

Health and Social Services Committee: HSS-19-02 (p3)

Date:	Wednesday 6 th November 2002
Venue:	National Assembly for Wales building, Cardiff Bay
Title:	Guidance to local authorities on charging for domiciliary care

Purpose

1. To update the Committee on statutory guidance to local authorities aimed at ensuring fairer charging policies for home care and other non-residential social services. A copy of the guidance, which has issued to local authorities, is at Annex 1.

Background

2. The background to the guidance was set out in detail in HSS-10-02 (p2). Under the Health and Social Services and Social Security Adjudications Act 1983, councils have discretion about what charging systems (if any) they operate for non-residential services to adults, such as domiciliary, day and respite care, meals on wheels etc. Within this discretion, the charge for the service must be reasonable and if a user satisfies a council that their means are insufficient, they will not be asked to pay more than they reasonably can.

3. All authorities in Wales have introduced charging regimes for non-residential services, but in common with local authorities in the rest of GB, the variation in charging levels is wide. This led to concern for some years and to the production and publication of guidance by the Welsh Assembly Government earlier this year. In issuing the guidance, under section 7 of the Local Authority Social Services Act 1970, I made clear my intention to review the treatment of disability benefits for the purposes of determining charges to be applied to individuals.

4. It should be noted that the powers in the Act allow the Assembly to establish principles to which local authorities must have regard in setting their charges, but that local authorities are still left with considerable discretion. During the passage of the Care Standards Bill, assurances were given that it was not the intention to seek to eliminate all variations in charging policies between local authorities. Under the powers in the relevant provisions of the Care Standards Act, the Assembly could not, for example, enforce a national tariff of charges. Local authorities would however be at risk of legal challenge from service users if they have demonstrably failed to take the guidance into account when framing their charging arrangements.

5. The guidance I issued therefore sets out a broad framework to ensure minimum requirements of fairness and consistency within the Welsh Assembly Government's overall social care objectives. It takes account of the points made during the Committee's consideration of the draft document on 1st May (encapsulated in Kirsty Williams' letter to me of 7th May and my response of 31st May). The guidance has been generally well received by representatives of service users and by councils. This has always been a difficult balancing act, but I believe that there is now a general recognition that the guidance begins to

introduce some clear principles and greater fairness and consistency in an area which has been largely neglected for nearly 20 years.

Treatment of Disability Benefits

6. The research, which I commissioned following the consultation on draft guidance and the earlier Audit Commission study ("Charging with Care"), showed that a complex picture of variation across Wales exists in the treatment of service users who were eligible for lower and higher rates of Attendance Allowance and Disability Living Allowance or Severe Disability Premium of Income Support.

7. The proposal in the consultation paper was to require that, if councils decided to take disability benefits into account, an assessment of the user's disability-related expenditure must then be made. However, this would mean a more detailed means test than many councils now carry out and the need for stronger, well-founded guidance about assessment of disability-related expenditure. The result could be an arrangement, which was both intrusive for the service user and costly and complex to administer.

8. In the light of this I told the Committee that I would establish a working group to explore the idea of some form of disregard for set amounts of disability-related expenditure before benefits are taken into account in charging. The aim would be to achieve greater consistency while avoiding the drawbacks of a more complex arrangement. The working group was established and met for the first time in September. The task of the group is exploring ideas and is to carry out additional work to establish the appropriate disregard for disability-related expenditure. A copy of the terms of reference and membership are at annexes 2 & 3.

9. The working group has made good progress and have considered a number of options for how the disregard of disability related expenditure could operate. Their preferred option is to disregard a standard percentage of disability benefits for all users receiving them (as distinct, for example, from allowances for individual components of expenditure, or differing treatment of different disabilities). The advantage of such an approach is its clarity for users and simplicity to operate. It would also avoid the need for regular reviews of the amount of disregard as it would increase in line with the uprating of disability benefits. The group is now considering the appropriate level of the disregard(s).

10. Apart from the potential cost, a substantial problem is the absence of sufficient consistent data given the range of accounting and recording systems which councils use. We also need to ensure that the disregard operates in a way which is of most practical assistance to users. Despite the complexities I am keen that we continue to make progress in this area. I have now also asked the group to undertake some forms of trialing in selected areas in order to assess the potential impact of the changes and help us to get a more accurate picture of the practical impact of disregards as well as picking up any practical implementation issues.

11. In the meantime most of the guidance has issued. This has afforded councils time to start work on assessing and revising their charging systems and has signalled our general approach towards disability-related expenditure.

12. If, as a result of the group's advice, I propose arrangements for disability-related expenditure that were not included in the original consultation paper, further consultation with local authorities and users will need to take place. I would be happy to share the working group's conclusions with the Committee when they are available.

Timescale & Impact

13. This is a complex area and we need to ensure that the final guidance benefits users but is also workable for local authorities. We will need to ensure that local authorities have sufficient time to make any changes to existing systems. They will need time to consider the implications of the guidance on their current charging arrangements, to consult representatives of service users locally on proposed changes, to work through the budgetary implications and to give notice of changes.

14. Over recent years, local authorities have steadily raised their charges. Currently charges amount to some £18 m a year and, on current trends, could be predicted to rise by around 15 per cent a year. Local authorities will expect the Welsh Assembly Government to make good the loss of chargeable income as result of the implementation of guidance relating to disability benefit disregards or income support under the "new burdens" procedures for local government finance. As I indicated in paper HSS-10-02 the costs of a disability benefit disregard could be significant. For example, some councils have estimated that around 60 per cent of their charge income comes from people in receipt of one of the disability benefits.

15. Bearing all of this in mind I am not now proposing to implement new arrangements for the treatment of disability benefits immediately, but I will look to do so in 2004-5 in light of the further work including the proposed trialing. Instead, I propose that implementation of the guidance will take place in two phases:

From 1 April 2003

- Councils will need to ensure that users receiving income support (IS) or job seekers allowance (income based) (JSA-IB), whose overall income equals the defined "basic" levels plus the 25% buffer will no longer be charged;
- Earnings should be disregarded as part of income in charge assessments; and
- Where councils take savings and capital into account, they should, as a minimum, be treated in line with the Charging for Residential Accommodation Guide (CRAG).

From April 2004

- All other parts of the guidance should be implemented which will include additional guidance on the treatment of disability-related expenditure.

16. People in receipt of income support with disability benefits will of course benefit from the 25% above income support buffer for April 2003.

Compliance

17. The powers exercisable by Ministers under section 7 the Local Authority Social Services Act 1970, as amended by the Care Standards Act 2000, have been transferred to the Assembly and delegated to me. There are no issues of regularity or propriety.

Action for subject committee

18. Paper to note and discuss.

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ANNEX 1



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

**Fairer Charging Policies for Home Care and other non-
residential Social Services**

Guidance for Local Authorities

July 2002

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Fairer Charging Policies for Home Care and other non-residential Social Services

Guidance for Local Authorities

This guidance is issued under section 7 of the Local Authority Social Services Act 1970

Executive Summary

1. Councils are expected to implement this guidance under section 7 of the Local Authority Social Services Act 1970 (Section I) at the latest by 1 April 2003 (Section XX).

2. This guidance does not make any presumption that councils will charge for non-residential social services, nor does it introduce any requirement to charge. Councils have had discretionary powers to charge for many years, subject to a general requirement of reasonableness. (Section I)

3. The guidance aims to help local authorities, who decide to charge for any non-residential services, to design reasonable and fair charging policies. It seeks to ensure greater consistency in charging policies. It provides that:

- Deciding whether to charge for non-residential social services continues to be a matter for councils' discretion. (Section I)
- Charges for different types of non-residential social service, and allied services, and how they affect individuals should be considered together, not in isolation. (Section III)
- Where councils charge for these services, flat-rate charges are acceptable only in limited circumstances. (Sections III, IV, and XIII)
- Regard should be paid to the effect of any charge on a user's net income; net incomes should not be reduced below defined basic levels of Income Support, plus 25%. Charging policies, which reduce users' net incomes below these defined basic levels, are not acceptable and undermine policies for social inclusion and the promotion of independence. (Sections IV, V, VI, XIII, and XIV)
- Councils should consider and specifically consult on the need to set a maximum charge. (Sections IV, V, and XIII)
- *[Where disability benefits are taken into account the treatment of disability related expenditure has yet to be decided (Sections VI, XIII, and XIV) – see paragraph 31]*
- Councils should ensure that comprehensive benefits advice is provided to all users at the time of a charge assessment. Councils have a responsibility to seek to maximise the incomes of users, where they would be entitled to

benefits, particularly where the user is asked to pay a charge. (Sections VI and VII)

- As a minimum, the same savings limits as for residential care charges should be applied. Councils are free to operate more generous rules, as with other parts of the guidance. (Section VIII)
- Guidance is included on the treatment of partners' resources. (Section IX)
- To ensure that disabled people and their carers, who wish to do so, are able to enter and progress in work, the guidance expects that earnings will be disregarded in charge assessments. (Section X)
- Where carers receive services in their own right under the Carers and Disabled Children Act 2000, the guidance includes specific advice on ensuring the fairness of any charges. (Section XIV)
- Good management by councils of charging policies continues to be important. Councils need to monitor the impact of charging policies on users and need to know how much it costs to administer their system. As with other services, the user's and carer's needs, including their need for good information, should be put first. (Section XIX)

I. Introduction

4. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives local authorities a discretionary power to charge adult recipients of non-residential services. Section 7 of the Local Authority Social Services Act 1970 allows the Assembly Minister for Health and Social Services to issue guidance to local authorities on the exercise of their social services functions, including those which are exercised under discretionary powers. In exercising those functions, local authorities must have regard to guidance issued under section 7.

5. Section 17 of the HASSASSA Act 1983 provides that councils may recover such charges as they consider reasonable in respect of relevant services. Annex A sets out the provisions of the Act regarding the services which may be charged for.

6. This guidance includes advice on a number of issues where councils need to take particular care to ensure that any charging policy is reasonable. Councils need to ensure both that their charging policies are demonstrably fair as between different service users and that the overall objectives of social care, to promote the independence and social inclusion of service users, are not undermined by poorly designed charging policies. These objectives – and the guidance following - apply equally to carers receiving services.

7. There is no requirement by the Assembly that all councils will charge for the various kinds of non-residential social services and councils retain the discretion not to do so. Where service users are asked to contribute a charge towards the cost of non-residential social services, this can raise additional income, which should be used to develop services.

8. Where they do decide to charge for services, councils also retain substantial discretion in the design of charging policies. This guidance sets out a broad framework to help councils ensure that their charging policies are designed to be fair and to operate consistently with their overall social care objectives. The guidance provides clear objectives, which all councils operating charging policies should aim to achieve. The Welsh Assembly Government's view is that these are minimum requirements to ensure that charges are reasonable in the terms of the HASSASSA Act 1983. In considering what are reasonable charges in their local circumstances, some councils may need to go beyond the minimum requirements in this guidance. Nothing in this guidance requires councils to make existing charging policies, which go beyond the requirements set out here, less generous taken overall to users than they are currently.

9. Councils will want to consider operational issues, including administration costs, in designing their charging policies.

II. Services which may not be charged for

10. After-care services provided under section 117 of the Mental Health Act 1983 may not be charged for under section 17 of the HASSASSA Act 1983.

11. Councils may not charge for providing advice about the availability of services or for assessment, including assessment of community care needs.

III. Charges for different types of services

12. This guidance concerns charges for all types of non-residential social services. The design of charges may vary between different services, but the relation between them, where users receive several services, also needs to be considered.

- i. *Meals at home, or in day care* – many councils make a low flat-rate charge to all users, without applying a means test. This can be justified, as such charges substitute for ordinary living costs.
- ii. *Day care*
- iii. *Domestic help*
- iv. *Personal home care*
- v. *Other support from social services*, e.g. transport, equipment and housing adaptations not provided through Disabled Facilities Grants.

Charging practices in respect of day care, domestic help, personal home care, and equipment and adaptations currently vary between councils. Ability to pay should not be assessed and charges should not be levied for any one service in isolation. The impact of charges for one of these services on the user's income should be taken into account in assessing whether charges should be levied for another service. The same charge assessment should normally be applied in assessing charges for these services.

Particular care needs to be taken to avoid an adverse impact on the user's income where flat-rate charges are applied if a user is receiving more than one service. Councils should ensure that such charges do not put any users' incomes below basic Income Support levels, as described below. This would need to be done in the initial design of the charging policy, through sample surveys and consultation with users, and by providing easy access to a review procedure.

vi. Supporting People

The National Assembly set out the detail of the long term funding arrangements for Supporting People in Wales (initially announced in August 2000) in the January 2001 consultation document "Supporting People: The Funding Arrangements and Implementation in Wales." The Assembly Government published a consultation paper on charging and means testing for Supporting People in December 2001. Consultation responses are currently being considered and the Assembly Government will announce its policy intentions shortly.

The consultation paper on charging and means-testing is available on the Supporting People page of the Assembly web page at:
www.wales.gov.uk/subihousing/content/supporting/index.html .

IV. *Charging according to the level of service and/or by reference to a service user's means*

13. The Audit Commission report, *Charging with Care*, published in May 2000, described four main charging models being operated by councils:

- a) a flat rate charge applied to all (but usually with an exemption for people receiving only Income Support/Jobseeker's Allowance (Income-based) (JSA-IB))
- b) a charge assessed according to the level of service received, with no regard to the user's means
- c) a charge assessed according to the user's means, with no regard to the level of service
- d) a charge assessed by reference to both level of service and the user's means

14. As described in *Charging with Care*, charging model (b) poses particular problems for poorer users with high intensity care needs. The Assembly Government's view is that charging models which take no account of a user's means are not acceptable. They are unlikely to be reasonable in the terms of the HASSASSA Act 1983.

15. Other than for charges for meals at home or in day care, where these substitute for ordinary expenditure, there could be similar problems with model (a), but these may be overcome, if (i) there are exemptions for people receiving Income Support and JSA-IB and others on similar levels of income and (ii) the charge is set as a low "token" contribution, to avoid reducing users' incomes below basic levels of Income Support, plus a buffer of 25%. Except where otherwise provided for in this guidance, flat rate charges applied to all users without any exemptions at all are not acceptable.

16. A potential problem with models (a) and (c) is that they may raise only limited charge income for service development, but this is an issue for councils to consider.

17. Work carried out by the Audit Commission along with research undertaken by the University of Wales Swansea during 2001 showed that model (d) had been adopted by the majority of councils in Wales, although there are wide variations of policy within this model and a number of problems. In particular:

- Where the policy sets no maximum charge and no regard is paid to the user's disposable income after the charge. This has resulted in some users' incomes being pushed below basic Income Support levels.
- Broad income bandings used in some councils' policies can have 'cliff edge' effects. Where there is no maximum charge, or no account taken of the effects of a charge on disposable income, some users' incomes may be pushed below basic Income Support levels, particularly for those at the bottom of a broad income band.

V. *The Effects of Charges on Users' Incomes*

18. The purpose of Welsh Assembly Government policies for social care is to promote independence and social inclusion. Charging policies should be seen within this overall context. As a minimum, users' incomes should not be reduced by charges below "basic" levels of Income Support, as defined in this guidance, plus a buffer of not less than 25%. The 25% buffer is added on to each user's Income Support allowances and premiums according to age, level of disability, and family status.¹ An example to show how the 25% buffer should be applied is at Annex D. The buffer provides an additional safeguard to prevent users' independence of living from being undermined by charging policies.

19. It is inconsistent with promoting independent living to assume that all of a user's income above basic levels of Income Support is available to be taken in charges. A buffer provides proportionately more help to those on low incomes and the Assembly Government sees this is a priority, given the evidence of poorer access to services by low-income groups.

20. As an additional way of ensuring that all users have some income, which is not taken in charges, councils may choose to set a maximum percentage of disposable income (over and above basic Income Support levels, plus 25%), which may be taken in charges. All councils should consider whether and how to set an overriding maximum charge and should consult users specifically on this issue. In some councils, this is set at a proportion of typical local residential care charges, to ensure that no perverse financial incentive is created for users to leave their own homes.

21. As a minimum, "basic" levels of Income Support should be taken to include the personal allowances and any premium appropriate to the user, according to age, level of disability, and family status, but need not include the Severe Disability Premium (SDP). SDP may be excluded, as it may be treated as analogous to other disability-related benefits, as set out in Section VI below. Where a carer is in receipt of Income Support or Jobseeker's Allowance (Income-based), the "basic" level of benefit should include any carer premium in payment. An example specifying the "basic" levels of Income Support in standard cases is included at Annex B.

22. Councils should exempt from charges users receiving Income Support or JSA-IB, whose overall income equals the defined "basic" levels.

23. Councils will need to carry out a charge assessment for users not receiving Income Support or JSA-IB, (where they are not covered by other exemptions), to ensure:

- (a) that those on levels of income equal to basic levels of Income Support, plus 25%, do not need to pay charges; and

¹ For pensioners, these allowances and premiums equate to the Minimum Income Guarantee (MIG).

- (b) that any charges levied on users above these income levels do not reduce the user's income below basic levels of Income Support, plus 25%.

24. Income should be assessed net of any Income Tax and National Insurance contributions payable and net of housing costs and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or Council Tax Benefit payable. This should help to minimise any "poverty trap" effects or work disincentives arising from withdrawal of Housing Benefit or Council Tax Benefit when a user's income increases. Councils will wish to consider taking account of other costs such as water rates or charges and home insurance.

25. For users who receive other income in addition to Income Support or JSA-IB, taking them above the basic levels, (usually disability-related benefits such as Attendance Allowance (AA) or Disability Living Allowance (DLA), but also including SDP for Income Support), councils may choose: *either* to exempt such users from charges regardless of their additional income, *or* to include the user's overall income within a charge assessment. Where councils choose the latter the Welsh Assembly Government is considering the feasibility of allowing some form of disregard for disability-related expenditure. This is explained further in the paragraph 31.

26. Where councils decide to exempt from charges users receiving Income Support/JSA-IB regardless of their additional income, an equivalent approach should be taken with users not receiving Income Support /JSA-IB. Disability benefits and other income sources should then be disregarded in a similar way for users at equivalent income levels.

27. The disregards applied for Income Support purposes to War Disability Pensions and War Widows Pensions (currently £10 weekly - April 2002), and to War Widows Supplementary Pension (currently a complete disregard), should as a minimum, be applied by councils in assessing income as part of charge assessments. Councils should take account of any higher disregards applied in 'local schemes' to War Disability Pensions and War Widows Pensions for Housing Benefit and Council Tax Benefit purposes.

VI. Treatment of disability-related benefits

28. The mobility component of Disability Living Allowance is excluded by law from being taken into account for charges. Councils should disregard the War Pensioner's Mobility Supplement in assessing income, as this should be treated as analogous to DLA mobility component.

29. Disability-related benefits considered in this section are the Severe Disability Premium (SDP) of Income Support, Attendance Allowance (AA), Disability Living Allowance (DLA)², Constant Attendance Allowance (CAA), and Exceptionally Severe Disablement Allowance (ESDA)³.

² This and subsequent references to DLA are to the care component and do not include the mobility component.

³ CAA and ESDA are paid under the Industrial Injuries Disablement Benefits and War Pensions schemes. They are paid in place of AA or DLA.

30. These benefits may be taken into account as part of a user's income – although it is open to councils not to do this.

[31. Where these benefits are taken into account the Welsh Assembly Government's proposal is to pursue further the idea of some form of disregard for set amounts of disability related expenditure but to allow users to seek a review if they felt their disability expenditure is higher than the disregard. In many cases it is hoped that this will avoid the need for intrusive and detailed means-testing of disability-related expenditure. To help with this, a working group, with local authority and user group membership, is being set up to explore ideas and to carry out additional work to establish the appropriate disregard for disability-related expenditure. Additional guidance on disregarding disability-related expenditure is expected to issue by 30 September 2002].

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1 Day and Night Care

32. AA is paid at a higher rate, if a person has day *and* night needs, or a lower rate, if a person has day *or* night needs.

33. The DLA care component is paid at the highest rate, if a person needs help both day *and* night; at the middle rate, if a person needs help during the day *or* night; or at the lowest rate, if a person needs some help during some of the day (but less than the middle rate), or, if age 16 or over, would need help to prepare a cooked main meal.

34. CAA is paid at one of four rates: a part day rate, a full day rate, an intermediate rate or an exceptional rate. The intermediate rate and exceptional rates will always include an amount awarded in respect of night time care needs. A need for some night care is a possible, but not inevitable, condition for the full day rate. ESDA is paid at one rate and is only paid with the two higher rates of CAA.

35. In a legal case (*R v. Coventry City Council, November 2000*), the High Court found that it was unlawful and unfair for a council to treat as income available for day care sums of DLA paid for night care.

36. Councils will need to be aware of the rate at which AA or DLA care component are paid, and whether this is in respect of day or night care. It would normally be reasonable to treat the difference between AA higher rate and lower rate and the difference between DLA care component highest rate and middle rate as the element paid for night care, unless, for example, it is clear that the additional element is paid in respect of day time care.

37. For CAA the difference between the intermediate or exceptional rate and the full day rate should normally be treated as the element paid for night care. In some cases, councils will need to assess what part of a full day rate award is needed for night care. ESDA will always include an element for night care, as it is only awarded with the intermediate or exceptional rates of CAA.

38. Case law has held that night means “that period of inactivity or that principal period of inactivity through which each household goes in the dark hours and to measure the beginning of the night from the time at which the household, as it were, closed down for the night”. It was also held that dressing in the morning and undressing before going to bed were activities carried on during the day (*R. v National Insurance Commissioner, ex parte Secretary of State for Social Services* [1974]).

39. While no detailed reasoning was given in the judgement, it seems to be unlawful for councils to take into account an element of AA, DLA, CAA, or ESDA paid for night care as income where the council purchases no element of night care. Any element of care or support related to night care, for example, an on-call service available at night, funded by the council, may in certain circumstances be regarded as night care.⁴

40. If the council purchases no element of night care, the night care element of AA, DLA, CAA, or ESDA should *not* be taken into account as income in the assessment. If, however, a user’s expenditure related to night care exceeds the level of the night care element of AA, DLA, CAA, or ESDA, any such excess amount *should* be taken into account when assessing the user’s disability-related expenditure (see below).

Treatment of disability-related expenditure

[41. To be decided - see paragraph 31]

VII. Benefits Advice

42. Councils should ensure that appropriate benefits advice is provided to all users of non-residential social services and carers services at the time of a charge assessment. Any charge assessment should be focussed on the user’s overall finances and personal needs. It will normally need to be carried out by personal interview in the user’s own home and always by appropriately skilled staff. The service should include advice about entitlement, help with completion of benefit claims and follow-up action, if the user wishes.

43. It is for councils to decide exactly how any welfare rights service they provide is organised to ensure that advice on benefits is provided to users at the time of a charge assessment. In many cases, it may be both convenient for users and cost-effective to provide combined charge assessments and benefits advice, training staff to fulfil both roles.

44. However, some users may prefer to obtain welfare rights advice from an independent source and users should be offered this choice, where possible.

⁴ For DLA, the Social Security Contributions and Benefits Act 1992, section 72, requires that a person should be, “so severely disabled physically or mentally that, at night, - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.”

45. Where independent advice is accessed, and as long as it doesn't undermine the independence of that advice, with the user's permission arrangements should be made to exchange information for the charge assessment.

VIII. Savings and Capital

46. Councils may take account of a user's savings or other capital in assessing their resources, but are not obliged to do so. This section includes minimum requirements for treatment of savings. Councils need to consider and consult specifically on their policy in relation to savings, including circumstances where individual users may have particular needs for savings.

47. Savings may be taken into account to calculate a tariff income on the same basis as set out in the *Charges for Residential Accommodation Guidance (CRAG)*. Users with savings of more than the upper limit may be asked to pay a full charge for the service. These savings levels will be updated automatically in line with any uplifts in *CRAG*. Councils may wish to set higher savings limits or more generous charging policies for users with savings, but should not set lower limits.

48. The value of the main residence occupied by the user should not be taken into account for charges for non-residential social services, but other forms of capital may be taken into account, as set out in *CRAG*.

49. Consistent with the guidance in *CRAG*, ex gratia payments made to former Far Eastern prisoners of war and payments made under the Vaccine Damage Payment scheme should be disregarded entirely.

50. Provision should be made for charges to be reviewed at regular intervals, where savings are being used up by charges.

IX. Partners' income and savings

51. Section 17 of the HASSASSA Act 1983 envisages that councils will have regard only to an individual user's means in assessing ability to pay a charge.

52. This will mean that parents and other members of an adult user's family cannot be required to pay the charges, except in certain legal circumstances, for example, where a family member may be managing the user's own resources.

53. Councils may wish to consider in individual cases whether a user's means may include resources not held in that person's name, but to which the user has a legal entitlement. The most likely instances of this kind will arise in relation to married or unmarried couples. In some circumstances, the user may have a legal right to a share in the value of an asset, for example a bank account, even if it is not in his or her name. In some circumstances, statutory provisions provide such a right. In other circumstances, what are known as "equitable principles" may apply to give such a right, for example where there is an unwritten agreement between partners that they both own a property or an asset, even though the title is in only one of their names. If the council has some reason to believe that the user does have means other than those initially disclosed, a request may reasonably be made for the user to arrange for the partner to disclose his or relevant resources. If there is

no such disclosure, the council may consider that it is not satisfied that the user has insufficient means to pay the charge for the service. It will be for the council to consider each case in the light of their own legal advice.

54. Issues of practicality and fairness arise in respect of the treatment of some benefits, which are calculated for the needs of a couple, and for jointly held savings. In cases where only the user's means are assessed, no assumption should be made that the whole of that person's disposable income is necessarily available for charging. For example, Income Support paid at the rate for a couple should not be taken into account without also taking account of the expenditure needs of both partners. Allocation of half of housing costs or other expenditure to an individual user may, in some cases, result in an unreasonable charge. Where an assessed charge for the individual user would reduce a couple or a household below basic levels of Income Support, plus a 25% buffer, taking account of the resources and expenditure of the couple or the household, as appropriate, then an assessment should be applied on the basis of the household.

55. Jointly held savings should be treated as divided equally between the owners, unless the contrary is demonstrated by, or on behalf of, the user. The minimum savings levels to be applied should be those set out in the *Charges for Residential Accommodation Guidance (CRAG)*.

56. Partners' earnings should always be disregarded in any charge assessment, in the same way as users' earnings, as set out in Section X.

X. Work incentives

57. The Assembly Government's policy is to encourage and enable those who wish to take up employment, including disabled people and their carers, to do so. Charging policies should avoid creating disincentives to work.

58. Disincentives may be either disincentives to take work at all, or disincentives to work longer or earn more – neither is acceptable. Disincentives may arise because many social security benefits are income-related and so are withdrawn as earnings rise. For example, both Housing Benefit and Council Tax Benefit are withdrawn as earnings rise. Both these effects will be taken into account if councils follow the guidance at paragraph 68vii below that housing costs and Council Tax should be assessed net of any Housing Benefit and Council Tax Benefit payable. If either benefit is withdrawn as earnings rise, increased net housing costs and Council Tax will be reflected in the assessment of expenditure.

59. Some benefits such as Income Support are withdrawn when there is more than a limited weekly amount of employment. The requirements that charges should not reduce users' incomes below basic levels of Income Support plus 25%, and to take specific account of users' expenditure, including disability-related expenditure, should help to minimise any disincentives to work arising, particularly for low earners.

60. Taking account of the whole picture, including loss of benefits, payment of income tax and National Insurance, and the costs of getting to work, any scope for charging is limited, if barriers to work for disabled people are to be removed. The Welsh Assembly Government believes it is right, therefore, that councils should disregard all earnings in charge assessments for non-residential social services, including charge assessments for carers. "Earnings" should be defined in the same way as in the Charges for Residential Accommodation Guidance (CRAG).

61. To ensure incentives for work, Working Families Tax Credit and Disabled Person's Tax Credit should also be disregarded as income in charge assessments.

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2 Independent Living Funds

62. Charges for non-residential social services are netted off any charge assessed as payable to the ILF.

XI. Creutzfeldt Jacob Disease (CJD)

63. The Assembly Government has made an undertaking that users of non-residential social services suffering from any form of CJD should not undergo a charge assessment, but should be treated as automatically exempt.

XII. Setting the Level of Charges

64. This guidance is concerned mainly with setting boundaries of fairness for the assessment of users' ability to pay charges. The requirement for charges to be reasonable concerns also what may be charged, having regard to the costs of the service provided to the user.

65. Councils should take account of no more than the full cost of providing the service, excluding costs associated with the purchasing function and the costs of operating the charging system. It is a matter for councils to decide whether to levy a contribution toward the costs of providing the service or to seek to recover the full costs, where possible. Councils will need to consider inter alia whether to use the levels of charge to target subsidy at priority users or services and whether charging full costs for some users will create perverse financial incentives for them to enter residential care.

66. Charges which reflect the costs of services provided to users and are based on hours of service provided are generally preferable to charges based on broad 'usage' bands, which can create perverse incentives and spread subsidy unfairly. Whatever the calculation used for establishing the cost of services, they must be capable of being refined to a unit cost. The calculation of charges made by councils should be transparent and

must have been consulted on with users and carers (see paragraphs 85 & 86).

67. Where the costs of services vary within the council's area, e.g. because providers' costs vary, it is for the council to decide whether charges should reflect the cost differences or whether to have a notional average charge for all users with the same means. A notional average charge may be set, for example, to avoid disadvantaging users in rural areas.

XIII. Summary of Issues in Design of Charging Policies

68. In summary, councils need to consider the following issues in designing a charging policy:

- i. As discussed at paragraph 12, flat rate charges or charges which do not vary with the level of service may be acceptable in limited circumstances (but are more generally acceptable for meals at home or in day care, where these charges substitute for ordinary expenditure). The level of charge will need to be set low in order to avoid reducing users' incomes below basic levels of Income Support, plus 25%. Councils will need to establish what is a reasonable level of charge through consultation. In no case, however, (other than for meals at home) should charges be levied on users receiving Income Support/JSA-IB, whose overall income equals the defined basic levels, or those with similar levels of income.
- ii. For most councils' charging policies, which are expected to be more sophisticated, councils should consider how to ensure that users' net incomes are not reduced below basic levels of Income Support (whether they are receiving Income Support or not), plus a buffer of 25%. For users who have income, which takes them above basic levels of Income Support/JSA-IB, plus 25%, councils should carry out charge assessments, which have regard to the effects of any charge on users' net incomes.
- iii. *[Treatment of disability related expenditure to be decided – see paragraph 31].*
- iv. A buffer should be set of not less than 25% above Income Support personal allowances and premiums. This provides an additional safeguard to prevent users' independence of living being undermined by charging policies.
- v. As explained in paragraphs 20 councils should consult users specifically about whether and how to set an overriding maximum charge.
- vi. Councils will want to have regard to any implications for administrative costs and staffing in deciding on a charging policy. Charging models, which involve detailed assessment of users' expenditure, may have initial costs, including those of staff recruitment and training. Councils running such policies have found that employment of specialist finance staff for assessment may produce more accurate assessments quickly

and free care managers for work directly related to their expertise, reducing overall costs.

- vii. Income should be assessed net of any Income Tax and National Insurance contributions payable and net of housing costs and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or Council Tax Benefit payable. This should help to minimise any “poverty trap” effects or work disincentives arising from withdrawal of Housing Benefit or Council Tax Benefit when a user’s income increases. Some councils will wish to consider taking account of other costs such as water rates or charges and home insurance.
- viii. Councils will need to consider how to treat savings and capital and partners’ income and savings, as discussed in sections VIII and IX.
- ix. Earnings should be disregarded from assessments of income to avoid creating disincentives to work.
- x. Councils will need to consider how to set the levels of charges in relation to the costs of the services provided to users.
- xi. The Assembly Government expects all councils to explain how these issues will be addressed as part of consultation with users and carers on their charging policies.

XIV. Carers

69. Users may be charged only for services provided to them and carers only for services provided to them under the Carers and Disabled Children Act 2000. Councils may not decide that a carer is the service recipient, and therefore subject to a charge, purely on the grounds that a user is exempt from charges or has an assessable income less than that of the carer.

70. Where users and carers are spouses or partners and both are receiving services, the guidance in Section IX should be followed. All other parts of this guidance apply to charges for services provided to carers.

71. Particular issues arise with expenditure incurred by informal carers. For services provided to carers under the Carers and Disabled Children Act 2000, in carrying out their assessment councils should take account of costs such as:

- private purchase of care, for example, to allow short breaks from caring or where this is needed to enable the carer to maintain employment or to fulfil obligations as a parent
- adaptations to the carer’s home, for example, where the disabled person moves to the carer’s home
- additional transport or other costs, e.g. taxis, which may arise unavoidably because the carer cannot be absent from home for long

- the range of additional costs for cleaning, clothing, where these are met by the carer

72. For services provided to the disabled user, account may also need to be taken of expenditure incurred by informal carers. Councils should take account of household resources and expenditure as set out at Section IX in cases where not doing so could result in an unreasonable level of charge,

73. Councils may decide to include Invalid Care Allowance (ICA) within a carer's income as part of a charge assessment, where a carer is receiving this, but are not obliged to do so. The requirements that a charge should not reduce net income below basic levels of Income Support, plus 25%, and to disregard earnings mean that most recipients of ICA will not be liable to pay a charge.

XV. Direct Payments

74. In considering whether, and if so how, to ask an individual to make a financial contribution to the cost of their care package, councils should treat people receiving direct payments as they would have treated them under the council's charging policy, if those people were receiving the equivalent services. Charges should be assessed and made in all respects in accordance with this guidance.

75. Councils should refer to the Community Care (Direct Payments) Policy and Practice Guidance for specific guidance on direct payments including making direct payments net or gross of any financial contribution.

XVI. Use of Powers to transfer funds

76. Local councils and health authorities may jointly commission social care services under section 28A of the NHS Act 1977. The details of any charges should be devised with advice from the local council's own lawyers. The council may recover from users up to the full cost of the social care service, even though the NHS may have met some or all of the cost of the social care service. Local councils must, however, bear in mind that section 17 of the HASSASSA Act 1983 is not a provision designed to enable them to raise general revenue. If a council and the NHS purchase services from the same provider, then charges to users may only be made for the social care element. Any services for which the NHS has underlying responsibility are automatically free at the point of use⁵, in whatever setting they are provided and whichever agencies provide or commission the service in practice.

XVII. Health Act 1999 Partnerships

77. The Health Act 1999 did not alter the local authority powers to charge in the event of a partnership arrangement. In agreeing partnership arrangements, agencies will have to consider how best to manage charging (where local authorities charge for services) and how to clarify the difference between charged-for and non-charged for services. There

⁵ Other than services for which specific charging powers exist, such as NHS prescription charges.

is no intention to increase or expand charging arrangements through the Partnership Arrangements. In entering into an arrangement, the partners will need to agree on the approach to be taken on charging. Further guidance is available in Chapter 8 of the increased flexibilities guidance document Flexibilities for Joint Working between Health and Local Government published in November 2000. Copies are available on the Assembly web page at:

www.wales.gov.uk/subisocialpolicy/content/pdf/health_lg_e.pdf

78. Partners will need to bear in mind that where charging is retained the arrangements will need to be carefully explained to users of services, to avoid any misunderstanding that NHS services are being charged for. It will be critical that charging arrangements are properly explained at the outset of the assessment process. See section XIX below. The existing charging review or appeals mechanisms should be made clear to the user.

XVIII. Intermediate Care

79. Separate guidance is to be issued about charging arrangements for intermediate care. Local authorities should have regard to that guidance where a time-limited package of intermediate care includes the provision of non-residential social services.

XIX. Management of charges and charging policies

80. This section summarises some issues in the management of charges and charging policies. The guidance on these issues draws on that in the Audit Commission study Charging with Care (May 2000) and also that issued by the former Association of County Councils and Association of Metropolitan Authorities (Discretionary Charges, a good practice handbook) (July 1996).

81. It is important for councils to get the key processes right if development of policies is to be well informed and local users are to understand and accept charging policies. A good practice 'checklist' from Charging with Care, covering both the design of policies and their management is reproduced at Annex C.

Information about charges

82. Clear information about charges and how they are assessed should be readily available for users and carers. This information should be made available at the time a person's needs for care are assessed.

83. Once a person's care needs have been assessed and a decision has been made about the care to be provided, an assessment of ability to pay charges should be carried out promptly, and written information about any charges assessed as payable, and how they have been calculated, should be communicated promptly. This should normally be done before sending a first bill. Charges should not be made for any period before an assessment of charges has been communicated to the user, although

exceptionally this may be unavoidable where the user has not co-operated with the assessment. A first bill for a charge for a lengthy past period can cause needless anxiety. Any increase in charges should also be notified and no increased charge made for a period before the notification.

Access to care and assessment of ability to pay charges

84. Assessment of a person's need for care should not be confused with financial assessment of a person's ability to pay a charge. Once someone has been assessed as needing a service, that service should not be withdrawn because the user refuses to pay the charge. The council should continue to provide the service, while pursuing the debt, if necessary through the civil courts. If a user refuses to provide information for a charge assessment, it may be reasonable to require payment of a full charge.

Consultation

85. Consultation with users and carers about charging policies and increases or changes in charges should follow good practice advice, for example, the National Consumer Council's Involving Users: Improving the Delivery of Local Public Services. Consultation is one of the main principles, which should guide councils' Best Value reviews of local services.

86. Where changes in charging policies would result in significant increases in charge for some users, this should be specifically explained and considered as part of the consultation.

Reviews and Complaints

87. Section 17(3) of the HASSASSA Act 1983 gives a user the right to ask the council for a review of the charge which has been assessed, if the user considers that they cannot afford to pay it. Under the legislation, the council must be satisfied that the user's means are insufficient to pay the amount they would otherwise be charged, before deciding to reduce or waive a charge.

88. It is important that any request to review a charge is carefully considered. The fairness of the charge should be considered in the light of the individual's financial circumstances and in relation to the position of other users and charge payers. The review may need to go beyond considering whether the assessed charge accords with the terms of the council's policy, since it is unlikely that policies will be able to make provision for all conceivable personal circumstances. Requests for review, which should be considered seriously, may include those for a relaxation of the savings limits for a period where the individual user has needs such as purchase of equipment related to their disability.

89. Information for charge payers should make clear that they may either seek a review of their assessed charge, or they may make a formal complaint if they are dissatisfied with any aspect of the assessment. Councils will need to consider how best to make the facility for a review accessible to users and how to ensure

independence and consistency in decisions. Useful advice is included in Discretionary Charges, a good practice handbook, published by the former Association of County Councils and Association of Metropolitan Authorities.

90. As part of strategic management of charging policies, councils need to have regard to the costs of administering charges. This issue should be a consideration in the initial design of charging policies. Councils should collect information on the costs of administration and should monitor this. Comparison of administration costs should form part of Best Value reviews considering charging policies.

91. Procedures for verification of claims and for countering fraud should be considered in the design of charging policies and should be built into the assessment and administration of charges.

Strategic Management of Charging Policies

92. Charging with Care stresses the need for good strategic management of charging policies. Charging policies should be consistent with the council's service policies. They should not operate against the Assembly Government's policy agendas for social care, to promote independent living and social inclusion. It is important that consideration of charging policies is not purely budget based, but takes account of service needs. The design of charging policies needs to be sensitive to the variety of users' circumstances and needs. The ways in which charging policies are developed also need to be sensitive and to involve users and carers.

93. The need for strategic management of charging policies implies a need for monitoring, for example, of any users refusing services or part services because of charges, and of users falling into arrears. Service managers need to have access to this information.

94. Charging with Care identifies five categories of performance information needed to help councils to manage the service and charges, to ensure they are responsive to users' needs. These are:

- client numbers and service levels
- clients refusing or cutting down on services as a result of charging, or asking for charges to be reviewed
- levels and reasons for arrears
- levels of client incomes, in particular the take-up of different benefits
- cost of collection as a percentage of income

95. In reviewing charging policies, councils should take account of the further advice included in the good practice 'checklist' at Annex C.

XX. Implementation

96. This guidance should be implemented by 1 April 2003 at the latest.

ANNEX A

Section 17 of the Health and Social Services and Social Security Adjudications Act 1983

Charges for local authority services in England and Wales

17. (1) Subject to subsection (3) below, an authority providing a service to which this section applies may recover such charge (if any) for it as they consider reasonable.

(2) This section applies to services provided under the following enactments-

- (a) section 29 of the National Assistance Act 1948 (welfare arrangements for blind, deaf, dumb and crippled persons etc.);
- (b) section 45(1) of the Health Services and Public Health Act 1968 (welfare of old people);
- (c) Schedule 8 to the National Health Service Act 1977 (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);
- (d) section 8 of the Residential Homes Act 1980 (meals and recreation for old people); and
- (e) paragraph 1 of Part II of Schedule 9 to this Act [other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948].

(3) If a person-

- (a) avails himself of a service to which this section applies, and
- (b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

the authority shall not require him to pay more for it than it appears to them that it is reasonably practicable for him to pay.

(4) Any charge under this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

ANNEX B

"Basic" Income Support levels – April 2002 rates

A. PENSIONERS, Single

Pensioner aged 60+, single

	April 2002
IS Personal Allowance	£53.95
Pensioner Premium	£44.20
BASIC IS LEVEL	£98.15

B. PENSIONERS, Couples

Pensioner aged 60+, couple

	April 2002
IS Personal Allowance	£84.65
Pensioner Premium	£65.15
BASIC IS LEVEL	£149.80

C. DISABLED ADULTS, Single

Aged 25 - 59

	April 2002
IS Personal Allowance	£53.95
Disability premium	£23.00
Enhanced disability premium #	£11.25
BASIC IS LEVEL	£88.20

Aged 18 – 24

	April 2002
IS Personal Allowance	£42.70
Disability Premium	£23.00
Enhanced disability premium	£11.25
BASIC IS LEVEL	£76.95

D. DISABLED ADULTS, Couples

Aged 18+

	April 2002
IS Personal Allowance	£84.50
Disability premium	£32.80
Enhanced disability	£16.25

premium	
BASIC IS LEVEL	£133.55

DLA acts as a passport to the severe and enhanced disability premiums. Thus, severe disability premium (SDP) is paid only if the claimant also receives the middle or highest rate care components of DLA. Enhanced disability premium (EDP) is only due if the claimant is receiving the highest rate care component of DLA. SDP also has other conditions; the claimant must not be cared for by someone who is receiving ICA for caring for him/her and the claimant must be living alone (though there is a list of people who don't count for the living alone condition, such children under 18).

When a person turns 60, the disability and enhanced disability premiums are replaced by the pensioner premium. SDP and DLA will continue in payment so long as conditions of entitlement still exist.

E. Carers, Single

Over 25 and under 60

	April 2002
IS Personal Allowance	£53.95
Carer premium	£24.80
BASIC IS LEVEL	£78.75

The Income Support carer premium is paid if the carer or partner are in receipt of Invalid Care Allowance (ICA), or claimed ICA after 1 October 1990 but could not be paid it because the person who claimed it was already receiving a higher benefit. If both partners satisfy one of these conditions both can get the carer premium.

ANNEX C

‘A Best Value charge?’: a checklist for councillors and managers (based on *Charging with Care*, Audit Commission, May 2000, Table 2)

A number of questions will help councils to review how their approach to charging for home care compares with best practice.

Principle	Key Questions
<i>Establish clear principles to guide charging</i>	<p><i>Are there principles to guide charging for home care? Do they answer the key questions:</i></p> <ul style="list-style-type: none">• Who should subsidy be targeted at? Why?• How should charges vary with the level of service received? Why?• How should charges vary with users' means and how should national benefits be treated?• Is it clear how costs of disability are taken into account?• Are members committed to the principles and their implications for charges and services?• Are incentives to work for the user or carer preserved?
<i>Consider charging as an integral part of service review</i>	<ul style="list-style-type: none">• Are charges reviewed as part of best value review and service planning?• Does the approach to charging fit with corporate priorities such as anti-poverty?• Are charges designed to deliver service objectives? Is the potential of charges to improve services or extend access considered?• Is there an effective process to review charges? (Are options evaluated? Is adequate information available?)

<p><i>Meet the needs of users</i></p>	<p><i>Open communication and consultation</i></p> <ul style="list-style-type: none"> • Does meaningful consultation take place over the design and management of charges? Do managers know users' key concerns? • Do users know that they can ask for charges to be reviewed or waived? Are such systems accessible to all? Is how to find out more or seek advice? • Are forms, letters and leaflets well designed (easy to follow, adequate print size, community languages)? • Are users told why information is required and given assurances over confidentiality? <p><i>Ensuring users are able to pay:</i></p> <ul style="list-style-type: none"> • Is the council effectively promoting benefits take-up by new and existing users? Is expert advice available to help users maximise their income? • Are users given a record of the assessment that explains how their charge has been calculated? Do users understand how/if their charge would change if their needs or means changed? • Is it clear how costs of disability have been taken into account? Will users know when they should ask for a review of their charges? • What happens when users cut down or withdraw from services? Are the reasons identified? What help is offered? • Does the council pro-actively monitor arrears to identify if users may be having difficulties paying, and initiate action to help tackle problems?
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<p><i>Manage performance effectively</i></p>	<p><i>Is key performance information gathered and acted upon? Are targets set and published?</i></p> <ul style="list-style-type: none"> • Are financial assessments carried out efficiently? Are they accurate and are users made aware of the results as soon as possible? • Are users billed promptly and accurately? • Do managers monitor the impact of charges on users (users cutting down on services or building up arrears)? <p><i>Are charges managed efficiently and effectively?</i></p> <ul style="list-style-type: none"> • Are managers aware of the costs of charging? • Have the costs of charging been minimised by careful review of assessment processes, and methods of billing and payment? • Could links be improved between finance and care management systems? Do different staff (social services, finance, welfare rights, care providers) work together effectively? • Are variations in services processed promptly and accurately? • Are staff adequately trained, so that users are treated consistently and sensitively?
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Example of charges assessments based on the minimum requirements in the Guidance (April 2002 rates)

1. Single person aged 66, no disability-related benefits or expenditure

Income Support only	Occupational pensioner	Occupational pensioner, higher income
Income Support Personal Allowance £53.95 + Pensioner Premium £44.20 Assessable income <u>£98.15</u>	Basic state pension £75.50 + occupational pension £110.00 Assessable income <u>£185.50</u>	Basic state pension £75.50 + occupational pension £200.00 + Savings £15,000, tariff = £13 weekly Assessable income <u>£288.50</u>
Deduct £98.15 + (25%) £24.54 <u>£122.69</u>	Deduct £98.15 + (25%) £24.54 <u>£122.69</u> Deduct Rent/housing £40.00 Council Tax £15.00 Total deductions <u>£177.69</u>	Deduct £98.15 + (25%) £24.54 <u>£122.69</u> Deduct Rent/housing Nil Council Tax £15.00 Total deductions <u>£137.69</u>
Assessable income remaining = zero No charge due	Assessable income remaining = £7.81 Actual charge depends on hours of care, subject to assessable income remaining	Assessable income remaining = £150.81 Actual charge depends on hours of care, subject to maximum

Terms of Reference of the Working Group on Disability Benefits Disregard

To consider the appropriate level of disregard for set amounts of disability related expenditure where local authorities decide to take into account disability benefits.

No presumption is made that all local authorities will charge for home care and other non-residential services. Where they do decide to charge for services local authorities retain substantial discretion in the design of charging policies.

Nothing produced by the Group will require local authorities to make existing charging policies, which go beyond the requirements set out in the guidance, less generous to users than they currently are. The work undertaken by the Group will be aimed at making charging systems fairer and operating to more consistent principles.

Membership of the Group

Lynda Bransbury, Welsh Local Government Association

Hugh Gardner, Association of Directors of Social Services

Jackie Davies, Newport City Council

Colin Berg, Monmouthshire County Council

Rhian Davies, Disability Wales on behalf of the Coalition on Charging

Ana Palazon, Help the Aged

Yvonne Apsitis, UK Home Care Association

Roz Williamson, Carers National Association

Andrew Powell-Chandler, Social Care Policy Division

Howard Teague, Social Services Inspectorate for Wales