



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 5
Legislation Committee No. 5**

**Dydd Mawrth, 14 Gorffennaf 2009
Tuesday, 14 July 2009**

Cynnwys
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(Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 1
Proposed Social Care Charges (Wales) Measure—Stage 1: Evidence Session 1

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mick Bates	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Lesley Griffiths	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Amanda Jones	Adran Gwasanaethau Cyfreithiol, Llywodraeth Cynulliad Cymru Legal Services Department, Welsh Assembly Government
Steve Milsom	Pennaeth Dros Dro, y Gyfarwyddiaeth Polisi Pobl Hŷn a Gofal Hirdymor, Llywodraeth Cynulliad Cymru Acting Head, Older People and Long Term Care Policy Directorate, Welsh Assembly Government
Gwenda Thomas	Aelod Cynulliad, Llafur (y Dirprwy Weinidog dros Wasanaethau Cymdeithasol) Assembly Member, Labour (the Deputy Minister for Social Services)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Anna Daniel	Clerc Clerk
Olga Lewis	Deputy Clerc Dirprwy Glerc
Lisa Salkeld	Cynghorydd Cyfreithiol i'r Pwyllgor Legal Adviser to the Committee

Dechreuodd y cyfarfod am 9.02 a.m.
The meeting began at 9.02 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Mark Isherwood: Bore da a chroeso. Welcome to Legislation Committee No. 5 for our evidence session on the Proposed Social Care Charges (Wales) Measure. We will start with the normal housekeeping comments. In the event of a fire alarm, Members should leave the room by the marked fire exits and follow instructions from the ushers and staff. No test is forecast for today. All mobile phones, pagers and BlackBerrys should be switched off, because they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of Welsh and English. Headphones are provided, through which instantaneous translation may be received, and, for people who are hard of hearing, they may also be used to amplify sound. Please do not touch any of the buttons on the microphones, as that can disable the system, and ensure that the red light is showing before speaking.

Interpretation is available on channel 1 and the verbatim feed on channel 0.

9.03 a.m.

**Mesur Arfaethedig ynghylch Codi Ffioedd am Wasanaethau Gofal Cymdeithasol
(Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 1
Proposed Social Care Charges (Wales) Measure—Stage 1: Evidence Session 1**

[1] **Mark Isherwood:** The committee is considering the general principles of the proposed Social Care Charges (Wales) Measure. Following the agreement of the committee at last week's meeting, our public consultation was launched on 7 July. The closing date for responses is 28 August and the details are on the committee's website. The purpose of today's meeting is to take oral evidence in connection with the proposed Measure. I therefore welcome Gwenda Thomas, the Deputy Minister for Social Services, who is responsible for introducing the proposed Measure. I also welcome her officials. I ask you all to introduce yourselves for the record.

[2] **The Deputy Minister for Social Services (Gwenda Thomas):** I am Gwenda Thomas, the Deputy Minister for Social Services.

[3] **Mr Milsom:** I am Steve Milsom, acting head of the older people and long-term care directorate in the Department for Health and Social Services.

[4] **Ms Jones:** I am Amanda Jones and I am the lawyer who has been working on this piece of legislation.

[5] **Mark Isherwood:** I will start with the first question. Can you please explain why you believe that there is a need for this legislation and whether you think that there may be valid reasons why charges for non-residential social care may vary across local authorities?

[6] **Gwenda Thomas:** Thank you for the welcome, Mark. Local authorities' power to charge for non-residential social services is set out in section 17 of the Health and Social Services and Social Security Adjudication Act 1983. In practice, this gives authorities wide discretion in deciding how to set their charges, to determine which services to charge for, and to set the level of those charges. It also gives local authorities the discretion not to charge, if they so wish. This discretion has led to significant variations in the services charged for, in the range of services that users have to pay for, and in the financial assessment process. While the Assembly Government has issued statutory guidance to local authorities under section 7 of the Local Authority Social Services Act 1970 on the exercise of their charging arrangements, local authorities are able to depart from such guidance and its impact has therefore been limited.

[7] If the Assembly Government were to issue further guidance under section 7, it would need to ensure that it did not fetter the fundamental discretion of local authorities to charge for certain services and to recover such charges as they consider to be reasonable, as set out in section 17 of the 1983 Act. The legal advice that we have is unequivocal: we cannot use the powers in section 7 of the Local Authority Social Services Act 1970 to achieve the degree of consistency and fairness that we are seeking. Therefore, we remain firmly of the opinion that the only way in which to deliver a consistent and fair approach to charging is by bringing forward this proposed Measure.

[8] **Darren Millar:** Thank you for your answer, Deputy Minister. The proposed Measure allows for the detailed provisions to be set out at a later date through regulations, Orders and guidance. However, in your statement to Plenary on 30 June, you specified some, albeit

limited, detail on the maximum weekly charge of £50, for example. Why do you think that you need to be less detailed than you could be in the proposed Measure at this point?

[9] **Gwenda Thomas:** The key point is that the policy intention and structure of the new charging regime is set out in the proposed Measure and will be subject to the scrutiny process of the Assembly. The regulations will then allow for detailed provision to be made as to the operation and implementation of that policy. These regulations will be primarily concerned with the financial and administrative arrangements covering the operation of the revised charging regime and, as such, will need to be reviewed and, perhaps, updated from time to time. That could be required more regularly than we currently anticipate, so we need that flexibility. For example, it is intended that the regulations will impose a cap on the weekly charge that may be levied by local authorities, as you have already said, and will prohibit local authorities from taking certain welfare benefits into account when undertaking the charge assessment. The regulations will include details that will enable the Welsh Assembly Government to review or amend the regulations from time to time, as future Governments might see fit.

[10] **Darren Millar:** Building on that, a great deal of information was put forward by the task and finish group, particularly on the impact of charges on families and individuals who sometimes struggle to pay them—and we see that in our constituencies. Will the fact that you are excluding some of the detail not delay the opportunity for people to benefit from the provisions of the proposed Measure that you have outlined? I know that you have the target date of April 2011 for the first-steps improvement package, but could that not slip because there is little detail in the proposed Measure? Would you not be allowed to make amendments or addenda to the legislation in future, while still specifying some initial detail?

[11] **Gwenda Thomas:** I think that we will need the time from now until April 2011 to prepare for the proposed Measure, but I do not think that saying now that we will introduce regulations to bring forward the policy proposals in the proposed Measure will cause a delay. In preparing those regulations, it is crucial that we consult widely with stakeholders.

9.10 a.m.

[12] As you say, so far, we have had the expertise of the task and finish group, which is made up of stakeholders, service users, and representatives of the Welsh Local Government Association, the United Kingdom Home Care Association, and Coalition on Charging Cymru. I am sure that you will not mind, Chair, if I pay tribute to that task group for the excellent work that it has carried out. I do not think that bringing in the policy measures through regulations will delay the implementation date that we have set ourselves of April 2011. The scrutiny of those regulations will be a very important part of their introduction.

[13] **Darren Millar:** So, you are absolutely confident that the timescale can still be achieved.

[14] **Gwenda Thomas:** Yes, I am.

[15] **Darren Millar:** Okay. In your Plenary statement on 30 June, you referred to the proposed Measure and suggested that some of the regulations would be subject to the superaffirmative procedure. Could you explain what the superaffirmative procedure is, and tell us which of the provisions would be subject to it?

[16] **Gwenda Thomas:** I would like to apologise, because when I mentioned the superaffirmative procedure in Plenary, it was a slip of the tongue. I should have said that some of the regulations could be subject to the affirmative procedure. The superaffirmative procedure, as I understand it, is a longer process than the affirmative procedure. There is a 60-

day waiting time for Assembly Members to refer to it and then it reverts to the affirmative procedure. At the moment, I cannot see that we would need to resort to that. I may inadvertently have given the impression that some of the regulations made under this proposed Measure might be subject to the superaffirmative procedure, but that was not my intention, and I am glad that you have brought it up, as it has given me the opportunity to clarify the matter. The regulations or Orders that amend any provision in an Act or Assembly Measure will be subject to the affirmative procedure. Other statutory instruments will be subject to the negative procedure. As most statutory instruments will be concerned primarily with the financial and administrative arrangements covering the operation of the revised charging regime, the negative procedure was considered to be the most appropriate. This is common practice for such pieces of legislation. The negative procedure would allow Assembly Members to table a motion annulling the proposed Measure if they so wished.

[17] **Darren Millar:** Thank you for clarifying that.

[18] **Leanne Wood:** You have said that a main reason for introducing this proposed Measure is to try to achieve greater consistency in charging throughout Wales, but is there not a danger that some people could end up being worse off as a result?

[19] **Gwenda Thomas:** There should not be such a danger. The powers in section 2 would ensure that the wide variation in charging across Wales is put on a much more consistent basis. My initial plans as part of the first-steps improvement package are, as you know, to introduce this maximum weekly charge from April 2011. Currently, only two councils in Wales have maximum charges below that. I believe that Rhondda Cynon Taf council, for example, has already made a proposal to introduce a maximum charge of £75 a week from 1 August, which will leave just one council with charges lower than those that we propose. So, in my view, definitely no service user should lose out directly as a result of this proposed Measure. While it will allow the Welsh Assembly Government to set maximum charges, it will not remove local authorities' discretion to charge less than £50 or not to charge at all. That discretion remains.

[20] **Leanne Wood:** Under this proposal, a person with a low income who receives a relatively low level of services could pay the same as someone who has a high income and receives a high level of services. Do you think that that is fair?

[21] **Gwenda Thomas:** We need to reflect on what the Welsh Assembly Government has already introduced. In 2002, we introduced the fairer charging policy and, in 2007, we enhanced it, bringing in protection for those people on the lowest incomes. I have a list of what was introduced in 2007, if you would like to see it. It protected people on the lowest incomes and took about 3,000 people, I think, out of the charging system altogether. The people who will benefit most from the proposed Measure are those in the age group of 60 and above who have the most complex needs. That is why we have introduced the disregard of constant attendance allowance and the severe disablement allowance, to begin to recognise the degree of disability when making financial assessments and assessing what people should pay.

[22] **Lesley Griffiths:** Could you confirm that any proposed changes to the arrangements for charging would apply equally to people who are in receipt of direct payments and who choose their own package of care?

[23] **Gwenda Thomas:** The proposed Measure, as currently drafted, does not apply to those in receipt of direct payments. I am glad of the opportunity to update Members on what is happening with direct payments. The legislative competence Order on charging, which was approved last year, and out of which this proposed Measure has grown, gave the Assembly the power to introduce legislation concerning direct payments to service users and those

looking after them. However, the Health and Social Care Act 2008, which has now gone through Parliament, introduces an extension to the categories of persons to whom direct payments may be made. I am very keen that we, as the Welsh Assembly Government, benefit from that enhancement of the categories. Therefore, the draft legislative competence Order on carers, which the Assembly approved about a fortnight ago, included an amendment to the direct payment regime so that we could benefit subsequently from the enhancement of the categories of people who could receive direct payments. I expect the draft legislative competence Order on carers to gain Royal Assent very soon. Once it does, it will allow us to table a Government amendment during the stages of scrutinising this proposed Measure, to ensure that the people of Wales do not lose out, as regards the categories of people who could receive direct payments.

[24] **Lesley Griffiths:** You stated that—

[25] **Darren Millar:** Sorry, just before Lesley moves on to another subject, can you just clarify that for me, Deputy Minister? You are saying that an Act of Parliament that was made added additional categories of people who could receive direct payments, but those provisions did not apply in Wales. Is that right?

[26] **Gwenda Thomas:** I will ask for legal clarification.

[27] **Ms Jones:** The draft legislative competence Order, under which this proposed Measure is to be made, refers to competence in respect of direct payments to people using services or those who are looking after them. Subsequent to that, the Act that the Deputy Minister has referred to extended the category of people to whom direct payments could be made, and therefore our competence was out of synch with the new extended group. So, the competence is being amended to reflect that and to incorporate the new, amended group, so as to give us the competence to make amendments to the proposed Measure, which would cover that.

[28] **Darren Millar:** Why were those things not discussed with the UK Government at the time of the Bill becoming an Act in the Houses of Parliament? Clearly, this could crop up again and there would be a need to recognise that and have some discussion with the UK Government. Is that not unusual?

9.20 a.m.

[29] **Ms Jones:** It happens occasionally with the timing of Bills. Sometimes the timing of different pieces of legislation in different places is unfortunate. However, like the Deputy Minister said, that could be rectified and should not cause a problem for this proposed Measure.

[30] **Darren Millar:** This is one of our problems, as the National Assembly for Wales, because we do not see the detail of the UK Bills that may impact on Wales. We are not scrutinising them properly, if I may say so, and we need better opportunities to scrutinise UK Parliament Bills prior to their enactment, so that we can assure ourselves that the impact on Wales is satisfactory. We could then at least have some sort of input into that process.

[31] **Mark Isherwood:** That matter has been addressed in the Subordinate Legislation Committee's report.

[32] **Darren Millar:** I know, but I am simply making the point.

[33] **Mark Isherwood:** Deputy Minister, could we have a note on direct payments for our report?

[34] **Gwenda Thomas:** Yes, I would be happy to provide that.

[35] **Lesley Griffiths:** You have stated that, if the proposed Measure is approved, you intend to introduce regulations to set a maximum weekly charge of £50. So, local authorities that currently have a higher, or no maximum, charge will be compensated by the Welsh Assembly Government. Given that you just mentioned that Rhondda Cynon Taf will charge £75 from later in the summer, only two local authorities will fall into this category. Is that not unfair on those who currently charge lower rates?

[36] **Gwenda Thomas:** No. We will talk to local government on the position of all local authorities through the partnership agreement that already exists. This was tested by the fairer charging initiative that was introduced in 2007, so there is already a precedent for this. I do not think that this needs to be unfair. Where local authorities charge more than £50 a week, they will need to identify all of the people who are being charged above that rate, and contact them. The local authorities that are charging lower than that £50 rate, which will only be one local authority after 1 August, will retain the discretion to charge below that £50 a week. It is important to make the point that we are not taking that discretion away. I do not think that any local authority will need to be in an unfair position as compared with any other local authority.

[37] **Lesley Griffiths:** What evidence have you used to set the rate of £50?

[38] **Gwenda Thomas:** We have benefited from the evidence of the task and finish group, which brought to this its own expertise. Research was also carried out by LE Wales, which I thank for its excellent work. It is worth looking at the research that it produced in booklet form. Wales is in a position of having substantial research in this field; I know of no comparison in any other UK country. The depth of that research and the information that it gave us provided the evidence that we needed to establish at which point to level out this charging. That research provided the basis for the evidence. I am sure that the committee would want to consider that research to facilitate this process.

[39] **Lesley Griffiths:** Following the introduction of the proposed Measure, you have announced your intention to introduce regulations to make the statutory elements of the existing guidance mandatory. What will be the effect of these regulations on charges for people using non-residential care services?

[40] **Gwenda Thomas:** Could you ask the first part of the question again?

[41] **Lesley Griffiths:** You said that, if the proposed Measure was approved, you would introduce regulations to make the statutory elements of the existing guidance mandatory.

[42] **Gwenda Thomas:** The statutory elements of the guidance are listed. I can make a copy available if the committee does not have it. The statutory elements are to ensure that service users' net income is not reduced, after charging, below the basic level of income support or below the appropriate guaranteed credit level, plus a buffer of no less than 35 per cent of this. These were introduced in 2007, as you said. They are also to ensure that all service users have a flat-rate disability-related expenditure disregard of 10 per cent of their equivalent basic level of income support or appropriate guaranteed credit level; to disregard from the charge assessment any savings or credit payments received under the pension credit arrangements; to disregard all earnings—that was important, and the Coalition on Charging is still making that point—as part of income and charge assessments, including the charge assessment for carers; and to ensure that savings and capital limits, where local authorities take these into account, are at least as generous as those set out in the charging for residential accommodation. Therefore, that brought a degree of consistency for non-residential services,

but making these statutory elements mandatory will ensure that the local authority cannot opt out of it. It could do so with statutory guidance, but making it mandatory will put an obligation on local authorities to treat them as a mandatory responsibility. This has been costed and we have already compensated local authorities, as I have already said, for the introduction of these statutory measures under the 2007 guidance, and I do not see that there will be any change in principle to that.

[43] **Lesley Griffiths:** While matter 15.1 allows the National Assembly to legislate on charges for children's services, the proposed Measure does not include charges for children's services. Is that right?

[44] **Gwenda Thomas:** Not quite. Local authorities in Wales currently have limited powers to charge for children's services, although, in practice, they rarely do so. For that reason, there is currently no issue that the Assembly Government needs to or intends to address by way of legislation with regard to that. Local authorities could choose to charge for children's services and, should they choose to do that, the Assembly has the power under the terms of the legislative competence Order, out of which has grown this proposed Measure, to introduce Measures with regard to children's services, if that became necessary. Some children's services would be covered under the proposed Measure, for example, for children who are carers. So, in the main, the sections that deal with charges for children's services are sections 17 and 18 of the Children Act 1989. The proposed Measure does not embrace that Act, but, as I have already said, and it is an important point, the LCO would allow that if it were thought necessary to introduce another Measure.

[45] **Lesley Griffiths:** Would section 3 give Welsh Ministers the power to abolish completely non-residential care charging?

[46] **Gwenda Thomas:** A policy to abolish all charges for non-residential social care would not be affordable in our budgets; I think that I have made that clear on many occasions. Therefore, we do not intend to pursue it at present. In the current financial climate of limited public resources, we have to make difficult decisions. However, I believe that the proposed regime for charging will allow more consistency. It will benefit, as I have said, thousands of service users, and I believe that moving towards consistency and fairer charging is what we can afford to do at present.

9.30 a.m.

[47] **Lesley Griffiths:** Could you clarify whether this proposed Measure would give Welsh Ministers the power to suspend charging for certain groups and for specified periods, if required, following discharge from hospital, for example?

[48] **Gwenda Thomas:** The proposed Measure would enable the Assembly Government to suspend charging for certain groups of people. This could include, for example, individuals who have a disability or a caring responsibility, or those who are of a particular age group. In respect of suspending charges on discharge from hospital, powers to make regulations under section 16 of the Community Care (Delayed Discharges etc.) Act 2003 would be used. However, there are no immediate policy intentions to do that.

[49] **Lesley Griffiths:** How does that compare with the powers that you have under the Community Care (Delayed Discharges etc.) Act 2003?

[50] **Gwenda Thomas:** No regulations have been made under section 16 of the Community Care (Delayed Discharges etc.) Act 2003 and, as I have said, there are no immediate policy intentions to do so. In Wales, the six-week free homecare policy was implemented through the introduction of a local authority grant scheme. Payments to local

authorities to cover the cost of provision were made subject to the standard grant conditions. These conditions were annexed to National Assembly for Wales Circular 5/2002, which was issued in February 2002 and contained general guidance as to the objectives, purpose and administrative arrangements for the grant scheme. The scheme ran for two years, 2001-02 and 2002-03, and then was included in the revenue support grant. That is where we are at present. While there is no intention at present to introduce regulation under section 16 of the Community Care (Delayed Discharges etc.) Act 2003, if such regulations were to be made, the power to charge under this proposed Measure would be subject to the regulations under the previous Act that I mentioned.

[51] **Lesley Griffiths:** You have already decided and announced that it is your intention to prohibit local authorities from charging for transport to day centres. Can you explain why you made this decision and why you have decided not to include it on the face of the proposed Measure?

[52] **Gwenda Thomas:** This was an option that the stakeholders' task and finish group was in favour of. The group argued along the lines that older people benefit from free bus passes, and that travel is free in the NHS. Therefore, the argument was that we needed to bring people who travel to day centres into the free transport entitlement. I was convinced by that; I think that it was fair. In my own constituency, representations have been made to me on the issue of travel to day centres. It is a relatively affordable option. Although we do not know exactly how many people use transport to day centres, we know that around 32,000 people in Wales use day services. The cost of introducing this is £1.4 million. Therefore, I think that it would benefit people. There was also the cost of the administration of this—red tape—to collect around 40p a day. Therefore, it is sensible to introduce this, and it was an aspect of the proposed Measure that was welcomed by the task and finish group.

[53] **Darren Millar:** Therefore, would you basically extend the existing bus pass scheme to these individuals—the category of individuals entitled to day care?

[54] **Gwenda Thomas:** I will not be extending the free bus pass scheme, but the principle of free transport, to some people who probably only go to day centres. It brought a degree of consistency.

[55] **Darren Millar:** I am encouraged to hear that, because not all communities are served well by buses and public transport. Obviously, if it was simply confined to free public transport via buses, it would be unsatisfactory; but if you are telling me that the existing transport arrangements will still be in place but will be free, that is much more encouraging news.

[56] **Gwenda Thomas:** That is an important point, is it not? I certainly hope that local authorities will retain this transport facility. The Assembly Government will reimburse local authorities for the cost of introducing this free transport. I hope that authorities will take the opportunity to review their community transport facilities and that this proposed Measure will trigger and facilitate the process.

[57] **Darren Millar:** It would be interesting to see how the community transport schemes that have been piloted in some parts of Wales might fit into this to ensure that there is equity of provision across the country. As we all know—it is certainly true in my constituency—the service is different in one county to that in the next, simply on the basis that the two pilot schemes are very different. In other parts of Wales, certain eligibility criteria vary, and it would be interesting to see how that would work in practice. I think that we should take more evidence on that.

[58] **Gwenda Thomas:** With the social services buses being integrated with the

community transport schemes, this is an opportunity to do that.

[59] **Mark Isherwood:** We should also bear in mind the fact that the Deputy First Minister is launching a consultation, led by the Community Transport Association, on the pilot schemes. Perhaps it might be helpful to feed some of this into that consultation process. That is just an observation. Thank you, Lesley, for dealing with that long line of questions.

[60] **Mick Bates:** Deputy Minister, I would like to look at the financial impact of the proposed Measure. The regulatory impact assessment provided by the Government does not provide any information on the likely costs of the provisions in the proposed Measure. In fact, the explanatory memorandum states:

[61] ‘Apart from the requirement to provide information set out above, the remaining elements of any revised charging arrangements will be set out in regulations and guidance to be made under the proposed Measure. Any implementation costs for local authorities such as loss of income and administrative and IT costs associated with the changes will be assessed accordingly as part of the Regulatory Impact Assessment for that legislation’.

[62] However, in your Plenary statement on 30 June, you outlined all the initial costs of the proposals for the regulation and an estimate of the likely costs. You said:

[63] ‘With regard to reimbursements and the cost, the best estimate of the cost of introducing the £50 per week charge is £6 million per annum, the cost of transport to day care is £1.5 million, and other costs could take the overall cost to about £11 million’.

[64] Has any consultation been undertaken on the possible impact of the new charging regime on care agencies that currently provide services through private arrangements with individuals who may, in future, arrange their care through a local authority in light of a more favourable charging climate?

[65] **Gwenda Thomas:** I do not believe that there will be any significant impact on care agencies providing services for private arrangements, so the short answer to your question is ‘no’—not if they are private arrangements. This proposed Measure is, of course, all about the way that local authorities charge for the services that they arrange, either by providing them directly themselves or through commissioning. Furthermore, the provisions of the proposed Measure have been directly shaped by the considered advice that I have received from the Assembly Measure task and finish group. Its membership included the United Kingdom Homecare Association, and I am confident, therefore, that the Assembly Government’s policy has been drawn up on the basis of authoritative and comprehensive advice from that task group.

[66] **Mick Bates:** The explanatory memorandum states that the requirements of section 5 on providing information about charges will not involve any additional cost to local authorities. On what basis did you make that assessment?

[67] **Gwenda Thomas:** We made that assessment on the basis that we are committed to reimbursing local authorities for the cost of the introduction of the proposed Measure.

[68] **Mick Bates:** I will look at that in more detail in a moment. So, you are quite happy that local authorities will be able to meet the full cost?

[69] **Gwenda Thomas:** I do not anticipate any extra costs. Please repeat the question.

[70] **Mick Bates:** It is okay. I think that you have answered that part. I shall move on.

[71] **Gwenda Thomas:** I wondered whether you touched on the information bit. You did not, did you?

9.40 a.m.

[72] **Mick Bates:** Yes, it was about information on charging. You say that you will reimburse local authorities in full for providing information on the new charging regime.

[73] **Gwenda Thomas:** We do not anticipate that providing this information will lead to any extra costs for local authorities. The need to provide this information was established in 2002 when the fairer charging regime was introduced by guidance. Therefore, this is about building on existing practices to achieve consistency. While some authorities have excellent means of providing information, others are not so good and the consistency of information that they provide is not good enough. So, the purpose of this is to achieve consistency on the amount and quality of information provided, but we do not foresee any extra costs.

[74] **Mick Bates:** I will address the concerns raised by the WLGA in the task and finish group in a moment, but I would like to confirm that the estimated total cost of your proposals is as outlined on 30 June, namely £11 million. Does that take into account any increase in demand for non-residential care services as a result of the new charging limits?

[75] **Gwenda Thomas:** We have costed this and if there is a move towards people requiring more services because of the impact of this proposed Measure, they will still be subject to the care assessment and the eligibility criteria laid down by local authorities. This proposed Measure does not take that away. So, the needs element should still dictate the level of care provided. Therefore, the level of care will be subject to the same assessment by local authorities.

[76] **Darren Millar:** Yes, but that does not take away the fact that there are many people out there who have not sought statutory care provision through social services, but are still purchasing domiciliary care services for £30 or £40 per week. Those people need to be assessed and they need a much broader range of services. They have been put off the process because of the charges that they might incur in their local authority area. So, a bit of a floodgate will open as a result of introducing any new regulation. I would have thought it prudent of your department to look in some detail at the size of the spill through this floodgate to determine exactly how you would cope with that. How would you cope if local authorities were inundated by a new tranche of people wanting to be assessed because you then face the problem of needing sufficient resources to assess those individuals and of funding the process thereafter? Has that work been done and, if so, what element of the £11 million accounts for that?

[77] **Gwenda Thomas:** This is still a matter of assessing needs and of local authorities assessing those needs in accordance with what they establish are the needs in their local area. The assessment process will still fundamentally be the mechanism by which the care needs are established and a service is offered, taking the eligibility criteria into account, which are down to the discretion of local authorities. If people are being charged the higher upper limit charge at the moment, then perhaps they would want to use the money that is freed up to buy extra support. That would be up to the individual to decide, but that will free up a resource for people who are currently paying much higher charges than £50 per week.

[78] **Darren Millar:** I appreciate that answer, Deputy Minister, but you are not responding to my specific question, namely that there will be many individuals out there in receipt of care outside of the local authority's provision, who have not been assessed by their local authority or who have, in fact, been discouraged from being assessed by their local authority because of its current charging regime. Has your department made an estimate of

the number of people who would suddenly be drawn in, or who would be encouraged to make an application for some sort of care provision by the local authority because it knows that the charges will be capped?

[79] **Gwenda Thomas:** I have no evidence of that, but Steve might want to come in here.

[80] **Mr Milsom:** Certainly, Deputy Minister. The research undertaken by LE Wales did not identify a substantial degree of unmet need or that there was, as you put it, a raft of new clients who were waiting to come to the local authority for services. The information that it gathered from local authorities did not suggest that that was the case. It is a difficult thing to prove; if someone has not come along to a local authority and sought an assessment, you do not know—

[81] **Darren Millar:** That is precisely the point that I am making. They would not be known to local authorities, but they would be known to domiciliary care agencies. It is a pretty easy thing to do, to put to them the easy question of what proportion of their business comes via the local authority, and what proportion does not. I know, Chair, that we are taking evidence on this subject from Care Forum Wales. It would be interesting to try to establish that and engage on that, because I think that your figures are quite dodgy. I do not think that you have made sufficient provision for what will undoubtedly be a flood of people who will make applications.

[82] **Mr Milsom:** The evidence, from Scotland for example, does not suggest that there would be a flood of unmet need. Those people who are currently paying for themselves, as the Deputy Minister said, will be subject to the means test and an assessment of their care needs. You cannot make the assumption that, because people are paying for their current care, they will suddenly become eligible according to local authority criteria, and fall under this charging regime.

[83] **Darren Millar:** We shall wait and see what the response is from Care Forum Wales.

[84] **Gwenda Thomas:** LE Wales touches on the demographic changes that are anticipated. It might be helpful for the committee if we extract the relevant evidence on this point and make that available to the committee.

[85] **Mick Bates:** To reinforce that, Chair, the WLGA raised concerns regarding this issue. It pointed out that it was imperative that local authorities were not financially penalised by the changes of this policy. Did you follow that up? From the answer that Steve gave, it seemed to me that you did not follow that comment up and look at what criteria you would use to satisfy WLGA concerns if there were, as Darren put it, a flood of new applicants.

[86] **Gwenda Thomas:** We have made it clear that local authorities will not lose out as a direct result of the introduction of the proposed Measure. I have said that we will be talking to local authorities with regard to the issue of reimbursement. It is very much the responsibility of local authorities as well to anticipate and to make known unmet needs. We can perhaps follow up concerns that the WLGA has voiced, which it should voice to us as well so that we are clear as to exactly what it is saying.

[87] **Mick Bates:** Finally, on this point, you have given a commitment to £11 million—you were saying that the costs were £11 million. Will you reimburse that £11 million every year?

[88] **Gwenda Thomas:** It will be on an ongoing basis. The £11 million will cover the introduction of the upper limit of £50 per week. It will cover the cost of the disregard of constant attendance allowance and the severe disablement allowance, which is about £3.6

million. Together, the £6 million, the £1.4 million and the £3.6 million make up the anticipated overall cost of the proposed Measure.

[89] **Mr Milsom:** Perhaps it is just worth clarifying to the committee that those are 2008-09 prices, not 2011 prices.

[90] **Gwenda Thomas:** We have factored in and anticipated inflationary costs.

9.50 a.m.

[91] **Darren Millar:** The Deputy Minister has already partly answered my question, but I would like to clarify whether she has factored demographic changes into the 2011 figure. Can you predict that more people will need a service?

[92] **Gwenda Thomas:** Yes. The demographic changes will be a part of the wider consideration of the cost of providing care over the next 10 or 15 years. We have had the paying for care consultation with regard to that. I am also committed to looking at the resources required for social services into the next decade. The paying for care Green Paper in England will be published this afternoon. We will then move towards the publication of a Wales-only Green Paper. We have to wait for the Green Paper for England to be published first because of the effects on pensions and benefits, for example. We have had an advisory group in Wales, and I would like to pay tribute to the work of that group.

[93] We have had thematic responses arising from the consultation in Wales with regard to the contribution of the state, the individual and families. So, we will now move towards the publication of a Wales Green Paper in the autumn, which, in itself, will be another consultation proposal. The Green Paper will be a proposal paper and will be subject to consultation. So, with regard to demographic changes, the question is how far ahead we need to look. We know that any implications arising from the Green Paper will not be introduced until 2014. Therefore, I see this proposed Measure as a way of bringing forward improvements for service users now and not waiting for the full effects of the White Paper that will follow the Green Paper. So, it is wise, if we can move now to improve the way in which we charge people, to do so and not wait until the Green Paper allows us to do that.

[94] **Mick Bates:** I have one further point that relates to the WLGA's concerns about the costs. What process will there be to resolve any disagreement between an authority and the Government in respect of costs incurred?

[95] **Gwenda Thomas:** The development of the partnership agreements has been very positive. That was the way that we negotiated with the WLGA for the 2007 proposals. I certainly hope that we can successfully talk to the WLGA and local authorities and I think that we have a track record of doing that, Mick, and I hope that we can do it this time.

[96] **Mick Bates:** To confirm what you have said, there is not an agreed protocol or procedure at the moment about resolving any cost issues that may arise from this particular proposed Measure. So, if the WLGA says that it has cost more than the £11 million, how would you resolve a dispute between you and the WLGA?

[97] **Gwenda Thomas:** By talking to the WLGA and relying on the research of LE Wales that has been shared with local authorities. That research forms the basis of our negotiations with the WLGA.

[98] **Mark Isherwood:** These are, no doubt, matters that can be raised with the Deputy Minister when she returns to committee on 1 October, dependent upon the evidence received in the interim.

[99] **Lesley Griffiths:** I would like to turn to section 4 of the proposed Measure, which deals with means-testing. This section seeks to introduce an important improvement on the existing legislation. One thing that it does is give service users the right to be means-tested and to have local authorities assess their financial means. How will this change the current practice of local authorities in relation to means-testing?

[100] **Gwenda Thomas:** At the moment, there is no express right for service users to request a means test or an express obligation on local authorities to undertake one. Therefore, section 4 of the proposed Measure will change that situation by enshrining a right to a means test in primary legislation. At the moment, the position for local authorities is that they are enabled to provide a means test. This will give the service user the right to demand a means test.

[101] **Lesley Griffiths:** It also introduces a duty to invite a service user to have a financial assessment. Why does it not do that as a matter of course? Why does it 'invite' service users?

[102] **Gwenda Thomas:** Under the current arrangements, the local authority determines how and when to carry out a means test to establish the service user's ability to pay. The new arrangements set out in this proposed Measure will, importantly in my view, mean that service users are given a clear right to opt for a means test. It does not make sense to say that service users must have a means test if they do not want one. They must also retain the right to opt out of a means test, because some people think that too many questions are asked and that the process is too intrusive. That is quite an issue for some. So, we are not saying that a local authority should be obliged to carry out a means test in every case. It is more sensible and does more to raise awareness of the rights of service users to allow them to opt in and to demand a means test. Where they want one, the local authority will be obliged to carry it out.

[103] **Darren Millar:** Returning to some of the detail that you have announced separately, but that has not been included on the face of the proposed Measure, this morning you reaffirmed your commitment to wanting to require local authorities to disregard, in full, the constant attendance allowance and the severe disablement allowance when they undertake financial assessments. Could that be put on the face of the proposed Measure rather than announced separately in future regulations?

[104] **Gwenda Thomas:** I will give you the reason for that. My personal view for a long time has been that we needed to look at the degree of disability when assessing for payments. The task and finish group also highlighted this and the Coalition on Charging has long held that view. The constant attendance allowance is for the most disabled people; you have to have a high degree of disability to be in receipt of that allowance. I think that you have to be between 80 and 100 per cent disabled. The severe disablement allowance was introduced for people who have never been able to work and thus have never been able to build up a national insurance record. Again, to have been in that category, you have to have been a severely disabled person. Both allowances will be phased out, but I feel that people who are now in receipt of those allowances should be considered in this proposed Measure.

[105] **Darren Millar:** So you have not included them on the face of the proposed Measure because the titles and types of benefits might change, is that it?

[106] **Gwenda Thomas:** Yes. The proposed Measure and the LCO in particular would allow us to look at any disability benefits that might replace them or any situations that might arise. However, it is important to disregard these allowances because of the very fact that they are paid to the most disabled people.

[107] **Darren Millar:** Thank you. I think that we have touched on the Green Paper issues.

[108] **Mark Isherwood:** Thank you. Leanne is next.

[109] **Leanne Wood:** In Plenary on 30 June, on the disregard that Darren just mentioned, you said that,

[110] ‘The disregard of the constant attendance allowance and severe disablement allowance can be extended. That is the nature of the proposed Measure. This is a first step. It can be added to and the legislative competence Order itself allows for the introduction of further Measures, on how pensions are dealt with, for example..

[111] Can you confirm that the proposed Measure as drafted would allow the Welsh Government to disregard benefits other than the constant attendance allowance and severe disablement allowance and what further regulations or Measures would be required to disregard pensions?

10.00 a.m.

[112] **Gwenda Thomas:** This proposed Measure establishes a framework that provides for regulations to be made as to the assessment of a person’s means. These could include provision for the exclusion or treatment of certain types of income when assessing an individual’s ability to pay service charges. That provision could certainly include pensions. Initially, we are proposing to take the steps that I have outlined to improve the fairness and consistency of charging arrangements, but future Assembly Governments may want to consider whether it would be feasible to also require local authorities to disregard pension income.

[113] **Leanne Wood:** Can you explain why it is necessary to make a detailed requirement of local authorities to provide information about charges and means tests through this proposed Measure?

[114] **Gwenda Thomas:** I think that including provisions in relation to information in section 5 of the proposed Measure is very important. I have already mentioned that there are examples of good practice among local authorities and one of the clear messages from the task and finish group was in relation to information. I believe that providing information to service users and keeping them up to date is a core component of delivering good services. We intend for there to be a need to build on existing practice and, of course, this is a free-standing provision and it does not impact on the level of charges, although I believe that it is an important aspect of the charging regime. So, unlike in the case of the detailed financial provision, it is not anticipated that section 5 will need amending. Once we have set this up, hopefully with the consultation that we will have in relation to this part of the proposed Measure, then it would be sensible for this to have been included in the proposed Measure itself, rather than left to regulations, because we cannot see any regular changes happening to the obligation to provide this information.

[115] **Leanne Wood:** My final question concerns section 6 and the right to request a review of charging decisions. Section 6 of the proposed Measure will allow Ministers to make regulations on reviews of charging decisions made by local authorities. Can you tell us how this would affect current local authority practice? Could you also tell us why it is necessary to leave the detail of those arrangements to regulations?

[116] **Gwenda Thomas:** I think that a simple review procedure is quite important. I am sure that all Members here, like me, have had constituents approach them about what they see as a simple mistake in a charging assessment—it could be ‘£100’ written as ‘£110’—or other simple issues that arise that should be reviewed and put right very quickly. People can be left

with quite hefty bills while they wait for a review of charging assessments. I do not think that it should take away the importance of the complaints procedure and it is not intended to do that. It is intended to introduce an obligation to review a charging assessment where a service user asks for that. I think that it has been an omission and it would probably help local authorities, as well. It would be wise to consult on this. On your point on the details, it would be my intention to set up a focus group to look at the details that service users would see as important to include in the review procedure. I think that it is needed and that it would be helpful to the whole procedure of financial assessment.

[117] **Mark Isherwood:** You will be pleased to know that we have come to the final question of this morning's session, which I will ask. Section 7 lists the enactments under which the services to which this proposed Measure would apply are provided. How exhaustive is that list, and how will any new legislation be accommodated?

[118] **Gwenda Thomas:** The list given in section 7 is comprehensive. It is written in legal jargon, of course, but it is important to understand it. If it were considered appropriate or necessary in future to add to the list, a further Measure could be proposed to do so.

[119] Defining the services by reference to the enactments under which they are provided is, I think, the most important way of defining them, and that is the approach adopted in current legislation.

[120] **Mark Isherwood:** Thank you. I invite you now to raise any issues that have not been covered by the questions or otherwise to make any closing remarks that you may have.

[121] **Gwenda Thomas:** I thank the committee for the probing questions. Anything that we have undertaken to supply to the committee, we will supply. We will be open throughout the process to an exchange of correspondence or to any questions that you would like to ask of us during that process. Before the next time I come to answer your questions, we would be very pleased to respond to that.

[122] **Mark Isherwood:** Thank you again for your offer to provide the information that you just referred to. We would be grateful if you could provide it as soon as is practicable.

[123] The clerk will provide you with a draft transcript of the proceedings for correction if necessary before it is finalised. That just leaves me to thank you and your officials for your contributions this morning. Thank you very much indeed. Diolch yn fawr.

[124] I remind Members that the next meeting will be held on Thursday afternoon, our new time, on 24 September, after the summer recess. I declare the meeting closed.

*Daeth y cyfarfod i ben am 10.07 a.m.
The meeting ended at 10.07 a.m.*