Sarah Wollaston (Totnes, Conservative)

Will the Minister also accept that one of the unintended consequences of the existing arrangements is cross-subsidy by self-funders of those being funded? Does he see arbitration as a way to address that?

Norman Lamb (The Minister of State, Department of Health; North Norfolk, Liberal Democrat)

I understand the risk of cross-subsidy; there are many claims that that happens. One of the good things that will emerge from the Bill is far greater transparency about the local authority's negotiated fee and what the self-funder pays through what is declared in the personal budget, or independent personal budget, which will make any practice of that sort much more difficult. It is hard to predict the exact consequences, but that transparency will ultimately help everyone and make unacceptable practice much more difficult to mask.

The amendment raises an important issue about the relationship between local authorities and care and support providers and how to resolve disputes, should they arise. The Bill recognises the importance of ensuring a variety of high quality services to meet the needs and preferences of all local people, not just those whose care is arranged by the local authority. As part of local authorities' day-to-day functions, they will agree contracts with providers from whom they intend to commission care and support. Sometimes, those will be block contracts or framework agreements agreed in advance to allow for flexibility over time, but, increasingly, they will be more specific contracts tailored to individual cases and preferences. Where the local authority has put in place a framework agreement or agreed prices on an individual basis, we are clear that prices agreed with providers as part of a contractual discussion are for the agreement of the parties involved.

Sometimes, there will be a dispute between the local authority and provider about the prices proposed or other matters and, occasionally, disputes may become intractable. The amendment would, in effect, require the appointment of a new independent arbitrator to adjudicate in any unresolved disputes.

I understand why that has been suggested and the model from the groceries code adjudicator provides an example of how that could operate. Of course, the problem is that that legislation requires the supermarkets to pay for the adjudication system, but I do not think the suggestion here is for the providers to pay for that and my fear is that the cost of any system would have to come out of the money available for care. Any disputes that arise as part of a contractual negotiation would have to be resolved through that process.

Local authority commissioners and providers should agree prices for care and support that reflect the particular circumstances in their local market. However, such negotiations do not take place in isolation. Local authorities must have regard to the importance of ensuring sustainability in the market as part of their market-shaping function under the Bill. That new duty is made clear in clause 5(2)(d). It means, for instance, that local authorities should not set prices that risk undercutting the stability of the market as a whole. Providers also have a clear responsibility, as they participate in negotiations over local fees.
I completely understand and am realistic about the pressures that providers are under and the respective bargaining power of the parties. We are clear that they should not sign up to contracts that tie them to fee rates that will risk the quality of services or the working conditions of those providing them. In that way, the incentives already exist—both in the Bill and as a matter of business practice—to militate against unreasonably low fee rates. I make the point again about transparency, which the Bill will offer.

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