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Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

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Joyce Watson AM  
Chair, Charging for Non-Residential  
Social Care LCO Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

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Dear Joyce

At the recent meeting of the Assembly Committee on the proposed LCO on charging for non-residential care, I undertook to write to you to provide further details of the variations in charging policies currently operated by local authorities in Wales for non-residential social care.

We are quite clear that variations in charging policies are widespread across Wales, are significant, and have a negative effect on service users. Recent figures provided to us by local authorities themselves show that hourly charge rates for home care differ significantly according to which area a care user lives in. In Pembrokeshire, for instance, they are likely to be asked to pay £5.45 for an hour's home care. But in the Vale of Glamorgan, they might be asked to pay up to £16.40 for the same hour's care. Whilst these two rates are at the extremes of the charges made, there is by no means consistency between the other local authorities' charges.

Seventeen authorities have a single rate for home care; two charge around £5 to £6 an hour; three charge around £7 an hour; four charge around £8 an hour; three charge around £9 an hour; four charge around £10 an hour and one charges £12.33 an hour. Three authorities each apply a range of hourly charge rates for home care, which between them span £7.72 to £16.40. The rate applied in each circumstance may depend on whether the service is delivered by the local authority directly or an agency or on the financial circumstances of the service user. Two authorities do not use hourly rates at all to calculate their charges but instead charge a set amount irrespective of the number of hours of service received. These set amounts range between £10.50 and £30.33.

In addition to variations in home care charges, local authorities also vary in their approach to charging for day care. Some authorities choose not to charge service users at all for attending a day centre whilst the information that we have shows that charges made by authorities that do charge range between £1.50 and £31.07. Nearly all authorities also charge, often nominal, but varying amounts for meals and transport associated with day care.

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Furthermore, different local authorities apply different weekly maxima when they levy charges for non-residential services. For instance, in Rhondda Cynon Taff, there is a policy that a care user would be charged no more than a total of £16.20 for a week's non-residential social care. If they moved to Powys, they might find that they were charged up to £185 for an identical week of non-residential care.

Again, there is not a "norm" at the centre of this range, with a majority clustered around it. Three authorities charge a maximum of less than £55 per week. Three charge a maximum of £80-£85 per week; three charge a maximum of between £100 and £120 per week; two charge a maximum of £150 per week and three charge £160 to £185 per week and in Newport, banded maxima are applied depending on service levels and accessible income. Seven local authorities do not set a maximum charge at all and as such do not limit the potential amount that they could charge. A table showing both the hourly and maximum weekly charges rates applied by each local authority is at Annex A.

Local authority charging policies do not only vary in respect of the charge rates that they levy for particular services but also in what income they choose to include or disregard from an assessment of an individual's income thereby determining how much of it is available to charge against. By means of an illustration, a survey of local authority charging policies conducted in 2005 showed that there was variation in the treatment of disability related benefits in the income assessment. Nine authorities disregarded Disability Living Allowance either in full or in part and eight disregarded Attendance Allowance either in full or in part, from an assessment of income. The remaining authorities took into account all components of these benefits that it was legally possible for them to include in an assessment of income.

The current position is of course perfectly permissible under the existing legal framework. Under section 17 of the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983, local authorities have a discretionary power to recover charges they consider reasonable from recipients of home care and other non-residential social services - day care, domestic help, personal home care, transport, equipment and housing adaptations. The only restriction on an authority's power to charge is found in section 17(3). This provides that an authority shall not require users to pay more for services than it appears to them it is reasonably practical for them to do so. This wide discretion has resulted in significant variations because local authorities have made decisions to fit local circumstances and in accordance with their own budgetary priorities.

I believe that, from the service user's perspective, the current position is unclear and inconsistent. It is difficult for a service user to be able to understand how charges are calculated and how their own income is assessed; and when comparisons are made with other areas – perhaps areas that are close to where they live – the system can seem arbitrary and unfair. The Welsh Assembly Government believes that the current, marked disparities need to be tackled and that care service users deserve a charging system that is both transparent and consistent in the way that it operates; and that is why this LCO has been brought forward in accordance with the One Wales commitment that we made.

Committee members will be aware that we have previously attempted to improve the situation by issuing Fairer Charging guidance, but – as the recent figures I quoted earlier illustrate – the disparities and inequities for service users continue. The fundamental stumbling block is that the Assembly Government's power to issue guidance on this subject to local authorities would not enable us to issue guidance that fettered the discretion contained in section 17 of HASSASSA. The legal advice 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 to achieve. The

Assembly Government can give guidance as to how an authority should set about exercising its discretion to charge, but that guidance cannot make it obligatory for local authorities to exercise their discretion in a particular way. Neither can we alter that discretionary power by limiting the power to charge.

We remain firmly of the view, therefore, that the only way to deliver a consistent and fair approach to charging is by the conferral of legislative competence and the bringing forward of Measures subsequently. I hope that I have made clear on previous occasions that we see the process of designing options for such a Measure as very much a collaborative process, to be undertaken in partnership with a range of stakeholders.

In my view there are no alternative effective and guaranteed means of bringing about the consistency and fairness without needing to go through the Measure process. I hope that if colleagues in local government have any firm proposals to the contrary they will spell out the details in the next stage. However, I would be concerned if the Committee were to give undue weight to this possibility. I am not aware of any such alternatives and the only, rather unsatisfactory, alternative that would seem to me to be available would amount to a voluntary arrangement of co-operation across local government, that would be vulnerable to unravelling readily at the local level if there were year-to-year budget pressures. That would just perpetuate the existing problems and not deliver the 'One Wales' commitment.

In the meantime, in the absence of any realistic alternatives, the Assembly Government would want to press on to obtain the legislative competence that we need to enable us to take action by statutory means.

Finally, I would also welcome the opportunity to clarify one further point. There has been some interesting debate in the Committee about whether the Assembly Government's intention in bringing forward this legislation is to create consistency or standardisation, and what this would mean for local authorities' discretion.

It is not our intention to remove altogether local authorities' discretion as to whether to charge, but rather to ensure that where a local authority does decide to charge, it does so in accordance with a specified set of requirements. Removing the wide discretion that local authorities currently have about how much to charge for non-residential social services is unavoidable if we are to address the significant discrepancies that currently exist and introduce a fairer and more consistent approach to charging. Furthermore, we are not seeking to impose a universal set of charges across the board in Wales, but to ensure that where charges are made, they are made in a logical and consistent way, and up to a reasonable level.

Yours sincerely

A handwritten signature in cursive script that reads "G Thomas".

**Gwenda Thomas AC/AM**