# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# CARE BILL [*LORDS*]

*Sixth Sitting*

*Thursday 16 January 2014*

*(Afternoon)*

CONTENTS



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**Monday 20 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

*Thursday 16 January 2014*

*(Afternoon)*

[Hugh Bayley *in the Chair*]

## Care Bill [*Lords*]

### Clause 19

Power to meet needs for care and support

*Amendment proposed this day*: 53, in clause 19, page 18, line 28, leave out 'may' and insert 'should'.—*(Paul Burstow.)*

2 pm

*Question again proposed,* That the amendment be made.

**The Chair:** I remind the Committee that with this we are discussing the following:

Amendment 54, in clause 19, page 18, line 28, after 'needs', insert 'and their carer's needs'.

New clause 12—*End of life care*—

'Following consultation, the Secretary of State may make regulations establishing arrangements for terminally ill persons to—

(a) have their preference for place of death recorded by local health and social care services and for that preference to be implemented wherever practicable; and

(b) to be exempted from charges for adult social care necessary in order to allow them to die in their place of preference.'.

**Bill Esterson** (Sefton Central) (Lab): Welcome back, Mr Bayley. I want to make a few remarks on amendments 53 and 54, following on from the intervention I made earlier on the right hon. Member for Sutton and Cheam. One issue facing local authorities, including Sefton, arises when significant numbers of people move to a borough for residential care as self-funders, but the money runs out, so the question then arises as to who is then responsible for their continuing care. Clause 19 and in particular the amendments to it, are relevant because they appear to add to that pressure. Will the Minister address my concern about how funding will be dealt with for the local authority to which people have moved, when they are ordinarily resident somewhere else? Is there something in the explanatory notes that already deals with that? If not, how will he deal with the situation, because it appears to be one of the consequences of the right hon. Gentleman's amendments?

My main remarks concern new clause 12, which I very much support, in the name of the hon. Member for Totnes and supported by my hon. Friend the Member for Easington. I went to visit my parents last night—I have mentioned them once or twice in debates already—and my dad is a fan of the hon. Lady, although his support for Tory Members of Parliament does not go much further than that. In this case, he is undoubtedly a fan and was appreciative of what she said in *The Guardian* yesterday. He mentioned it, as someone who is experiencing many of the issues to which she referred in her article. He is not alone in being appreciative of what she wrote; many people around the country must have been pleased to read it and would welcome the new clause. Clearly, there is great support for it.

My question for the Minister, which I mentioned on Second Reading, is about the definition of free social care at end of life. At what point does "end of life" become defined? I think that is my question. At what stage should free social care be brought in? I shall not say too much more, because I have tabled an amendment on that very question, which we will probably discuss when we come to the end of our deliberations.

The issue of free social care at the end of life is incredibly important for all the reasons given by other hon. Members. As the hon. Lady said, I hope that the Minister will find a way in his response if not to accept the amendment, to indicate how the Government will move forward on that incredibly important issue.

**Liz Kendall** (Leicester West) (Lab): Welcome back, Mr Bayley. I am delighted that we are having a proper discussion about this. It has been a pleasure to follow the thoughtful speeches of my hon. Friends and Government Members. I do believe that this is a cross-party issue and that all the parties are signed up to doing something about it. The question is how quickly we can get there. I say to the hon. Member for Truro and Falmouth that my comments to the right hon. Member for Sutton and Cheam were not political point-scoring, but to place on the record that Opposition Members really pressed this as part of the cross-party talks on social care. We really wanted to engage with this and make it happen.

Hon. Members will know that the first time there was even a strategy for end-of-life care was in 2008. It was led by Professor Sir Mike Richards, who at that stage was the cancer tsar and is now the chief inspector of hospitals. Mike has been a champion of this work to give people the choice of where they die. I want to make a slightly broader point based on what the hon. Member for Totnes said. We need to talk about dying in this country. We have never really had a public discussion about death and dying. I understand why. Nobody wants to think about it, but it comes to us all.

If I may digress, it is interesting what happens in other countries. The one that springs to my mind is Mexico, which has a day of the dead. There is a bigger, broader debate about dying. We rightly talk about how we keep people fit, healthy and living for as long as they can, but it is something that will come to us and we do not think about it until too late. It is about giving people a choice, but also about the awful issues of having to talk about money alongside it. Anybody who has been through this will know that it is the last thing they want to do and think about. Those who have experienced it themselves with constituents, families or friends, know they have to start raising all the difficult issues of power of attorney, money and all that. It is horrible, but it is important that it is done. I hope we are discussing a first step to a bigger, broader and more thoughtful conversation about these issues, so I am grateful that the hon. Lady specifically raised that point.

I also really want to pay tribute to the organisations who have relentlessly championed this issue of free social care at the end of life: Help the Hospices, Marie Curie Cancer Care, Macmillan Cancer Support, Sue Ryder and the National Council for Palliative Care. They have been champions, but they have also done some really good work in showing that, at the very least, they believe that this policy would be cost neutral, because it would reduce the more expensive hospital care that people have to receive by helping them to get out and stay at home.

I first got involved with this issue when I was director of the ambulance service network. We wanted to get involved with the national end-of-life care strategy because when that crisis point is reached in a family and they are worried about something that has happened to a person who is terminally ill and at home, they often pick up the phone to the ambulance, because if they dial 999 they are there. Ambulance services need to be involved because they need to know that if that person has a package of support that keeps them at home, all the different parts of the system need to be involved.

As I said, we are extremely supportive of this. We want to see quicker and faster progress. We raised this issue at the cross-party talks on social care, and my right hon. Friend the shadow Secretary of State for Health said in his party conference speech last year that in our policy review we are working on whole-person care, to put the right for people to have a choice about where they die at the heart of our plans.

My view is that if we had a single budget for health and social care, and budgeted not annually but for longer periods so that there was certainty and commitment, we could take account of some of the initial up-front costs. Having more time to plan would make that much easier, and we are working on that as part of our policy review. I look forward to hearing the Minister's comments on how we can make sure that that happens, and happens quickly.

I have one further point, which is not just for this Committee. It would be useful for us all to work on a cross-party basis to raise the difficult issue of dying, and to think about how we can help families to get through what will always be a terribly difficult time.

**The Minister of State, Department of Health (Norman Lamb):** Welcome back, Mr Bayley.

As the shadow Minister said, if the truth be known, we probably all agree on this issue. We have a rather crazy situation at the moment, as the hon. Member for Strangford highlighted, in which we are spending bucketloads of money on caring for people in acute hospitals who do not want to be there. My experience of dealing with the difficult issue of the application of the Liverpool care pathway, and with the concerns expressed by some families about their experiences in hospital in some parts of the country, has highlighted the horror of what has happened too often in end-of-life care and why there is such an urgent need to improve it. We must do so wherever someone is when their life ends; but, critically, we must also respect people's wishes about where they want to die. At the moment, because of the way in which the financial incentives work, hospitals are often under enormous pressure, with many frail elderly people in them, and too many of them dying in hospital when, as the hon. Member for Strangford said, they do not want to be there.

Until recently my wife worked for Cruse Bereavement Care. Hearing the stories of what a loved one has to cope with in bereavement, it is clear that a bad experience of a death lives with that person for the rest of their life. We have a heavy responsibility to think of the needs of those people as well as the needs of the dying person. I feel strongly about this issue and hope that we can achieve some real progress, which is what we all want.

I will first address amendments 53 and 54. I thank my right hon. Friend the Member for Sutton and Cheam for tabling them, and pay tribute to him for his work on end-of-life care when he was Minister, which set in train a lot of the important work that might ultimately result in an improvement in people's rights and experience at the end of life. I know his commitment to achieving the best outcomes for people at the end of life is very much a continuing one.

My hon. Friend the Member for Truro and Falmouth raised concerns that I know have been brought to her attention by a number of groups, including Macmillan Cancer Support, and asked whether it might be possible to have a round-table meeting to discuss the critical issues. I would suggest that that should be once we have finished our work in Committee, but I would very much be up for that. It is important that we reassure those groups—I join the shadow Minister in paying tribute to the work that many of them have done—that the work is on track, and that we continue to involve them thoroughly in achieving the objectives we all seek. I am happy to agree to that proposition. If the shadow Minister would also like to turn up she is welcome. How about that for a spirit of openness? I can see that hon. Members are impressed.

**The Chair:** So is the Chair.

**Norman Lamb:** Excellent.

2.15 pm

**Grahame M. Morris** (Easington) (Lab): I am grateful to the Minister for his characteristic generosity.

**Norman Lamb:** What is coming?

**Grahame M. Morris:** I promise there will be no devilishness. I know that we will have an opportunity later under clause 73 to consider end-of-life care, but will the Minister give an undertaking, given that there is consensus on the desirability of free end-of-life care, to bring forward some costing? We earlier heard some figures available from charities. If the cost is the stumbling block and it is cost neutral, surely there is an argument for taking it forward.

**Norman Lamb:** I thank the hon. Gentleman for that intervention. I hope I can address the issues he raises as I develop my argument. We agree that when someone is terminally ill waiting for their care and support to be put in place can often be a highly distressing time. That is why we amended the Bill in the other place. I was determined that we should amend it to state explicitly

*[Norman Lamb]*

that when people are terminally ill, local authorities are able to use their power to meet needs urgently, that is, without having first to carry out a financial assessment or make an eligibility determination.

However, we would be wary of agreeing to amendment 53, because use of the word "should" in this context would create legal uncertainty. I pay tribute to my right hon. Friend the Member for Sutton and Cheam for his attempt at legislative innovation but I think it is dangerous. That is the boring old lawyer in me.

**Liz Kendall:** Are you a lawyer?

**Norman Lamb:** I was. In legislation we tend either to require someone or some organisation to do something, when we use the term "shall"—shall do this or that—or we say "may", which gives discretion. To say "should" leaves people in a no man's land not quite knowing what it means. I think my right hon. Friend understands that point. He will no doubt remember it next time he drafts an amendment.

Nor would it be appropriate for there to be a duty, so it is just as well that he did not try to use the word "shall" because I would have rejected that as well.

**Paul Burstow** (Sutton and Cheam) (LD): My hon. Friend is never boring and would not have been even when he was a lawyer. I am sure once someone is a lawyer they never cease to be one. He was coming on to explain why, if I had used the word "shall", he would have rejected it. Will he please share with the Committee why he thinks it is inappropriate to be clear about the expectation of an obligation on local authorities to act in these circumstances?

**Norman Lamb:** Ultimately, we all know where we want to get to. In the meantime, until we get there, we want to ensure that we apply the rules equitably.

Let me continue to make the argument. As I said, it would not be appropriate for there to be a duty to meet all needs at end of life urgently, as there are many instances where it would be appropriate first to carry out financial assessment and eligibility determination in the normal way. I want to change the rules, as does my right hon. Friend. It is important that there is clarity until then about how the existing system operates.

Turning to amendment 54, we do not consider it to be necessary. When a carer's needs for support are deemed urgent it is usually as a result of the adult's needs being urgent, and so usually that would be best remedied by providing care to the adult urgently, for which there is already provision in clause 19. Where it is clear that local authorities need to put in place support for a carer quickly, they should obviously do so. We would expect provisions in the Bill to be applied proportionately, so that there need not be a delay in providing the support carers need, especially in urgent circumstances. However, we do not think that an additional express provision in the Bill is necessary to ensure that. I understand the concern my right hon. Friend the Member for Sutton and Cheam expresses and I would want to avoid inadvertent neglect of the carer. I will reflect genuinely on what he has said and report back to him in due course.

Turning to new clause 12, tabled by my hon. Friend the Member for Totnes, the Government are committed to moving towards choice for all on how to have a decent and dignified death and where that should be. I am determined that we achieve that. A review this year will determine when such an offer of choice in end-of-life care can feasibly be introduced. I can provide guidance on the choice review which I think my hon. Friend raised. It will happen this year. A workshop in early February will scope the whole issue and it will involve the full range of experts and stakeholders. They will continue to be involved as the review progresses. But it will happen and be completed this year.

As I say, I am determined that we achieve the breakthrough and achieve what we are all after here in delivering choice at the end of life. Any offer will be introduced using existing legislative powers, namely the standing rules. One of the recommendations of the independent palliative care funding review was about free social care at the end of life. The Government have funded eight pilot sites to gather the information needed to develop a new system and to test the review's recommendations, including its recommendation to provide free social care at the end of life. Other hon. Members have made the point that it feels clear, and indeed, work has been undertaken to demonstrate that it should be cost neutral. There is a cost attached to the fact that so many people are dying in hospital and we are not delivering what those people want.

**Jim Shannon** (Strangford) (DUP): I referred this morning to the figures supplied by Macmillan Cancer Support and I think the hon. Member for Easington referred to them too. I think it was £21,000 per 200,000 head of population as against a saving of £135,000. There was clearly a financial advantage to introduce what they were suggesting. Have the Minister and the Department had a chance to consider those figures? If not, perhaps we could have some feedback on that later.

**Norman Lamb:** The Government have funded eight pilot sites to gather the information needed to develop a new system and to test the review's recommendations, including the recommendation to provide free social care at the end of life. The pilots are gathering evidence over two years until March this year, and the Government will consider the evidence collected from the pilots before making any decisions on a new funding system, including whether to offer free social care at the end of life and the practicalities of doing so. The Government have already stated that they see the merit in removing the means test at the end of life, but that it is not right to make any decisions until the evidence from the pilots can be properly considered.

It is daft, it seems to me, to commission pilots but then to make decisions before getting the evidence from them. Let me tell my hon. Friend the Member for Totnes: I am determined that we do this. Obviously, I want to see the evidence and we have to be aware of the financial consequences, but I am determined that that will happen. The current situation is very hard to justify, particularly given that we are spending money on caring for people where they do not want to be.

**Dr Sarah Wollaston** (Totnes) (Con): I thank the Minister for his words—I am pleased to hear that he is so committed. However, may I ask him for some clarification? When he says that he is determined to do this, does he mean the choice review? I think the words we would all like to hear are: implementing free social care at the end of life. I accept that the pilots have to guide the mechanisms for that, and no one expects him to set that out without seeing the evidence, but a firm commitment to introducing free social care at the end of life would really reassure everyone on the Committee.

**Norman Lamb:** I have given my hon. Friend my personal assurance that I want us to do this. I am not in a position to commit the Government, but, as the responsible Minister—indeed, I have some degree of influence over the decision making—I am determined that we achieve that objective.

Just to be clear, it seems that the issues of choice and free care are inextricably linked. It is the financial incentives that currently mess around with and undermine proper choice at the end of life, and that is what has to be resolved. The choice review can achieve that important objective, but getting the mechanism right is inextricably linked to the outcome of the pilots. It is my clear objective, however, that we achieve this ambition.

**Paul Burstow:** That is a helpful undertaking. Clearly, the independence of the system is key to unlocking the resource to deliver what will actually be more cost-effective and better end-of-life care. Given the commitment the Minister gave to my hon. Friend the Member for Truro and Falmouth about a round-table, could we dwell on this matter as part of that discussion?

**Norman Lamb:** If it comes up, I am sure we ought to dwell on it.

**Paul Burstow:** Can it come up?

**Norman Lamb:** I am sure that it can come up. As I say, these matters are linked and cannot be neatly separated out into two separate issues. Therefore, any sensible discussion should deal with all of these matters.

**Nick Smith** (Blaenau Gwent) (Lab): Will the Minister give way?

**Norman Lamb:** May I finish this paragraph? I am being a bit more demanding now: it is not just the sentence, but the paragraph. However, I will of course allow interventions.

As with any new policy on choice in end-of-life care, any decision to remove the social care means test at the end of life can be introduced through secondary legislation under existing powers. Clause 14(6) provides powers to make regulations that prohibit local authorities from making charges in specific cases.

**Nick Smith:** I am really pleased that the Minister is convinced by the merits of the argument. It is good that he is waiting for any evidence from the pilot, but earlier he talked about any possible implementation taking place through standing rules. I want to press him on that. What will the legislative framework be for bringing forward and introducing this important idea?

**Norman Lamb:** My understanding is that the standing rules under the National Health Service Act 2006 allow for that, but I am happy to provide clarity by way of writing to hon. Members.

**Sarah Newton** (Truro and Falmouth) (Con): I am grateful for such a firm commitment to delivering free social care at the end of life. When we have our round-table meeting, it would be useful if we looked at the scope of the research and met with the researchers. I understand that they will be gathering that material until March and that the analysis will take a few months, but we need to understand how that was done, so that all stakeholders can contribute to our learning from that for the implementation.

2.30 pm

**Norman Lamb:** That seems to make sense. I am very nervous at the way hon. Members keep saying, "I am so pleased with this very clear commitment." I am conscious that the officials are probably quaking in their boots at what I am saying.

Paragraph (a) of new clause 12 deals with the ability to register one's interest, intentions and wishes towards the end of life. NHS England and Public Health England are supporting the expansion of electronic palliative care co-ordination systems—EPACs—by introducing a new information standard for local providers to build their own systems. In places where EPACs are already established, around 80% of people die in a place of their choice.

Giving a person the chance to have their say, and recording it, with the professionals abiding by those wishes, is a remarkable and powerful thing. It perhaps contradicts what I said earlier, but that seems to have been possible even within the existing rules and does not undermine the case for changing the rules. It is a remarkable fact that, with EPACs, 80% of people die in the place of their choice, whereas we know that about 50% of people in the country as a whole die in hospital, where most of them do not want to be.

NHS England has an ambition to increase national coverage from the current 30% to 70% by 2015, more than doubling the number of people who currently benefit from the system. That is a powerful driver for change. The question of whether legislation achieves things or whether there are other levers that can be used has been a continuing theme. Ultimately, it must be a mix of levers, but the fact that NHS England has committed to the objective of getting 70% national coverage is very powerful.

I hope that hon. Members, if not officials, are reassured by what I have said.

**Bill Esterson:** I asked several questions in my speech but I am not sure I have heard any answers. One was about the definition of "end of life" and how a decision might be taken. What is the Minister's view of what constitutes the end of life? I also asked about people moving to an area.

**Norman Lamb:** I apologise to the hon. Gentleman. I know he raised those matters and I intend to respond.

At what point the end of life becomes defined as such is precisely what we are considering through the palliative care funding pilots, so that we can understand how to implement it most effectively. The easiest way would be

*[Norman Lamb]*

once a patient has been placed on a palliative care register. The question, of course, is when that should happen, but the hon. Gentleman highlights an incredibly important point that is under active review through the pilots.

The hon. Gentleman was concerned about areas that are enormously attractive—areas such as his—where people might go for the last period of their lives in a care or nursing home. They might be paying for it as self-funders, but in some cases the money runs out and then it becomes the financial responsibility of the local authority—I hope I have got his concern right. On the whole, such matters balance out across the country. I appreciate his assertion that there is a substantial in-flow, but the relative needs formula takes account of population and demographic differences between areas. We are considering such issues as we work on plans for implementing the reforms, including reviewing the relative needs formula. I hope he accepts that I acknowledge the need to look at the issue, and that we will do so. I hope I have said enough to encourage my right hon. and hon. Friends to withdraw their amendments.

**Paul Burstow:** I am grateful to the Minister for his full response, and I look forward to listening to the other contributions to get a sense of how others feel about it. I want to pick up two or three things from the debate and say something about the amendments in light of the Minister's response.

I agree with the shadow Minister's comments about Professor Sir Mike Richards. He played a series of roles within the NHS, and his contribution to cancer care is legendary. We inherited the end-of-life strategy from the previous Administration. As the Minister at the time, I took the view that it would be pointless to put it in the bin and start again because it is essential to have continuity.

I am particularly proud that this Administration delivered a national bereavement survey for the first time, because it gives us a great insight into the issue. It provides valuable information and intelligence, and enables us to drive improvement and reach our ambitions about people being able to die in a place of their choosing. The Minister's comments about EPACs are encouraging, particularly on the ambition to reach 70% coverage. He talked about how different the areas covered by EPACs are, and he made a powerful case for driving that whole area forward.

When we have the round table, I hope the Minister will say more about guidance. In particular, I hope he will respond to my question about guidance on intermediate care, which he did not address in his response. Given that commitments on intermediate care were made in the White Paper, it would be good to know how that will be taken forward.

**Norman Lamb:** I had intended to respond to my right hon. Friend's question. I understand that the package of statutory guidance on the Bill will deal with intermediate care, and we will publish guidance for consultation in May.

**Paul Burstow:** I thought it might help the Minister to pick that up and it will be useful to explore that issue in those discussions. The Minister's comment is very helpful.

The problem, as my hon. Friend the Member for Totnes said, is that we are paying more for worse care, and the Minister said that it is hard to justify the current situation. I am absolutely determined about this issue, and after the intervention of my hon. Friend the Member for Totnes, we know that we must deal with free social care because it is connected to issues such as choice, tariff reform and so on.

This has been a useful debate. For me, free social care is a means to an end. It will mean that people have the chance to choose where they die, and that their death is as dignified as possible. As the Minister said, families live with the experience of a poor death for the rest of their lives. I therefore urge the Minister to reflect carefully on the issue of carers. I am grateful for his comments, and given that he has undertaken to seriously consider that point, for technical drafting reasons I will withdraw the amendment.

**Dr Wollaston:** I thank the Minister for his response, and I would like to ask him a few questions. I accept that he feels that these matters are dealt with elsewhere, and that regulations can be introduced, but I want to take him back to the wording. It says "in specific cases" in the regulations. Can he reassure me that "specific cases" could include the broader category of terminally ill persons?

**Norman Lamb:** I can reassure the hon. Lady about that.

**Dr Wollaston:** I thank the Minister; that is very reassuring. On his second point, he gave us reassuring news about the progress of EPACs. However, may I point out that the figure is up to 80%, but it is not 80% across the board? We must not be distracted. That 80% figure could risk people thinking that we are going to deal with it all through EPACs and that therefore other measures are unnecessary. That is an important clarification on those data.

**Norman Lamb:** I am grateful to my hon. Friend for her clarification and I accept her point. I did say that I was not arguing that the figure undermined the case for reform.

**Dr Wollaston:** I accept that, but I thought it was an important clarification to put on the record.

There is also the fact that we have four reviews ongoing in this area—or one about to start. The Minister will know that one of those reviews was set to be completed last year. I am grateful for his categorical assurance that it will start this year, that it will be completed by the end of this year, and that the terms of reference will involve stakeholders. That is reassuring.

Most of all, I am absolutely delighted with the Minister's assurance that he is determined to introduce the policy and that it refers to the issue of free social care at the end of life. Based on that reassurance, I look forward to seeing the progress of the policy, and I am happy not to press the new clause to a Division.

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

*Amendment, by leave, withdrawn.*

*Clause 19 ordered to stand part of the Bill.*

*Clauses 20 and 21 ordered to stand part of the Bill.*

## Clause 22

EXCEPTION FOR PROVISION OF HEALTH SERVICES

**Paul Burstow:** I beg to move amendment 41, in clause 22, page 20, line 32, after 'is' insert 'authorised or'.

*This amendment seeks to introduce wording which replicates the terms used in other legislation on the boundaries between social and health care in order to meet the concerns of the Joint Committee on the draft Bill about a court's likely interpretation of any substantive differences introduced by this Bill.*

The clause sets the boundary between what is NHS-provided and free at the point of use, and what is social care. Where that boundary is drawn and how it is understood by decision makers, both in the NHS and in local authorities, is a critical part of the Bill. It is as important, I think, as discussions we have had on eligibility, because it determines whether someone is in a paid-for system or a free system when it comes to their direct experience of the service. If that boundary moves, it has big consequences for the individual and the public bodies concerned, and shunts costs one way or the other. If the shift moves access to the NHS, that can increase costs for the taxpayer; if the change goes the other way, it can shift the burden more squarely on to the individual.

I have some form on the issue because I researched and wrote a series of reports entitled, "Who Cares, Who Pays?", which helped to expose the postcode lottery of the rules operated by the NHS in the 1990s, and showed how different NHS bodies were interpreting their obligations under the legislation and guidance that applied at the time. The obligations were ultimately tested in court. The most seminal case is that of Coughlan, which was heard by the Court of Appeal. That is set out in some detail in the explanatory notes and is intended to be reflected in the language in this clause. It took a major inquiry by the health service ombudsman to force the then Government to set in place a national eligibility framework, and a process of review and compensation for those who had been wrongly excluded from NHS-funded care.

2.45 pm

When I reflect on my time as a Minister in the Department of Health—as I do from time to time—one thing that strikes me about this policy area is how jumpy officials were about what the Minister might say about NHS continuing care. I am sure the Minister will be incredibly careful about what he says. The concern was that a Minister's words might inadvertently trigger a challenge in the courts or help a different interpretation of where the boundary sits. That jumpiness leads me to table this amendment, because words matter when it comes to drawing the line between what is free and what is not. For perfectly good reasons, and on the recommendation of the Law Commission, the Bill does not use the same wording as the current legislation, and in the response to the Joint Committee's recommendation on this issue, the explanation was that to do so would be to confuse.

My contention is quite the contrary: not to use the same words as before is to confuse and run the risk of a series of dangers, which I will try to describe. Instead, regulation-making powers are proposed in the legislation to guarantee that the boundary remains where it is. That is fine, but it applies only as long as the Government of the day have that policy. The Government of the day can very easily change their mind, and a subsequent Government could do so even more easily and choose to use the regulation-making power to decisively shift the boundary through secondary legislation, rather than through the additional scrutiny that primary legislation requires. For me, having the boundary clearly demarcated in statute, in primary law, is very important.

This issue returns to the proposition that I put to the Minister when we debated clause 14 on charges. Fundamental principles should not be set in secondary legislation. Despite reassurances from the Government in response to the Joint Committee on this point, my fear is that we will open a Pandora's box, regardless of the good intentions that I know were part of this change in legislation.

The Pandora's box is that clinical commissioning groups are still relatively immature bodies finding their feet and developing their policies and practices. They may well argue that the Coughlan judgment no longer applies, as the wording in section 21(8) of the National Assistance Act 1948, on which that judgment is based, no longer exists. The material question is about what the law says now and what it will say once the Bill becomes an Act. The relevant parts of the legislation are as follows. Section 21(8) of the 1948 Act says:

"Local authorities have no power or duty to provide support under Section 21 (social care in care homes) if that care or support is authorised or required to be made under the National Health Service Act 2006".

Clause 22(1) keeps the words "required to be", but we lose the word "authorised". We have a situation where the 1948 Act effectively prohibits local authority involvement if the NHS has the power or duty to provide support, whereas the drafting of the Care Bill prohibits support only if the NHS is under a duty to provide it. That might seem like a small drafting point, but the problem is real. Wherever budget pressures are great—we can debate how great they are now compared with the past and what they might be in the future—primary legislation where there are separate bodies with separate statutory duties comes into play.

I urge the Minister to accept the amendment, or at least take it away and give it genuine and serious consideration. To do otherwise runs the risk of opening a Pandora's box. Simply relying on regulations is not sufficient. Regulations can be a useful tool, but they should not be the way in which the boundary is secured. By accepting the proposal, he will prevent a new wave of disputes over who pays for care. That is fundamentally why I moved the amendment and why I remain concerned, why the Joint Committee was concerned and why until this point I have not been reassured. I look forward to the Minister's response.

**Norman Lamb:** Clarity on the distinction between what local authorities are responsible for and what the NHS is responsible for is of great importance, as my right hon. Friend the Member for Sutton and Cheam says. Our intention is to retain the existing boundary. Clause 22 does that by setting out the limits of what a local authority may provide by way of health care. It does that by reference to what is required of the NHS and providing that such matters are off limits to the local authority. The clause therefore sets the boundary

*[Norman Lamb]*

between the responsibilities of local authorities for the provision of care and support and those of the NHS for the provision of health care. Currently, in the case of the provision of accommodation under section 21 of the National Assistance Act 1948, local authorities are prohibited from providing anything that is

"authorised or required…to be provided under the National Health Service Act 2006"—

that is, things that the NHS has the power to provide and things it is under a duty to provide. That has sometimes led to confusion and uncertainty over what services might have been so authorised.

Section 29 of the 1948 Act, which deals with non-residential welfare services—and with which I am sure my right hon. Friend is familiar—sets the prohibition on what a local authority might provide by reference to matters required to be provided under the National Health Service Act 2006. There is therefore currently a difference in the "health service prohibition" depending on whether the support being provided is by way of accommodation or otherwise. The Bill does not distinguish between those two types of support—residential and non-residential. They are both examples of how need might be met under the Bill. Given the uncertainty in identifying what might have been authorised in some cases and given also that we no longer distinguish in any event between the different types of support—residential or non-residential—we have tried to make this boundary much clearer, while still retaining the ability to fix the boundary where it currently lies. We have framed the prohibition on the provision of health care services by local authorities by reference to services that the NHS is required to provide.

The Committee should note that we have also made provision for a regulation-making power, as my right hon. Friend said—clause 22(2)—so that where there is uncertainty on these matters, or where the need arises, we can clarify and detail the types of service that may or may not be provided by local authorities and in which circumstances. In that way, and if necessary, a local authority may be prohibited from providing a service if it is something that the NHS is providing. The regulation-making power gives us far greater flexibility than is currently available to control the boundary and prevent gaps or undesirable overlaps in provision. I hope the Committee is reassured that in the case of any regulations that might further restrict what a local authority might do, which might in theory lead to a gap in provision—it is not intended that such gaps be allowed to arise—such regulations would be made by the affirmative resolution procedure.

The provisions in clause 22 are not intended to change the current boundary—let me place that clearly on the record—and we do not believe that they will have that result. The limits on the responsibility by reference, as now, to what should be provided by the NHS remain the same. However, the prohibition, combined with the regulation-making power, is framed in a way that allows greater flexibility and greater clarity. I hope that I have reassured my right hon. Friend and that he will feel able to withdraw his amendment.

**Meg Munn** (Sheffield, Heeley) (Lab/Co-op): As a former practitioner and a constituency MP, I want briefly to tell the Minister that this is an incredibly important area. The issue of continuing health care has been enormously complex over the years. Twenty years ago we used to have a debate about whether somebody needed a bath as a health bath or a social bath—I always thought a social bath was perhaps where more than one person was involved. However, at the end of the debate nobody disagreed that somebody needed a bath, but we would spend an enormous amount of time deciding whether it should be provided by somebody, say, from the district nursing service or from a care service. It was not a very helpful way to proceed.

Much more fundamentally, I have had cases in my constituency recently where somebody had payments and a very personalised service. Suddenly, following a period in hospital, they were deemed to be eligible for continuing health care support. Through that they lost control over the decisions about what kind of care and support they could have, so the issues that the right hon. Member for Sutton and Cheam has raised—about both the funding and the ability to make those kind of decisions—are fundamental.

**Norman Lamb:** I assume that the hon. Lady will be pleased that we have legislated to provide a right to request a personal health budget if someone has NHS continuing care. It comes in from April, and from October this year there will be a right to have a personal budget. This is the first time that we have given a patient control over resources within health care. It is an enormously significant advance and it narrows the gap between social care and health care. It means that when someone's condition deteriorates and they move from support within social care to become entitled to NHS continuing care, from October they will not lose that control. They will have a right to maintain control over it.

**Meg Munn:** I very much welcome that and agree that it will, I hope, give greater continuity of overall care and achieve the holistic approach for which I have been arguing throughout the Committee. I also welcome the fact that we will look at regulations on this matter. Over time, regulations create the opportunity for Government to respond to changes out there and identify where there are problems. Whatever the intentions are—I think they are proper in terms of establishing this difference—I am convinced that there will be difficulties, as there always are, in implementation, not least because we continue to be in a time of great austerity and cuts.

I do not particularly want to harp on about that. My fundamental point is that this issue causes a lot of problems for people and will continue to do so. Therefore I am pleased to note that there will be regulations on this. Obviously, the opportunity to see and comment on them would be greatly appreciated.

**Paul Burstow:** I echo the point about control when it comes to CHC. One of the frustrations was that a one-size-fits-all approach was taken—"You can have this or not." As a Minister, I had to sign a number of authorisations to allow PCTs to start effectively to operate a direct payment system for that very reason. It is good that we are now going to have that policy translated into the system that the Minister has described. I listened incredibly carefully to what he said. Today's amendment was intended to probe. This is not one of those occasions when I can offer the Minister any

suggestion that I have been persuaded, because I have not—I really have not. There are unintended consequences, and if there is no change, they will be in an Act. A benign Government such as this one, with their clear commitment to keeping the boundary where it is, will be able to do that through regulation, but a less benign Government, under financial pressure or whatever it might be, will be able to use the regulation to move the boundary.

3 pm

What we will do is allow secondary legislation to be the place in future where the boundary is tested, debated and changed. To me that seems the wrong place to do it. We have a clear establishment of case law in this area and that is not fully embodied in the drafting of the clause. I will look for ways to return to this issue. I hope I will continue to have conversations with the Minister about it. I am dissatisfied with his response, but I will not press the matter to a Division today. However, I may wish to divide the House on this issue if I get the opportunity at a later stage. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 22 ordered to stand part of the Bill.*

**Clause 23**

EXCEPTION FOR PROVISION OF HOUSING ETC.

**Grahame M. Morris:** I beg to move amendment 90, in clause 23, page 22, line 2, at end add—

'(2A) Where a local authority is unable to meet the adult's needs for care and support without the provision of housing of a specified nature or location, subsection (1) does not apply.'.

I declare an interest: I am vice-chairman of the all-party group on learning disability. I want to raise some issues relating to housing which have been highlighted by Mencap. I tabled the amendment to ensure that local authorities are provided with the flexibility they need to deliver housing solutions for vulnerable people with complex needs. Without that flexibility, people are at risk of remaining or ending up in institutional care. I remind the Committee that, as the Bill stands, clause 23 states that the local authority may not meet care and support needs by doing anything that they are already required to do under the Housing Act 1996.

The division of housing and care and support duties concerns a number of organisations, including Mencap and the Challenging Behaviour Foundation. We have already discussed how crucial it is that the Bill recognises that appropriate housing is an integral part of meeting care and support needs. I do not want to rehearse the arguments we had earlier in the week or about section 177 of the Health and Social Care Act 2012—just for the record, it was on 10 March 2011, at column 667. It is important that we meet care and support needs as well as being mindful of the importance of keeping costs down. It is fair to say that there was a general agreement by both sides of the Committee that that was a reasonable principle that we should apply.

The amendment is concerned with addressing the position of an individual with very complex needs, such as learning disabilities and behavioural issues, that can be triggered by environmental factors. In those circumstances the type of housing or the location of the housing would be critical in ensuring that a person's care and support needs were met. The Minister has made several statements to the House on this issue following the events at Winterbourne View, but under the Government's transforming care programme, the intention was that local areas had to ensure that the 3,500 people—if my numbers are correct—with a learning disability and challenging behaviour currently living in units such as Winterbourne View were moved back into their communities.

**Norman Lamb:** The hon. Gentleman is raising important issues, but I want to correct his last point. If someone is in institutional care inappropriately and they are able to live independently with support, that is what should happen.

**Grahame M. Morris:** That is a fair point; I should have used the word "appropriate". The Minister is absolutely right: it is important that people receive the appropriate care and personalised support in an appropriate community setting where possible. Indeed, many individuals will require bespoke, tailor-made housing and support packages to be developed. As hon. Members will know from their own communities, a common solution is to come up with a standard self-contained flat or an adapted house shared with three or four others, but that simply would not work for people with complex special needs. Often, individuals will need to live on their own; and, with the relevant support staff, they might need additional space or they might need to live in a detached property, because their challenging behaviour produces excessive noise. Such housing options must be made available now and in the future to meet the housing and support needs of people with a learning disability and challenging behaviour.

The Minister has said several times that we must not agree amendments that have unintended consequences, but it is important that we do nothing to work against the Government's commitment, restated by the current Care Minister, to ensure that people with learning disabilities are not put at risk of abuse in institutional settings such as Winterbourne View and are able to live fulfilling lives in the community, where appropriate, with the support that they need.

I am concerned that the Bill as drafted will mean that social services, or the care and support arm of a local authority, might be prevented from taking innovative approaches to solving housing problems. Perhaps the Minister will comment on that. For example, they may wish to provide capital to ensure appropriate housing of the right type or in the right location can be bought or built to meet the needs of people with a learning disability. If the local authority is not able to do that, the only option where the housing authority is unable to meet high rental or capital costs will be for a local authority social services department to place a person in institutional care, as they would have no power to secure appropriate housing.

It is crucial that clause 23 allows for the local authority, in the discharge of its care and support function, to provide property or capital to make up any shortfall in rental payments. I hope the Minister will assure me that that will be possible. The local authority should not be prevented from doing that.

*[Grahame M. Morris]*

Mencap has given me examples that focus on the importance of enabling the resettlement of people stuck in institutions such as Winterbourne View. However, many other people with a learning disability are at risk of being sent to inappropriate institutional settings if there is no flexibility in the system to deliver appropriate housing solutions. It is sad but true that three quarters of the parents of people with a learning disability have not planned for the time when they are no longer able to care for their son or daughter in the family home.

Mencap commissioned a study in 2012 entitled "Housing for people with a learning disability", which is recommended reading. For many families of people with a learning disability, planning for the future comes too late, when a family carer either becomes ill or dies. Indeed, the hon. Member for Totnes highlighted that in a debate on an earlier clause, when we were talking about end-of-life care. It is not always possible to plan for such situations, which creates a crisis situation for someone with a learning disability and a need for emergency housing and care provision.

People with learning disabilities and complex needs who live with elderly relatives are not homeless. Although they are vulnerable, they might be on a council waiting list for many years before suitable accommodation in the right location to meet their complex needs becomes available. Local authorities must have the flexibility to secure suitable housing for some of the most vulnerable people in our society. It would be a scandal if those with the most complex needs were destined to remain in, or continue to be sent to, institutions.

As the Minister has told us, the Bill aims to reform and transform care and support, with the well-being of individuals at its heart. We applaud that, but the amendment would help to ensure that there are no unintended consequences and that the Bill's aims become a reality for people with learning disabilities and the most complex needs.

**Norman Lamb:** I thank the hon. Gentleman for his contribution. He and I share a determination to ensure that people with learning disabilities get treated as equal citizens. The horrors uncovered both at Winterbourne View and by the subsequent review of treatment centres showed that so many still lived in institutional care—at the taxpayers' expense, outrageously—in the wrong place. Sometimes, they were at risk of neglect and they were certainly not receiving appropriate care to meet their individual needs.

As a preface to my remarks, may I say that I will always listen to Mencap? It is a good organisation that has done important work in this regard to help the Government to respond properly and effectively to Winterbourne View. I have described the task of changing the behaviour of commissioners with regard to people with learning disabilities as like wading through treacle backwards. This is not about money, because we have spent enormous sums of public money on putting people in inappropriate care—I think the average cost at Winterbourne View was £3,500 per patient, per week.

This is therefore not about the Government being mean with public money. In my view, it is about commissioners at a local level sometimes being lazy and not taking proper account of the rights of people with learning disabilities to lead as good a life as they can. Instead, sometimes they are shoving them away hundreds of miles from home and forgetting about them. That scandal has to end. However much pressure we have to keep applying to commissioners to change their habits, we will apply it. If there are continuing concerns about what the hon. Gentleman has raised, I will continue to listen to Mencap about them—and, indeed, to the hon. Gentleman.

Let me reassure the hon. Gentleman that we agree that housing can play a vital role in meeting care and support needs. We have already discussed how we amended the Bill in the other place to make express references to housing to increase its prominence throughout the Bill. To be clear, specialised housing—for example, extra-care housing, supported living or minor adaptations—could already be provided to prevent or to meet the needs for care and support under the Bill. Where meeting an adult's care and support needs require some form of accommodation, that may be provided under the Bill, as acknowledged by clause 8(1)(a), which, as an example of how to meet needs, states:

"accommodation in a care home or premises of some other type".

The words "premises of some other type" are important, as that covers other options as well.

Further, the general duties to promote integration in clause 3 and the co-operation duty in clause 6, which apply to all the local authorities' care and support functions, would require consideration of housing issues where relevant to care and support. Clause 3(5) expressly clarifies that housing is a health-related service, which local authorities must aim to integrate with the provision of care and support and health services when exercising its functions under the Bill.

3.15 pm

The point of clause 23 is to clarify the difference in law between a local authority's duties to provide adult care and support, which may include certain specialised housing services, and its duties to provide general housing under other legislation so as to avoid duplication. The clause does not place a bar on local authorities providing accommodation where that is necessary to meet care and support needs. What it does is prohibit local authorities from using care and support law to provide general or social housing that is not related to a person's care and support needs. That is only right and proper to ensure clarity about roles and responsibilities.

I hope that that reassures the hon. Gentleman that the amendment is not necessary and that he is content to withdraw it. I repeat that I am happy to discuss his concerns with him and with Mencap so as to ensure that we get this right.

**Grahame M. Morris:** I am grateful to the Minister for his sympathetic response and his offer of further consideration of the points raised by Mencap through me. In the light of his comments, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 23 ordered to stand part of the Bill.*

**Clause 24**

THE STEPS FOR THE LOCAL AUTHORITY TO TAKE

**Mrs Emma Lewell-Buck** (South Shields) (Lab): I beg to move amendment 113, in clause 24, page 22, line 26, at end add—

'(3A) The Secretary of State after consultation must establish by regulation a specified timeframe for the conclusion of the steps required of local authorities by virtue of this section.'.

**The Chair:** With this it will be convenient to discuss amendment 94.

**Mrs Lewell-Buck:** It is a pleasure to serve under your chairmanship once again, Mr Bayley.

Amendment 113 is aimed at ensuring that service users are clearly informed of when they will receive an assessment and whether any support identifying that assessment will be in place. At the moment, no time scale is set down in law regarding that process. The matter is left for local authorities to decide and implement. I acknowledge that there are performance indicators that say that local authorities should begin all assessments within 48 hours; complete them within 28 days; and have services in place within another 28 days. However, the reality on the ground is that those performance indicators are not having their desired effect. Stronger incentives are needed.

As a former social worker, I understand how that can happen. In many ways, the profession is a reactive one. There will always be priority cases to deal with, and someone else's case will always be pushed to the bottom of the pile until they become critical. Under a straining system, in areas with high need and savage cuts, those indicators are not incentivising some local authorities to complete assessments and provide services in a timely manner. I know that some authorities go the extra mile, but many others fall short of those recommended time scales. A benchmark needs to be set in regulations to ensure that local authorities see that to be a priority.

The lack of consistency also creates an issue regarding portability. Social care clients who move from one authority to another commonly find that the timetabling arrangements for assessment are different. That can lead to uncertainty for them, their carers and their family. People with care and support needs require clarity about when they can expect to be assessed and when they can begin to receive support. For those who are in need, whose health is failing them, who have care needs, or who are anxious about what their future holds, I want them at least to know when they can expect help. I am sure that the Minister would want that too.

**Meg Munn:** My point is related to clause stand part, but it probably makes sense for us to include it here, given your earlier guidance, Mr Bayley. It refers to the discussion that we had earlier and relates to subsection (3), paragraphs (a) and (b). It again concerns needs that might not be eligible needs and whether they would be met. *[Interruption.]* I see that the Minister is a little distracted at the moment.

I am asking whether the principle of a holistic approach applies to the application of subsection (3)(a) and (b). I am happy for the Minister to write to me on that point to provide clarity on how assessors will approach the situation when some needs might not fulfil the eligibility criteria.

**The Chair:** For the sake of clarity I should say that I mistakenly said we were debating this amendment together with amendment 94. We have, of course, already concluded the debate on amendment 94. We are considering just amendment 113, which everyone who has spoken so far has addressed.

**Norman Lamb:** I am grateful, Mr Bayley, for that clarification. It did distract me briefly from what the hon. Member for Sheffield, Heeley was saying. I would be grateful if she could clarify which subsection of clause 24 she referred to and repeat her point.

**Meg Munn:** I referred to subsection (3) and the criteria under paragraphs (a) and (b). I am suggesting that a certain interpretation of those could lead to lower-level needs, not normally eligible for support, none the less being important in an holistic view of the situation. In subsection (3)(a) does "needs" mean that the overall needs of the person meet the eligibility criteria, or does it refer to specific individual needs?

**Norman Lamb:** I am grateful to the hon. Lady for raising that point. Rather than give an inadequate response now, the best thing would be to write to her to ensure that we are both on the same wavelength, if that is acceptable.

On amendment 113, I can assure the Committee that we have looked very closely at the issue of timeliness in the care-planning process. I totally agree with the points that she makes and this issue was discussed in the other place.

It is vitally important that local authorities retain the ability to be proportionate to the needs to be met. For some people the care planning process may be relatively simple, and therefore can occur relatively quickly. That may not be the case for people with multiple complex needs. That is not to say that it is right that there should be any delay. It may just take longer to do a proper and thorough assessment in some cases. There may also be a need for experts and independent advocates to be engaged in some cases, as we have previously debated. That should not be overlooked in order to meet a centralised target of time scale. Introducing a prescribed time scale for the completion of the care-planning process may also have the unintended consequence—to coin a phrase that has been used on other occasions—of some plans being rushed in order to meet the deadline. There is a fear that that could happen. I hope the hon. Lady would agree that that does not fit well with our vision of a personalised care and support system.

In addition, the duty on local authorities to act reasonably applies to the care and support plan or support plan. That includes the time it takes to complete the process. We should also set out in guidance best practice regarding care and support planning, including indicative time scales for the completion of care and support plans. I hope that helps the hon. Lady. I absolutely agree with her that we do not want backlogs of cases where people may be in very real need waiting for something to happen, but a disorganised local authority

*[Norman Lamb]*

does not get its act together and deliver the care plan on time. That has to be avoided, but I hope that she will understand that we also want to avoid over-prescription, which could have the unintended consequence of rushing a care plan, which genuinely might take a significant amount of work to get right. With that, I hope I have provided the reassurance to enable the hon. Lady to withdraw her amendment.

**Mrs Lewell-Buck:** I thank the Minister for his response. I am comforted by what he said about indicative time scales, but the point I was trying to make is that the message is just not there in the legislation. It lacks weight because it is not in the legislation. Those time scales are not there, so people will not give it as much importance as it should have. I know that from speaking to social workers whom I know—just last night I was speaking to a former team manager—that they feel that the weight is not there and that it is not being given as much credence as it should be. However, bearing in mind what the Minister has said, I beg to ask leave to withdraw my amendment.

*Amendment, by leave, withdrawn.*

*Clause 24 ordered to stand part of the Bill.*

## Clause 25

### Care and support plan, support plan

**Norman Lamb:** I beg to move amendment 108, in clause 25, page 24, line 21, at end insert—

'(14) The regulations may in particular specify that the paragraphs in question do not apply as regards specified needs or matters.'.

This minor and technical amendment clarifies that the regulation-making power in clause 25(13) allows the regulations to specify cases related to needs, or matters where aspects of the care plan, including the personal budget, are not required. This will allow regulations to exclude from the personal budget in the care plan the cost of meeting any specified prescribed care and support needs, which are otherwise incorporated in that plan.

It was always the policy intention that there may be cases where aspects of care planning are not appropriate. An example is the inclusion of costs related to the provision of re-ablement. This is where the provision of care and support needs to be short term, rapidly provided and may change often. Therefore it may not be appropriate for these types of care and support to follow the same processes as for long-term care and support. This also reflects current practice, and we intend to continue this arrangement through regulations under the Care Bill. The guidance and regulations that will accompany the Bill are being developed with stakeholders and will be open for consultation later this year.

**Meg Munn:** I would like the Minister to clarify subsection (1)(b), relating to the care and support plan. It states that the plan:

"specifies whether, and if so to what extent, the needs meet the eligibility criteria".

I do not want the process to become a tick-box approach, which meets the eligibility criteria but it is being done by a carer. They could be told: "Shopping is low need, therefore we are not going to provide it," when in fact shopping will support the carer who is supporting somebody with a high level of need.

**Norman Lamb:** I absolutely agree that we must avoid that tick-box mentality and look at the holistic needs of the individual. However, this covers similar ground to the other points that the hon. Lady has raised. If I could deal with them together in correspondence, I hope that that will help her.

*Amendment 108 agreed to.*

*Clause 25, as amended, ordered to stand part of the Bill.*

## Clause 26

### Personal budget

3.30 pm

**Paul Burstow:** I beg to move amendment 88, in clause 26, page 24, line 40, at end insert—

'(4) Where the needs are to be met through a direct payment, the costs to the local authority must mean the costs to the adult of meeting those needs.'.

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

Amendment 103, in clause 26, page 24, line 40, at end insert—

'(4) A personal budget for an adult must be set at a level that would be sufficient to meet all of that adult's eligible needs as assessed by regulations referred to in section 13(6).'.

Amendment 89, in clause 28, page 25, line 37, at end insert—

'(1A) The specified costs to the local authority must mean the costs to the adult of the meeting their eligible needs.'.

**Paul Burstow:** This amendment is to clause 26, which will importantly provide a statutory basis for personal budgets for the first time. In other words, the law is finally catching up with where public policy has been for a considerable time. In its report, the Law Commission described the current situation as having

"a confusing structure, whereby social care practice is not founded in the legal framework."

With these amendments I want to explore whether the legal framework has fully caught up with public policy and practice, not least in terms of calculating the amount that is made available through a personal budget or direct payment. It is clear that unless personal budgets are transparent and it is possible to challenge them, some local authorities may potentially operate mechanisms for determining how much is available in a way that leaves people unable to access services that would meet their eligible needs. The personal budget is a critical part of the architecture of the Bill. It is a critical tool for delivering individualised, person-centred care, which Members on both sides of the Committee want to see, and which is at the heart of the well-being principle in clause 1.

This proposal is about where power sits in the system. We should be clear that we are trying to transfer power to the individual by giving people control over their budgets. To achieve that and to help them meet their eligible needs we need further clarity, and that is what the amendments seek to do. However, that will only happen if the budget is sufficient to enable the person to buy appropriate support. The Bill as drafted implies that the budget will always be set at a level equivalent to the cost to the local authority of meeting the need. That sounds like a perfectly reasonable way of constructing an obligation to the individual and making resources available to them. However, it does not make clear—and it will be useful if the Minister can indicate how this is to be done—the fact that, as I have said before, local authorities enjoy monopsony powers in the care market. They are purchasers, and can use their market power to get lower prices than an individual going into the market and buying services for themselves. The individual could, therefore, face higher costs.

Let me be clear about the intention behind the amendment. It is not to allow people to use public money to buy a level of service higher than what the local authority provides directly to meet their eligible needs. It is not to enable them to buy a more luxurious set of services. It is to ensure that direct payments do not inadvertently disadvantage their users, relative to others who have services provided directly.

One of the charities that is particularly concerned about this issue drew my attention to a hard case that illustrates that possibility. A carer for an disabled child said:

"We were told when direct payments started that it would help his choice and independence and be able to give him what he needed. But things have changed. We're now told that travel to some place, paying for social activities and things he likes to do cannot be covered by direct payments. That's the whole care plan gone. The cost of care services have also gone up and the direct payment no longer even covers enough in care for him. We have to pay to cover the gap to make sure he gets enough support."

**Norman Lamb:** Does not that case study address a different point? There is the question in that case study of the authority deciding to withdraw certain elements of the personal budget. None of us knows the circumstances of the individual case and whether that is in any way legitimate, but it is an argument about whether particular elements should be in the personal budget. It is not an argument about the value that the local authority attaches to meeting that need.

**Paul Burstow:** I entirely accept that I could well rely upon the same case study to make points about that. But I do not accept that it is not relevant to a debate about the adequacy of the resource available to purchase against an agreed care and support plan to meet eligible needs. I accept that after a reassessment it might be determined legitimately that the eligible needs have changed and therefore the package changes and certain things are no longer provided. I agree. That is a different matter. The matter I seek to draw attention to through this example is the one about the adequacy of the resource to provide appropriate care to meet the currently agreed eligible needs.

This is particularly acute when one looks at the care home sector, which we have already debated. One sees the differential in the price a local authority pays compared with the price that might be more publicly available. Given that we as a Government are exploring the possibility of direct payments in the residential care market as well, it becomes a more live issue. The clause is still not clear on how these matters are to be calculated. One of the things that we looked at in the Joint Scrutiny Committee was the evolution of resource allocation systems at a local level. We expressed concern in the report about how opaque these resource allocation systems are in practice.

This has evolved as a bit of public policy since 2008. It was in a circular and then subsequently reinforced in guidance. To be fair, the previous Government were clear that these things should be done in an open and transparent way. As we conducted our inquiry and looked at the evidence, it was clear that many local authorities treat these as something to be kept out of the public's gaze and so they are not easily obtainable for people who want to understand how that figure in their personal budget has been calculated. That must be wrong, not least because it means that local authorities are flying in the face of existing statutory guidance.

The Bill quite rightly confirms the pre-eminence of the duty to meet eligible needs. It is how those costs are calculated that remains unclear. It is hard to obtain this information from a number of local authorities. Some guard it incredibly jealously. We recommended that the Government should review the efficacy of resource allocation systems to ensure that guidance is clear in the development of resource allocation systems or indeed other methodologies for determining how much the local authority will put into a personal budget or a direct payment. We suggested that this should be linked to clause 1 of the Bill.

My amendments seek to tease out the Government's thinking on this. RAS is murky. It is an area that is not very well documented in public policy in terms of guidance and so on. The Bill gives the Government an opportunity to make these things much clearer and, from the point of view of the person who is receiving the personal budget, much more acceptable when it comes to understanding how the local authority arrived at its figure. I look forward to the Minister's response.

**Liz Kendall:** Our amendment 103 is along the same lines as the amendment tabled by the right hon. Member for Sutton and Cheam, which he spoke to extremely well. As hon. Members know, personal budgets and direct payments were brought in under the previous Government in 2007. They came out of people working on the ground to empower people with disabilities, including learning disabilities, who felt strongly that too often their choices, chances and needs were being ignored. They were told what institutional care they should have rather being given the power and control over their own lives. We may have introduced it as a national policy, but it came from people working on the ground, and I pay tribute to those early champions.

I am a long-standing and passionate supporter of personal budgets. If they are done properly and well, they can transform people's lives by giving them more choice, say, power and control. I have always believed that the purpose of getting power is to give it away. The purpose is to give people more control and power over their own lives. That is what I have always believed, and personal budgets are at the heart of that.

*[Liz Kendall]*

However, I have had cases in my constituency, as I am sure many other hon. Members have, of people who are becoming critical of personal budgets because they are not being implemented properly. People feel that they could be becoming a cover for cuts. People say: "I'm not getting as much as I used to, even though my needs have not changed at all. They certainly haven't gone down, in some cases, they've increased." We must not allow personal budgets to get a bad name because they are vital and can and should be developed. They are not the sole way of delivering more personalised care and support, but they are an absolutely vital way of doing that.

I echo the comments of the right hon. Member for Sutton and Cheam. The Care and Support Alliance raised the point that people are very worried that, while councils can make block purchases and contracts, when the money is given to individuals they cannot buy as much for their care as they might want. The Bill must be clear that local authorities have a duty to meet people's eligible needs and that a personal budget must be sufficient for an individual to get the level of care and support they are assessed as needing.

Care provision is changing in response to personal budgets. This is an important policy area that could be developed in future. For example, when people say, "I've got my personal budget but still the kind of care and support I want isn't out there," some councils, such as Lambeth, bring groups of those people together and ask, "Okay, what is the support you would like to buy?" If they say, "We want x, y and z and it's not out there" the council can act as a kind of negotiator, go back to the providers and tell them they need to change, or bring new entrants in, if the existing providers refuse to change. Some things will be done individually, while others will involve personal budgets, still with individual choice, but on a more collective, market-shaping basis. However, we will do that only if personal budgets really work for people.

Even if the Minister does not—as I predict he will not—accept the amendments, having greater clarity about how the level of the budget is set and making sure it covers eligibility is vital. As the right hon. Member for Sutton and Cheam said, this is an area where legislation has not kept up with policy. Some of the practice in local councils and in Government policy has not kept pace with how we intend personal budgets to work on the ground. We need more clarity on this somehow, even if it is not on the face of the Bill, because we cannot let personal budgets have a bad name.

**Norman Lamb:** I thank my right hon. Friend the Member for Sutton and Cheam and the shadow Minister for their points. I agree with both of them. I am a very strong advocate of personal budgets and direct payment. The new area of development is the concept of the personal health budget in the NHS. As I mentioned earlier, we introduced the right to have personal health budgets for NHS continuing care. I want to extend that. I am impatient to extend it to mental health. If any group of patients ought to be given power over the resources that are available to them, surely it is people with mental health problems.

3.45 pm

I agree with the shadow Minister that, if applied wrongly, personal health budgets can be given a bad name. We must guard against that. There is frustration that practice among local authorities is quite variable. Many local authorities have embraced the concept and absolutely get the need genuinely to empower the people they are there to serve, but others either have not extended personal budgets nearly far enough, or —*[Interruption]*—as the shadow Minister is indicating from a sedentary position, simply go through a tick-box exercise. We must avoid that. The measures in the Bill are incredibly helpful in developing the concept of personal budgets, entrenching it in law and giving people clear legal rights, but we must also ensure that things work properly in practice.

My right hon. Friend the Member for Sutton and Cheam made a point about the importance of transparency so that the individual can understand how their personal budget has been calculated. We completely agree. It is critical that people understand how it has been calculated, both to help them understand their needs and the options available to them and for the credibility of the system as a whole. We intend to use statutory guidance to set out the expectations on local authorities regarding transparency in calculating personal budgets. Such guidance will allow for more detail on different circumstances and the means of publishing information to reflect people's needs.

**Grahame M. Morris:** Can the Minister clarify how personal care budgets will be applied and what they could be used for? During the Joint Committee inquiry, a Conservative authority highlighted the fact that one reason why local authority day care facilities were being run down was that people with personalised budgets could not purchase day care from the local authority. Was that anomaly ever addressed?

**Norman Lamb:** I would need to get back to the hon. Gentleman on that point. As much as possible, I want the personal budget genuinely to empower the person to use the money as they wish. Of course, it may well be the case that the individual does not want to use an old-style day centre. They might choose to, but they might not, and we must always respect their particular wishes.

I have spoken before about our commitment to rebuilding the law around the person, and in few places is that more evident than the provisions that deal with the new entitlements to a care and support plan and a personal budget. They have been warmly welcomed through consultation. Set against that, the amendments are not necessary because either they serve only to restate matters that are already clear, or they run the risk of undermining the gains made in the Bill.

Let me explain. Amendments 88 and 89 propose similar changes to the personal budget and the independent personal budget, to state that they should reflect the actual cost of care to the individual. The personal budget must be the amount that it costs the local authority to meet the adult's needs—needs that it is required or decides to meet. If the local authority meets the adult's needs by making a direct payment, that

payment must always be of an amount that is sufficient to enable the adult to meet their needs in a reasonable way.

The personal budget will be derived during the development of the care and support plan. That will take into account the needs of the particular individual and how they wish to meet their needs. The new focus on meeting needs provides for a more personalised approach and should lead to personal budgets and direct payments reflecting individual circumstances and preferences, rather than being a more simplistic service-based calculation.

**Paul Burstow:** That is a helpful description of how the Government intend things to work. Several organisations representing people who use services have made representations that led me to table the amendment—indeed, they also made representations to the Joint Committee. I think that they would find it incredibly helpful if, rather in the spirit of the round table discussions that were offered on end-of-life care, there could be, once the Bill is enacted, a conversation about how the regulations are drafted. Getting user input could ensure that the regulations deliver what the Minister says they will.

**Norman Lamb:** I am completely open to such an approach. I have tried to stress throughout that the collaborative co-production approach does not end with the passage of this primary legislation, but must continue. We must continue to involve those user groups to ensure that their voice is heard and that we get the best possible result.

Everyone's personal budget must be based on the same principle: that it relates to the cost to the local authority. That ensures fairness and consistency. If a direct payment were the cost to the person, it might have the unintended consequence of incentivising people to source more expensive care and support to meet needs, and thus progress quicker to the cap on care costs. If a person is unable to use their direct payment to purchase care to meet their eligible needs, they can ask the local authority to review their care plan, and consider whether there are other ways to meet their needs, such as through the provision of care and support arranged by the local authority or a combination of such provision and direct payments.

Similar to amendment 88, amendment 89 seeks to change the way the independent personal budget is calculated. To provide consistency with the personal budget, the Bill defines the independent personal budget as what the cost would be to the local authority of meeting a person's eligible needs for care and support. It is important that people progress towards the cap at the same rate, whether the person's needs are met by the local authority or the individual. The amendment would mean that people funding their own care would progress towards the cap at the actual cost they pay for their care.

Although in some cases there will be little difference between what the individual pays and what the authority would pay, in other cases self-funders may choose care more expensive than that that the local authority would usually provide. That would therefore increase the rate at which those individuals progress towards the cap. Although it is right that individuals are free to choose to purchase care of their choice, including at a price of their choice, the amendment would unfairly advantage well-off people who spend much more on their care. It would be inequitable, because wealthier people who are able to purchase more expensive care would reach the cap more quickly.

The reforms offer the first ever opportunity to protect all people from catastrophic costs and provide more transparency about the costs of care and support. The amendment would undermine those gains—I suspect that my right hon. Friend the Member for Sutton and Cheam sees the point I am making—and make the system less fair, directing public money to those who need it least, but I absolutely understand that that is not the intention.

Amendment 103 intends to link the personal budget to the needs to be met as identified in the eligibility criteria, which will be set out in regulations underpinning the Bill. The amendment is not required because clause 26 already ensures that the personal budget specifies the cost to the local authority of meeting the person's eligible needs. That is because the personal budget must include a statement of the cost to the local authority of meeting those of the adult's needs that it is required to meet or decides to meet as mentioned in clause 24(1). Clause 24(1) refers to the duties and powers in the Bill to meet eligible needs, so the link back to the needs identified in the eligibility criteria already exists. Those provisions ensure that the amount at which the personal budget is set is sufficient to meet the eligible needs of the person. There is no ability for the local authority to reduce the personal budget to an amount less than it would cost to meet the person's needs. I therefore urge my right hon. Friend and the hon. Member for Leicester West not to press their amendments.

**The Chair:** It might help members of the Committee if, before calling Mr Burstow, I make a brief procedural announcement: if the Minister or any other Member plans to table an amendment for debate on Tuesday—the next sitting—they need to do so before the rise of the House today. The procedural point I want to put to the Committee is that I have had a message that the debate in the main Chamber is likely to end before 5 o'clock. If someone is working on amendments, they should come and talk to the Clerk quickly to ensure they do not miss the deadline.

**Paul Burstow:** That is very helpful information, and I will rush to the Clerk after I sit down.

I welcome the spirit in which this debate on personal budgets has been held. There is unanimity on the importance of personalisation. The distinction I would draw is that the personal budget is merely the means, and sometimes in some quarters the personal budget gets elevated to being more important than the goal, which is individualised, personalised care. I welcome what the Minister said about extending the personal budget to mental health, which is a great step that is long overdue.

The shadow Minister is right that personal budgets came about because grass-roots activists pushed the case for them. Some of those grass-roots activists have subsequently begun to question some of the ways in which local authorities have gone about translating

*[Paul Burstow]*

personal budgets into practice, hence my raising the question of resource allocation systems. I welcome what the Minister said about the intention to use statutory guidance to set out in more detail how those calculations will be made in future. I merely point out that there is already extant guidance on them and the evidence is that many local authorities ignore the guidance and treat such things in a "Hitchhiker's Guide to the Galaxy"-type way: the guidance is locked in a filing cabinet in a basement of the town hall so that it is not accessible to anyone who might choose to seek it out. That cannot be right and it has to change. I hope the Minister will address that.

The Minister talks about notional costs and their relevance to the cap, which is important. It is one of the reasons why, in his continuing reflections on the arguments about appeals mechanisms, I hope he will bear it in mind that many more people will be contesting the calculation of that notional amount to reach their cap. Those people will have the financial means to contest, so avoiding costly legal cases is why we need some mechanism of the sort for which I argued earlier in our consideration of the Bill.

The Minister has been very persuasive, and as ever he has been helpful. With his commitment to meeting charities, and hopefully me, to discuss guidance after the Committee has concluded and the Bill is enacted, I will not press the amendments.

**Norman Lamb:** I absolutely agree with my right hon. Friend on the importance of a clear mechanism to enable challenge, which reinforces his point on people with money being willing to challenge. We need to end up with a mechanism that is straightforwardly clear and has an independent element but is not overly costly, burdensome and bureaucratic, which would cause delays and take enormous costs out of the system to everyone's disadvantage.

I want to address further the points raised by the hon. Member for Easington on the use of direct payments. Direct payments cannot be used to purchase care directly from the home local authority, but there is no such restriction on local authority care provided via a personal budget, which continues to be the case under the Bill. If people choose to have a personal budget and not to take on direct payment cash, they may continue to opt to use local authority day facilities and so forth.

**Grahame M. Morris:** Does the Minister not think that that is an anomaly that should be corrected if he believes in choice? Part of the consequences that all Members are foreseeing is a run-down in day care facilities. The amendment would be an easy way to address that.

**Norman Lamb:** I will reflect on what the hon. Gentleman says.

**Liz Kendall:** I know this might sound like a dry and technical issue, but it is important that people get the right personal budget to pay for care that meets their eligible needs and that that is done in an open and honest way. That is the bedrock of what will make the personal budgets work. I do not think that Government policy and regulations are up to scratch, so I look forward to hearing what the Minister says. The detail may not go into the Bill, but this is a serious issue and we need to figure out how councils can provide these budgets in the best possible transparent way; otherwise, the budgets will get a bad name and we do not want that. I will look to the details in the regulations and make my judgment according to those.

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

*Amendment, by leave, withdrawn.*

*Clause 26 ordered to stand part of the Bill.*

## Clause 27

### Review of care and support plan or of support plan

4 pm

**Mrs Lewell-Buck:** I beg to move amendment 114, in clause 27, page 24, line 4, leave out 'keep under review generally' and insert 'review regularly'.

**The Chair:** With this it will be convenient to discuss amendment 115, in clause 27, page 25, line 33, at end add—

'(5A) The Secretary of State after consultation must establish by regulation appropriate arrangements and timetable for the regular review of care and support plans and of support plans by local authorities provided for in subsection (a).'.

**Mrs Lewell-Buck:** These amendments would perform a similar function to amendment 113, but would apply to the review of care plans rather than assessment. In my experience, it is the review stage at which delays are most common and local authorities fall the most short of their duties. The amendments would require local authorities to conduct regular reviews of service users' care and support plans and establish a timetable for that through regulations.

In my constituency, care plans are supposed to be reviewed every 12 months, but that does not always happen. Just a few days ago, I spoke to a constituent, Mr Bennetts. He is registered blind and his sight loss is increasing, but his most recent review was more than three years ago. As with assessments, I understand that time pressures on care workers mean that routine assessments are often put on the back burner in the face of more urgent cases. However, that does not change the fact that, without regular assessment, checks show that many people's conditions are allowed to deteriorate. Stronger terms need to be put on local authorities to ensure that such checks are carried out.

Care plan reviews are particularly important for people with progressive or fluctuating conditions. For them, even a few weeks can make a huge difference. A person with a progressive condition whose needs are not assessed for many years may find themselves with support that is completely inadequate for their developing condition.

Regular reviews also provide a built-in check on the care system, which can improve safeguarding. Regular contact with service users enables inadequate care to be

identified quickly. I was involved with a care home in my constituency where, due to a lack of scrutiny by a number of agencies, criminal negligence went on unchecked. That had heartbreaking consequences. I do not ever want to experience that again and nor do I want anyone else to have to.

Like amendment 113, the amendments deliberately do not specify a time scale, as that is best left open to consultation. However, even the current target used in most areas of an annual review is too long, given the speed with which conditions can change and the vulnerability of some clients. Adult social care workers are fed up that their profession never receives the same rigour and attention as children's care, in which review meetings can take place as regularly as monthly if a local authority has concerns about a case. Local authorities strictly keep to children's social care time scales because of the emphasis placed on child protection and the public scrutiny. There is no such urgency for adults.

I am sure that the Minister agrees that an 85-year-old with dementia deserves the same protection as a vulnerable child and that, therefore, the priorities need to be rebalanced. I fancy, however, that the Minister's response will be the same as for my previous amendment. When responding, I would like him to think seriously and carefully about the message his Government is sending to service users and local authorities by not prescribing any time scales in legislation.

**Meg Munn:** I want to make a brief point in addition to those made by my hon. Friend. It is important to review the care that service users receive, not just because their needs change in a negative way, but because they could improve. Some of the most successful cases that I dealt with in practice were where, by providing a significant amount of care at the point when a person was discharged from hospital—thus enabling them to be discharged—a review quickly after that enabled care to be reduced, often much more quickly than either the service user or the social worker expected, thus releasing the budget to be used for other people.

Often, particularly with elderly people, the issue is a lack of confidence after a period in hospital. Returning home is a bit of a lottery; no one knows or can judge properly how that person is going to cope. My experience was that, by putting someone in who slept there, perhaps for a week or two, that elderly person could be enabled to return home to regain their confidence. There could be a proper assessment of just how able they were to cope at home. Subsequently, their care needs were often reduced to the level of home care that they had before their admission to hospital.

Not to proceed in that way could lead to a person entering residential care, with their lack of confidence compounded, the costs escalating, and the person never going home. Looking at early reviews and ensuring that the needs of people, both when they deteriorate and when they improve, are properly addressed and supported by changing services are fundamental to a much more efficient service.

**Norman Lamb:** On the hon. Lady's final point, I agree that the whole objective should be to help a person improve their mobility and well-being; that is at the heart of the Bill. We all need to be focused on improving well-being.

One of the things that I feel strongly about is the need to improve how commissioning works by providing incentives to providers to improve well-being. We have amended the Bill through clause 5(4) to require local authorities to focus on well-being when they are commissioning services.

We know that if the right things are done, we can often reduce someone's dependency. There is a role for the voluntary sector, friends and neighbours to help as well, tackling the awful consequences of loneliness. That can have a massive impact on reducing loneliness. Therefore I am very much with the hon. Lady, and I share the view that a follow-up assessment makes absolute sense if we can identify reduced need.

The points of the hon. Member for South Shields were, on the whole, well made. Right at the end, she introduced a sour note, which I thought was misplaced. The whole tone of our discussions has been about valuable reforms, which I think most people are behind. We are trying to achieve something that has been widely supported. The sense that the Bill sends a message about what this Government think of people introduces an unfortunate tone, which has been missing from the discussion until now. I gently chide her in that regard.

The local case described by the hon. Lady, about someone who has been waiting three years for a review, is absolutely shocking. I hope that she is taking her own local authority to task for that complete failure of care and support for that individual, who is clearly a vulnerable person. Failures can occur all over the system, and we should be indiscriminate in being unwilling to accept them where they occur.

Amendment 114 would require care plans to be reviewed regularly. Taken in conjunction with the related amendment 115, which would provide for regulations to specify a time frame for the regular review of care plans, the effect would be to establish a review period that local authorities must adhere to. Clause 27, which deals with the review of care plans, creates a general duty to keep plans under review and a specific duty to review a care plan whenever the adult concerned requests it. The clause introduces a right to a review if a reasonable request for one has been made, which should help in cases such as that of the hon. Lady's constituent who has been requesting a review and not making any progress.

The clause also requires the local authority to revise the care plan and carry out fresh assessments whenever it believes that an individual's needs or circumstances have changed. We believe that to be a more pragmatic way of fitting reviews around people's lives. It supports our policy of personalised care, because it bases the decision to review on an individual's needs, not on an arbitrary time scale. A regular review would imply only that the frequency of a review was consistent over time; it would not necessarily mean that the frequency was right or that the review took place at the most appropriate time for an individual. Our proposal to keep the plan "under review generally" would ensure that it was monitored constantly, and steps could be taken to change it as required.

Local authorities must act reasonably in the discharge of their duties, including those in relation to care and support planning and reviews. It would not be reasonable to delay or extend that process, as in the case of the hon. Lady's constituent, beyond what is appropriate in an individual case. We will set out in guidance best practice

*[Norman Lamb]*

for conducting care and support plans and reviews, and we will work with social care partners to include indicative time scales for care plans. I hope that that might help the hon. Lady. For the reasons that I have given, we intend to refrain from specifying and prescribing time scales. I hope that on that basis, she will agree to withdraw the amendment.

**Mrs Lewell-Buck:** I believe that the word "generally" is too vague, but I will not divide the Committee on the issue. I am comforted by the Minister's response, but not entirely convinced. I would like to think about the matter outside the Committee and I may return to it at a later date. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 27 ordered to stand part of the Bill.*

*Clauses 28 to 32 ordered to stand part of the Bill.*

## Clause 33

DIRECT PAYMENTS: FURTHER PROVISION

**Norman Lamb:** I beg to move amendment 109, in clause 33, page 29, line 22, at end insert—

'(da) cases or circumstances in which an adult who lacks capacity to request the making of direct payments must or may nonetheless be regarded for the purposes of this Part or the regulations as having capacity to do so;'.

**The Chair:** With this it will be convenient to discuss Government amendments 110 and 111.

**Norman Lamb:** These minor technical amendments should not detain us long. They allow the direct payment regulations to provide flexibility in cases of fluctuating capacity. Amendment 109 makes a mirror provision to the one in clause 33(2)(e) to allow regulations to be made so that adults for whom a direct payment is made under clause 31 can be treated as continuing to have capacity notwithstanding some periods of incapacity. That regulation-making power allows regulations to reflect the provisions in the current direct payment regulations. Clause 33, together with the proposed amendments, allows regulations to make provision for cases where a person with a direct payment has a fluctuating capacity, so that the local authority can continue with the original direct payment arrangements. This is intended to provide continuity and to prevent direct payments from having to be terminated unnecessarily.

4.15 pm

The guidance and regulations that will accompany the Bill are being developed with stakeholders and will be open for consultation later this year.

*Amendment 109 agreed to.*

*Amendments made:* 110, in clause 33, page 29, line 24, leave out

'request the making of direct payments'

and insert 'make such a request'.

Amendment 111, in clause 33, page 29, line 25, leave out

'the purposes of this Part or the regulations'

and insert 'any of those purposes'.—*(John Penrose.)*

*Clause 33, as amended, ordered to stand part of the Bill.*

## Clause 34

DEFERRED PAYMENT AGREEMENTS AND LOANS

**Liz Kendall:** I beg to move amendment 104, in clause 34, page 30, line 46, at end insert—

'(9) The Secretary of State shall make available to all local authorities a model deferred payment scheme and all local authorities must follow this model unless they can show due cause not to.'.

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

Amendment 105, in clause 35, page 31, line 15, at end insert—

'(3A) The regulations must require any interest incurred on an adult's deferred amount or interest on an amount charged under subsection (1)(b) to count towards the set level above which an adult starts receiving financial assistance with the costs of their care.'.

Amendment 106, in clause 35, page 31, line 20, at end insert—

'(4A) The regulations may not specify any threshold of other assets above which a person is not eligible to receive a deferred payment loan.'.

Amendment 107, in clause 35, page 31, line 27, at end insert—

'(5A) Regulations under this section must provide that—

(a) a local authority shall direct anyone considering a deferred payment arrangement to an appropriately qualified financial adviser or to appropriately qualified financial advisers; and

(b) any loan under this scheme shall be sufficient to pay for advice under paragraph (a) above.'.

Amendment 96, in clause 35, page 32, line 12, at end add—

'(11) The regulations in subsection (1) are subject to the affirmative resolution procedure.'.

**Liz Kendall:** We now come to another important clause in the Bill, which is about the deferred payment schemes: council loans to people who require care to help them pay for their residential care. Such loans are absolutely at the heart of what the Government claim the Bill will achieve. Hon. Members will have heard the Prime Minister and the Health Secretary say many times that the Bill will ensure that nobody has to sell their home to pay for their care. However, that is not true; they will have to sell their home to pay for their care, but after they have died. The Minister had the foresight to include the second part of that sentence, but when the Prime Minister and the Health Secretary regularly say that no one will have to sell their home to pay for care, that is not the case. They will—after they die—to pay off the loans.

**The Parliamentary Under-Secretary of State for Health (Dr Daniel Poulter):** The hon. Lady will be aware that someone cannot sell their own home after their death, so the statement by the Prime Minister is absolutely accurate. The point is that when someone does die, there is generally a division of the assets among the beneficiaries, which are normally many in the case of any estate.

**Liz Kendall:** I am saying that the Prime Minister especially should be careful about what he says, because many people have heard his statement and think that they will not have to sell their homes. I want to be careful and accurate in my comments on this.

Amendment 104 states that the Secretary of State has to make a model deferred payment scheme, or one of the loan schemes, available to all local authorities, although they can opt out if they so choose. Amendment 105 specifies that the interest that people would incur on the loans will not count towards the cap on care costs. We discussed that issue on Tuesday. Amendment 106 would remove the means test for the loans, which was not recommended by Dilnot, who wanted a universally available system, and the matter was sprung on people when the Government issued their consultation document on the deferred payment schemes just before the summer.

I pay tribute to Lord Lipsey for raising the issue and moving the amendment in the other place. He was the first person to highlight the fact that the new loan schemes will not be available to everybody as was intended, but are being means-tested.

Amendment 107 states that local authorities must direct anybody considering taking out such a loan to a financial adviser so that they can be well advised about the best financial options for their situation.

Amendment 96 calls for regulations on deferred payment loan schemes to be subject to the affirmative resolution procedure of both Houses of Parliament.

To provide some background, the loans are widely available but not widely taken up. I did a freedom of information survey on local councils and 95%—we had a high response rate—said that they offered the loans but do not often promote them—

**Norman Lamb** *rose—*

**Liz Kendall:** Perhaps what I say will prevent the Minister from intervening, although if it does not it does not matter. That is why the duty in the Bill requiring councils to offer the deferred payment schemes and the Minister's commitment on a public awareness programme is important. The loans are available but councils often do not tell people about them. Does the Minister still want to intervene?

**Norman Lamb:** As the hon. Lady says, there is no duty at the moment. If they are theoretically available that is one thing, but if the local authority does nothing to publicise that fact and if they attach all sorts of conditions, limitations and restrictions, the reality is that they are not available.

**Liz Kendall:** I agree. I was just explaining, because some people will think that this is a brand new thing, although it is not. It does exist, but needs to be more widely available.

It is important to ensure that everybody sets up a deferred payment scheme that is simple, easy to understand and easy to use. Our amendment 104 would require the Secretary of State to have a model deferred payment scheme that local authorities should follow, unless they show good reason not to. Each local authority, as the Minister just said, has designed and implemented different schemes and they will have to set up different care accounts to keep an eye on how much money people are spending and how much they have taken out in a loan. This is a big undertaking. Allowing councils to do this in different ways is potentially wasteful and could lead, as the Minister said, to variations in the schemes; some could be good and others could be poor quality. A simple single model that could be opted out of would aid councils. That could be a good way to have simple, clear, universal access, cutting back on bureaucracy and waste and saving the taxpayer money. This is a value for money and efficiency proposal, which I hope that the Minister will accept.

Amendment 105 relates to the interest on the loans. Let me clarify. I am sure that the Minister will correct me if I am wrong. Currently, councils are not allowed to charge interest on the loans while the person is alive. Interest can be charged once they have passed away. Our freedom of information survey shows that the rate councils charge varies between nothing and 8%. Once people die, their home has to be sold to pay back the loan. Some may sell a home quickly, but others may not. The interest really matters.

We do not disagree with the Government's saying that interest should be charged on the loans. Councils are not going to be able to balance their books if lots of people take out the loans and they do not have that money in the bank. We are not disagreeing about interest. However, we have never heard that said by anyone, even the Care Minister, until we raised this issue in the media. It was in the fine print of the consultation document, but there has never been a big public statement saying, "You're going to get these loans and interest will be charged."

As I told the Committee, if interest is charged at 4%, as the Government's consultation document suggests, for an average stay in a care home of two and a half years that would cost some £3,500. For the one in eight elderly people who stay in residential care for five years that could rack up almost £14,000 in interest charges. As I said, the interest will continue to grow until the family home has been sold, even after the person has died. It would be even bigger for elderly people who live in areas where residential care is more expensive. We have calculated this according to the average price of a care home and some people face paying much higher bills. Our amendment would ensure that the interest on the bills counts towards the cap. That is what many elderly people and families would expect. They would expect that that was part of their care costs.

I turn now to amendment 106 and the new means tests on the loans. When Dilnot recommended that the scheme be made universal he said he wanted it to be available, obviously, for everybody who might want to use it. However, in the consultation document the Government issued this summer they unexpectedly proposed a £23,250 limit on people's savings. In other words, those who have more than that in savings would not qualify for the deferred payments scheme. The concern about this relates back to these claims that no one will have to pay for their care. As Lord Lipsey pointed out in the other place, someone who spends all of their savings down to £23,250, which would be a lot of money for many people, would get £700 a year at current interest rates, or just £14 a week.

*[Liz Kendall]*

For many elderly people in residential care, that means they would not be able to afford the little things that make life in a care home tolerable and give them pleasure in later life: buying a newspaper; getting presents for the grandchildren; buying them sweets. It is this human aspect, this personal cost to people's quality of life that the Minister seems to have forgotten in suddenly saying that people will not be able to get a loan unless they have less than £23,250 in the bank. Our amendment does away with the means test for eligibility for these loans and restores the Dilnot principle of universality.

Amendment 107 relates to the point we have frequently raised about financial advice. Opposition Members and Government Members, particularly the hon. Member for South Derbyshire, have been engaging in the discussion about financial advice. There is concern about the deferred payment scheme and the loans and providing proper financial to people is really important. For some people it might make more financial sense to rent out their homes rather than to take out these loans because of the cost implications later on. People must get that good quality advice because they may not understand how the loan will affect them.

We have had this debate before but we still have not nailed this down. I would certainly want my constituents or my parents to get proper financial advice on whether the loan would benefit them because of the cost implications. I hope that the Minister takes this issue away. It has come up many times before. This is yet another reason why people need proper financial advice from properly trained and qualified advisers to ensure that all these issues are covered when they are thinking about the cap on care costs and this deferred payment loan.

Finally, hon. Members will be pleased to hear, amendment 96 calls for the regulations about the deferred payment loans to be subject to the affirmative resolution of both Houses of Parliament. This is yet another complex area. There is complex interplay with the cap and complex interplay with the means test. We need to see more details of all of this: the interest rates on these loans and whether they will be means-tested and at what level. It is essential to understand the combined package of who will benefit, and how, across the different income levels. The Minister is moving in an unsure way—*[Laughter.]*—with his eyebrows.

4.30 pm

**Norman Lamb:** That is an over-interpretation.

**Liz Kendall:** We have to take decisions in this House based on who benefits from a proposal, according to their level of income and which part of the country they are from. Who does this benefit: the poorest, those in the middle or the better off? It is very confusing for us to decide as MPs who really benefits. My concern is that unless we see all the details, including of the loan scheme, we are not clear about who benefits. That is an important issue for Opposition Members and, I hope, for Government Members.

**Paul Burstow:** I wish to pick up on a couple of points made by the hon. Lady and to ask a question of the Minister. Deferred payment is fundamentally about having a mechanism that avoids the family facing the trauma of a fire sale of the property at the moment of crisis. Having a deferred payment gives that peace of mind of knowing that is not something they have to address at that point.

It also ensures that the property is not sold at a point when everything else is going on, potentially at a lower price than it would achieve if properly marketed over time. It is an important protection of the asset, but a much more important protection of the emotional crisis that a family is in at the point at which this takes place. That is the best way to understand what deferred payment should be about.

It was great that the previous Government, with one of the few things it did following the recommendations of the Royal Commission on long-term care, sought to introduce deferred payments. What is great about this Government and their determination to see it through is that they have legislated and made it a mandatory requirement that they are delivered. They were never mandatory. As the hon. Lady said, because of that many local authorities had them, paid lip service to them, but did not deliver them, and they were highly variable. This is a good step by the Government.

The other reason that deferred payment is important goes to a point made by the hon. Member for Sheffield, Heeley about reassessments being done in a timely fashion. Someone who has a crisis, who is a self-funder and admitted from a hospital into a nursing home, may recover social function and function, but because they are a self-funder that all too often becomes invisible, and they live for years in that home spending a large amount of money on their nursing home fees, and as a consequence they fall back on the state because they have spent everything they have.

Deferred payment also provides the breathing space to allow those things to be sorted through and provide assurance. There is an issue there about how this can be exploited in a proactive way to achieve another public policy goal, which is to spend money where it most has effect. That is about helping people recover, not helping people increase their dependency.

We have already debated clause 4 but it is relevant to this clause. Clause 4(3)(a) states that local authorities must identify the people

"who would be likely to benefit from financial advice".

I want to press the Minister on the point about regulated financial advice and seek further clarification on how he envisages the guidance being crafted so as to ensure that local authorities do bear that in mind. There is a huge reputational risk for local authorities and a huge risk to the individual. I was in this House when misinformation around the state earnings-related pension came to light. As a consequence, the then Government had to sort out and compensate many people who had been told effectively to opt out of the state earnings-related pension and were in a less advantageous state as a result.

My fear is that, unless an individual has had the benefit of regulated financial advice, what will come back to haunt either the Government of the day or certainly the local authority in question is that they did not act diligently, and did not fulfil their duty of care and ensure that the individual received the right advice.

In some ways, this product mimics equity release, which is why it should be treated as a financial product for the purposes of regulated financial advice.

**Norman Lamb:** It is legitimate to debate this concern, but does my right hon. Friend agree that this is ultimately a low-cost loan? As he and the shadow Minister have already said, deferred payments have been around for quite some time, albeit not widely available in reality. Is my right hon. Friend aware of any circumstance in which someone who has taken out a deferred payment arrangement—in the whole time since their introduction—has later claimed that it was mis-sold to them? We might expect that assertion to have been made by now were it a genuine and legitimate fear.

**Paul Burstow:** I accept the Minister's challenge, but I do not have the answer off the cuff. My only other point in response is that that, in and of itself, is not a sufficient reason not to ensure, when designing a national obligation on local authorities, that we look around the corner and guarantee that the Government design a system that makes it certain that such a scenario does not play out.

**Grahame M. Morris:** On that point about the national obligation to establish deferred payment schemes in 150 authorities, which is a low-cost but not a no-cost option, would it not be advantageous and more efficient to have a model scheme that all 150 authorities could adopt?

**Paul Burstow:** I am about to come on to that point, about which I had the benefit of a conversation yesterday with representatives from the Local Government Association, who are canvassing such an idea. Under the powers to delegate functions, it would of course be possible for local authorities to act in combination to operate a national scheme, but I dare say that that may be one argument that the Government could use to counter the case for it. There is, however, a case for the Government giving more thought to having a clear national offer around deferred payment, because this whole area of financial advice is so important. The personal social services research unit says that 40% of self-funders could benefit from existing financial products, so it would be good for people get such advice so that they can consider the alternatives to a deferred payment scheme, which is part of the point here.

The £23,250 means test is being unfairly characterised, partly because it happens to be the same figure as the threshold for access to financial support for care itself, which allows for some inadvertent conflation. That was certainly not intended by Lord Lipsey, who raised some important points. It is the case that this specific proposal, which was also present in consultation papers issued by the previous Government, excludes the property that the person is living in. The proposal aims to address those who have considerable wealth beyond the property in which they live.

Earlier, the shadow Minister rightly told Government Members that we need to focus on those in the middle. The way in which the Government are trying to craft the rules for access to deferred payment is doing exactly that. It is about addressing those in the middle, not those with super-wealth, who will be able, through good financial advice, to access other products more suited to their circumstances, or to self-insure using their resources. That issue has not been fairly discussed. The Government have none the less consulted on it, but I have not yet heard the outcome of the Government's deliberations. It would be useful to know when the Minister expects to share with us whether the Government intend to stick to the £23,250 figure, because they need to move past this argument.

My final point is a question. In a scenario where a person takes out a deferred payment in one area to move into a care home there, then perhaps for reasons of family or something else, they choose to move to another care home which is not in that local authority's area, who will have responsibility for the deferred payment? Does it stay on the loan book of the local authority which issued it in the first place, or will it transfer to the other local authority? I am not sure that the Bill makes this clear. It would be another reason why perhaps a national framework would be useful for this purpose. It would be helpful to the Committee, and I suspect others outside, if the Minister answered that.

Finally, I hope that those who follow our business in this Committee—and they follow it closely on these matters of financial advice—will take up the Minister's challenge. I will be only too pleased then to come back to him with some further answers.

**Norman Lamb:** I would be happy to hear back from my right hon. Friend when the cases come in. May I respond to one specific point, about how guidance will ensure that local authorities have in mind the need for financial advice around deferred payments? We are developing statutory guidance in partnership with local authorities and the financial services industry, including representatives from the financial advice sector. We are committed to providing local authorities with the implementation support that they will need to implement the scheme well.

With regard to my right hon. Friend's other point about what happens when someone moves to another area, we will write to him and other hon. Members to confirm the point. He has managed to flummox both me and, I suspect, officials with that question, but I have no doubt that we will have an answer and we will enlighten him.

To make a very gentle, political point, some of the debate around this has been unfortunate. Whatever the intention, it has ended up being somewhat misleading in its intent. It is slightly irritating—if I can go that far—because I remember that in 1998 the then Prime Minister, Tony Blair, that great man, said words to the effect: "I do not want to live in a country where people have to sell their homes to pay for care". Thirteen years later, tens of thousands of people have had to sell their homes to pay for care because nothing was ever done. I know that predecessors of mine shared that frustration, and I know that many of those who have held this job were completely frustrated that the previous Government failed to act—*[Interruption.]* My right hon. Friend says: "And me".

The great thing is that this Government are acting. They commissioned Andrew Dilnot to do the work and we are now getting on with righting a wrong that has been in existence for far too long. The shadow Minister

*[Norman Lamb]*

made the assertion that deferred payments are not a new thing and have been around for a long time. What is new, and so important, is the duty.

**Liz Kendall:** I said that!

**Norman Lamb:** I know and I do not seek to claim that the hon. Lady did not say that, but it is important to assert the fact that in the past deferred payments have been theoretically available in many areas, but without a duty to provide them, they have not been available for many people. My right hon. Friend made the correct point that the protection of individuals and families from having to sell at a moment of distress is what makes this so valuable. Having to sell at the moment when someone goes into care, or soon after, when it has to be done to pay for those care costs, is a deeply unfortunate situation. My right hon. Friend also made the valid point that the availability of a deferred payment may also enable someone to recover and return home, if that is possible.

4.45 pm

The shadow Minister had a go at the Prime Minister and others for the words that they used, but the deferred payment can of course be paid off using other assets; it does not have to be paid off from housing assets following the death of the individual. That is a matter for the beneficiaries to decide, subject—of course—to the amount of money that is available.

The introduction of the universal deferred payment scheme will provide protection and peace of mind for those people who face having to sell their home in their lifetime to meet the cost of their care. Our open approach to this legislation will not cease with the primary legislation completing its passage through Parliament but will continue as we develop regulations and statutory guidance. It will remain as we develop the necessary support to ensure that all local authorities are in the right position to offer deferred payment agreements from April 2015. We will provide this support in a consistent way and we have already committed to making a model scheme available, which directly addresses the shadow Minister's concern. The guidance will say that local authorities should use the model scheme, unless there is good cause not to use it. In effect, that will mean local authorities have to use it, so we will achieve what she seeks to achieve. I do not believe that any of the amendments are necessary to clarify our commitment to collaborative working or to ensure successful implementation of the reforms in the Bill.

The purpose of amendment 105 is to provide that any interest or charges on deferred payment agreements would count towards the cap on care costs. Deferred payment agreements do not have any relation to how much a person is expected to contribute towards the cost of their care and nor will they necessarily have any relation to the rate at which a person meters towards the cap. Instead deferred payment agreements are a mechanism that people can choose to use—if they wish to do so—to pay for their care costs. The method by which a person chooses to pay should not affect how much they are expected to pay before they reach the cap. I do not believe that people should meter towards the cap faster if they choose to pay through a deferred payment agreement than people who choose to pay, for example, through an immediate needs annuity, an insurance policy or, indeed, by selling their home. Why should we benefit one group of people over other groups in reaching the cap faster as a result of counting interest? This is a low-cost loan, giving people a very valuable facility, but they should not be advantaged over and above others in that regard. To do so would simply be unfair and that would be an undesirable result of the amendment.

**Liz Kendall:** When elderly people or their families receive advice about this scheme, will they be clearly told about the interest, how much interest they will clock up and that the interest will not count towards the cap?

**Norman Lamb** *rose—*

**Liz Kendall:** How will the Minister guarantee that they are told those things?

**Norman Lamb:** I am moving in an unsure way again.

**The Chair:** It is my job to tell people to sit still.

**Norman Lamb:** Yes, of course people will be told about the interest that is payable, and I am sure that it will be part of the provisions in the guidance on the model deferred schemes that the hon. Lady's amendment sought to achieve, but that amendment is not necessary, as I have tried to explain.

Amendment 106 would prohibit the use of any asset-based criteria for access to deferred payments. First, I will take a moment to refresh our memories about the Dilnot commission's report. It recognised that people who can afford to contribute towards the cost of their care should do so. The commission's recommendations sought to define a new partnership between the individual and the state and to focus the money available on those who need it most: those with the fewest assets or who face catastrophic care costs.

Amendment 106 would go against that principle. It would not target those people who most need support but instead ensure that anyone, even those with assets of great monetary value in addition to their main home, can have a deferred payment agreement. I simply disagree with that principle. I do not think that the public purse should be helping people who do not need financial support to pay their care fees. A person with a substantial sum in their bank account would not be

"unable to afford care charges without selling their home".

Such a person would therefore not be the principal purpose of a deferred payment agreement, as set out by the commission. In effect, if the shadow Minister presses the amendment, Labour would be advocating cheap, Government-subsidised loans for millionaires.

**Liz Kendall** *indicated dissent.*

**Norman Lamb:** She shakes her head, but that is what it would be. A low-cost loan is a very attractive proposition. Anyone with a lot of financial savvy and a lot of money in the bank would go for it. Why on earth should

hard-working people on relatively low incomes help to subsidise the cost of giving low-cost loans to millionaires? I simply do not understand where Labour is on that, and I find its whole argument deeply frustrating.

**Liz Kendall:** I do not want the Minister to misrepresent what Andrew Dilnot said. He said that the loan should be universal. Is that the case?

**Norman Lamb:** The loan is universal for anyone who may be forced to sell their home to pay for care. I also find the principle of having a threshold over which the loan would not be available to be remarkable, because, clearly, if someone has £100,000 in the bank, they are not in a position in which they would be forced to sell their home. Does the hon. Lady believe that someone with £100,000, or indeed £1 million, in the bank should be entitled to a loan? That is what her amendment would provide for.

**Liz Kendall:** What we are saying is that someone with, say, £20,000 in the bank—they may want to pass on those savings to their children—might be living off the interest on those savings, which does not actually provide that much per week. That is the point raised by David Lipsey in the House of Lords. It goes back to what Andrew Dilnot said. The Government have constantly said that they are putting in place what Andrew Dilnot and the Law Commission recommended, but Andrew Dilnot said that the loan should be universal. If the care Minister wants to disagree with what Dilnot recommended, he should say so. We are questioning why he has changed the fundamental principle of a universal, all-in system.

**Norman Lamb:** I absolutely believe that it is a universal system. We will make the loan available to anyone in this country who would be forced to sell their home to pay for care. It is universal.

Let me tempt the hon. Lady once more. Her amendment would mean that someone with £100,000 in the bank is entitled to a cheap, Government-subsidised loan. Does she support that?

**The Chair:** The hon. Lady does not have to ask Minister to give way. She might refer to the question when she replies.

**Norman Lamb:** I think the silence is very telling. In the dying days of the last Labour Government, Labour finally, after 13 years of waiting, came up with a scheme. It was a crazy scheme, and I suspect that in her private moments the hon. Lady agrees, but none the less the scheme included a universal right to a deferred payments scheme. Do you know what? The assessment provided for a threshold of £23,000, or whatever the amount was subject to price rises. It appeared to be right for Labour's deferred payments scheme; why is it wrong for this Government's deferred payments scheme? I am happy to give way on that.

**Liz Kendall:** I will save my comments until the end.

**Norman Lamb:** I just make the point that the threshold is exactly the way that Labour proposed to do it. I hope that we can agree that the principle of having an upper threshold for non-housing assets is a sound one that is in line with the conclusion of the debate on this issue in the other place. I am sure that there are different views within this room on what that amount should be.

Although the matter is for regulations, I hope to build some consensus on the principles that should determine that amount. First, I expect it to be an amount that prevents people from being forced to sell their home in a moment of crisis to pay for their care. Secondly, the amount should, as far as possible, complement and align with the new charging system to facilitate smooth transitions. Thirdly, the amount should be targeted not at those who are looking for a cheap loan and have enormous assets, but at those who are most in need of the flexibility and peace of mind that deferred payment agreements can offer. I think that those are reasonable principles, and I hope that the Opposition agree with them. These principles will guide the development of regulations on the deferred payment access criteria, alongside the responses we received to our consultation and the views of our partners in local government and the care and support sector who will develop the regulations with us.

Amendment 96 is not necessary for regulations specifying the interest rate for deferred payments to be subject to the affirmative resolution procedure. We have already consulted on the issue and asked for evidence in our consultation on funding reform. We have committed to consulting on draft regulations this spring, before regulations are laid in Parliament. Such consultation on the first use of these powers is sufficient scrutiny, especially when we have been clear that the interest rate is about making the scheme cost-neutral and not about raising revenue for local authorities.

Finally, amendment 107 is on financial advice for people considering a deferred payment agreement. I agree that it is important that people make well-informed and considered choices on the care they receive as well as on how to fund their contribution towards its cost. That includes people considering a deferred payment agreement. The local authority has a central role to play in ensuring that its local population is aware of the range of information and advice, both regulated and non-regulated, that is available and how to access it. We have set out the active and facilitative role that we expect local authorities to take in meeting the duty in clause 4 on information and advice, which includes financial information and advice.

I have already spoken of how deferred payments provide protection to people in a moment of crisis, typically by providing much needed breathing space, as my right hon. Friend the Member for Sutton and Cheam made clear, to decide how to meet the costs of care in the longer term. A balance needs to be struck to ensure that people have the information and advice they need to make a well-informed choice while maintaining access to deferred payment agreements in a moment of crisis. It is my view that mandating a local authority direction to advice from an appropriately qualified financial adviser would be too onerous, especially as not everyone will require independent advice to make a well-informed decision. Compelling them to seek it would simply be a waste of their time and money. Equally, having to go through a Government-mandated tick-box exercise could cause enormous frustration for people.

*[Norman Lamb]*

In light of what I have said, I hope that the hon. Member for Leicester West feels able to withdraw the amendment.

**Liz Kendall:** I know the Minister clearly feels passionately about this matter. He is many things, but a mind reader he is not, so for the record I want to say that his assertions about what I think are wide of the mark—he has no idea about that.

Let me go through things in turn. First, on amendment 104 and a model scheme being available, that is important and I welcome hearing about it. On the point about interest counting towards the cap, it is important for that to be spelt out clearly, not only in the fine print of a consultation document, but in the advice given: councils must be required to tell people that they will be charged interest and how much it could be, so that they can make a decision about the loan.

**Norman Lamb:** Does the hon. Lady still feel that it is right for interest to count towards the cap, advantaging those people, as against other people who choose equally reasonable and appropriate schemes to meet their needs?

**Liz Kendall:** The Minister made a good argument, and people need to be treated fairly. My point has always been that people need to know about the interest on the loans. That had not been made public except in the fine print—*[Interruption.]* I am sorry, I thought that the hon. Member for Burton was making an intervention.

**Andrew Griffiths** (Burton) (Con): Will the hon. Lady give way?

**Liz Kendall:** I will give way once I have finished my point. It is important to be clear about the interest, because it could be fundamental to someone's decision about whether to take out the loan—and how much for—or, in future, an insurance product to guard against such a level of interest rate.

**Andrew Griffiths:** I was talking to a colleague, but as the hon. Lady overheard me I will repeat what I was saying for the record. Is what she is offering actually a tax break for millionaires?

**Liz Kendall:** That is rich—excuse the pun, if it is one—coming from a party that cut the top rate of tax to benefit millionaires at a time when many others were suffering. I will come on to that point in a minute, though.

On qualified financial advice, we will keep returning to the subject, because it is important. I take the Minister's point: has anyone seen an example of a person who was told about the deferred payment scheme and has anyone ever complained about it later? It is more complicated now, however, because the loan, the cap and the means test together are all complicated. The three are interrelated and that proper financial advice is required. I have no intention of setting up a system that predominantly benefits millionaires. As I think I said, Lord Lipsey said in the other place that if someone had £20,000 of savings in the bank and is living off the interest of those savings, it is not very much a month or a week. He was deeply concerned about that, and we are reflecting that issue today.

There is much more to be debated, and the Opposition will be thinking about this and many other issues and the implications for Report stage. I am aware of the time and of Members' commitments. Although I am prepared to withdraw the amendment, more thinking must be done—

**Norman Lamb:** By the Opposition.

**Liz Kendall:** No, by the Government. I stress seriously that how the loans, the means test and the cap work together will affect who the Bill benefits—those at the top, at the bottom and in the middle. I do not think that anyone present is fully clear—I am happy to admit that I am not—about exactly who will benefit when all the different elements come into play. It is right that we scrutinise the Government's legislation; the purpose of the Committee stage is go through things in detail. I hope that we have done at least some of that today.

We will think about what amendments we might table on Report, but for now I will sit down. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 34 ordered to stand part of the Bill.*

*Clauses 35 to 38 ordered to stand part of the Bill.*

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

5.5 pm

*Adjourned till Tuesday 21 January at five minutes to Nine o'clock.*

## Written evidence reported to the House

CB 18 Local Government Association and Association of Directors of Adult Social Services

CB 19 National Autistic Society