will very nearly become £72,000.

Liz Kendall: The right hon. Gentleman is courageous for thinking that he might know what on earth house prices will be like in the years ahead. Dilnot was clear on where he thought the cap should be set. Even in 2015-16, for many of my and other Members' constituents, the level is above what Dilnot recommended. Sustainability and fairness are both issues.

Grahame M. Morris: I want to bring the discussion back to the amendment and the reasons for changing the wording from "cap." We have been at pains to say that local authorities must behave transparently and openly so that people are aware of the charges. Surely the Government should also be absolutely open about how the cap will apply so that people with moderate care needs, for example, will know that those costs will not count towards this thing that we are calling a cap. Those costs could be many tens of thousands of pounds. Is that not rather disingenuous?

Liz Kendall: My hon. Friend rightly moves me on to the substance of my amendment, but I thought it was worth reminding hon. Members of the original Dilnot proposals.

For many people, the cap simply will not be a cap on the costs that they actually pay. First, as my hon. Friend has just said, if someone is not assessed as having eligible care needs, which we know will be set at substantial care needs, money spent on care will not count towards the cap—any money spent on home care, on someone to help with the shopping, on grab rails or on stair lifts by someone with low to moderate needs will not count towards the cap.

Secondly, the cap is based not on what someone actually pays for their care home but on the standard rate that their local council pays. Currently, the average rate that councils pay for a care home is £477 a week. Many hon. Members will know that the weekly charges for care homes in their constituency are much higher than £477.

Norman Lamb: Will the hon. Lady give way?

Liz Kendall: Let me make some progress before I give way.

We asked the House of Commons Library to analyse the trend of increases in the past five years in the difference between what councils pay and what care homes actually charge. The Library said that in 2016-17, when the cap is due to start, the average council rate for residential care is estimated to be £522 a week, but that the actual price of a care home bed is estimated to be £610 a week—hundreds of pounds more in many areas. The average price that people actually pay covers both council-funded and private care homes. The figure for private care homes alone is far higher than £522 a week. The difference between the council rate and what people actually pay will not count towards the cap.

If a person manages to survive long enough to hit the cap, they will still have to pay the extra costs. The only alternative is that they would be forced to move, and we know how risky that is for elderly people in residential care homes. Unfortunately, we know that too often such people pass away. The care Minister has been slightly better behaved than some of his colleagues, particularly the Secretary of State, who said:

> "The cap is not saying that we expect people to pay £75,000"—

which is what they were saying at that stage,

"towards their care costs. We are saying that that is the maximum anyone will have to pay"—[*Official Report*, 11 February 2013; Vol. 558, c. 600.]

That is simply not the case.

Norman Lamb: I understand the shadow Minister's point: the pressures across the system and the argument that some local authorities do not pay the full amount that it costs in some care homes within their areas and so forth. But does she argue that all the costs that someone pays in a care home should count towards the cap? If that was the case, then better-off people who choose to pay for the more luxurious care homes would get more benefit—and quicker—than other people.

Liz Kendall: What I am asking for is Ministers, particularly the Secretary of State, the Deputy Prime Minister and the Prime Minister, not to say a wrong amount when telling people the maximum cost they will have to pay. That is what I am asking for—for people to be straight.

I know that the Minister will raise the issue of living costs. We have never asked for people's so-called hotel costs—living, heating, fuel, lights and food—to be paid, because if they were staying in their own homes they would be paying for them. Andrew Dilnot recommended that these living costs should be set at between £150 and £190 a week, but the Government have raised the figure to £230 a week.

Those extra costs will also count towards the cap. If we take both factors into account—the living costs that people will be charged and the gap between what a council pays and what the people in the residential care home actually pay—we see that on average people will have to pay not £72,000 before they hit the so-called cap, but £150,000. It will take people on average almost five years to hit that cap. We need to be clear that the average length of stay in a care home is just over two years. What this means is that six out of seven people will be dead before they hit the cap.

Let me illustrate my point with an example from Norfolk, the county of the Minister's constituency. We rang the council to ask the standard rate that it paid for residential care in its area and it refused to tell us, so we had to do a freedom of information request. Norfolk council told us that its rate for a week in a residential care home is just £321.33. That is what it pays. Then we rang four or five care homes in the area and the average cost was £550 a week. Some were a lot more than that, as the Minister will know.

If the prices continue to increase at the rate of the last five years, in 2016-17 a bed in a Norfolk care home will cost £610 a week, but all that will count towards the cap is £339. Once we take away the £230 a week in living costs, just £109 of what the person actually pays will count towards the cap. At that rate, a self-funder in the Minister's constituency will spend over £400,000 in care bills over the course of 12 years before the state steps in. If they live long enough to reach the cap, once they have hit it they will still have to pay £270 a week, or £14,000 a year.

I do not know whether some hon. Members' eyes are glazing over because it is late in the day or because of the nature of my speech, but it is really important that we understand the complexity of this issue. People are already sick of politicians. They think that we do not tell the truth and that we claim things that we do not deliver. If we go around saying that a cap is at £72,000 and it is not—and that it will be different in different areas—we run a real risk.

Like the Minister, I am sure, I have had conversations with constituents, or their friends or families. People might say, "It's all right, because at least we know that our costs will be capped", but I have to reply, "No, they won't be." They say, "Well, what will I have to pay?" I reply, "I don't know—because of your circumstances, which care home you go into—what the prices are likely to be." That is the point that I am making: the situation is unclear.

My final point on the so-called cap is about the interest. People might decide to take out a deferred payment agreement; we will come more on to deferred payments later, but this is an important point to do with the cap. The council gives people a loan to pay for their care, meaning that they do not have to sell their home while they are alive, although it has to be sold once they are dead. The Government have said that people will not have to sell their homes to pay for their care; they will, but after they are dead.

Councils will charge interest on the loans. The Government's consultation document stated that the rate will probably be set at roughly 4%. The interest on the loans, however, will not count towards the cap. A loan to cover the average length of a stay in a care home, two and a half years, would clock up extra costs of £3,500 in interest alone.

Someone who happened to live in a care home for five years—about one in eight care residents do—would face almost £14,000 in interest charges over the period, and those interest charges will not count towards the cap. People might think, if they had taken out a loan to

pay for their care costs, that the interest on the loan would be part of the care costs and count towards the cap. In fact, it will not.

I have explained why we are so concerned about calling something a cap when it is not one. Our amendments seek to ensure that the language in the Bill reflects the reality. In truth, changing the legislation will not make the difference on being clear with people; the issue is about Ministers not making claims for a policy that cannot be delivered in practice. We must be straight with people, so that they can plan properly for the future. The system is complex; making frankly unacceptable claims that costs are being capped when they are not is bad for people. It is also not fair when families are trying to plan for the future.

We also tabled amendment 102, which would require the Secretary of State to report to Parliament in advance of the so-called cap's coming into force, and then every year on how the cap is affecting people across the income spectrum, in particular focusing on the distributional impact of the cap on people with different levels of income and assets. This is an incredibly complex system and Members of the House should be clear, when they vote for a Bill, whom it will affect. What kind of families will be affected? Does the Bill have the right balance between protecting assets and helping the poorest? What kinds of families or assets and which different parts of the country will be affected? We are unclear on all that.

The Government, in pushing forward their changes, should be clear about who the Bill will benefit. That is tough. I am not saying that the Bill is not a step forward; the Minister knows that I believe it is, but where will the public money be going? Who will it benefit? Which families will benefit? We need an assessment of how the cap works and interacts with the eligibility criteria and the means test, which we will be coming on to. We are talking about public money on a really important issue—we need to know who will benefit. There are a lot of complex issues out there and that is why we have tabled our amendments.

Norman Lamb: I will first deal with the level of the cap. As my right hon. Friend the Member for Sutton and Cheam made clear, Andrew Dilnot's proposals and the suggestion of a range between £25,000 and £50,000 were in 2010-11 prices. At such prices, the cap proposed by the Government comes out at just over £60,000. Yes, it is outside the range, but it is not that much outside the range. The important thing is that Andrew Dilnot, who came up with a whole package of proposals, very much supported the proposals that the Government are taking forward. Contrary to what the shadow Minister said, the cap maintains the integrity of the package as a whole.

5.15 pm

The bottom line is that, whatever the Government put forward has to be affordable. The remarkable thing is that, despite extraordinarily difficult public finances, the Government have taken the bold step of committing public resource to implementing the Dilnot proposals, which is massively overdue. The Government commissioned Andrew Dilnot and his panel to do the work for the report. He came up with a proposal and I think that everybody, including, I suspect, the Opposition, believed that we would not do it, but we have done it and we should all be very proud of the coalition Government for taking that bold step.

If the shadow Minister is saying that the Opposition would be more generous, we need to know, and we need to know how that would be paid for. If it comes back to what we said earlier about a wringing of hands on how things need to be better, without a commitment to do anything about it, we need to understand that that is the position.

Liz Kendall: The Minister was not there in the cross-party talks. We were really serious about them. We tabled a fully written paper about all these issues, including the deferred payments scheme, the means test, which we are coming on to, the care accounts and the implementation costs—all of that—and we have not received one response. The care Minister knows that we were serious about those talks. We asked all those questions because we wanted to make it work and we wanted it to be the best available system. I wanted to remind hon. Members what Dilnot really proposed, and the bulk of my comments was that the Minister should not make claims that are not met in practice, because that is not fair to older people or their families.

Norman Lamb: I am grateful to the shadow Minister for that clarification, but we have to understand whether the Opposition accept the Government's proposal or whether they are arguing for something more generous. I have not heard any argument for something more generous, and the public need to understand that. She fairly makes the point that we need to be clear, open and honest with people about what the proposals do and do not do—in a moment, I will offer her a deal—but equally the Opposition have to be open and honest. If they are not proposing something that is more generous, they need to say so.

It is all very well saying, "We will come out with our proposals at some later date nearer the election", but we need to know what the Opposition—*[Interruption.]* There is a lot of complaining going on, but we need to know now whether the Opposition believe in offering something more generous or whether they do not have an alternative to put forward. If the hon. Member for Oldham East and Saddleworth will enlighten us on what they are proposing, I am happy to give way.

Debbie Abrahams: I will tell the Minister what we are not doing: we are not committing to something that we are not going to do. The amendment would remove the idea that it is a cap on care. My hon. Friend the Member for Leicester West has made a compelling argument on why it is not a care cap. The amendment would remove what is not true.

Norman Lamb: Let me come on to the substance of my offer. I offer to the shadow Minister that we will work with her and her party on an awareness-raising campaign, so that the public understand exactly what is and is not on offer, as well as the substantial advance achieved with the clause combined with everything else in the Bill and the focus on well-being. In return, she would commit to supporting a strong set of proposals.

[Norman Lamb]

Earlier, I quoted the then shadow Secretary of State and his comments in the immediate aftermath of the publication of the Dilnot proposals. At that point, the Opposition were fulsome in their support and absolutely recognised the importance of protecting people against catastrophic cost. Now it is all about how what is proposed is not enough and needs to go further, but without any commitment to any more money. Let us all agree that this is worth doing and is a very substantial advance; then we can have a discussion about getting out there and telling the public about it, so that everybody understands exactly how they will benefit from the proposals. That is the offer, and I would very much welcome joint working on that.

Sarah Newton: I am grateful for the very sensible and generous proposal that my hon. Friend the Minister has put forward. One of the major benefits of Dilnot was that a market would develop for financial products, so that people could insure themselves against catastrophic risk. Unless we get united communication, and if there is constant carping about the level of the cap, it will cause confusion and prevent what everybody agreed at the time was a benefit of the Dilnot proposals.

Norman Lamb: I very much agree with my hon. Friend. The problem until now was that the financial services industry could not take the risk of offering products, because this was open-ended. Now, there is a defined amount of money that it can work with, and it can offer people the chance to plan, prepare, budget and save for their old age—if they choose to. That is not required or obligatory, but the measure will give them the opportunity to do so. We cannot predict what will happen ultimately, but from the discussions that we have had with the financial services industry, I am very hopeful that businesses will enter the market and see it as an area of real potential opportunity for them, both as a business and to fill a gap that is absolutely there; at the moment, people simply have no means of preparing themselves for the risks of old age. In future, through the Government's reforms, we will give people that opportunity.

Protecting people from the risk of catastrophic care costs is at the heart of our funding reforms, as the former shadow Secretary of State made clear. It is vital that we enable people to plan better, to prepare, and to provide for the risk of future care costs. The introduction of the cap on care costs represents a significant step forward, ending decades of uncertainty by providing much-needed protection against unlimited care costs. It will provide greater clarity about what people will be expected to contribute towards the cost of their care, and about the support that they can expect from the state.

The hon. Member for Leicester West has suggested that the terminology was wrong as the cap on care costs was not a cap, but in my view, that is not true. Let me explain. The cap on care costs is what it purports to be, and what was recommended by the Commission on the Funding of Care and Support—the Andrew Dilnot commission. It is a limit on what an adult has to pay towards the cost of care to meet their eligible needs. We have always been clear about what the cap on care costs does and does not include. It does not include daily living costs for those in residential care. That is a simple matter of ensuring parity with those receiving care in their own home, and of ensuring that there is not a perverse incentive for people to move into residential care earlier than they otherwise might. Again, that is taken from the Dilnot commission's recommendations.

I intervened on the shadow Minister, but did not really get a response to my point, which was that if someone chooses to spend a lot more money and enjoy the luxury of an expensive care or nursing home, for example, it is not right that the state should be allowing all those costs to count, because in those circumstances, better-off people would benefit far more and earlier than other people. Covering what the local authority assesses as the cost of care in their area, but no more, is the best way to ensure that people with modest means benefit from the provision, and that wealthier people do not excessively benefit, which, I suspect, would end up being the result of the shadow Minister's proposals.

There is currently no protection at all from catastrophic care costs, and little that people can do to protect themselves from the risk of future care needs. Our proposals will mean that everyone has more peace of mind about care costs, that many more people will receive more support from the local authority, and that no one should be worse off. No one can argue that that is a step in the wrong direction; indeed, to be fair to her, the shadow Minister has been generous in accepting that these measures are a step in the right direction, though I think she ought to be a little more generous in her recognition of the advance that the Government are making.

Bill Esterson: On the Minister's point about the increase in the number of people who would be helped to avoid "catastrophic care costs", as he phrased it, does he accept that only one in seven people would benefit if the cap is set at £72,000?

Norman Lamb: That is what the then shadow Secretary of State was making clear when he said in response to the Dilnot commission:

> "Our concern is to protect the one in 10 of us who have to pay over £100,000 for the costs of care in older age."

The problem we all have is that none of us knows who of us it will be. As we grow older, we all live with the fear of catastrophic costs destroying everything and, as the shadow Minister said, taking away everything we have ever worked for. The great value of the Dilnot proposals is that they reassure everyone that they are protected against catastrophe, because any of us could be in that position. My hon. Friend the Member for Truro and Falmouth made the point that that greater certainty will allow people to plan for old age.

The amendments renaming the cap on care costs would be detrimental to our aims. They would cause not only inconsistency with the rest of the Bill, but confusion for those we are trying to help to prepare for the risk of future care needs. Helping people to understand what that means will be key to the success of the Bill. I repeat that I am happy to work with the Opposition to get across to the public the message about what the changes will and will not do. I am committed to being completely open, honest and straightforward about what we are seeking to achieve, because I strongly believe in

and feel confident in it. That is why we have adopted the terminology used by the independent Commission on the Funding of Care and Support. It is not something that we have come up with as a wheeze; we are applying the terminology that Andrew Dilnot suggested.

Amendment 102 would require an impact assessment before the clause commenced. That has already been done, and includes the distributional impact by income. We will update that before we publish the regulations that set out the detail of how the cap will operate. In advance of that, we are also working with our partners in local government to better understand the impact of the reforms at the local level.

The proposal requiring subsequent annual assessments is not necessary. The Bill already requires the Secretary of State for Health to review every five years how the cap on care costs is operating, and the results of that review can be used to inform decisions on whether to change the cap, or any other parameters. We think that five years is the correct interval and that annual reviews would be excessive and cause significant instability that could undermine people's confidence in preparing for the risk of future care costs.

The amendments would not improve the Bill, but provide more confusing and inaccurate language, and greater bureaucratic burdens and instability. I therefore urge the shadow Minister to withdraw them.

Liz Kendall: I thank the Minister for his response, and would like to make a couple of points about what he said. First, the only people who are running a public awareness campaign about what the Government's proposals really mean are Opposition Members. I am not saying that lots of the detail has not been put in the consultation documents, but someone reading the headlines and the spin—particularly from the Prime Minister and the Secretary of State for Health—in newspapers would end up thinking something that is not actually true. We are trying to make people outside this place aware of what the measures entail.

5.30 pm

Secondly, I wanted to emphasise that when the proposals initially came forward, my right hon. Friend the Leader of the Opposition and the then shadow Secretary of State for Health were clear: we actually called for the cross-party talks. We also said that we welcomed the Dilnot commission, which, let us not forget, said that we needed money in the baseline as well as reform in the future. We were happy to discuss all that, and I do not think that the Minister should throw those words back at us. We were serious about getting the matter sorted out.

My final point is about financial services. I hope that I am proved wrong, but I am not that optimistic that the financial products that are needed will be brought forward. I have had discussions with people working in financial services who have said that because of all the issues I have been talking about today—what the local authority rate will be when the cap comes in, what care costs people will have to face and when their care costs will start to be counted as eligible—they are concerned that the situation is complex and that they will still not be able to offer the products that are needed. I hope I am proved wrong, but we will see.

I am happy to withdraw amendment 99, and will not press amendments 100 and 101 to a vote. Those amendments were our attempt to make the Bill clearer, but in reality only the words of Ministers will do that. However, I think that the Minister—and as a responsible Minister, he should agree—should look at the impact of this policy, to see who it is affecting and how. Reviewing the implications of a policy to see who it is benefiting is simply decent Government policy. I know that we are at the end of a long and busy day, but I will press amendment 102 to a vote.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 102, in clause 15, page 15, line 22, at end add—

'(9) The Secretary of State must report to Parliament—

(a) in advance of this section coming into force with the Government's assessment of the likely impact of the set level above which an adult starts receiving financial assistance with the costs of their care; and

(b) annually once the section is in effect, with the Government's assessment of the impact of the set level above which an adult starts receiving financial assistance with the cost of their care, in particular its distributional impact across different levels of income.'.—*(Liz Kendall.)*

The Committee divided: Ayes 10, Noes 13.

Division No. 6]

AYES

Abrahams, Debbie	Morris, Grahame M. *(Easington)*
Esterson, Bill	Munn, Meg
Kendall, Liz	Reed, Mr Jamie
Lewell-Buck, Mrs Emma	Shannon, Jim
Malhotra, Seema	Smith, Nick

NOES

Burstow, rh Paul	Newton, Sarah
Doyle-Price, Jackie	Penrose, John
Griffiths, Andrew	Poulter, Dr Daniel
Jones, Andrew	Stephenson, Andrew
Lamb, Norman	Wheeler, Heather
Morris, Anne Marie	Wollaston, Dr Sarah
Morris, David	

Question accordingly negatived.

Clause 15 ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(John Penrose.)*

5.35 pm

Adjourned till Thursday 16 January at half-past Eleven o'clock.

Written evidence reported to the House

CB 11 The Equity Release Council
CB 12 Northumberland County Council
CB 13 Chartered Society of Physiotherapy
CB 14 Royal College of Nursing
CB 15 Alliance for Inclusive Education
CB 16 Royal College of Surgeons
CB 17 Elizabeth Ayres