

## **Briefing Note:**

### **Government Green Paper – Shaping the Future of Care Together Published on 14<sup>th</sup> July 2009**

Mike Hurst, 3<sup>rd</sup> August 2009

The Government Green Paper on the Future of Care in England and Wales was published on 14<sup>th</sup> July 2009. At the same time the Government announced a consultation period, during which interested parties are invited to comment, which will run until 13<sup>th</sup> November 2009.

The principal problem, as identified by the Government, is that more people will need care support in the future due to significant changes to demographic trends.

The Government recognises that the current system is ill equipped to meet future demand pressures and it appears to be unfair, difficult to access and unsustainable.

If the current system is left unreformed, a lower proportion of people in the future will have their basic needs met through social care, with knock-on effects on other services such as the NHS. Therefore, the Government believes intervention is necessary in order to meet these future pressures.

The Government's policy objectives and intended effects are that the new system is fair, simple and affordable for everyone, underpinned by national rights and entitlements, personalised to individual needs. In this new national care service, everyone should be able to get really good care wherever they live and whatever their own or their family needs are.

There are three main policy options under consideration.

#### **Policy Option 1 – Pay for yourself**

In this system, everyone will be responsible for paying for their own basic care and support, when they need it without any support from the State. This option is ruled out as it is seen as being fundamentally unfair.

#### **Policy Option 2 – Partnership arrangement**

In this system, everyone who qualifies for care and support will be entitled to have a set proportion of their basic care and support cost paid by the State. People who are less well off will have more of their care paid for and people who are better off will pay more. This system is a variant on what we currently have.

### **Policy Option 3 – A private insurance scheme**

In this system, everyone will be entitled to have a share of their care costs met just as in the partnership model. This system will go further to help people cover the additional cost through private insurance.

### **Policy Option 4 – A comprehensive scheme, the cost of care being met by the state**

In this system, everyone over retirement age who has the resources to do so will be required to pay into a state insurance scheme. Everyone who is able to pay will make their contribution, and then everyone whose needs mean that they qualify for care support, will get all of their basic care and support for free when they need it.

### **Policy Option 5 – A tax funded system**

In this system, people will pay tax throughout their lives which will be used to pay for all people who currently need care. When people need care themselves, they will get all their basic care free. This option has been ruled out as well because it is seen to place a heavy burden on people of working age.

The current system is not seen to deliver the personalised, high quality care that current and future generations will expect. In particular, the system (based on the combination of national and predominantly local service position) is seen to:

- Be unfair and difficult to access due to lack of transparency regarding eligibility;
- Have some disparity of service provision in different areas of the country; and
- Not effectively meet all the needs of those who require care.

Personal injury professionals will note that in dealing with cases, clients with the same needs receive different levels of care dependent upon where they live, i.e. a post-coded lottery.

Local Authorities across England use the Fair Access for Care Services (FACS) Guidance issued by the Department of Health to assess and determine eligibility for services; this aims to make such decisions more transparent.

However, different Authorities interpret the FACS criteria differently and so differ in the levels of need they support. Some Authorities provide support for care packages for people with moderate or substantial and critical levels of need, whereas some only provide support for the substantial and critical levels, or indeed, just critical.

This is seen and recognised by people to be very unfair. Clients also find it unfair that when they move to a new area, they are unsure as to whether they will still get funding for the care and support in the same way.

The Green Paper sets out what people can expect from a future national care system, which includes:

- The right support to help people stay independent and well for as long as possible and to stop care and support needs getting worse;
- Wherever a person resides in the country, their care and support needs will be assessed in the same way and they will have the same proportion of their care paid for. This is called a national assessment;
- The Government intends to have a joined-up service where all the services that people need will work together smoothly, particularly when a person's needs are being assessed. The services that people use will be based upon their personal circumstances and needs;
- Money available for such services is intended to be spent wisely and everyone who qualifies for support will get some help meeting the cost of care and support. This is obviously a continuation of some sort of means-testing system.

It appears clear from the Green Paper that change and reform is on the way. However, whether this will have any impact on personal injury and clinical negligence claimants, insofar as their awards of damages interacting with means-tested Local Authority care, is unclear.

In the Guidance on Fairer Charging for the new Individual Budgets for care, published simultaneously with the Green Paper, the Department of Health stated that it was happy with the Fairer Charging system as it currently stands. This means we are left with the position as laid out in the *Crofton* Judgment.

Given the length of time it takes to implement political reform, especially as the reforms to be addressed in the Green Paper are complex and far reaching, it seems likely that we are left with the current system for the foreseeable future.

This means that Local Authorities across the country can adapt their Charging Policies to take into account income from personal injury damages when assessing for domiciliary care packages. The *Crofton* case makes it quite clear that for **residential care** and accommodation, capital and income from personal injury awards, whether held at Court or within a Personal Injury Trust, will be disregarded.

For **domiciliary care**, whilst capital held at Court or within a Personal Injury Trust must be disregarded by Local Authorities, they may take into account income from such capital and/or periodical payments income, subject to local policy decisions.

With the recent falls in interest rates, both on Special Account and in the private sector, many clients will have seen such income generated on their capital “fall of a cliff”.

This means that any Local Authorities who have been taking into account such income, will effectively be obliged to contribute to any shortfall due to reduction in interest received on a pound for pound basis. Further, it is also important to note that it is possible and legitimate, with appropriate investment advice, to minimise such income.

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