Consultation Response

Adult social care charging reform: distribution of funding 2023 to 2024 – consultation response by London Councils

London Councils represents London's 32 borough councils and the City of London. It is a cross party organisation that works on behalf of all its member authorities regardless of political persuasion.

Introduction

1. London Councils welcomes the opportunity to respond to the Government's consultation on adult social care charging reform: distribution of funding 2023 to 2024. Adult social care funding represents a third of local government spending: it is imperative for the viability of the sector that a sustainable long-term funding solution is delivered and implemented fairly.

2. However, the planned reforms are extremely complex and delivering both the fair cost of care and charging elements of the reforms simultaneously - whilst dealing with continued high demand resulting from the covid-19 pandemic, the soaring costs of inflation and significant shortages of staff – is immensely challenging. Our member boroughs have significant concerns about the deliverability within the timeframe and the cost envelope provided by Government.

3. We also believe the options set out in the consultation require more development and should be based on further evidence, having been thoroughly tested with the sector. We believe more time is needed to consider the evidence and continue the development of the options so that we consider the full complexity of the issues and implement fair and sustainable reform. We are, therefore, calling for the implementation to be pushed back to April 2024. Above all – regardless of what funding distribution is eventually decided – we're calling for the reforms to be fully funded so that no authority is financially worse off as a result. If this requires an increase above the £5.4bn earmarked at SR21 then the government should deliver this prior to the next Spending Review.

4. This response firstly sets out London Councils' general comments regarding ASC funding and our key concerns with the consultation proposals, before providing detailed responses to the specific questions posed.

5. In summary, our key concerns are regarding the:
   - financial sustainability of the sector
   - sufficiency of adult social care funding
   - deliverability of the adult social care funding reforms
   - high degree of complexity within the proposals
   - lack of transparency and engagement with the sector in developing these reforms; and the
   - principle of distributing funding for one age cohort based on another age cohort.

General Comments

Financial sustainability

6. The adult social care (ASC) funding reforms are not happening in a vacuum: local government has suffered from underfunding for far too long, with London boroughs' overall resources still 22% lower than they were in 2010 in real terms. The overall funding landscape also continues to be very uncertain. Despite a three-year Spending Review, local government only received a one-year settlement for the current year (effectively for the fourth year in succession), and there continues to be no clarity about the scale or timetable of the overall funding reforms to needs and resources or the reset of the business rates retention scheme. With so much uncertainty, accurate medium-term planning - and with it the efficient use of resources - is almost impossible

7. The covid-19 pandemic added £3bn of financial pressures to London boroughs in 2020-21 and 2021-22, and while the funding support the Government provided was very welcome, the demand pressures in many services haven't subsided. We are particularly concerned about rising demand pressures on DSG budgets, children's social care, homelessness and – most significantly - in adult social care, where the impact of long covid, the interaction with the huge NHS backlog, and increasing delayed transfers into ASC means there will be a very challenging winter ahead. Outer London boroughs, as some of the lowest funded in the country, have particularly few levers to alleviate these growing pressures.

8. In addition, the energy crisis and rising global inflation have added £300m to £400m of additional financial pressures on London borough budgets this year, this is despite the uplift in funding at the 2022-23 LGF Settlement, and our latest estimates suggest the level of required next year and in each of the following two years, could rise to £700m.

9. **As such, we call on the Government to confirm details of a 2-year local government finance settlement as soon as possible to provide funding certainty and increase local government funding in line with inflation next year for all funding streams other than council tax to protect vital local services from significant cuts.**

Sufficiency of adult social care funding

10. More specifically, ASC has provided the greatest source of financial concern within local government for many years. Over the last decade, the Government's short-term approach to funding social care - with the addition of numerous annual top-ups to grant funding - has failed to provide stability and hindered the strategic planning of services. The ASC precept has not delivered funding to where it is needed most, while representing central hypothecation over the only tax councils have any control over. Prior to the Spending Review, we estimated London Boroughs needed an increase of £400m over the SR period to meet underlying demand and cost pressures, not including any ongoing pressures caused by covid-19.

11. London Councils, therefore, welcomed the reforms announced a year ago, as a long-term sustainable solution is desperately needed. However, it has become clear that not only are the reforms themselves unlikely to be affordable, but that there is still huge uncertainty over the long-term funding of social care. The £5.4bn set out over the SR21 period will not go towards meeting the underlying demand pressures and ongoing high demand for care following the pandemic.

12. **We welcome the new Prime Minister's commitment to investing more in adult social care during the leadership election campaign and urge the Government to set out how it plans to meet these pressures as soon as possible, including how adult social care will be funded long term if the Health and Social Care levy is scrapped.**

The deliverability of the ASC funding reforms

13. London Councils has significant concerns about the deliverability of the ASC funding reforms – both in terms of the capacity of councils and the Government to deliver them by October 2023 and the complexity of simultaneous implementation of the fair cost of care and capping reforms.

14. We are concerned that the £3.6bn funding over three years to implement fair cost of care reform, the care cost cap and extension of the means test threshold will not be sufficient. The LGA estimates the existing provider market funding gap is £1.5bn nationally. Tackling this alone is more than the funding allocated for the fair cost of care reforms, leaving nothing for other practical implementation matters. Delivering these reforms is already redirecting resources away from delivering frontline social care when the ongoing impact of the pandemic and now rising inflationary costs is putting huge pressure on staff capacity.

15. These concerns are echoed across the sector, with the well-publicised *"Preparing for Reform"* report by Newton earlier this year forecasting a £10bn funding gap over the first ten years nationally and the recent inquiry by the Levelling Up, Housing & Communities Select Committee concluding that the Government has underestimated the combined cost of its charging reforms and that adult social care needs at least £7bn a year to meet the cost of reforms, rising costs and unmet care needs.

16. **We believe these hugely important reforms need time to get right and so we are asking the Government to push back their implementation to April 2024 at the earliest, to ensure the sector has the capacity and resources to deliver them.**

17. If the Government continues with the current timetable for implementation we ask that allocations for the 2023 Market Sustainability and Fair Cost of Care Fund are discussed and consulted upon with the sector in good time to support financial planning. While we recognise that this fund is out of scope for this consultation, it would be enormously helpful to give local authorities certainty on the allocations of this fund and details of how and why it will be distributed as soon as possible.

Complexity

18. Moving to the specific proposals within the consultation, our biggest concern is regarding the way the proposals have been presented, which relies on a significant amount of trust by the reader in the statistical analysis undertaken by academics at the University of Kent. The proposed formulae are, by their nature, highly technical and extraordinarily complex. This isn't by itself a criticism, or indeed unique to adult social care funding; however, it does make the proposals extremely difficult for the lay person to follow. The consultation document and technical note fail to clearly explain for non-academics why specific variables have been chosen and others not within the means test formulae options or to explain how weightings have been arrived at. Such complexity and opacity exacerbate concerns that the grant is being unfairly distributed.

19. There seems to be a step missing in explaining how the very detailed 59-page statistical methodology underpinning the formulae produced by the University of Kent results in the proposals in the consultation. It is also unclear how the overall weightings between the three elements of the funding have been derived (e.g. the £490m for the extension to the means test, the £35m for the cap on care costs, and the £247m for implementation and additional assessments), and indeed the relevant splits between older and younger adults within the third block specifically.

20. It was disappointing that the DHSC chose not to hold engagement workshops or information sessions with the sector to help them interpret the complex proposals at the start of the consultation (in the way that happened with the Homelessness Prevention Grant recently, for example).

Lack of transparency and engagement

21. Given the significant amount of funding being distributed, it is disappointing that these proposals have not been designed over a longer period of time in collaboration and dialogue with the sector. We understand that

a working group has overseen its development, but this is an important and complex funding stream and should have been more widely discussed with both social care and finance colleagues from the sector across the country.

22. It is also concerning that the specific local authority modelling which sits behind the proposals has not been published in the way that the Government has done for other funding streams (the UKSPF for example), as this level of transparency enables proper scrutiny of the proposals.

23. We welcome the commitment to continue to monitor new data sources and consider whether modifications are required to distribution mechanisms in future, but this does but go far enough. There must be a clear and responsive feedback process to for local authorities to inform the government of this. If the Government is insistent upon implementing on the current timetable, we believe there must be a detailed and robust monitoring exercise to ensure costs are fully funded and the formulae do accurately reflect the costs incurred. As the methodology outlines, these reforms "have not yet been implemented, we cannot directly assess the 'fit' of our models by comparing them with (historical) real data". This data will become available quickly to local authorities once the reforms begin, and so it is vital that any evidence of significant underestimates of need and eligibility, and the cost of additional assessments are factored in quickly. A full assessment of the pilot local authorities for the reforms would be helpful, particularly in relation to the cost implications and their market capacity and readiness. This exercise could be undertaken while the reforms are paused, as we propose.

24. If, upon implementation of the reforms, the predicted outcomes envisaged in the underlying formula methodology are an underestimate of the real demand, there must be a simple process for funding to be increased responsively.

25. **Regardless of what funding distribution is chosen – we're calling for the reforms to be fully funded so that no authority is financially worse of as a result. If this requires an increase above the £5.4bn earmarked at SR21 then the Government should deliver this prior to the next Spending Review.**

Proposals for younger adults

26. It is clear from the options set out for distributing funding for the extension of the means test for younger adults that more time is required to develop a robust formula.

27. As we set out below, none of the options proposed are particularly convincing, and we are especially concerned about the proposal (option 3 in Question 2) to use the older adult's formula to distribute the means test extension funding for under 65s. We believe it is fundamentally wrong to distribute funding to local authorities relating to one age group based on a formula and data derived for a completely different age group. There is a well-established recognition that adult social care needs differ markedly between these two cohorts. It is also disappointing that the weightings derived from the older adult's formula have similarly been used – with some big assumptions – within option 1 (Q2). This is a worrying trend – with the Government choosing to distribute the Social Care Grant (which can be spent on both adult and children's social care) using only the ASC needs formula, which London Councils has opposed since its inception.

28. Given the limited data available for younger adults, even the underlying methodology by the university of Kent suggests that "consideration is merited for either bespoke data collections or exploration of alternative datasets (recognising their limitations) for direct estimation of a younger adults formula".

29. These are further reasons why we believe more time is required to deliver the reforms with wider consultation with the sector particularly regarding the costs for working age adults. As such, **we urge the Government to push back the implementation of a new allocations methodology in order to work with local authorities to develop robust formulae that accurately capture need.**

Responses to specific questions

Q1. Do you agree or disagree with the proposal to use the ASCRU-PSSRU means test extension formula for people aged 65 and over (2022) for distributing means test funding for people aged 65 and over in 2023 to 2024? (Strongly agree – Agree – Neither agree nor disagree – Disagree – Strongly disagree). Please explain your preference.

30. London Councils disagrees with this proposal. We don't believe sufficient justification for the metrics used within the formula has been provided. Specifically, the consultation does not explain, in lay terms, how the detailed and highly technical academic report that sits behind the formula has resulted in the formula and the weightings proposed. We reiterate our view that the best course of action is to push back the implementation of the charging reforms and to further road-test and develop the formula in the meantime.

31. Regarding the specific measures, we broadly agree with the inclusion of Attendance Allowance and agree in principle with the use of people with a significantly limiting condition aged 85 and over, as reasonable measures of need in an area (although it is unclear why the over 85 population with limiting illnesses has been used rather than the over 65 population which is used in the subsequent formulae concerning the costs of implementation and additional assessments). The justification for this difference in age categories between the first formula and the latter two has not been appropriately explained.

32. We also believe further evidence and explanation is required regarding the wealth proxies used in the formula: "the number of homeowner households aged 65 and over per census households aged 65 and over" and the multiplication by properties in the various council tax bands. The ASCRU-PSSRU states that the "preferred specification is to use council tax band models. Although banding is somewhat out of date, it is comprehensive. House price data is for the sample of homes for which there were transactions". London Councils believes that this is insufficient justification to use this wealth metric in this way. The use of council tax bands as a proxy for how wealthy an individual's housing assets are, and therefore whether they would benefit from an extension of the means test, is too crude and doesn't account for the very different makeup of the housing market, home ownership rates and private rental sector of the capital compared to other areas of the country.

33. Following this, the underlying logic of the negative need proxy for the number of pension credit claimants is also something we contend is not sufficiently justified in the methodology for this formula. It is stated that areas with a higher proportion of pension credit claimants will have a lower additional expenditure requirement because this is representative of areas where a greater proportion of the population will already be covered by the existing means test. We believe that more evidence needs to be provided for this relationship to be proved, particularly given the size of the negative coefficient attached to this metric.

34. We would also question the negative needs proxy concerning the proportion of couple households in a local area. The justification behind its inclusion is that for households where a partner is present it is more likely that the partner can provide informal care and thus decrease the likelihood of an individual needing to receive formal care, meaning an area would have a lower additional expenditure requirement. However, with the extension of the means test, those households with couples which then become eligible for state provided adult social care may indeed avail themselves of this rather than continuing to provide informal care, if that is indeed the relationship between these two factors. Much more evidence would need to be provided for this metric to have merit in its inclusion.

35. Due to the above issues with this formula, we reiterate that these charging reforms ideally need to be paused.

Q2. Do you have a preferred approach for distributing means test funding for adults aged under 65 in 2023 to 2024?

Option 1 – ASCRU-PSSRU means test extension formula for people aged 18 to 64

Option 2 – per capita (people aged 18 to 64) distribution formula

Option 3 – ASCRU-PSSRU means test extension formula for people aged 65 and over (2022)

Other

Please explain your preference. We are particularly interested in any evidence that would add to our understanding of the distribution of pressures.

36. In the absence of better options, London Councils' preference is for option 2.

37. We strongly disagree with option 3 and the use of the ASCRU-PSSRU's 65+ formula for the extension of the means test for the younger age cohort of 18-64-year-olds. We believe it is fundamentally wrong to distribute funding to local authorities relating to one age group based on metrics targeted at a completely different age group. There is a well-established recognition that adult social care needs differ markedly between these two cohorts, which is why the 2013-14 adult social care relative needs formulae, for example, has separate sub-formulae aimed at each age group. London, and other large urban areas generally, has a relatively younger adult population and so would be particularly disadvantaged by this. This follows the similarly worrying example of the Government choosing to distribute the Social Care Grant (which can be spent on both adult and children's social care) using only the ASC needs formula, which London Councils has opposed since its inception. Under no circumstances do we believe that this option would be appropriate in distributing funds.

38. We also have three broad concerns regarding option 1 (the ASCRU-PSSRU means test extension formula for people aged 18 to 64), including:

- **Oversimplicity** - While it improves upon option 3, by using metrics targeted at the correct age group – it may be overly simplistic as it only includes a single metric for each of the strands (need and wealth). We don't believe Personal Independence Payments (PIP) necessarily captures the totality of adult social care needs under this extended means test; for example, it has been highlighted that PIP may not be the best proxy for mental health needs[1], which along with learning disability support are growing areas of spend in this cohort for London boroughs.
- **Using older age assumptions** – as with option 3, we are concerned that data relating to the older age category is being used to determine the formula for the under 65s. Specifically, the need proxy of PIP and the wealth proxy of homeowner households are weighted using the parameters that link these two effects in the older adult's formula. We would question the assumptions made that relative wealth and need effects are the same across all ages and that the new variables, once the coefficients are reweighted, capture the same underlying wealth and need effects, as the over 65's formula variables. The methodology note accepts that unit costs for social care for younger adults are indeed higher than for older adults and that this approach could place too much weight on the wealth component of the formula.
- **Different rates of homeownership in London** – We disagree with the inclusion of "homeowner households aged 25 to 64 per census households aged 25 to 64" as the wealth proxy. London has a far lower rate of homeownership (at just over 50% in 2020) compared with 66% across England overall[2], and this is even lower in 18–25-year-olds, which are completely missed by this indicator (which is not adequately explained in the methodology). Homeownership rates do not represent the value of a housing asset. Given the extreme difference of London's property market to other areas we are concerned this could disadvantage London boroughs.

39. In the absence of better options, we would like to express a preference for option 2 as the best way to currently distribute this funding. As the underlying methodology report notes, there is a paucity of good

[1] https://www.tandfonline.com/doi/full/10.1080/09687599.2021.1972409

[2] https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/subnationaldwellingstockbytenureestimates

datasets currently for this younger age cohort. While distributing funding based on population is far from ideal, we believe it is the best option available of the three options given.

40. Ultimately, we believe it would be sensible to take time to improve the quality of data collected on this younger adult's cohort and would suggest the implementation of the reforms is pushed back partly to undertake this exercise.

Q3. Do you agree or disagree with the proposal to distribute cap funding in the same way as means test funding for adults aged under 65 in 2023 to 2024? (Strongly agree – Agree – Neither agree nor disagree – Disagree – Strongly disagree). Please explain your preference.

41. London Councils conditionally agrees with this proposal, but solely based on whether our preferred option for the 18-64 formula is selected. If the option selected is either option 3: the ASCRU-PSSRU means test extension formula for people aged 65 and over, or option 1: the ASCRU-PSSRU means test extension formula for people aged 18 to 64, then we disagree. This is because of the reasons given in answer to question 2.

42. We agree that the cohort which this cap on care costs is aimed at is likely to be in the 18-64 age cohort with complex care needs who are therefore likely to reach the asset cap the quickest. We also agree with the principle that a single formula should be used to distribute both the means test and cap on care costs for next year, in the absence of more detailed data, to retain simplicity.

43. However, we would like to see a clearer explanation of the profiling of the overall quantum of funding allocated to this part of the charging reform and how the number of £35m was arrived at. It is not clear from the methodology or the DHSC's Impact Assessment of the reforms why this is considered enough for this part of the reforms.

44. More fundamentally, this will become a significant cost as more and more people reach the £86k cap over time. We would welcome engagement and discussion regarding how this element of funding is calculated as the DHSC develops this methodology in due course.

Q4. Which option do you prefer for distributing £247 million of funding for assessments in 2023 to 2024?

Option 1 – ASCRU-PSSRU assessments formula (utilisation approach) 2022

Option 2 – ASCRU-PSSRU assessments formula (normative approach) 2022

Option 3 – ONS estimates on the number of self-funders

None

Please explain your preference.

45. None of the above.

46. We strongly disagree with the use of option 3 - using the ONS estimates on the number of self-funders for three reasons:

    - **Missing data** - this dataset does not draw from all authorities, with at least three London authorities missing. One of those (the City of London), requires its own sub-formula to account for this, further adding to the complexity and questionable utility of this formula. The other two boroughs do not have data and, therefore, must use a regional average instead of their actual rates of self-funders.

- **Reliability** - the dataset has highly variable confidence limits connected to the estimate of self-funders in each local authority, which calls into question its utility as a stable measure. It is also a very recent dataset, with no sufficient time-series yet established with which to assess whether it truly reflects self-funder rates in a local area.
- **Exclusion of community care** - of greatest concern, it focusses purely on residential care settings. The ONS has published estimates of self-funders in the community in July 2022, but the technical note on this consultation itself said that this could not be used “due to a combination of quality issues mentioned in the publication, and because the underlying data only includes the location of the community care providers not the people supported by the services.” As the number of self-funders in community care is one of the largest unknowns about these reforms, it would be remiss to base allocations of funding for additional assessments on a formula that does not include this metric (or even a suitable proxy for it).

47. As the methodology outlines, there are problems with both the utilisation approach (option 1) and the normative approach (option 2), which would have benefited from further explanation for the lay reader. The utilisation approach may underestimate additional assessments from people with lower need, whereas the normative approach relies very heavily on whether the unproven metrics selected are appropriate measures of need and may also underestimate additional assessments because of this.

48. As both options 1 and 2 use the same metrics as the 65+ means test extension formula, merely with different coefficients, London Councils would reiterate the concerns set out in response to question 1 (paragraphs 32 to 34).

49. Additionally, as mentioned in response to question 1, there is an inconsistency between the metric used here “the number of people aged 65 and above with a significantly limiting condition per census person aged 65 and over” and the over 65s means test extension formula, which uses 85 and above as its measure. We ask that the reason for the different measures is explained.

50. Finally, the profiling of the funding by age cohort is much less clear than for the extension to the means test funding. Of the £247m being distributed, £223m (90%) is earmarked for the implementation costs and additional assessments in the over 65 cohort, while £24m (10%) goes to 18-64-year-olds. No clear reason is given for this in the consultation document or technical note. There is not a separate formula given for younger and older adults here, and there are not suitable metrics for the younger age cohort contained within any of the formulae options so this would again seem to disadvantage those areas with relatively younger adult populations.

51. Due to the above issues with all three formula options, London Councils cannot recommend any of the three options, and instead would reiterate that the reforms should be paused to address the underlying issues with the formulae construction and data quality and availability issues.

Q5. Is there anything else about the options for distributing funding that you wish to comment on?

52. As an additional point, a great deal of these formulae rest upon underlying Census data for the utility of their measures. It is stated that the reason for not using Census 2021, instead using Census 2011, is because datasets at a LSOA level have not yet been published. London Councils contends that there are greater methodological concerns with the use of the Census 2021 figures as they currently stand – namely population undercounting because of when the census was held during the third lockdown of the Covid-19 pandemic. Therefore, before these formulae are introduced, and subsequently updated when this Census data becomes available, it should be ensured that any methodological issues have been addressed.