

**Date:** Wednesday 19 June 2002

**Venue:** Committee Room 2, National Assembly for Wales

**Title:** Statutory Guidance on Charging for Domiciliary Care

1. In their letter of 7 May 2002 to the Minister of Health and Social Services, the Health and Social Services Committee, amongst other things, in relation to paragraphs 13.1 and 13.2 of the statutory guidance asked for clarification from lawyers on what might be regarded as "reasonable" and whether the phrase "charging full cost for some users " would be construed to mean anything other than the costs to users for the specific services they receive. As the Committees legal adviser I have been asked to provide such clarification. I understand that lawyers from the Office of the Counsel General have also been requested to give advice but I do not know how that request has been framed ; that being so there is a danger that lawyers are not "singing from the same hymnsheet".

2. The basic statutory provision relating to charging for local authority services is section 17 of the Health and Social Services and Social Security Adjudications Act 1983. This provides that," subject to section 3 below, an authority providing a service to which this section applies may recover such charge (if any) for it as they consider reasonable."

3. One therefore needs to consider what the word "reasonable" means in the context of that provision. In 1984 the DHSS issued a Circular which stated that, in relation to section 17 , "the section does not require authorities in determining a reasonable charge to have specific regard either to the cost of the service or to the means of the person required to pay. Nevertheless, such considerations among others will no doubt be taken into account by authorities when determining what level of charge would be reasonable."

4. The question of "reasonableness" here was also considered in the case of Avon County Council v Hooper [1997] 1 All ER 562. There the judge stated as follows:

"It is implicit both in the language of the section and in the general law governing the activities of local authorities that the power must be exercised reasonably, that is to say, that the local authority must have relevant and reasonable grounds for choosing to exercise the power. Nothing turns on how one construes the [ words "such charge(if any)

for it as they consider reasonable"]. As a matter of language, these words carry the implication that the charge may be waived and that the local authority need only make the charge if it considers it reasonable to do so. Thus there is an overriding criterion of reasonableness which governs the local authority's exercise of the power which is given by subsection(1) ---- If, having provided a service, the local authority seeks to recover a charge it must be prepared to justify the reasonableness of doing so.. The reasonableness of any conduct falls to be assessed at the time of the relevant conduct and having regard to all the relevant circumstances then existing."

5. Applying the above it seems to me that the wording of section 17 does not expressly limit a local authority to charge a person only for the cost of the specific service he or she receives. Having said that, however, I find it difficult to see what "extra" charges could in practice be justified. I think a court would be most reluctant to accept that a charge upon a person which went beyond the cost to the local authority of providing the service to that person should stand.

6. Having read paragraph 13.2 of the statutory guidance it seems to me that "charging full costs for some users " means the costs to users for the specific services they receive ; it links back to the first sentence of the paragraph which states that Councils should take account of no more than the full cost of providing the service. I give that view not having received any information to indicate that "providing the service" could include matters other than specific services to the user. The statutory guidance was prepared by the Welsh Assembly Government and it is for them to explain whether it was intended that costs other than those for specific services to users should be included.

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