People with preserved rights

A socially excluded minority

William Laing

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1 Introduction

In *A Fair Price for Care?*, published by the Joseph Rowntree Foundation in 1998, the author proposed that the money spent by the DSS on preserved rights claimants in care homes might be transferred to local authorities, which would become responsible for arranging their care and accommodation in the normal way. Transfer of funds should include the necessary additional resources to raise preserved rights rates to the baseline fee rates paid by each individual authority, together with additional sums for assessment and for continuing administration.

Since then, the Royal Commission on Long Term Care has made a similar proposal in its January 1999 report (Stationery Office, 1999).

Most recently, the Government itself has put the issue on the policy agenda. In an announcement to the House of Commons on 2 December 1999, the main topic of which was the Government's intention to set up a National Care Standards Commission, Health Secretary Alan Milburn went on to say:

> *We are also considering transferring to local authorities the funding and care management responsibility for people who entered care homes before the 1993 community care changes and who have preserved rights to Income Support towards their care costs.*

The Government's initiative reflects a recognition that preserved rights arrangements have become something of an anomaly. Moreover, preserved 'rights' can be viewed as a misnomer, since most of those with 'rights' are in practice a disadvantaged minority who have been excluded from important financial and non-financial advantages enjoyed by care home residents supported by local authorities or the NHS. The Government's willingness to look at the issue now also reflects the diminishing population covered by preserved rights – and consequently the declining cost to the Exchequer of modifying the regime.

Abolition of preserved rights is the most direct approach to dealing with the issues of unequal access to support from state agencies that emerged after 1993. But there are alternative approaches that would address some if not all of the issues, possibly at lower cost to the Exchequer. In declining order of comprehensiveness of the solution offered, the main options open to the Government are:

1. abolition of preserved rights, and transfer of all funding and care management responsibilities to local authorities
2. extension of the powers of local authorities to 'top up' care home fees for residents *over* pension age with preserved rights, so that these come into line with existing local authority powers to top up fees for residents *under* pension age
3. provision for greater local variability in the nationally set limits to the special higher rates of Income Support payable to people with preserved rights, in order to reduce the wide gap between the limits and prevailing fee rates in high-cost areas of the country.

The aim of this study is to describe the background to this important policy issue, to assess the relative merits of the various options for each of the client groups affected and to consider the potential impact on taxpayers, on various budget-holding agencies within the public sector and on care home providers.

2 Background to preserved rights

The legal framework

Up until 31 March 1993, the great majority of people needing state funding to enter an independent sector residential or nursing home in Britain were in receipt of special higher levels of Income Support, a means-tested benefit available from the Department of Social Security (DSS).

The state funding system changed fundamentally with the implementation in April 1993 of the community care reforms embodied in Parts III and IV of the NHS and Community Care Act 1990. This transferred to local authorities the responsibility to make arrangements for people needing public financial support to enter residential and nursing homes from 1 April 1993, subject to both a means test and an assessment of need. However, Section 26A of the National Assistance Act 1948 (contained in Section 43 of the NHS and Community Care Act 1990) prohibited local authorities from making residential arrangements for people who were already resident in independent sector care homes on 31 March 1993.

The provisions of Section 26A and associated regulations are described in Local Authority Circular LA[93]6. The effect has been to divide state-funded residents of independent sector care homes into two groups.

- Those entering homes for the first time on or after 1 April 1993, who look to local authority social service departments (or in a minority of cases to the NHS) for assessment and financial support.
- Those who were 'ordinarily resident' in an independent sector care home on 31 March 1993, who have 'preserved rights' to special higher levels of Income Support, but whom local authorities are – with some exceptions – legally prohibited from supporting. This group includes care home residents who were paying their fees from private means on 31 March 1993 and who have subsequently run out of money.

There are four exceptions to the legal prohibition on local authorities providing financial support for people with preserved rights, set out in regulations (SI 477, 1993). Their overall effect is to empower local authorities under the post-reforms regime to 'top up' at their discretion the special higher levels of Income Support funding for people *under* pension age, in effect continuing the same pre-reforms powers local authorities had under the now repealed Schedule 8 to the NHS Act 1977.

In contrast, there are few circumstances in which local authorities are empowered to offer financial support to people *over* pension age with preserved rights.

The four exceptions are:

1 *People in independent sector residential care homes for whom local authorities were already providing financial support at 31 March 1993*. This exception applies to all age groups, though most of those covered were under pension age at the time and most survivors remain under pension age now.

2 *People under pension age in independent residential sector care and nursing homes for whom local authorities were not providing financial support at 31 March 1993*. When

such people reach pensionable age, local authorities may continue to support them and to make arrangements to transfer them from a residential home to a nursing home if necessary.

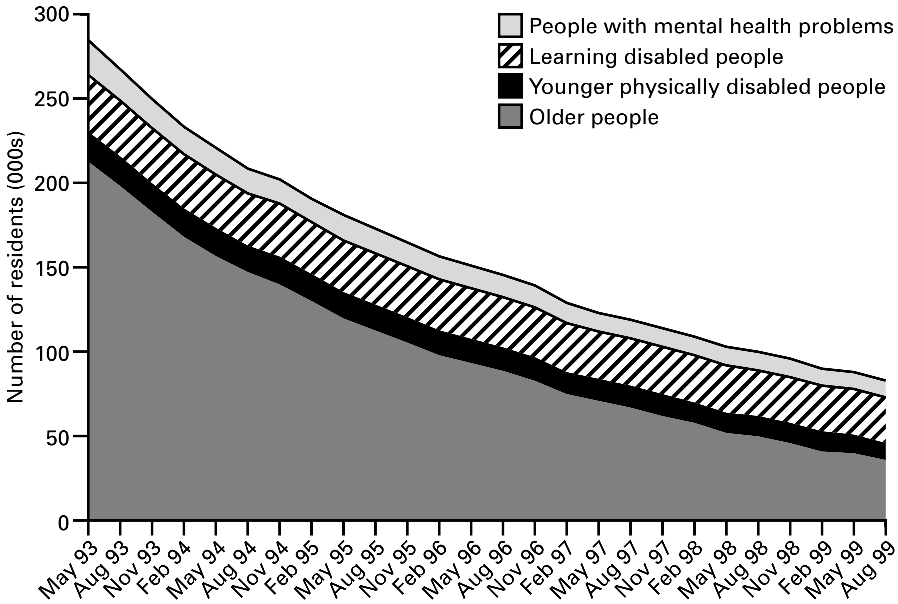
3 *People without preserved rights or who lose their preserved rights*. An example of the former is someone living in a small home at 31 March 1993 who was not eligible at the time for the special higher rate of Income Support. People who lose preserved rights include those who leave residential care for at least 13 weeks, or 52 weeks if they are admitted to hospital.

4 *People over pensionable age in independent sector residential care homes who face home closure or eviction*. This is the only exception specifically for older people. In cases of threatened eviction, local authorities are empowered to pay for alternative residential care arrangements, but only in a home which is not owned or managed by the person or organisation which owns or manages the resident's current home. The purpose of this restriction was to prevent undue pressure being placed on local authorities to provide additional funding for residents with preserved rights. Moreover, local authorities are prohibited from providing financial support for *nursing* home residents with preserved rights who face eviction, unless the local authority has already provided the person concerned with financial support under one of the other exceptions.

Diminishing numbers of people with preserved rights

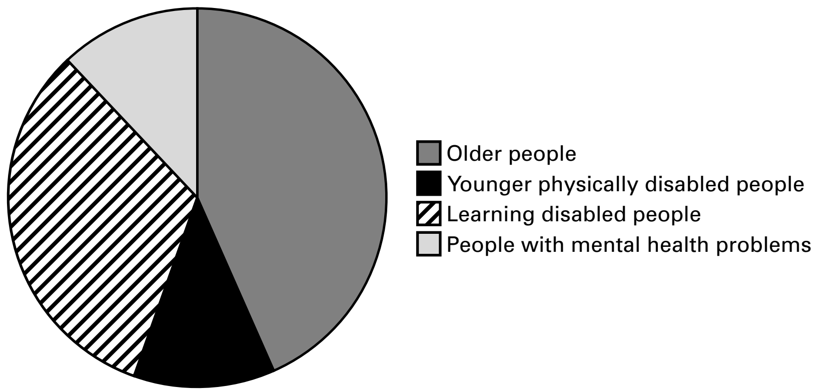
In August 1999, there were 83,000 residents of independent sector nursing and residential homes in Britain who were in receipt of special higher levels of Income Support. Their numbers have declined sharply and the composition of the population has changed markedly over the last six years (Figure 1). In May 1993, there were 213,000 older people claiming preserved rights benefits, but this had dropped to 36,000 by August 1999. In contrast, numbers of other preserved rights claimants – including learning disabled people, younger physically disabled people (YPD) and people with mental health problems – declined much less sharply, from 72,000 in May 1993 to 47,000 in August 1999 (Figure 2). Though older people are still the largest single client group, learning disabled people will take over as the largest group during the year 2000. It should be emphasised here that the analysis in Figures 1 and 2 is based on the client group classification used by the DSS, not on chronological age. Thus, people aged over 65 with learning disabilities are classed as 'learning disabled' rather than 'older'. The rationale for using the client group classification is that it makes a neater distinction between those who are likely to receive local authority financial support under one of the exceptions and those who are not.

Figure 1 Residents of independent sector nursing and residential homes receiving special higher rates of Income Support, Great Britain 1993–99



Source: Income Support Statistics, Quarterly Enquiries, DSS.
Note: 'Older' client group comprises: 'Old age', 'Very dependent elderly', 'Physical disablement above pension age' and 'Other'.

Figure 2 Residents of independent sector nursing and residential homes receiving special higher rates of Income Support, Great Britain, August 1999



Source: Income Support Statistics, Quarterly Enquiries, DSS.
Note: 'Older' client group comprises: 'Old age', 'Very dependent elderly', 'Physical disablement above pension age' and 'Other'.

3 Shortfalls between Income Support limits and care home fees

Market background – preserved rights 'grants in aid' and local authority care contracts

The April 1993 transfer of state funding from the DSS (with nationally determined limits) to local authorities (with local discretion on fee rates) had the predictable consequence of generating greater regional differentials in fees paid by state agencies. Income Support had never been seen by the Government as anything more than a grant in aid, to be topped up as necessary by residents, families and charities, and this remains the case under preserved rights arrangements today. Local authorities, on the other hand, have a statutory obligation to pay care home fees in full for those for whom they accept responsibility, and they were forced from April 1993 to raise baseline rates sharply above preserved rights Income Support limits in high-cost areas such as London and the home counties. At the same time, baseline rates fell below Income Support limits in some low-cost areas, particularly in the North of England and Wales, as local authorities aligned what they were willing to pay with local market conditions.

The position in financial year 1999/2000 is summarised in Table 1, for the elderly client group. Nationally, there are two to three times as many local authorities paying over Income Support limits than under, and they are concentrated in the more affluent South. In the less prosperous areas, where Income Support limits are above local authority baseline fees, the differential is a few pounds a week. But, in the more affluent areas, where Income Support limits are below local authority baseline rates, the disparity may be tens of pounds a week.

Figures 3 and 4 show how Income Support limits compare with fees for elderly care home residents. Because average fees include private payers as well as state paid residents, they are higher than Income Support limits in all regions. The magnitude of the disparity, however, is much greater in the affluent South than in the less prosperous North.

Frequency of shortfalls for preserved rights recipients

Each year the DSS publishes maximum weekly sums that may be claimed by care home residents with preserved rights to the special higher rates of Income Support (Table 2).

The limits have been criticised by residents' lobby groups, such as Age Concern, and by care home operators on the grounds that:

- DSS limits are inadequate to cover prevailing fee rates in many parts of the country
- other than the London weighting, they are too inflexible
- annual upratings have not kept pace with care home costs.

Latest available results from the DSS quarterly survey of Income Support claimants confirm that there are frequent shortfalls. Only an estimated 57 per cent of residents in receipt of preserved rights Income Support had their fees covered in full from that source in May 1999 (Table 3). Of the remaining 43 per cent, it is not known exactly how many may be classed as

Table 1 Numbers of local authorities whose baseline fees for elderly care home residents are above, below or in the same range as Income Support limits – regional analysis financial year 1999/2000

	Residential homes			Nursing homes		
	LA baseline above Income Support level No. of LAs	LA baseline below Income Support level No. of LAs	LA baseline equal to/ straddles Income Support level No. of LAs	LA baseline above Income Support level No. of LAs	LA baseline below Income Support level No. of LAs	LA baseline equal to/ straddles Income Support level No. of LAs
North	0	5	8	1	3	9
Yorkshire and Humberside	0	5	10	5	2	8
North West	10	4	7	10	3	7
West Midlands	6	3	4	5	3	5
East Midlands	2	4	3	2	5	2
East Anglia	4	0	0	4	0	0
Northern Home Counties	8	0	4	7	0	6
Inner London	10	0	1	10	0	1
Outer London	13	1	3	11	2	4
Southern Home Counties	5	2	1	3	3	3
South West	3	1	10	4	1	10
Wales	3	6	12	4	7	11
Scotland	5	3	20	19	1	10
Northern Ireland and Isle of Man	1	1	2	1	2	2
Total	70	35	85	86	32	78

Source: Derived from detailed information on baseline fees by individual authority published in *Community Care Market News*, June 1999 issue (Laing & Buisson, 1999b).

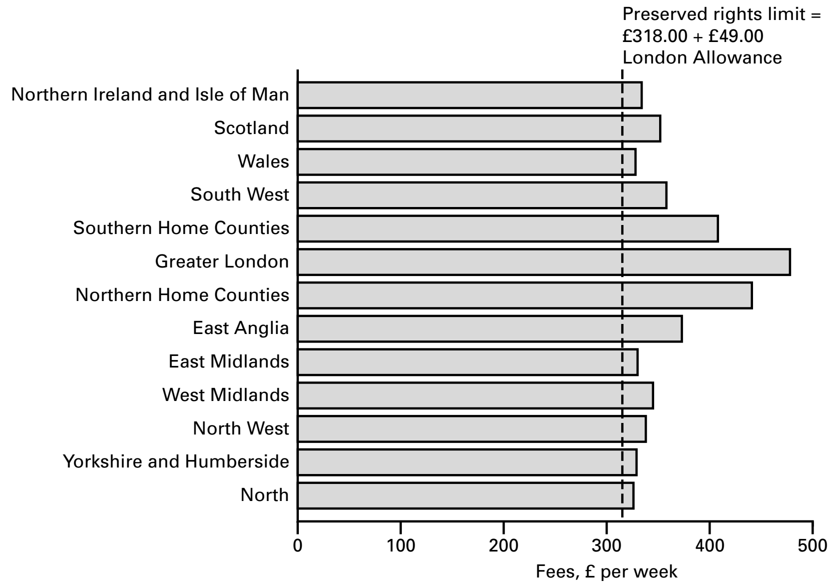
'distress' cases. This is discussed further in Chapter 5.

Preserved rights limits and care home cost inflation

There is also clear evidence that the preserved rights Income Support limits have not kept pace with care home costs. Since 1993, the limits have closely tracked the Retail Price Index and have fallen well behind the index of average hourly earnings for women. The latter is a key indicator because wages, the bulk of which are paid to women on an hourly basis, absorb 50–60 per cent of nursing and residential home revenues. The post-1993 period contrasts with the period before 1993, when Income Support limits tracked a path intermediate between RPI and the earnings index, partly because of a major upward realignment of nursing home limits in 1991/92, Figure 5 and Table 4.

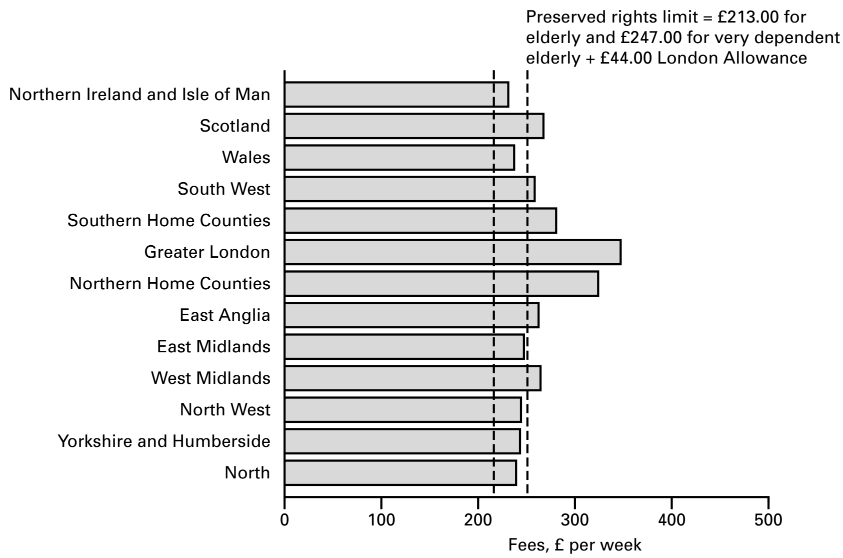
Other things being equal, the failure of Income Support limits to keep pace with staffing costs might be expected to have

Figure 3 Weighted average single and sharing fees, nursing homes for elderly, £ per week, UK, 1998/99



Source: Laing & Buisson database.

Figure 4 Weighted average single and sharing fees, residential homes for elderly, £ per week, UK, 1998/99



Source: Laing & Buisson database.

Table 2 Preserved rights Income Support limits 1999/2000 and 2000/01

DSS Income Support limits 1998/99	Residential homes £ per week		Nursing homes £ per week	
Client type	1999/2000	2000/01	1999/2000	2000/01
Old age	218	221	325	330
Very dependent elderly	252	256	–	–
Mental disorder	230	234	326	331
Drug/alcohol dependence	230	234	325	
Learning disability	262	266	332	337
Terminal care	–	–	325	330
Physical disability	298	303	367	373
Others	218	221	325	330
Greater London Allowance	45	46	50	51
Personal Allowance	14.75	15.45	14.75	15.45

Source: Department of Social Security.

Table 3 Disparities between preserved rights Income Support limits and fees paid, Great Britain, May 1999

	Older people %	Younger physically disabled people %	Learning disabled people %	People with mental health problems %	All client groups %
Fees equal to or below Income Support limit	57	51	59	64	57
Top-up less than Personal Expenses Allowance (PEA)	20	8	6	10	13
Top-up between PEA and £15	2	0	0	3	1
Top-up from £15.01 to £25	6	3	3	8	5
Top-up from £25.01 to £35	4	5	3	4	4
Top-up from £35.01 to £45	2	2	3	2	2
Top-up from £45.01 to £55	2	2	1	1	2
Top-up from £55.01 to £65	1	1	1	1	1
Top-up £65.01 and over	5	29	24	7	14
All cases	100	100	100	100	100

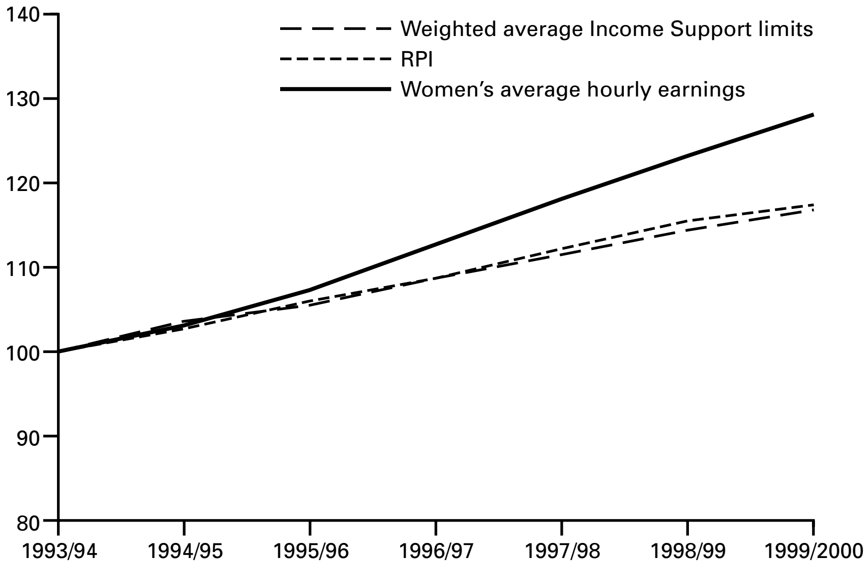
Source: Income Support Statistics, Quarterly Enquiry, May 1999, Department of Social Security Analytical Services Division.

Table 4 Income Support preserved rights limits (£ per week) RPI and women's average hourly earnings index, 1988/89 to 1999/2000

	88–89 £ p.w.	89–90 £ p.w.	90–91 £ p.w.	91–92 £ p.w.	92–93 £ p.w.	93–94 £ p.w.	94–95 £ p.w.	95–96 £ p.w.	96–97 £ p.w.	97–98 £ p.w.	98–99 £ p.w.	99–00 £ p.w.
Nursing homes												
Elderly	185	190	210	255	270	280	290	295	303	311	318	325
Terminal illness	230	235	260	275	280	280	290	295	303	311	318	325
Physical disability below pension age	230	235	255	290	305	315	325	331	341	352	359	367
Mental illness	185	195	210	255	270	280	290	296	304	312	319	326
Residential homes												
Old age	130	140	155	160	175	185	194	197	203	208	213	218
Very dependent elderly	155	155	170	185	205	215	224	227	234	240	247	252
Learning disability	160	165	180	195	215	225	232	237	244	250	257	262
Physical disability below pension age	190	200	215	230	245	255	262	267	276	285	292	298
Mental illness	130	140	155	170	185	195	202	207	214	220	225	230
Index 1988/89 = 100												
Weighted average Income Support limits 1988/89 = 100	100	104	114	125	136	142	147	149	154	158	162	165
Retail Price Index 1988/89 = 100	100	108	117	124	128	130	133	138	141	146	150	153
Women's average hourly earnings 1988/89 = 100	100	111	123	136	146	152	157	163	172	180	188	195

Sources: DSS and Office for National Statistics.

Figure 5 Weighted average index of Income Support preserved rights limits, RPI and women's hourly earnings index, 1993/94 to 1999/2000



Sources: DSS and Office for National Statistics.
Note: Index 1993/94 = 100.

translated into growing shortfalls between the limits and care home fees, and thus an increasing burden for those providing top-up funding. For the most part, however, this has not happened because care home fees have also closely tracked RPI in recent years, as local authorities have used their monopoly purchasing power to keep fee inflation to a minimum (Laing & Buisson, 1999a, 1999b). By and large, it has been care home operators who have absorbed increased staffing costs, through a reduction in margins, rather than residents and their families, friends and charities.

4 Bridging the gap between preserved rights limits and care home fees

Differences between older and younger groups of residents

Younger and older groups of care home residents differ widely in the means at their disposal to top up Income Support payments. People under pension age often have access to additional resources, usually unavailable to those over pension age, which may be used towards care home fees. These consist of:

- *Disability Living Allowance mobility component*. Younger people with mobility problems (in particular younger physically disabled care home residents) may qualify for the mobility component of Disability Living Allowance, which is non-means-tested and payable in addition to Income Support. In contrast, people over 65 are barred from making a first claim for this benefit after the age of 65, though if they have claimed before their 65th birthday they are entitled to receive it thereafter.
- *Financial support from local authorities*. As noted above, local authorities are empowered to 'top up' care home fees for preserved rights income support recipients under pension age, but only exceptionally for those over pension age. The term 'top up' is strictly incorrect since in fact local authorities contract with care home operators to take full responsibility for fees and recover Income Support entitlements through charges levied on supported residents.

Because of their access to additional resources, third-party top-ups by relatives, friends or charities are rare for learning disabled and mentally ill people, who make up the bulk of younger preserved rights claimants. This is confirmed by both the Association of Charity Officers and the Association for Residential Care, which represents owners of care homes for these client groups. Younger residents are also less likely to use their Personal Expenses Allowances towards fees, both because of their access to other benefits and by virtue of the fact that many are in receipt of local authority funding, in which case use of the Personal Expenses Allowance or disregarded capital towards fees is prohibited.

In the light of the above, and data presented below, sources of top-ups for younger and older preserved rights claimants can be characterised even more simply as follows:

- nearly all top-ups for younger resident groups come from local authorities
- nearly all top-ups for older residents come from third parties, from Personal Expenses Allowances or from residents running down their disregarded capital.

Topping up by local authorities

A key question is: what proportion of preserved rights recipients benefit from local authority 'top-ups'? This is important not only for the residents themselves, and indeed care home operators, but also for taxpayers because the larger the scale of local authority topping-up, the lower will be the amount of any additional public funds necessary to bridge the gap between current preserved rights Income Support limits and fees charged by care homes, in the event that the preserved rights regime is modified or terminated.

The Scottish Executive is the only government agency which collects and publishes information on how many preserved rights claimants also have local authority funding, though only for residents of registered residential homes, not nursing homes. The most recent data for Scotland are set out in Table 5. They indicate that out of all the residents with preserved rights in residential homes ('DSS' and 'Pre-1/4/93 local authority' combined) about half of them were receiving local authority financial support at March 1998, ranging from one-sixth for older people (which is surprisingly high and presumably mainly represents people who were already being supported by local authorities, usually in voluntary sector homes, at 31 March 1993), to two-thirds for learning disabled people and over 90 per cent for physically disabled people.

Frequency of local authority top-ups in Britain
There are no equivalent data for other constituent parts of Great Britain. However, the approximate prevalence of local authority funding of people with preserved rights can be estimated (Table 6) from comparison of a number of separate data sources. Essentially, this involves calculating the total number of residents and taking away estimates of those who are wholly private or wholly NHS funded. The remainder are funded either by preserved rights or by local authorities *or by both*. Comparison of this remainder with independent estimates of preserved rights and local authority funded residents allows the proportion with both at the same time to be estimated The method is clearly subject to error, but it appears to be the best available. Data on learning disabled people are perhaps the most reliable. It is estimated by this method that 38 per cent of learning disabled residents of independent sector homes in Britain with preserved rights also receive financial support

Table 5 Sources of financial support for residents of registered residential homes in Scotland at 31 March 1998

	Older people %	People with a physical disability %	People with a learning disability %	People with mental health problems %	Other people %	All client groups %
Private means	33	5	1	2	1	20
Health board	1	1	1			1
DSS	19	6	24	25	11	20
Pre-1 April 1993 local authority	4	55	48	16	16	19
Post-1 April 1993 local authority	43	33	21	58	72	38

Source: Scottish Executive, Statistical Bulletin, Social Work Series, Community Care, Scotland 1998.

from local authorities. Corresponding estimates for younger physically disabled people and people with mental health problems are both in excess of 50 per cent. For older people, the estimate is a little under 10 per cent, though error is likely to be high because it is an estimate derived from a small difference between two large numbers.

It should be a straightforward task for local authorities to count how many of their supported clients are in receipt of preserved rights Income Support. There is a strong case for such a one-off exercise being undertaken, in order accurately to inform discussions on the future of these clients.

Third-party top-ups and Personal Expenses Allowances

State-funded care home residents (other than those supported by the NHS only) have the right to choose a more expensive home than their state funding agency is willing to pay for, provided the shortfall is met from a source which is disregarded for the purposes of the means test. As noted above, older residents rarely qualify for the additional non-means-tested benefits that some younger residents get, and if they wish to choose a more expensive home they must either use their Personal Expenses Allowances or disregarded capital or

Table 6 Residents of independent sector nursing and residential homes by funding source and client group, estimates, Great Britain, March 1998

	Older people No. of residents	Younger physically disabled people No. of residents	Learning disabled people No. of residents	People with mental health problems No. of residents	All client group No. of residents
Funding source					
(a) Local authority	177,500	8,600	22,200	12,300	220,600
(b) DSS preserved rights	55,000	12,000	28,000	11,000	106,000
(c) Wholly NHS	13,200	3,600	3,700	4,600	25,100
(d) Wholly private	123,100	1,400	300	1,300	126,100
(e) Total residents	363,900	19,100	43,600	22,800	449,400
% of preserved rights residents with local authority funding (sum(a:d)-e)/b)	9	54	38	58	27

Sources: Local authority supported residents: England, *Community Care Statistics 1998,* Department of Health, ISBN 1 85839 980 7; Wales, *Social Services Statistics Wales 1999,* Welsh Office, ISBN 0 7504 2342 0; Scotland, *Statistical Bulletin Social Work Series*, Scottish Executive (unpublished data for 1998).
Residents with preserved rights: *Income Support Statistics Quarterly Enquiries*, Department of Social Security.
Wholly private paid and wholly NHS paid residents estimated from Laing & Buisson's *Continuing Random Sample Survey* of care homes, based on data from 2,600 residents.

get a third-party top-up, for example, from a relative, friend or charity. Such third-party payments do not affect the resident's means-tested entitlements. The rules governing third-party top-ups are similar whether residents have preserved rights or receive local authority support, though in the latter case the local authority as the sole contractor must cover any shortfall if a third party fails to pay. Also, local authority funded residents may not 'act as their own third party' according to regulations and Department of Health guidance. In other words, they are not entitled to use their own disregarded capital or income towards payment of fees, whereas residents funded only by preserved rights may do so. Nor are local authority funded care home residents allowed to use their Personal Expenses Allowance (£14.75 per week for 1999/2000) towards care home fees, whereas there is no bar on people with preserved rights using them and they frequently do so (see Chapter 5).

Within the population of care home residents whose state funding plus personal disposable resources fall short of the full fees charged, a distinction needs to be drawn between the following:

- 'distress' cases, defined as residents who are unable to get access locally to adequate care without getting a third-party top-up or using their Personal Expenses Allowance towards fees
- discretionary spending by families, friends or charities, or use of disregarded captial, to buy a higher standard of care/ amenity than the state could reasonably be expected to fund.

Provided local authorities are carrying out their duties responsibly, there should be no 'distress' cases at all amongst the local authority funded care home population, since local authorities have a clear responsibility to contract for an adequate standard of care and to pay fees in full. In principle, therefore, all state funded 'distress' cases should be found within the preserved rights population. This in turn suggests that third-party top-ups should be more frequent among residents with preserved rights than among local authority funded residents, and this is borne out by the statistics (see Chapter 5).

In summary, therefore, care home residents with preserved rights Income Support as their only source of state funding are financially disadvantaged in two ways with respect to local authority funded residents.

1 They may be unable to get access to adequate care locally without a third-party top-up.

2 In the absence of any disregarded capital, they may have to use their Personal Expenses Allowances towards fees.

In each case, the financial disadvantage to preserved rights recipients is concentrated in the more prosperous areas of the country, including London and the South East, where care home costs and fee rates are higher and the shortfall between Income Support limits and average care home fees is greatest, see Figures 3 and 4.

5 Financial and non-financial costs borne by residents with preserved rights

Making use of data presented above, the aim of this chapter is to:

- quantify, where possible, the extra financial costs borne by residents with preserved rights along with their relatives, friends and supporting charities
- describe the non-financial disadvantages experienced by the preserved rights population.

In each case, the situation of local authority funded residents is used as a benchmark from which to determine the *extra* costs borne by people with preserved rights as their only source of state funding. This may in turn be used as a measure of the likely cost to public sector budgets of measures to equalise the positions of the preserved rights and local authority funded populations. When quantifying and describing these costs it is again necessary to distinguish between older and younger groups of preserved rights claimants.

Unequal financial costs borne by residents, families, friends and charities

Estimates of the gross annual value of shortfalls between preserved rights Income Support payments and care home fees are presented in Table 7. Based on May 1999 data from the DSS quarterly enquiries into Income Support claims, gross shortfalls amounted to an annual £21 million for older residents (reducing by about one-third each year as the population diminishes) and £52 million for younger residents (reducing by some 5 per cent in real terms each year). It should be noted that estimates are sensitive to the value of weekly shortfalls in the 'open' class of '£65.01 and over', assumed here to average £75.00.

Some of this money, however, represents discretionary or 'non-distress' spending and some represents local authority top-ups. The gross figures, therefore, need to be adjusted to give a fair reflection of the shortfalls currently borne by preserved rights residents, their families, friends and charities, over and above their local authority funded counterparts – and to reach a reasonable estimate of how great a claim on public sector resources would be required to equalise the financial position of each group. Again, it is necessary to distinguish between older and younger groups of preserved rights claimants.

Older people

Shortfalls of less than the Personal Expenses Allowance (PEA) cost 7,800 older residents an estimated £2.8 million per annum on May 1999 figures, according to Table 7. It may be assumed that most of them fund the shortfall from their PEA or disregarded capital or a combination of the two. Assuming it would be unrealistic to seek fee reductions from care homes (amongst other things because of the financial pressures that care homes are currently experiencing), equalisation of the financial positions of the preserved rights and local authority funded populations would require the whole of this cost to be transferred to the state, since use of both PEA and disregarded capital is prohibited for local authority funded residents.

Equalisation of financial positions would also require the cost of third-party top-up

Table 7 Value of shortfalls between preserved rights limits and fees charged by care homes, Great Britain, May 1999

Disparity between weekly fees paid and preserved rights limits, £ per week	Shortfall £ p.w. per resident	Older residents No. of residents in band, 000s	Older residents Annual value of shortfalls, £ million	Younger residents (Learning disabilities, YPD and mental health problems) No. of residents in band, 000s	Younger residents (Learning disabilities, YPD and mental health problems) Annual value of shortfalls, £ million
Fees equal to or below Income Support limit	Zero	21.8	0.0	27.3	0.0
Top-up less than Personal Expenses Allowance	7	7.8	2.8	3.5	1.3
Top-up between Personal Expenses and £15	14	0.7	0.5	0.4	0.3
Top-up from £15.01 to £25	20	2.4	2.5	1.7	1.8
Top-up from £25.01 to £35	30	1.5	2.3	1.6	2.5
Top-up from £35.01 to £45	40	0.9	1.9	1.1	2.3
Top-up from £45.01 to £55	50	0.8	2.1	0.7	1.8
Top-up from £55.01 to £65	60	0.4	1.3	0.6	1.9
Top-up £65.01 and over	(say) 75	2.0	7.8	10.2	39.9
Total		38.3	21.3	47.1	51.7

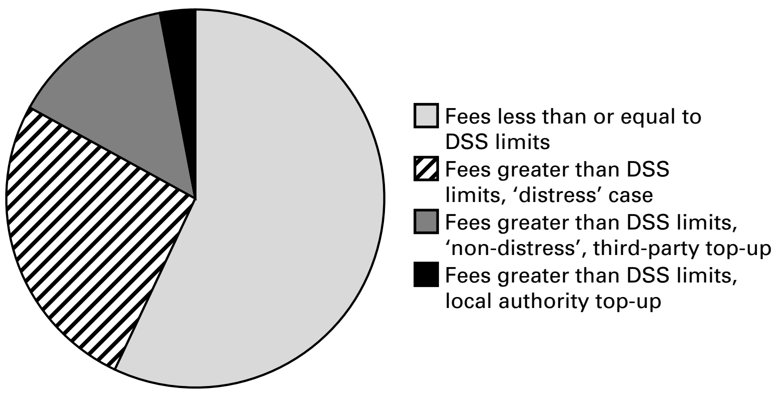
Source: Income Support Statistics, Quarterly Enquiry, May 1999, Department of Social Security Analytical Services Division; shortfall per resident estimated.

funding classifiable as 'distress' to be transferred from family, friends and charities to the budgets of state agencies. There is no survey information indicating how many older people would come into the 'distress' category. A clue may, however, be gleaned from the frequency of third-party top-ups amongst local authority funded residents, all of which should in principle represent discretionary spending. At 14 per cent (Laing, 1998), the third-party top-up rate for older local authority funded residents is well below the 23 per cent for older preserved rights recipients. The difference may be used as a very rough measure of the frequency of 'distress' cases in the preserved rights population. On this basis, it is estimated that approximately one-third of third-party top-up spending (£6.2 million per annum for 3,000 older residents) relates to 'distress' cases. Most of the remaining two-thirds will represent discretionary spending by families, friends or charities to buy a higher standard of care or amenity than the state could reasonably be expected to fund. A small residue will represent local authority 'top-ups' in the case of those few exceptions to the general bar on local authorities providing financial support for older residents with preserved rights.

In summary, taking 'distress' third-party top-ups and PEA/disregarded capital users together, the state would on the face of it have to meet the shortfalls of 10,800 residents – a little over a quarter of all older preserved rights claimants (Figure 6) – at a cost of some £9 million per annum (based on May 1999, reducing by about a third each year) in order to put the older preserved rights population on the same financial footing as the local authority funded population. It should be emphasised that the figure of £9 million must be regarded as an 'order of magnitude' estimate, based as it is on an informed guess on the frequency of 'distress' cases, where local authorities would have to bridge existing gaps between fees and preserved rights entitlements. The estimate is also sensitive to the average value of £75.00 attributed to weekly shortfalls in the 'open' class of '£65.01 and over'. However, the principal conclusions of this study do not hinge on the exact amount. If the scale of additional spending were viewed as a critical issue, then Government has the option of commissioning a speedy research exercise in order to provide more reliable data.

To this should be added the cost of meeting any 'hidden' disparities. These have been described in a previous Joseph Rowntree Foundation publication (Laing, 1998) which argued that, in addition to the 'visible' disparities between care home fees and what the state is willing to pay, there are also 'hidden' disparities, for example, where private payers cross-subsidise state paid fees, or where care homes offer discounted fees to residents who have run out of their own money. Where this occurs, preserved rights shortfalls are in effect being bridged by wholly unrelated private payers or by care home operators themselves.

Figure 6 Illustrative partition of the older preserved rights population into financially 'distressed' and 'non-distressed' groups



Source: Constructed with reference to Table 7, assuming that 'distress' cases include all those whose fee shortfalls are less than or equal to the Personal Expenses Allowance and one-third of those whose fee shortfalls are greater.

Regardless of the details of the above calculations, it is clear that the cost to the state of equalising the financial position of older preserved rights recipients would be fairly small in terms of overall public expenditure, and set to diminish rapidly over the next few years.

Depending on the reform option selected, however, the additional care purchasing and management costs to local authorities might be substantially larger (see Chapter 6).

Younger people

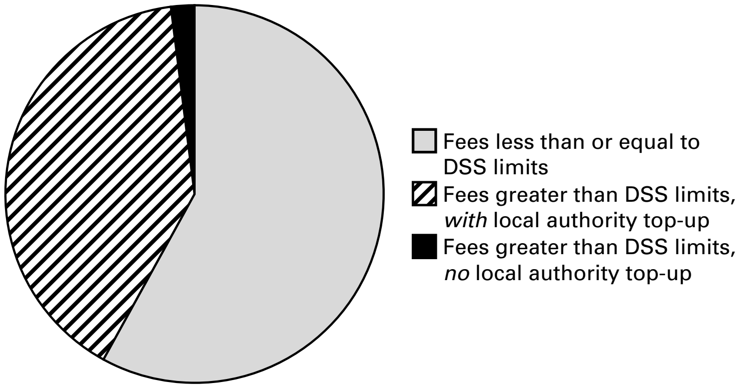
Table 7 shows that relatively few younger care home residents with preserved rights face a shortfall of less than the Personal Expenses Allowance. Rather, shortfalls are concentrated at the upper end of the range. Those of £65 per week or more account for £40 million out of the estimated £52 million gross value of shortfalls for younger people. The estimate is in this case highly sensitive to the average value of £75.00 attributed to weekly shortfalls in the 'open' class of '£65.01 and over'. The true figure could be much higher, to the extent that local authorities are providing very substantial top-ups. Any resulting under-estimate, however, will not impact on the policy conclusions drawn below, since the costs of bridging gaps between fees and preserved rights limits are already being met from public funds.

Since family and charitable top-ups are rare for younger residents (except possibly for younger physically disabled people), shortfalls must be bridged either by local authorities, under the specific under pension age exception to the bar on local authority top-ups, or sometimes by residents themselves out of the non-means-tested mobility component of Disabled Living Allowance.

Comparison of data from Tables 6 and 7 suggests that most if not all of the preserved rights shortfalls for younger residents are in fact bridged by local authority top-ups. Few shortfalls appear to be bridged from residents' own non-means-tested benefits, which are presumably being used to fund personal consumption and services that are charged separately from care home fees. The basis for this conclusion is that Table 6 indicates that at March 1998 an estimated 46 per cent of all younger client groups receiving preserved rights (younger physically disabled, learning disabled and those with mental health problems) also had local authority funding at the time, while Table 7 indicates that at May 1999 roughly the same proportion of recipients in these client groups (42 per cent) faced some sort of shortfall – however bridged. The analysis should not, however, be pushed too far, since the figures relate to different points of time, they are derived from different sources and all are subject to a degree of error. Taking the learning disabled group alone, which is the most clearly defined and least subject to error, Table 6 indicates that at March 1998 an estimated 38 per cent of preserved rights recipients also had local authority funding, while Table 7 indicates that, at May 1999, 41 per cent faced some sort of shortfall – however bridged.

The conclusion to be drawn is that the great bulk of fee shortfalls faced by younger preserved rights residents are already being bridged by local authorities, as illustrated in Figure 7. Some of the remaining shortfalls will be met from the non-means-tested mobility component of Disabled Living Allowance. Only a small residue is currently being met from third-party top-ups or Personal Expenses

Figure 7 Illustrative partition of the younger preserved rights population



Source: Constructed with reference to Tables 6 and 7.

Allowances. Consequently, none of the reform options would add much to existing public sector costs of meeting shortfalls for younger client groups.

Again, however, depending on the reform option selected, local authorities might have to meet substantial additional care purchasing and management costs for younger preserved rights residents who do not currently receive financial support from a local authority (see Chapter 6).

Unequal access to physical amenities

Results from Laing & Buisson's *Continuing Random Sample Survey of Care Homes,* cited in an earlier Joseph Rowntree Foundation study (Laing, 1998), show that older residents who are wholly reliant on preserved rights Income Support are disadvantaged in access to better quality physical amenities in care homes (in particular, single rooms and rooms with en-suite bathrooms) both in comparison to private payers and also in comparison to local authority funded residents who have the benefit of a dominant purchaser arranging services on their behalf (see Table 8). It should be emphasised that there is no evidence that they are disadvantaged with respect to care. It may reasonably be assumed that the quality of care is fairly uniform throughout any individual care home, irrespective of the size or type of room.

The results apply to the older client group only. Numbers were too small for a corresponding analysis for younger residents.

Unequal access to non-financial support and advocacy

More generally, those care home residents for whom preserved rights Income Support is the only source of state funding represent a socially excluded minority in so far as they are denied access to important elements of non-financial support and advocacy offered by local authority

Table 8 Proportions of elderly residents in independent sector care homes occupying single and single/en-suite rooms by funding source, 1997/98

	Nursing homes		Residential homes	
	% occupying single, en-suite rooms	% occupying single rooms (whether en-suite or not)	% occupying single, en-suite rooms	% occupying single rooms (whether en-suite or not)
Self-funding	36	80	38	86
Local authority contract	30	61	32	77
Preserved rights	12	47	9	68

Source: *Continuing Random Sample Survey of Care Homes*, Laing & Buisson, cited in Laing (1998).

social service departments (and the NHS) to the residents they financially support. These include the following.

- *Assessment of need*. People who entered care homes prior to 1 April 1993 usually received no assessment of their needs and were sometimes inappropriately placed in care homes. Aside from the cost to the taxpayer, some individuals lost the chance of continued independent living they might have opted for if given the choice. Approaching seven years after the community care reforms, it is unlikely that many older care home residents would now be able to return to the community. However, assessment of the younger preserved rights population may well find many residents who would more appropriately be placed in an alternative community setting, especially in view of changed thinking on the ability of learning disabled people to manage outside a care home.

- *Care contracts*. Though practice varies widely from authority to authority, contracts developed by social service departments all in principle offer supported clients protection against eviction, specified standards of care which may be more demanding than statutory inspection standards, individual care plans, monitoring and review of changing needs and arrangements to change home if necessary. Residents with preserved rights, in contrast, suffer from an 'orphan' status – without access to the protection, advocacy and negotiating skills of social services, monitoring or review of the care they receive, assistance if they need to move home and protection from eviction. Older and younger preserved rights residents are similarly disadvantaged.

- *Opportunities to receive new services*. Social services department personnel play an important role in introducing new opportunities to residents whose care they are responsible for, including training, education and employment. To the extent that preserved rights recipients are isolated from social services personnel, they may fail to benefit from new opportunities that become available. Although social services are responsible for the welfare of *all* people living within their boundaries, social workers are in practice less likely to be in regular contact with preserved rights care home residents than with local authority funded residents or vulnerable people in the community. The resulting disadvantages are greatest for younger care home residents with preserved rights and no local authority top-up.

- *Opportunities to receive cash for care under the Direct Payments scheme*. The powers of local authorities to offer the Direct Payment option for users of domiciliary care services have now been extended to include people aged over 65 as well as those under 65. Although this option is not yet widely available, the Government has stated in *Modernising Social Services* (Stationery Office, 1999a) that it will consider making it mandatory for all local authorities to operate such schemes. There is evidence that for those who choose it Direct Payments can greatly enhance care outcomes perceived by users. In principle, local authorities can currently offer Direct Payments to care home residents with preserved rights, to enable them to leave the care home and access domiciliary care. But, in practice, local authorities are unlikely to do so, given the high marginal cost to their budgets. This (practical) exclusion impacts most on younger care home residents with preserved rights and no local authority top-up.

Taken together, these are significant disadvantages. Moreover, the disadvantage gap between people receiving local authority support and those preserved rights claimants excluded from it is likely to widen in the future as local authorities improve the effectiveness of the services they offer to their own clients.

6 Merits and demerits of each reform option

Each of the options for reforming the present preserved rights regime would involve transfers of resources between taxpayers, residents (and their families, friends and charitable supporters) and care home providers. There would also be complex transfers between various government agencies, including the DSS, the Department of Health and local authorities in receipt of central government grants. In order to illuminate the issues, a description is provided of how each group of stakeholders might expect to win or lose from each of the options for reform. Independent sector care home operators are included amongst the stakeholders because the present and previous governments have accepted that they will provide the bulk of residential care services in Britain for the foreseeable future and because, in view of the precarious financial position of many providers (Laing & Buisson, 1999a), any threat to their profitability must be a matter of concern for policy makers.

For ease of presentation, the interests of all state agencies are subsumed under a single head, 'Public sector spending'. This is not, of course, to deny the importance of the separate state budgets or the perverse consequences that may flow from sub-optimising behaviour by particular state agencies. In any reform of the preserved rights regime, it is clearly essential that redistribution of money should be carried out equitably and with regard to the incentives under which various state agencies operate.

Option 1: abolition of preserved rights and transfer of all funding and care management responsibilities to local authorities

The merit of this policy option is that it directly addresses all of the issues of disadvantage and social exclusion that have emerged as a consequence of the preserved rights regime. The demerit is that there would be a significant public sector cost, mainly in the form of additional administrative and care management costs, which may or may not be offset by savings from more effective purchasing of care services. Also, new problems might be created by the solution of existing ones, the avoidance of which would depend on fine detail of the policy. Option 1 would require primary legislation.

Residents and their families, friends and supporting charities

The principal financial beneficiaries would be those older preserved rights claimants, together with their families, friends and supporting charities, who can be classed as 'distressed' in the sense that they are unable to get access locally to adequate care without using their Personal Expenses Allowance towards fees or getting a third-party top-up. At May 1999, there were 7,800 (Table 6) of the former and some 3,000 of the latter, diminishing by about a third each year.

Financial benefits to younger groups of residents would be small since local authorities already fund most of the shortfalls between preserved rights limits and fees, and since relatively few of this client group use their

Personal Expenses Allowances or disregarded capital towards fees, or receive third-party top-ups from relatives, friends or charities.

Both older and younger preserved rights residents would, however, benefit from access to non-financial support, protection and advocacy from local authorities, by virtue of inclusion as local authority clients. These non-financial benefits would flow to the great majority of the 36,000 older preserved rights recipients (in August 1999, decreasing by about one-third each year) as well as to over half of the 47,000 younger preserved rights recipients, who do not currently enjoy local authority financial support.

Public sector spending

Abolition of preserved rights would necessitate a substantial transfer from the DSS to local authorities, of approaching £1 billion gross, at unadjusted 1999/2000 claims levels (Table 8). This would not in itself have any net impact on public sector spending as a whole, though there are risks of turbulence and inequities arising from the distribution of DSS monies between local authorities.

Some £9 million per annum of additional public money (in May 1999, dropping by about one-third each year) would have to be spent in order to meet shortfalls currently met by financially 'distressed' older residents and their families, friends and supporting charities (see Chapter 5). There would be few additional claims on public sector resources to meet the shortfalls of other, younger, preserved rights residents, since most are being bridged already by local authorities.

A number of imponderable factors might impact on the cost of meeting 'distress' shortfalls. There may, for example, be hidden shortfalls, where expensive care homes have continued to care for formerly privately funded residents who have run out of money and whose preserved rights funding is insufficient to meet normal fees. Though these have not been included in calculations of 'distress' cases, local authorities in high cost areas may nevertheless come under strong pressure to meet some of these shortfalls. Conversely, many local authorities in low-cost areas currently pay care homes at rates that are lower than Income Support limits. In those cases, transfer of funding responsibility from the DSS to local authorities would offer a potential saving in public sector spending. It is not unreasonable to assume that these other factors would roughly balance each other out over the public sector as a whole, though there are clearly further risks of inequities arising between losing and gaining public sector agencies.

The public sector cost of meeting fee shortfalls could, however, be dwarfed by the substantial additional purchasing and care management costs that local authorities would incur. Exactly how large these would be is difficult to predict on available data. Returns to central government indicate that local authorities' 'total purchasing costs' absorb about 10 per cent of gross residential and day and domiciliary care service spending on adult care services (Department of Health, 1999). Within this global figure, however, the purchasing overhead is believed to be substantially lower for residential than for domiciliary care. Moreover, purchasing and care management costs are typically front-loaded, being heaviest at the assessment and placement stage, then dropping away, sometimes to a worryingly low level, once a residential placement has been made (Gazdar, 1999). In the absence of more detailed information, the ‘best estimate’ used here is that local authorities would have to commit between (say) 2.5 and 5 per cent of gross service costs on purchasing overheads, if they were to take financial responsibility for preserved rights residents. This would amount to an estimated £24 – 48 million in 1999/2000, reducing to £16 – 33 million in 2001/02 (Table 9). In order to inform its deliberations on the various policy options, and indeed subsequently to calculate new grant requirements if it were to choose Option 1, it would be helpful for the Government to commission work to estimate a reasonable purchasing ‘on-cost’ factor for (former) preserved rights clients.

From the foregoing, it is clear that the estimates of the purchasing overhead should be treated as no more than illustrative of the order of magnitude of costs involved. What is fairly robust, however, is the conclusion that on any reasonable assumptions the additional purchasing overhead would be substantially greater than the cost of meeting fee shortfalls.

In order to estimate the net impact on public sector spending as a whole, it is also necessary to deduct administrative savings to the DSS arising

Table 9 Estimate of additional public sector costs if responsibility for residents with preserved rights were transferred from the DSS to local authorities

Financial year	1999/2000	2000/01	2001/02
No. of residents claiming preserved rights (mid-year average[1])	83,000	68,700	58,400
No. of residents transferred, i.e. now without local authority support[2]	58,100	46,000	37,500
Gross service cost per resident[3] (£ per annum)	16,500	16,900	17,400
Total gross service cost (£ million per annum)	960	780	650
Purchasing and care management @ (say) 2.5 – 5% of gross service cost[4] (£ million per annum)	24–48 (less DSS admin. savings)	20–39 (less DSS admin. savings)	16–33 (less DSS admin. savings)
Cost of meeting current fee shortfalls (£ million per annum)[5]	9	6	4
Savings from more appropriate placements of preserved rights residents	– ?	– ?	– ?

1 1999/2000 mid-year average taken as August 1999, see Figure 2; subsequent years estimated assuming one-third annual decline in older claimants and 5 per cent decline in younger claimants.
2 After deducting proportion currently in receipt of local authority support, from Table 5.
3 DSS Income Support Statistics, Quarterly Enquiry, May 1999.
4 ‘Best estimates’ – see text.
5 Derived from Table 6.

from termination of the preserved rights Income Support payment role. Such savings are unlikely to be significant, however, since the people whose funding would be transferred to local authorities would still require DSS assessment for and payment of ordinary Income Support.

Finally, there would be opportunities for local authorities to offset much or even all of their additional costs by more effective purchasing of services. Anecdotally, it is reported that many if not most learning disabled and mentally ill people with preserved rights as their only source of state funding would not meet current local authority criteria for placement in a care home. This in turn implies that a major share, possibly a large majority, of the preserved rights claimants whose fees are currently met in full by the DSS could be more appropriately placed in supported housing. Local authorities do have powers to organise alternative supported living placements, but perverse financial incentives discourage them from doing so. As things stand, where a preserved rights resident's fees are fully covered by the DSS, the cost to social services is zero, whereas social services would have to make a contribution towards an alternative home care package.

There is little potential for similar savings amongst older preserved rights claimants. Some seven years after the 1993 reforms, few older people would wish to or be able to move out of a care home environment. For many younger people, however, supported housing may offer the double bonus of a less expensive placement option that is at the same time preferred by the client. In the absence of any dependency profile of the preserved rights population, it is not possible to estimate the savings that might be achieved. However, it is not wholly unrealistic to envisage a 2.5 – 5 per cent purchasing and care management on-cost delivering an offsetting saving in spending on services of the same magnitude or even more.

Care homes

Care homes that have hitherto subsidised residents on preserved rights, by accommodating them on lower than normal fees, would stand to gain from transfer of funding from the DSS to local authorities. Gainers would be concentrated in the more prosperous areas of Britain, such as the South, where shortfalls are greatest. On the other hand, care homes in many less prosperous areas including most of the North of England and Wales stand to lose. Table 1 shows that 32 out of the 196 authorities providing information for financial year 1999/2000 had baseline fee rates for elderly nursing care which were lower than DSS limits. Corresponding figures for elderly residential care were 35 out of 190. Care homes in these areas would be at risk of having the fees of their remaining preserved rights clientele *reduced* as a consequence of transfer to local authority contracts. It is likely that the revenue losses in less affluent areas would outweigh the revenue gains in more affluent areas.

In addition to the north/south divide, there is a difference of interest between care homes catering for older residents and those catering for a younger clientele. While care homes for older people would be beneficiaries of additional spending by local authorities to bridge fee shortfalls, homes for younger people stand to gain little from this source since local authorities already bridge most of their preserved rights shortfalls. Moreover, there are fears amongst care homes catering for learning disabled and mentally ill people of possible cost shunting by local authorities. These fears are founded in reports of past cases where care home residents have been placed in supported accommodation outside their sponsoring local authority's area, later to find themselves the subject of a dispute over the funding of their care. Any reform of the preserved rights system would need to address this issue. Care homes for younger residents also have a broader fear that demand for residential care might be decimated as a result of placements in supported housing flowing from assessments – in some cases for the first time – of preserved rights residents' needs. This concern is not shared by care homes for older people, where placement in a non-residential setting is unlikely to be a realistic alternative.

The overall balance of advantage for care homes in the North and the South, for younger and older clients, is unclear. On the one hand, care home interests would undoubtedly welcome the termination of the annual central government exercise of setting preserved rights limits, on the grounds that the limits have not only failed to track care home costs but also have broadcast a perverse message to local authorities whose own annual fee upratings have often been based on the inadequate increases in preserved rights limits.

On the other hand, care home interests would have serious misgivings about bringing preserved rights clientele under the umbrella of local authorities because of the perception that the latter have frequently abused their monopoly purchasing power to drive care home fees as low as the market will bear. According to this view, many care homes may be financially better off serving individual customers with inadequate state funding – as long as it can be topped up by Personal Expenses Allowances, disregarded capital or third-party payments – than providing services on contract to local authorities at unrealistic fee rates. If the government does decide to abolish preserved rights and transfer funding to local authorities, the concerns felt by care home operators may be allayed if at the same time government were to allow local authority-funded residents to top up fees with their own disregarded capital.

Option 2: extension of the powers of local authorities to 'top up' care home fees for residents over pension age with preserved rights

The merit of Option 2 is that it would potentially offer relief to the most financially distressed amongst older preserved rights claimants, whilst greatly reducing the administrative and care management on-cost of extending local authority responsibilities to all current preserved rights claimants as in Option 1. The demerit is that it would leave unchanged the 'orphan' status of the majority of older and younger preserved claimants, whose fees are currently fully covered by Income Support limits. They would continue to be excluded from the non-financial support, protection and advocacy of local authorities. Option 2, like Option 1, would require primary legislation.

Residents and their families, friends and supporting charities

As under Option 1, the principal financial beneficiaries would be those older preserved rights recipients, together with their families, friends and supporting charities, who can be classed as 'distressed' in the sense that they are unable to get access to adequate care locally without using their Personal Expenses Allowance towards fees or getting a third-party top-up. To the extent that local authorities' new powers were discretionary, however, the full 7,800 of the former and 3,000 of the latter would not necessarily benefit.

Also as under Option 1, the financial benefit to younger residents would be small since local authorities already fund most of the shortfalls between preserved rights limits and fees, and since relatively few of this client group use their Personal Expenses Allowances towards fees or receive third-party top-ups from relatives, friends or charities.

The remainder of the 36,000 older preserved rights recipients, together with over half of the 47,000 younger preserved rights recipients, would remain excluded from non-financial support, protection and advocacy from local authorities.

Table 10 Estimate of maximum additional public sector costs if local authority powers were extended to allow them to 'top-up' care home fees for preserved rights claimants over pension age

Financial year	1999/2000	2000/01	2001/02
No. of residents claiming preserved rights (mid-year average)[1]	83,000	68,700	58,400
Maximum no. of financially distressed residents who would stand to receive local authority support under Option 2[2]	10,800	7,200	4,800
Gross service cost per resident[3] (£ per annum)	15,100	15,500	15,900
Total gross service cost (£ million per annum)	160	110	80
Purchasing and care management @ (say) 2.5 – 5% of gross service cost[4] (£ million per annum)	4–8 (less DSS admin. savings)	3–6 (less DSS admin. savings)	2–4 (less DSS admin. savings)
Cost of meeting current fee shortfalls (£ million per annum)[5]	9	6	4
Savings from more appropriate placements of preserved rights residents	0	0	0

1 1999/2000 mid-year average taken as August 1999, see Figure 2; subsequent years estimated assuming one-third annual decline in older claimants and 5 per cent decline in younger claimants.
2 See Chapter 3.
3 DSS Income Support Statistics, Quarterly Enquiry, May 1999.
4 Ten per cent care management factor derived from 'total purchasing costs' as a percentage of residential and day and domiciliary care service costs for adult care services, as presented in Local Authority Personal Social Services Gross Expenditure, 1997–98, Personal Social Services Statistics for England, Department of Health.
5 Derived from Table 6.

Public sector spending

Estimates of the maximum additional public sector spending flowing from Option 2 are presented in Table 10 – maximum in the sense that it is assumed that all financial 'distress' cases would be picked up by local authorities.

The public sector cost of meeting current fee shortfalls would be unchanged at £9 million per annum in 1999/2000, reducing by one-third each year. Additional purchasing and care management costs would be cut to a fraction of the Option 1 figure, at £4 – 8 million in 1999/2000, but, at the same time, the savings from more appropriate placement of people with preserved rights would be reduced to zero since alternative placements would be a realistic option only for younger preserved rights claimants who are currently without local authority support, whose position would not be altered under Option 2.

Care homes

Option 2 would be preferred over Option 1 by most care home interests. Those care homes in affluent areas which are currently accommodating preserved rights claimants at less than normal fee rates would stand to gain from additional top-up funding from local authorities, while there would be no fee reductions for preserved rights residents in less affluent areas, where local authority baseline fee rates are lower than Income Support limits. Moreover, the threat of decimation of demand for care homes catering for younger client groups, as a consequence of local authority review of alternative placement options, would be removed.

Option 3: greater local variability in Income Support limits

This option was proposed by Age Concern (1994) to address the specific issue of financial distress amongst older preserved rights residents unable to access adequate care locally without using their Personal Expenses Allowances or getting a third-party top-up. Under Section 135 of the Social Security Contributions and Benefits Act 1992, the Secretary of State for Social Security has powers to adjust the national preserved rights Income Support limits, taking into account local variations in home fees negotiated by local authorities under the new community care funding system:

> *135.(3) In prescribing for the purposes of Income Support, amounts … in respect of accommodation in any areas for qualifying persons … the Secretary of State shall take into account information provided by local authorities or other prescribed bodies or persons with respect to the amounts which they have agreed to pay for the provision of accommodation in relevant premises in that area.*

A significant advantage of Option 3 is that no legislation would be required and, therefore, the policy could be implemented without delay. In addition, like Option 2, it would target relatively small amounts of extra state spending on financially distressed preserved rights claimants. Nearly all of them would in practice be older people, although (unlike Option 2) Option 3 would also assist the handful of financially distressed younger preserved rights claimants. Moreover, it would involve no additional administrative and care management costs at all for local authorities. The downside is that no inroads would be made into the population of preserved rights claimants suffering from an 'orphan status' – excluded from the non-financial support, protection and advocacy of local authorities.

Residents and their families, friends and supporting charities

As under Options 1 and 2, the principal financial beneficiaries would be those older preserved rights recipients, together with their families, friends and supporting charities, who can be classed as financially 'distressed' in the sense that they are unable to get access to adequate care locally without using their Personal Expenses Allowance towards fees or getting a third-party top-up. It is unlikely, however, that the full 7,800 of the former and 3,000 of the latter would benefit. An important practical obstacle would be that over a third of local authorities currently set a range of fees they may be willing to pay, rather than setting a single baseline fee level for each client group (see Table 1). This may be because market conditions vary within local authority areas, or it may be because local authority purchasers wish to exercise discretion in the fees they are willing to pay for specific residents or specific homes. Whichever is the case, the DSS would find it difficult to cope with ranges and would presumably opt for the lower rather than the upper limit, thus denying preserved rights claimants full equality with their local authority funded counterparts.

A further disadvantage of Option 3 is that there would be no change in the 'orphan status' of preserved rights claimants. Even those claimants who benefited financially from higher local Income Support limits would continue to be excluded from the non-financial support, protection and advocacy of local authorities.

Public sector spending

Option 3 would cost the public sector less than Option 2, essentially because the former would involve no additional administrative and care management costs at all for local authorities. Aside from that, there is little to choose between Option 3 and Option 2 with regard to public sector spending. The cost of meeting shortfalls would be similar in each case and in neither case would there be any offsetting savings from more appropriate placement of people with preserved rights.

Care homes

Option 3 would be preferred over Option 1 by most care home interests, but not over Option 2. Under Option 3, those care homes in affluent areas which are currently accommodating preserved rights claimants at less than normal fee rates would stand to gain from an increase in local Income Support limits. The disadvantage compared with Option 2 is that under Option 3 local Income Support limits might be varied downwards in less affluent areas, where local authority baseline fee rates are currently lower than Income Support limits. Under neither Option 3 nor Option 2 would care home demand be threatened by local authority reviews of alternative placement options.

7 Conclusions

Abolition of preserved rights and transfer of all funding and care management responsibilities to local authorities (Option 1) offers the most complete solution to the issues of social exclusion that have been raised by the legacy of Income Support funding for long-term care. It would create a single consistent and equitable regime for state purchasing of social care. Crucially, it would address and resolve the orphan status of all preserved rights claimants, thus extending the benefits of local authority support, protection and advocacy to some 58,000 more people in 1999/2000, reducing to some 37,500 in 2001/02.

The additional public sector cost of meeting fee shortfalls would be small and diminishing, around £9 million in 1999/2000 dropping to about £4 million in 2001/02. A more important cost would be the potentially large additional administrative burden that would be faced by local authorities, costing in the order of £24 – 48 million in 1999/2000, reducing to about £16 – 33 million in 2001/02.

Two questions need to be posed to form a clear view of the overall merits of this policy option compared with the others.

1. Are the benefits of extending the support, protection and advocacy of local authorities to all preserved rights claimants in themselves worth the additional purchasing and care management costs?
2. If not, to what extent would the additional purchasing and care management costs be offset by savings in the costs of services purchased?

On the face of it, the opportunity to end the social exclusion of a vulnerable minority of some 58,000 claimants currently without local authority support is a compelling argument in favour of Option 1.

If, in addition, further research were to show that there are currently significant numbers of inappropriately placed younger preserved rights claimants, and that local authorities could reasonably expect to offset most or even all of their additional purchasing and care management costs by enabling those claimants to express a preference to live in less expensive supported housing, then the double benefit of public expenditure savings and enhanced client satisfaction would make the case for Option 1 yet more compelling.

Devil in the detail?

There is a strong case for abolishing preserved rights, but the rules governing the transfer of money from the DSS to local authorities would need to be carefully framed to avoid creating new problems, such as:

- inequitable distribution of DSS money between local authorities, and associated turbulence, which might arise from a central government 'formula' approach to distribution
- leakage of transferred money to other social services budgets (e.g. children's services) or to other local authority departments
- cost shunting by local authority social service departments to other agencies (exemplified by the 'stateless person' problem of the past, which arose as

people were being transferred from hospitals to care homes – when it sometimes proved difficult to establish the parish of origin upon which financial responsibility turned)

- disempowering of individuals who, though currently excluded from the support, protection and advocacy of local authorities, at least have the certainty of a preserved rights entitlement and the power that brings to buy services of their choice.

Some of these potential problems could be avoided by ring-fencing of transferred money, so that it could be used only for specified client groups. The use of 'dowries' is another approach to securing the future funding of individuals, but in the past this has created tensions because local authorities cannot usually commit budgets further forward than the current financial year. Nor would fixed dowries necessarily be appropriate in a situation where placement in alternative settings is likely to be a frequent occurrence.

Most if not all of these potential problems could, however, be avoided by the expedient of linking central government transfers to individual claimants as follows.

- Each social services authority to be given the responsibility for establishing an appropriate contract covering the care of all preserved rights claimants in homes within their boundaries within a specified time frame.
- The amount of the 'preserved rights transfer grant' to each authority in the first financial year to be equal to the aggregate value of the contracts thus established, less the ordinary Income Support entitlements of clients concerned, plus an allowance for purchasing and care management.
- The amount of the grant in subsequent years to be calculated by a formula based on the first year, adjusted according to assumptions on attrition rates, inflation and service cost savings through more appropriate placement of the individuals transferred.
- The grant to be adjusted in subsequent years for the small numbers of (older) privately paying care home residents running out of money who would otherwise have become preserved rights claimants.
- Guidance to local authorities on how to deal with cases where fees being paid for preserved rights residents are higher than the local authority is usually prepared to pay. In particular, if local authorities were unable to negotiate fees down they would need to address the question in their assessments whether it could be considered an integral part of assessed needs that a person remain in a particular home, despite being more expensive than the local authority's usual benchmark. If so, then the local authority would be expected to pay. If not, then the person would be expected to move to a less expensive home, unless a third-party top-up were available from a relative, charity or friend.
- Monitoring of fees agreed by local

authorities for newly established contracts, possibly with caps on average fees by client group, in order to counter the lack of incentive that local authorities might perceive to control costs effectively when negotiating fees for people with (former) preserved rights.

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