Centre for Policy Studies

Pointmaker

CARE FOR THE ELDERLY

THE LIMITATIONS OF THE DILNOT PROPOSALS

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SUMMARY

- The Dilnot Commission report marks a significant break with the previous all-party consensus on care provision.
- Dilnot has proposed introducing a cap on the costs of social care of £35,000, at an initial cost to the taxpayer of £1.7 billion (and rising). This is intended to protect families against unknown risks while stimulating a financial products market for care insurance purposes.
- Whilst the desire to protect assets is an understandable wish, it is unclear that it is one that should be fulfilled by the taxpayer.
- The £1.7 billion will mainly go towards protecting the inheritances of families who can afford to pay for care.
- Furthermore, bodies such as the Association of British Insurers have stated that the cost-cap is unlikely to generate an insurance market for long-term care.
- If implemented, the cap must also be better explained. Not only does the cap exclude living costs, it is not a cap on actual spend. Rather, it is based on what a local authority would spend if the individual was eligible for support in the means-test. A self-funder in care for four years in the South East may still pay 90% of the pre-Dilnot cost.
- If £1.7 billion is available for spending in this area of public policy, it would be better allocated to improving the choice and quality of care homes.
- On funding, the Coalition should investigate the potential for varying disregards according to provision for insurance or financial products, or the way disability-linked annuities interact with pensions; and breaking down barriers to equity release.

INTRODUCTION

The Coalition was formed to bring down the budget deficit. In their *Programme for Government,* the leading protagonists from the Conservatives and the Lib Dems agreed that "the deficit reduction programme takes precedence over any of the other measures in this agreement". They stated that deficit reduction was essential to stabilise the economy and to bring about recovery. They agreed the answer to a debt crisis was to borrow less, not more.

They stated in their first five year plan that they would achieve 80% of the deficit reduction by cutting spending, and 20% by raising taxes. They warned us of a new era of austerity, and implied that the austerity would be toughest in the public sector.

If you read the numbers of the government's strategy, rather than listening to the words used to describe the strategy, it looks different. The 80% of spending cuts were cuts in planned increases, not necessarily actual cuts in spending. The tax increases were front-loaded, with inherited large increases in Income Tax rates and National Insurance Contributions, and Coalition rises in VAT and Capital Gains Tax.

It has now been confirmed that current public spending rose in real terms as well as cash terms in 2010, 2011, and is forecast to rise again in 2012. 2013-15 sees progressively larger reductions in real spending, though cash spending still goes up. It is also now clear that because the economy has not grown as planned in the first two years of the Parliament, the total borrowing over the five year period will be more than £100 billion above the 2010 planned level, with revenues considerably lower despite, or because of, the tax rate rises.

In many areas, the outgoing Labour Government signed the country up to large long-term financial commitments it could scarcely afford, and left new anti-enterprise taxes as a small gesture towards paying for them. These duly helped depress growth and damaged revenues.

Their share-buying in RBS and Lloyds left the country with more risk and exposure to bad debts. Their extension of education and training from three to 18 years of age increased costs substantially, albeit for a better cause. Their approach to public sector remuneration and pensions left large pensions deficits and unfunded liabilities. Their adoption of the Working Time Directive and other measures greatly increased the costs of delivery of important public services.

None of this makes a great background to consider whether the state should assume new responsibilities, or even discharge old responsibilities in a more generous way.

Nevertheless, in the 2010 General Election, all main parties said they would reconsider the financing of care funding, including funding care for the elderly. The Dilnot Report resulted from a government commissioned study into this.

Dilnot concentrated on the financial questions, and has mainly attracted interest because of what it says on how to reduce the contribution of the individual; and increase the contribution of taxpayers. It was less radical or convincing on the big question of how to meet care and support needs, which dominate the concerns of many families.

The Coalition has said that it agrees in principle with Dilnot's idea of capping how much people have to pay for long-term care. It has been understandably cautious about

saying how and when these new liabilities can be taken on by taxpayers. To achieve a lasting and equitable solution to this problem, we need to consider the relative priority accorded to:

- Improving the quality of care that is available.
- How the care can be better provided to meet the needs of each individual.
- Or how much inheritance the children of elderly relatives receive from the last will and testament.

THE NEEDS OF THE ELDERLY AND DISABLED

Many of us do not wish the books to be balanced on the backs of the elderly and disabled. The Conservative Party in opposition said it would protect a range of pensioner benefits in government, and has so far kept its pledge. Some of us feel strongly that if anything we need to be more generous to those who cannot go to work owing to disability, and to the elderly who need more care, whether at home or in a care home. We understand the need to bring public spending in total under control, but have suggested several other areas where there are savings to be made far away from danger to care for the elderly and the most vulnerable.

The difficulty with the recommendations of the Dilnot Report is that the problem it sets out to tackle – the finance for elderly people needing to live in a care home for the closing months of their lives – was unresolved by successive governments in more solvent times. It arrives when the last thing Ministers want, or the country can afford, is another major spending commitment.

THE TRI-PARTISAN CONSENSUS PRIOR TO DILNOT

For many years all three political parties in office have stuck to a clear distinction between health care and assisted living in a care home. They have argued that the NHS is there to provide health treatment free at the point of need. When an elderly person in a residential home requires a hospital admission or GP service, this is rightly provided free. If an elderly person needs to live in a residential care home, this is thought not to be health care, and is not free at the point of need.

This consensus settled that an elderly person's income or pension should be used to pay for the costs of food, accommodation and other assistance in the care home, just as other elderly people pay for their rent or house upkeep, food and other living costs when living in their own homes. If an elderly person had to move into a care home for the remaining years of their life, they were expected to sell their old family home and use the capital proceeds (above a £23,250 threshold) to pay for their care home costs. All parties and participants in the debate have accepted that elderly people who need care home provision who have capital assets of under £23,250 should have state money to pay for their stay in a home of state approved quality and cost.

This consensus was acceptable to most voters, who had no wish to pay more tax to pay for care home costs for elderly people with capital. Over time, however, it has become increasingly unpopular with some family members of the elderly people in care homes, who have felt the state should provide the care home costs as part of the NHS package. This would mean that the family could inherit the house of the elderly relative, and maybe enjoy the rental income on it prior to the elderly relative's death.

In recent years, politicians have listened sympathetically to the children's case, accepting some right to inherit, and hinting that they would be happy to vote for a larger taxpayer contribution to care home expenses on behalf of better off pensioners.

DILNOT'S AIMS

The Dilnot Report was commissioned in reaction to the perception of a growing crisis in the long-term care system. This arose for two reasons. First, there have been shocking cases of neglect and abuse which have been well-documented by the mainstream media. Second, the lobby against home sales to fund long-term care has grown stronger in recent years.

The Terms of Reference for the Dilnot Report reflected this. The Commission was asked to examine:

- How best to meet the costs of care and support as a partnership between individuals and the state.
- How people could choose to protect their assets, especially their homes, against the cost of care.
- How, both now and in the future, public funding for the care and support system can be best used to meet care and support needs.
- How any option can be delivered, including an indication of the timescale for implementation, and its impact on local government (and the local government finance system), the NHS, and – if appropriate – financial regulation.

DILNOT'S RECOMMENDATIONS

Dilnot responded with a more generous system in which the state would take on a greater role.

He correctly recognised the huge variance in care quality across the country. He also was right in calling for an awareness-raising campaign that long-term care requires private financing. For these reasons, his calls for more in the way of public education and national eligibility criteria and portable assessments have been largely welcomed by the industry.

His conclusions on funding are more controversial. Firstly, he proposed a cap be placed on how much any person has to pay towards their care costs. He thought the cap should be in the range £25,000 to £50,000, with a middling figure of £35,000 suggested.

He proposed raising the asset threshold to £100,000 from £23,250 under which the state will contribute to the care costs. Finally, he assumed elderly people would continue to pay between £7,000 and £10,000 for their annual living costs.

According to Dilnot, his conclusions sought to fulfil two different aims. Primarily, he claimed the cap on costs would provide a degree of certainty for families, and protect their assets against the most extreme unknown liabilities. But he also argued that the cap in itself would generate a proliferation of financial products to allow people to insure themselves against the possibility of needing care provision at all. It is unlikely that either of these will be the result.

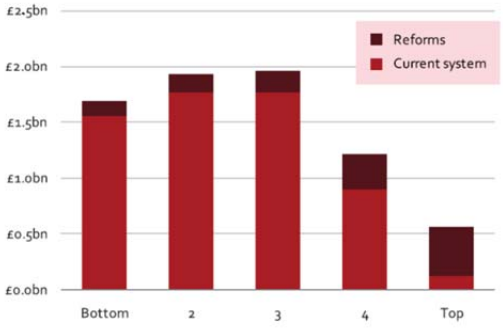
IS THE CAPPED COST MODEL "FAIR"?

Is the move to a capped cost model "fair"? This would see us move from the current system, which gives means-tested support to the poorest, to a public insurance mechanism for all.

The following chart (from the Dilnot report) shows that a cap would be most helpful to the limited number of people who have long-term care needs, who go into a care home and who

stay there for a number of years. These also tend to be the wealthiest.

Figure 11: Public expenditure in 2010/11 on older people's services by income quintile



Source: Commission analysis of ESHCRU/PSSRU microsimulation model results

Dilnot's justification for this change is twofold. He claims that this cap would provide more certainty for families, in turn encouraging provision of insurance for the first £35,000. But his argument is also based on the assumption that someone utilising their own assets or having to sell their home to pay for care is "unfair". But why is it unfair?

The moral and political questions are:

- Who has the *right* to the often substantial sums of money, often property-based?
- Should these funds be used to pay for the living and care costs of someone in a care home?
- Or should these funds rest with the estate so the family can inherit this money?

Housing owned by the elderly is a valuable asset. In 2009, the Pensions Policy Institute estimated housing wealth owned by people over the state retirement age at £907 billion. The London element of this has risen further since then. In 1971 the proceeds from selling the average house paid for 3.7 years of care. By 2008 the value of the average house paid for 8.8 years of care, much more than the average required. Is it really wrong to suggest this should be used to fund care costs?

Families who would like to inherit the old family home or their elderly relative's property argue that it is unfair for the state to pay for the residential or care home costs of those who saved nothing during their lives and did not buy a home, whilst expecting the richer pensioners who did make provision to pay their own bills. Their argument is a specific case of a more general argument against means-testing – it "rewards" the unsuccessful, the profligate, the lazy, the unlucky and the disadvantaged at the expense of the hard working and the prudent.

It is, surely, morally right to expect the taxpayer to fund decent food, care and accommodation for the disadvantaged and the disabled who may have not been able to get a better paid job, or afford the home or put money away in savings. This may also entail the state paying for some of those who could have provided for themselves but chose not to. The latter is the price of being able to do the former: for everyone who has blown money on round the world cruises or fast cars who ends up penniless, there are many more deserving cases of people who were never able to earn good money in their working years.

The two extreme alternatives to means-testing are less attractive. The first is to help no-one, forcing charities and family members to pick up the bill and the responsibility for those without provision. This tough love approach would force more people to make provision for their old age, and would encourage saving and insurance. But it would also leave the most vulnerable with the possibility of falling between the various support structures on offer. A decent society should not entertain the idea of leaving the most vulnerable with no state support.

The second is to make general provision of an equal kind through a universal benefit. The extreme version would be for the state to say that anyone judged to need a care home place would be paid for entirely by taxpayers, leaving the family free to use or inherit that person's home. This is widely thought to be too expensive. It means the millionaires would benefit most, as their assets and income would not be used to pay for care in their later years.

The Dilnot proposals go too far in extending the liability to the taxpayer. The family of an elderly person moving into a care home has numerous options if they wish to keep that elderly person's home. They could pay the elderly person's care home costs out of their income, and have the benefit of the house for themselves. They could, with the elderly person's agreement, rent out the empty home, and use the rental income to pay the care home costs. The family could enter into an equity release mortgage, so that a lump sum could be freed from the value of the property to pay the care homes costs whilst keeping the elderly person's home in the control of the family.

As longevity continues to increase, the "children" due to inherit are often around retirement age, and often have private pensions, good incomes, financial assets as well as property. Their parents tend to move into smaller, easier accommodation for their retirement years prior to needing a care home. These homes have no sentimental value for the children, and are not usually suited to the children's needs with families of their own. The only real reason the children want to inherit is they would like to have more money. That is an understandable wish, but not necessarily one that should be fulfilled at the expense of the taxpayer.

IS THE CAP WELL EXPLAINED?

Dilnot believes taxpayer subsidisation of inheritances is necessary to provide certainty to families and to encourage them to plan for their care needs. The central plank of this certainty is the proposed cap of £35,000.

But if these proposals are to be taken forward, it is vital that the cap is better explained to the public. In reality, there are two key reasons why the cap is not as strong an incentive as it first appears.

First, some have assumed that the Dilnot proposal caps the individual's contribution to residential care costs to around £35,000. In reality, his figure refers *only to the social care cost component*: in other words, individuals will contribute to their own living costs. This is sound in principle – after all, pensioners not in the social care system also have to fund their own food and accommodation. But it should be clearly understood that individuals would still need to finance their own living costs.

Second, the cost cap proposed by Dilnot is not a cap on what is actually spent on an individual's long terms social care. Rather, it is based on what a local authority would spend if the individual was eligible for support in the means-test. This means that a self-funder staying in a more expensive care home will only see their 'cost-clock' increase each week by the amount that the local authority would spend on them. This means that they might in fact spend significantly more than the £35,000 limit before the limit is reached.

This must be more clearly articulated.

AN EXAMPLE OF HOW THE CAP WOULD WORK IN PRACTICE

For an example of how the cap would work in practice, consider this example provided by Partnership (the largest long-term care annuities provider in the UK).

On average it costs £817 per week for a single nursing care room in southern England (including hotel costs). For a four year stay, it would therefore cost £42,500 per year, or £170,000 overall.

Under the Dilnot proposals (a £35,000 cap on social care costs but with an additional £10,000 per year hotel costs to be paid by the individual), the person in care would be eligible for the state weekly contribution after £35,000 had been clocked up on the care cost-clock. The average local authority rate is £461 per week including hotel costs. Take away the self-funded hotel costs of £190 a week (or £10,000 per year), the state cost-clock for social care would therefore increase by £271 per week until the £35,000 threshold is reached.

Therefore, for the first 129 weeks, the self-funder in this care home would not be entitled to any support as the £35,000 cap would not have been reached (129 weeks at £271 a week = £35,000). Yet during this time, the self-funder would pay the full £817 per week, costing them around £105,500.

Once the cap has been reached, the state would contribute £271 per week for the rest of the four year stay. Thus, for the final 79 weeks the individual would still have to finance £546 per week (made up of £190 per week hotel costs and £346 per week care costs above the local authority rate). This adds up to about another £43,000.

Thus, the self-funder in care for four years will now pay a total of around £149,000 under Dilnot compared with £170,000 beforehand, i.e. they will still fund 90% of the costs of care.

WILL A CAP STIMULATE INSURANCE?

Both the Association of British Insurers and the Strategic Society Centre have stated that the cost-cap is unlikely to generate a pre-funded insurance market for long-term care, despite Dilnot's aim that more people will pre-plan for potential care needs.

The evidence seems to back up this opinion. This type of insurance has been tried before in the UK, but failed to take off. As at the end of 2010, the last provider of these products left the market citing lack of demand – leaving only around 36,000 pre-funded policies still in force. Most studies have concluded that there are both significant demand and supply barriers to these becoming popular, even after the cap is imposed. These barriers include:

- uncertainty regarding future health/care needs;
- uncertainty over future unit care costs;
- a belief that the state provides care free;
- the complexity of products, coupled with the widespread distrust of financial services and uncertainty over the adequacy of products.

Other products may prove more popular. Immediate needs annuities (INAs) are

designed specifically to meet the care costs of those who are at the point of entering care, or are already paying for care out of their own resources. Their high cost typically means that these are usually bought by people who have sold a property – the typical purchaser in 2009 was someone aged 85 paying an £80,000 premium for payouts of £25,000 for the rest of their life increasing either at a predetermined rate or in line with inflation.

Under 7,000 immediate needs annuities (INAs) are in force nationally, but it is estimated that six or seven times more people could afford them – and might benefit from them due to the risk of higher than expected care home costs.

Alternatively, equity release is a mechanism by which individuals can obtain equity held in the value of their homes. It would normally be used to meet immediate needs (i.e. if someone needed to transfer to a nursing home and did not have sufficient income or savings to provide a desired level of care). The current system is biased against equity release to fund long-term care in the home. This is because housing wealth is disregarded when assessing eligibility for state-funded care in the home (unlike for residential care), whereas income and capital from equity release is not disregarded. Furthermore, the Joseph Rowntree Foundation and SHIP (now known as the Equity Release Council) identified two additional barriers which have prevented wider use: first, pensioners on low incomes and pension credit risked losing their benefits if accessing equity release income; second, equity release schemes are viewed with suspicion by older people, and are relatively expensive to set-up due to the need for regulated independent advice, and for the customer to use a solicitor.

POTENTIAL LIABILITIES

The cost of adult social care to the state is expected to increase substantially: from £14.5 billion in 2010/11 to £19 billion in 2020/21. In 2009/10 over half of the funding went towards the elderly. The cost-cap presents a further addition to the government's largely unknown future costs. Dilnot estimates that his proposals would cost around £1.7 billion this year, rising to £2.8 billion by 2020/21 in 2010/11 prices. This assumes a cap of £35,000 on costs the elderly person has to pay, and a requirement that they contribute £7,000 a year to their living costs.

These figures are, however, determined from a range of assumptions which become increasingly difficult to judge in the medium- to long-term. It assumes that disability prevalence does not deteriorate, and assumes that social care costs rise by just 2% per annum in real terms. It is possible more people will live longer and need these services. It is also possible that care costs will rise more rapidly than forecast, particularly as this is a labour intensive activity. If either of these scenarios were realised, the addition of the cost-cap would further increase the bills for taxpayers.

THE CHOICE OF CARE AVAILABLE

The focus on the funding mechanism of social care following Dilnot has overshadowed the more worrying instances of poor quality care seen in the media, and the lack of awareness of the choices available to old people as care needs arise.

Progress has been made in recent years in widening choice and in improving the quality of life for many elderly people. Surveys show that most people want to stay in their own homes and have care brought to them. Council social services departments assist with care packages, assessing the individuals' needs and helping pay for the assistance required.

The development of retirement villages and sheltered housing has offered an intermediate stage between living independently at home and living in a residential care home. Elderly people can have their own flat or small house, their own front door and their privacy. They can also use communal services and facilities, getting help with cooking, catering, cleaning, and maintenance from the staff on the development. This can delay the need for a care home, and allow people to lead more fulfilling lives. Any system of financial support should encourage this type of approach, to put off the day when an elderly person has to be dependent on care home staff for most needs. The government should seek to break down barriers for the use of equity release schemes to fund these.

Another alternative is for elderly people to move into sheltered accommodation. These are usually private sector retirement complexes. The individual or couple have their own self-contained flat or small property, with back up from communal facilities and staff. If they wish to take communal meals, require help with their domestic tasks or are in need of emergency assistance, the Warden or other staff member can usually assist. Close care, or assisted living, takes this idea further, with the individual's property often being in the grounds of a care home. This provides substantial back-up if need arises. Care homes offer permanent accommodation where individuals live in full time. Some just provide full hotel services, others include nursing care.

The better homes have seen substantial improvements. Some of the old Council homes offered very little except for meal services. Better homes now offer a range of facilities, outings and entertainments so that residents have things to look forward to, and activities designed to keep the mind and body sufficiently active. A care home should aim at more than just keeping an individual alive. It should strive to make that person's life as interesting and fulfilling as possible.

All of this costs money. Richer families can afford to select a high quality home and pay the fees. Those dependent on state support need to have access to a decent range of choice, and to have on offer care homes which can provide more than a roof and food. It is crucial that the Coalition should seek to improve the quality of this provision, particularly given the shocking cases of neglect highlighted in recent years.

HOW SHOULD WE SPEND £1.7 BILLION?

If there is an extra £1.7 billion available for this important area of public policy, it should surely be spent on allowing elderly people more choice and better quality care homes.

It is not a great priority during this period of strained public finance to ensure richer children inherit more of their parent's housing wealth. The large amount of money tied up in property for the elderly should be utilised as a resource. It is important for families and the state to find ways of releasing some of that asset value to give elderly people a better quality of care at the end of their lifetimes. The state needs to use its powers of inspection and procurement to ensure higher standards of provision generally. Families should take a strong interest in the suitability of accommodation, as many do already.

In reality, as we have seen, there are various ways that a family can protect and inherit the housing wealth of the parent. In most cases the parent's housing wealth far exceeds what care homes will cost, so there will still be an inheritance. Where an elderly person does need a longer period in a care home, that does

seem to be a reasonable demand on their lifetime savings. Why else does one save, but to have the money for a rainy day?

AND WHAT OF FUNDING?

Insurance has not developed well in this area thus far. Providers dislike the possibility that in a few cases the bills can be large. Many individuals and families either think the care home will not apply to them, or rely on the substantial wealth in their home to take care of future bills.

On balance, Dilnot's cap places too much emphasis on protecting inheritances without providing sufficient incentive for individuals to obtain insurance. Any comprehensive changes to funding must not expose the state to large new costs, but yet must not penalise people for insuring.

There are several concepts that the Coalition could explore. First, it could examine ways of varying disregards depending on how much insurance an individual has taken out – a concept developed by John Major's Policy Unit in 1996/1997. The increases in the disregard upon insurance take-out could be incentivised such that insurance earlier in the life-cycle provides better asset protection.

Another potential area could be to examine the ease with which disability annuities could be rolled into pensions. If people enter long-term care, they could, for example, be allowed to access pension assets early, to purchase a disability annuity.

CONCLUSION

The financial and demographic strain on the social care system is recognised on a cross party basis. Even in these difficult fiscal times, many of us realise that we have a duty to make better provision for the old, vulnerable and frail.

The Dilnot Report came at a time of increasing concern at the state of the quality of many care home services, and it correctly identifies many of the challenges of the sector. Its remit was mainly focused, however, on the future funding mechanisms for care needs. Since then, media coverage of the report has tended to conflate the personal funding of care with issues surrounding care quality.

Dilnot's conclusion, to cap the lifetime costs of social care to £35,000, marks a large break with the previous consensus. One must question whether the £1.7 billion cost of the cap is the best use if further funds are available. This money will mainly go towards protecting the inheritances for families who can afford to pay for care. Furthermore, Dilnot's claim that the cap in itself will generate an insurance market has been met with a mixed reception by the industry.

Now is not the time to develop a new state programme which will be incredibly difficult, politically, to rein back if downside risks are realised. The money, if it is there, would be better spent on improving the quality and choice of care homes open to older people.

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ISBN 978-1-906996-61-1

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