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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref

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Legislation Committee No. 5
National Assembly for Wales
Cardiff Bay
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July 2009

Proposed Social Care Charges (Wales) Measure

Thank you for inviting me to appear on 14th July before Legislation Committee No 5 to give evidence on the proposed Social Care Charges (Wales) Measure.

During that meeting I undertook to write to the Committee to provide you with further information on a number of issues. Those issues were:

- the statutory elements of the current Fairer Charging Guidance and the changes to these that were introduced in 2007;
- the Assembly's legislative competence in relation to the proposed Measure and its affect on service users in receipt of Direct Payments and how it is planned to include these recipients within the scope of the proposed Measure; and
- extracts from the LE Wales research regarding the possibility of new clients applying for services as a consequence of the First Steps Improvement Package I intend to introduce should the Measure be made.

Further information on all three areas is attached at Annexes 1 to 3. Whilst writing I would also like to take the opportunity to clarify the situation with regard to the estimated cost associated with my intended First Steps Improvement Package. This was touched upon during the Committee's meeting and I feel there may have been a misunderstanding over the basis of this estimate.

To clarify, based on the research undertaken by LE Wales I estimate the cost of this package to be up to £11 million per annum at current prices. This cost would be the additional income foregone by local authorities as a direct result of the changes I am proposing. As I indicated in my Policy Intention Statement of 30th June to Assembly Members and stakeholders, under our Partnership Agreement with local government we are committed to reimburse local

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authorities for the cost of any additional financial burden we place upon them. Consequently should the proposed Measure be agreed we will engage with local government to agree the detail and level of this estimate, as well as its revaluation to 2011- 2012 prices as that is when changes are planned to be implemented. This revaluation would take account of inflation, changes to DWP benefit levels and any other relevant factors that would impact upon this estimate. As you will see from Annex 3, there is currently no clear evidence to suggest that one of those factors would be a significant increased demand for services as a result of the implementation of my planned First Steps Improvement Package. That said should local government or others put forward evidence of an increased demand for, or an adverse impact upon, services I will of course consider this as part of the process of developing subsequent draft Regulations for consultation to implement my initial reforms. I am clear that these potential operational implications do not in any way undermine the principles underpinning the proposed Measure or the strong case that exists to secure greater consistency in charging for non-residential social care services across Wales.

Yours sincerely

Gwenda Thomas AC/AM

FAIRER CHARGING GUIDANCE – STATUTORY REQUIREMENTS

The Fairer Charging Guidance was originally issued by the Assembly Government in 2002 using the powers contained in Section 7 of the Local Authority Social Services Act 1970. While the majority of the Guidance is good practice guidance to local authorities who chose to charge for their non-residential social care services, there are some elements which are subject to statutory guidance. These were essentially introduced to protect those service users on low incomes who are charged for the services they receive. This statutory guidance was enhanced in 2007 so that currently it is:

- to ensure that service users' net incomes are not reduced after charging below the basic level of Income Support, or below the appropriate guarantee credit level, plus a "buffer" of no less than 35% of this. This buffer was increased from an original 25% level set in 2002 to 35% from 2007;
- to ensure that all service users have a flat rate Disability Related Expenditure disregard in their charge assessments of 10% of their basic level of Income Support, appropriate guarantee credit level. This was a new requirement from 2007;
- to disregard from the charge assessment any savings credit payments received under the Pension Credit arrangements. This was introduced in 2002;
- to disregard all earnings as part of income in charge assessments. This was introduced in 2002;
- 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 Guide. This was introduced in 2002.

SERVICE USERS IN RECEIPT OF DIRECT PAYMENTS

The Legislative Competence Order (LCO) under which the proposed Social Care Charges (Wales) Measure is to be made, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, gave the National Assembly the power to bring forward legislation concerning Direct Payments to service users or persons looking after them. This was included to ensure that the scope of the LCO was wide enough to enable a subsequent Measure to be made which would make changes to the charging framework for non-residential social care services which would apply to those service users in receipt of Direct Payments as well as those in receipt of services directly from their local authority. The wording used in that LCO encompassed the making of payments to all persons to whom Direct Payments could be made at that time.

However the category of person to whom Direct Payments may be made was subsequently expanded as a result of the Health and Social Care Act 2008. Welsh Ministers now have the power, by regulation, to enable Direct Payments to also be made to a “suitable person” in certain circumstances. A suitable person is defined as:

- a) a representative of the service user; or
- b) a surrogate of the user and someone who the responsible local authority considers to be a suitable person to receive the payments for the purpose of securing provision for the user of the service concerned; or
- c) neither a representative of the user nor a surrogate but a person who the authority considers to be a suitable person to receive the payments for the purpose of securing provision for the user of the service concerned.

While any such payments would be made for the purpose of securing the provision of services for the service user, the recipient would not necessarily be required to be the service user or a person looking after them. Hence the LCO as made would no longer provide the National Assembly with the legislative competence to extend the provisions of the proposed Measure to all cases where a Direct Payment may be made. As a result, any changes made to the charging regime for these services by the proposed Measure would not apply in relation to these additional categories of persons who could receive Direct Payments. Consequently the development of a dual system of calculating Direct Payments would be unavoidable. This would run against one of the key objectives of the proposed Measure, that is to create greater consistency and simplicity in charging.

To correct this problem, an amendment to the Assembly’s competence in this area is being sought. Additional wording has been inserted into the draft National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 which would enable the provisions of the proposed Measure to apply in all cases where a Direct Payment may be made. That particular LCO, which is currently in the final stages of its legislative process, relates to the same field of Schedule 5 of the Government of Wales Act 2006 as the existing competence in the 2008 LCO, that is social welfare. Including this amendment in the present LCO will then enable the scope of the proposed Measure to be similarly extended by way of Government amendments to Measure which I intend to bring forward later this Autumn during its passage through the Assembly.

LE WALES RESEARCH AND THE POSSIBILITY OF NEW CLIENTS APPLYING FOR SERVICES

The research undertaken by LE Wales as part of the development work for the proposed Measure considered both the current charging policies of local authorities in Wales for non-residential social care services and the resultant position on charging itself in each authority. Based on this information it then identified a range of options for introducing more consistency in this charging and assessed the implications of those options.

In relation to the issue of any latent demand for services that might arise following implementation of changes to the charging regime, the research said the following:

LE Wales Baseline Assessment

101. *In our questionnaire, we also asked local authorities how many potential service users had refused a service on the basis that charges were too high. Local authorities had great difficulty in answering this question. Only five of the 22 local authorities were able to provide some kind of estimate of these numbers. The responses suggested that these five local authorities had records of 28 (out of approximately 10,700) service users refusing a service due to the level of charges. This is equivalent to less than 0.3% of users.*

1. *The derivation of these figures is mixed – in some cases they relate to the numbers of service users who withdraw from a service, citing cost as the main reason, and in other cases they are based on local authority estimates. Most local authorities do not keep records of the reasons for which service users withdraw from a service.*
2. *One local authority indicated that of those users who were entitled to a six week period of free services, 33% ceased their service during or after the six week free period. The total of the average weekly hours of service for all these people was 380 hours per week or about 6.5% of the total service for the year. The LA noted that a proportion of these people would no longer have needed home care anyway, but that these figures provide some feel for the unmet need.*
3. *A number of service users/carers/representatives in Wales that we have spoken to feel that there are many people who refuse a service on the basis of high charges. We are not aware of any survey-based evidence of this in Wales. A recent report from the Coalition on Charges¹ reports the results of a survey of service users in England in which 80% of the people who no longer used care services described charges for accessing support as playing a part in stopping usage. In addition, 22% of respondents using care services said that they were likely to reduce or stop receiving services if charges increased.*

LE Wales Main Report

4. *Packages that reduce the number of people subject to charges and/or that reduce the level of charges paid by those who do pay charges may lead to increases in demand for services. As services become free or cheaper for more people, those people may chose to use more services. The increase might come from those who previously had not been using services or*

¹ Coalition on Charging (2008) *Charging into poverty? Charges for care services at home and the national debate on adult care reform in England*, June 2008.

it might come from those who were paying for some services but would be willing to pay for more services at the lower price.

5. Predicting the demand effects of a change in charges is very difficult as it involves judgements about how people might change their behaviour in response to the price change. The size of any change in demand will depend on a number of factors. These include:

a. The extent to which there are potential service users, who would pass current eligibility criteria, but who, dissuaded by existing charges, are either not currently taking up services or who are only taking a portion of the services for which they are eligible;

b. The extent to which such service users are sensitive to price changes. This might be determined by a number of factors including income levels; the size of the price change; how beneficial new or a greater level of services would be to their daily lives; the availability (and price) of alternative sources of assistance, e.g. family assistance, private care services.

c. The response of other stakeholders, such as local authorities and service providers, to price changes and to any initial impacts on demand. If, for example, local authorities are not adequately funded for any initial increases in demand, or if in the short term they have difficulty in adjusting to increased demand because of the time it takes to expand workforce and other capacity, then they may use other methods to limit any increased take up of services. For example they might raise eligibility thresholds.

6. There has been some assessment of the demand impact of reducing or eliminating charges for non residential social care services outside Wales. However evidence often arises in the context of introducing free care for some types of service and results seem to be mixed. In Scotland, for example, Audit Scotland found that the numbers of people receiving public funding for personal care at home had increased from 27,337 in 2002 to 41,386 in 2007 following the introduction of free personal care in the home for older people in 2002. In the USA and the Netherlands research has suggested that the introduction of free personal care does little to cause people to switch away from more informal care.

7. Any demand effects in Wales will depend on the specific circumstances of services users, charging systems and policy changes in Wales and so it is difficult to draw any direct conclusions on the basis of experience elsewhere. Nevertheless consideration of demand effects is likely to be a key part of arrangements for the Welsh Assembly Government to compensate local authorities for any losses in charging income arising as a result of policy changes in this area.

Consequently while the LE Wales research raised the possibility of an increase in demand as a result of any changes introduced, the evidence which exists in relation to this is mixed as to whether this would occur in practice and if so, the level of this. In addition, in considering the LE Wales research there are a number of important factors to bear in mind which would have a significant effect on the likelihood of latent demand occurring and hence its level. These are:

- Both the LE Wales research and advice from the Care and Social Services Inspectorate for Wales maintain that there is no significant unmet demand for services, where individuals who require services are not receiving them at present. There is no evidence to suggest, therefore, that there is currently a significant number of people who are not receiving services who would wish to access services should the position with regard to their charging change. In discussions, the United Kingdom Home Care Association have indicated that the proposals to change the charging arrangements may cause some initial turbulence in the delivery of services but they have not suggested that this would be significant or could not be effectively managed;

- Those who currently pay for their services privately might not be as ready to access local authority provided services as might be first thought. At present they have the freedom to commission services from whom they wish and to receive these as they wish. Such freedom would be restricted if services were commissioned through their local authority. Those in this position might not welcome the potential need to have to switch provider to those who their local authority contracts with rather than their current provider and to having the service provided in a way that meets their assessed needs rather than what they currently purchase. The two could be very different;
- In addition, not all those who currently pay privately for their services would in any event be eligible for local authority commissioned services. Under the “Creating a Unified and Fair System for Assessing and Managing Care” guidance authorities have the discretion to set their own eligibility criteria for access to services based on classifications of an individual’s care needs. This is so that authorities have the freedom to set eligibility locally in the light of the availability of resources and local priorities in relation to service provision. As a result under the guidance authorities can set their eligibility at one of four classifications – low, moderate, substantial and critical needs. Almost all authorities in Wales now provide services to only those individuals whose needs fall into the upper two categories – substantial and critical. Hence only those individuals who are currently paying privately for their care who fell into those categories following a care needs assessment would be eligible for a local authority service. The remainder would continue to either have to pay for their services privately or seek support from their family or friends as now;
- Where individuals access local authority commissioned services for the first time they might not welcome the possibility of having to declare their financial circumstances as part of a means test. Many find means testing intrusive and prefer not to have one, paying at present the full charge an authority makes for the services they receive irrespective of whether they should be or not. Individuals who take this position will, under the proposed Measure, be at liberty not to request a means test if they wish. Where this occurs authorities will be able to charge the set weekly maximum charge for the services provided irrespective of whether the individual’s means warrant this or not;
- The First Steps Improvement Package I intend to implement does not seek to introduce free services across the board. There will still be a charge for certain services and for certain categories for service users, albeit that the charge may only be up to a maximum of £50 per week for all of the services a user receives. This is different to the situation in Scotland, for example, with the introduction of free personal care when a large latent demand for services occurred. A charge, however small, may still deter some individuals from seeking services from their local authority given the other consequences this entails in relation to freedom and means testing.

In summary, therefore, I have considered the possibility of there being an increase in demand for services following the implementation of my planned First Steps Improvement Package. However, based on the LE Wales research and the factors I outline above I do not consider it likely that there will be a significant increase in demand as a result of my plans. That said, should local government or others put forward evidence of a significant increase in demand for services I will of course consider this as part of the implementation of my initial improvement plans and in the development of the draft Regulations required to effect those plans. I am clear that these more detailed potential operational implications do not undermine the principles underpinning the proposed Measure or the strong case that exists to secure greater consistency in charging for non-residential social care services across Wales.