



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 17 December 2013

Session 4

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HEALTH AND SPORT COMMITTEE

36th Meeting 2013, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)

*Colin Keir (Edinburgh Western) (SNP)

*Richard Lyle (Central Scotland) (SNP)

*Aileen McLeod (South Scotland) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Campbell (North Lanarkshire Council)

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab) (Committee Substitute)

Ian Hood (Learning Disability Alliance Scotland)

Councillor Peter Johnston (Convention of Scottish Local Authorities)

Alex Neil (Cabinet Secretary for Health and Wellbeing)

Garrick Smyth (Convention of Scottish Local Authorities)

William Tait

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 4

Scottish Parliament

Health and Sport Committee

Tuesday 17 December 2013

[The Convener *opened the meeting at 10:31*]

Subordinate Legislation

Health Boards (Membership and Elections) (Scotland) Order 2013 [Draft]

The Convener (Duncan McNeil): Welcome to the 36th and final meeting in 2013 of the Health and Sport Committee. I remind everyone to switch off mobile phones, BlackBerrys and so on. In saying that, members might use iPads or other tablets to access their papers for the meeting.

The first item on the agenda is an affirmative instrument, the draft Health Boards (Membership and Elections) (Scotland) Order 2013. As usual with draft affirmative instruments, we will have an evidence-taking session with the cabinet secretary and his officials, followed by the formal debate on the motion.

I welcome Alex Neil, the Cabinet Secretary for Health and Wellbeing; Robert Kirkwood, the corporate business manager of the national health service in Scotland; and David Wilson, a solicitor in the food health and community care division of the Scottish Government.

I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Health and Wellbeing (Alex Neil): The draft Health Boards (Membership and Elections) (Scotland) Order 2013, which is before the committee today, will, if approved by the Parliament, revoke the pilot order that was made under the Health Boards (Membership and Elections) (Scotland) Act 2009. That order led to the piloting of health board elections in the Fife and Dumfries and Galloway health board areas in 2010.

In taking forward the policy with Parliament following the 2007 election, we sought to address the levels of participation and engagement between boards and the communities that they serve. After an extensive consultation, we worked with others in the Parliament and introduced legislation that allowed the piloting of direct elections. As part of that original legislation, we also agreed with Parliament that a robust process should be put in place to ensure that no roll-out of the pilot could take place without proper consideration. Those measures included a requirement for the pilot scheme to be

independently evaluated, to give us a vital independent view of its impact. The pilot also had to last for at least two years before any evaluation reported, to ensure that it had an appropriate time to become established before any judgment was made. Further, there could be only one pilot, to avoid any moves to continue to change and modify board structures, which could have proved to be an unhelpful distraction.

The election count took place on 10 June 2010. From 60 candidates in Fife and 70 in Dumfries and Galloway, 12 and 10 members, respectively, were returned. In December 2012, two-and-a-half years after the elections took place, the independent evaluation that was carried out by the London School of Economics, working with the University of St Andrews, was published. That evaluation made it clear to me that we should not continue with the rolling out of the programme.

We also carried out alternative pilots at the same time as the Dumfries and Galloway and Fife election pilots. Those alternative pilots were successful in attracting a far greater number of applicants from different spectrums and demographics of Scottish society than was the case under the previous system. In Grampian, for example, we received 90 applications for the appointments, which compared with the eight applications that we received under the previous process. Building on the success of the alternative pilots, many of the approaches that were used have been replicated by other boards during their appointment rounds.

The increase in the diversity of appointments to health boards will contribute to better participation and engagement. It is my intention to build on the successes of the alternative pilot approach and to continue to encourage boards to be more flexible and inclusive in their approach to appointments.

For the reasons outlined, I believe that we should not roll out the health board elections and that, under the terms of the legislation, we should terminate the pilots accordingly.

Aileen McLeod (South Scotland) (SNP): I have a couple of questions to ask, as a member for South Scotland—and Dumfries and Galloway is obviously part and parcel of South Scotland. My questions are primarily on the costs of the elections that were held in NHS Dumfries and Galloway. What were the costings, and how much would it cost to roll out the health board elections across all health board areas in Scotland?

Alex Neil: The cost of the pilots was in the order of £2.5 million. The independent evaluation estimated that it would cost £12 million to roll out the elections. We think that that is an underestimate. The cost of the local elections in Scotland last year was £16 million to £20 million,

depending on what is included in that cost. We believe that the £12 million estimate is quite an underestimate. Even at £12 million, that money would have had to come out of the health and social care budget. My view is that there are higher priorities for £12 million than rolling out direct elections to health boards.

Aileen McLeod: My other question relates to the governance arrangements that will be put in place. When do you think you will appoint the new non-executives to the pilot health boards, and how many members will there be?

Alex Neil: Early in the new year, we will start the process of advertising for new members for Fife and Dumfries and Galloway. I always want to ensure that there are significantly more non-executive board members than executive members. I am therefore anxious to ensure that we move reasonably quickly to do that in the new year.

We will take into account experience elsewhere, particularly in Grampian and Lothian. The current exercise in NHS Lanarkshire to deliberately try to recruit a more diverse spectrum of people on to the health board by advertising specifically to have members of underrepresented groups, including women, ethnic minorities and disabled people, has proved quite successful in terms of the number of applications. We believe that we will be able to fill the two positions in Lanarkshire with people from underrepresented groups. When we come to advertise the positions in Fife and Dumfries and Galloway, I want to use the opportunity to ensure that people from underrepresented groups within society are encouraged to stand, and that, provided they are up to the job, they are appointed to the board.

Rhoda Grant (Highlands and Islands) (Lab): I think that you said in the Parliament last week that the people who were directly elected will come off the boards at the end of this month. If I hear you right, you are advertising to replace them, starting next month. How long will the gap be between the present members leaving and the new appointments being made?

Alex Neil: The usual timeframe to recruit new people is two months, from the time when we advertise the positions to appointment. It will be done timeously and speedily. It so happens that we still have a good complement of members on both the boards concerned, so it is not as if we are down to the last half dozen members or anything like that. The boards are sufficiently well staffed up as far as the board membership is concerned.

However, the issue is not just about the number of people on the board; it is also about the balance, particularly between the executive and non-executive members, and I am keen to ensure

that there is always a very strong preference and majority for non-executive members.

Rhoda Grant: Why, then, did you not decide to run the elected members up until they would be replaced by the appointed members that you are now advertising for? Why leave a gap?

Alex Neil: Actually, a lot of it has to do with the terms of the legislation. Under the legislation that was passed by the Parliament, I have had to take a decision to lay the order, otherwise I would have been duty bound by the legislation to rerun the elections in Fife and in Dumfries and Galloway in 2014, and that is where the timing issue has come in. I have allowed those members to serve for as long as I could under the terms of the legislation, but the legislation does not allow me to continue with that, beyond the laying of the order.

Rhoda Grant: Could the appointments have been advertised earlier to allow appointments to be made at the end of the month, to prevent a gap?

Alex Neil: It would be presumptuous of me to predetermine what the Parliament will decide on that matter. I give respect to the Parliament. The Parliament might decide not to agree with me and not to pass the order, in which case I would have spent a lot of money advertising positions that I could not then fill.

Rhoda Grant: Could you not have taken the order to the Parliament a bit sooner? That is what I am trying to say.

Alex Neil: If I had done that, the period of office would have come to an end once the order was in effect, so I felt that this was the best timing and I do not see any significant gap between the elected members demitting office and new recruited members taking office. As I said, neither board is short of board members.

Rhoda Grant: To clarify, are you saying that, the moment the order is passed, those people cease to be members? Could you not have put a date in the order or put an order to Parliament that would have come into effect two months hence to allow that space?

Alex Neil: I also wanted to ensure that the elected members, who have served for a period of time, did not have their period of office cut short unnecessarily, because I felt duty bound to them. I anticipate that some of those members will reapply for board membership under the normal procedure.

Rhoda Grant: I do not think that you quite understand what I am driving at. I am not talking about their term of office being cut short. Are you telling me that there has to be a two-month gap regardless, because of the way in which the legislation is set up?

Alex Neil: The legislation is worded in such a way that things have to be done in the way that I have outlined. If I had made the order earlier, it would have created a period of uncertainty. Let us suppose that I had made the order six months ago and had said that the members could continue to serve until the turn of the year. In that case, the authority of those members would have been grossly undermined. I wanted to bring the order to the latest date that I possibly and reasonably could so that we did not undermine the authority of those board members while they were serving.

Rhoda Grant: So it is not a surprise to them?

Alex Neil: I do not think that it should be. Anyone who reads the evaluation—certainly anyone I have spoken to in the health service, irrespective of whether they are board members or have other roles—will take the universal view that, if you have £12 million to spend, it is far better to spend it on service provision than on rolling out elections.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I apologise for not having read the evaluation. I am not here to oppose what you suggest, but it would be interesting to know what other lessons you have learned from the experience. You have presented the financial objection to continuing with the arrangement, but it was certainly a major policy plank—almost a flagship policy—that you advocated in the past. I am not criticising people for changing their minds, but I would like to know in what other ways the arrangement did not fulfil your expectations.

10:45

Alex Neil: First, the alternative pilots actually did a better job of addressing the issue of underrepresented groups on boards. I am determined to get more women, disabled people and ethnic minority representatives on to national health service boards, and that did not happen. Secondly, the turnout in the elections—particularly the 10 per cent turnout—was disappointing and makes questionable the extent to which the election reflected public opinion.

My third point is something that I noticed in some of the decisions that have been made. I do not want to go into a lot of detail about this, but one of my concerns, which was not highlighted in the evaluation, is that when candidates who live in one part of a big geographical area—both Fife and Dumfries and Galloway are fairly significant geographical areas—are elected on the back of support from their locality, sometimes they see their role on the board as being to fight for resources for their area, rather than to look at the big picture of the total board area.

I am sure that Malcolm Chisholm, as a former health minister, would be the first to agree that we cannot risk the balkanisation of health boards and have someone from Glenrothes think that they are on a board to represent Glenrothes. They are not. They are there to represent the board area in its entirety and the point is that they have to look at the big picture, which is the entire Fife area, Dumfries and Galloway area or Lanarkshire area. Since the evaluation, and in the 15 months that I have been in this job, I have noticed the possibility creeping in of people taking a different view and seeing themselves as being in a position to represent a particular locality, rather than look at the big picture and the overall board position.

Even without that, the right decision is not to go ahead with rolling out the elections, but that is another reason why that is the right decision.

Malcolm Chisholm: That is really interesting. I do not think that the fundamental reason was to get underrepresented groups on the board. I suppose that it was seen at the time by some people as an answer to the problem of meaningful public involvement in health decisions. If it has not proved to be the kind of panacea that some people thought that it would be, have you developed other forms of improving public involvement in health decisions?

Alex Neil: I will give you a two-pronged answer to that. First, as I have said, we are using the lessons learned from the alternative pilots in Grampian and Lothian and what is going on in Lanarkshire in co-operation with the Commissioner for Ethical Standards in Public Life in Scotland, which is deliberately designed to ensure that we get underrepresented groups on the board of NHS Lanarkshire.

The second point is that, in any case, we need to look at ways of improving the governance and accountability of health boards and we need to take account of the implications for public accountability of the integration agenda and the shift in health board areas of responsibilities to the new partnerships. Early in the new year, I will issue a consultation document on ways to improve the governance and accountability of health boards in Scotland.

The Convener: Nanette Milne has the next question.

Nanette Milne (North East Scotland) (Con): My question was covered by Rhoda Grant.

The Convener: As there are no other questions, I will proceed to agenda item 2, which is a formal debate on the affirmative Scottish statutory instrument on which we have just taken evidence. I remind members that they should not put questions to the cabinet secretary at this

point—this is a debate—and that officials may not speak in the debate.

I invite the cabinet secretary to move motion S4M-08580.

Motion moved,

That the Health and Sport Committee recommends that the Health Boards (Membership and Elections) (Scotland) Order 2013 [draft] be approved.—[*Alex Neil.*]

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for their attendance and wish them a very merry Christmas and a happy new year.

Alex Neil: I reciprocate and wish you and the committee all the best of the season. I hope that Santa Claus will be good to each and every one of you.

The Convener: Thank you.

10:49

Meeting suspended.

10:50

On resuming—

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Amendment Regulations 2013 (SSI 2013/327)

The Convener: Agenda item 3 is further consideration of subordinate legislation. We have four negative instruments to consider.

There has been no motion to annul the regulations, and the Delegated Powers and Law Reform Committee has made no comments on them. There are no comments from the committee. Does the committee agree that it has no recommendations to make on the regulations?

Members indicated agreement.

Food Safety, Food Hygiene and Official Controls (Sprouting Seeds) (Scotland) Regulations 2013 (SSI 2013/333)

The Convener: There has been no motion to annul the regulations, and the Delegated Powers and Law Reform Committee has made no comments on them. There are no comments from committee members. Does the committee agree that it has no recommendations to make on the regulations?

Members indicated agreement.

Health Boards (Membership) (Scotland) Regulations 2013 (SSI 2013/334)

The Convener: There has been no motion to annul the regulations. The Delegated Powers and Law Reform Committee has drawn the Parliament's attention to the instrument on the general reporting ground. Details are in annex B to paper 7, on pages 10 and 11 of members' papers. There are no comments from committee members. Does the committee agree that it has no recommendations to make on the regulations?

Members indicated agreement.

Food (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/336)

The Convener: There has been no motion to annul the regulations, and the Delegated Powers and Law Reform Committee has made no comments on them. I invite comments from members.

Nanette Milne: This is perhaps an ignorant question, but what is a lagomorph?

The Convener: A lagomorph?

Nanette Milne: Does anyone know?

The Convener: I know what it used to mean—"I laidimorph on a Friday when there was no work."

Richard Lyle (Central Scotland) (SNP): Somebody could write to Nanette Milne and let her know.

Nanette Milne: It is obviously something that produces meat, but I do not know what it is.

The Convener: Have we got any answers? No? We are scrambling about. A bit of notice of that question would have been appreciated—it would have saved a lot of red faces.

We will move on. Apart from that, there are no comments on the regulations. Does the committee agree that it has no recommendations to make?

Members indicated agreement.

Care Bill

10:54

The Convener: Item 4 is consideration of a legislative consent memorandum. Members will find in their papers the Scottish Government's memorandum, a draft of the motion and an explanation of the motion. The committee could take evidence on the bill, but we might take the view that the effect of the proposed legislation to be passed by the United Kingdom Parliament is so minor that we do not need to carry out further scrutiny and we can simply recommend to the Parliament that the motion be agreed to.

There are no comments from members. Does the committee agree to recommend to the Parliament that the legislative consent motion on the UK Care Bill be approved?

Members indicated agreement.

10:55

Meeting suspended.

10:56

On resuming—

Petition

Non-residential Services (Local Authority Charges) (PE1466)

The Convener: Item 5 is consideration of PE1466, which the Public Petitions Committee referred to us earlier this year. Information on the petition from the Scottish Parliament information centre is in members' briefing papers.

I welcome the witnesses who will give evidence on the petition: the petitioner, William Tait; Councillor Peter Johnston, spokesperson for health and wellbeing for the Convention of Scottish Local Authorities; Garrick Smyth, COSLA policy manager; John Campbell, service manager for financial inclusion at North Lanarkshire Council; and Ian Hood, co-ordinator for the Learning Disability Alliance Scotland. I welcome you all to the committee.

I offer William Tait, the petitioner, the opportunity to make opening remarks.

William Tait: I will be as brief as possible. I thought that it might be useful if I ran through the process that I believe happens. After I have set that out, I will be open to questions.

The petition started because of a personal incident that involved my autistic daughter. As events developed, they made me believe that what was happening to us was happening throughout Scotland and that there could be a postcode lottery for charges and so on. People with the same disability and in the same circumstances could pay more in Edinburgh than in Aberdeen, because of interpretation.

When someone has an exchange with their council, things might become fraught, and there is nowhere to go during that exchange to get help, support or intervention. People simply have to stay on the merry-go-round until it stops. When they get off, they are probably somewhat bedraggled and bewildered.

I believe that COSLA is an excellent organisation, and I must be thankful to Garrick Smyth, who eventually invited me to talk with him. That made me even more certain in my belief that COSLA should be an independent body and not a body that is made up of councils. If it is made up of councils, the situation becomes one of, "It's my ball and my rules." I suggest that, unless both parties have input into the rules, there will always be a bias. COSLA should be an independent body that makes its own bible and polices the use of that.

11:00

I am sure that the Scottish Public Services Ombudsman is a credible body, but I put it to you that it does not intervene until the patient is dead. The SPSO does not intervene until everything is at an end, and its consideration of a complaint is very much procedural. It gets 3,000 complaints a year but upholds less than 100. I do not believe that the quality of complaints is so poor that it results in such terrible odds.

The SPSO's remit should be different; it should have inspectors who can be phoned during an event, and they should be able to go in and put everything in abeyance until they investigate. We would see what happened after that. There are monitoring officers in the council system. I have sent freedom of information requests by email to a number of councils to ask for their profile of a monitoring officer, which goes from very poor to not much better.

There are advocates in the community such as Ceartas advocacy and Carers Link East Dunbartonshire. On the particular issue that led to the petition, the advocates were very nice and helpful. However, all that they said was, "We don't understand a thing. If it goes to appeal, we'll come to hold your hand and keep you company, but we can't contribute." If they are there to fill in or hand out forms, that is fine, but if they are there to go a step beyond that, their knowledge should be much better.

It is open to appeal to a council. I believe that, through the ombudsman's efforts, an appeal now has two stages but, when I wrote the petition, there were three stages and they were farcical. The first appeal went to a council employee in the department that was being complained about, so what chance had someone of their appeal being upheld? The second appeal was basically dealt with in the same way. In the third stage, the appeal was supposed to be dealt with by an independent panel, but its independent chairman often worked with the council. There were two other members of the independent panel who were not independent, because they were council employees. I suggest that an appeal has no chance in such a process.

I believe that COSLA should write and police the use of its own bible. That would stop different councils having a pick-and-mix by taking up some things and disregarding others, which is why we get a postcode lottery.

A disabled person in Somerset took Somerset County Council to court in London and won the case. The court asked the council to re-evaluate all the charges that it had set for people. The court said that, when a council sets up a charge against a disabled person, it must take account of the

costs that relate to the disability. Up here, councils do not do that. The court gave the example of a disabled person going on holiday and said that, although the cost of that person going on holiday should not be disregarded, because it is a cost that we would all have, the cost to the disabled person of having to take a carer should be disregarded, because it relates to the disability.

I think that COSLA could do a wonderful job as an independent body; it could create and police the use of its own bible and ensure that it is applied equally in councils throughout Scotland. The ombudsman would be far better equipped if it had a different remit, so that someone could phone it during a difficulty and it could then phone a council to say, "Put everything in abeyance. We're sending someone in to inspect this." It is not fair that people with disabilities and people of all mental abilities are put on to a merry-go-round that—to be frank—they cannot get off until the council pushes the button.

The Convener: Before I bring in committee members to ask questions, do the witnesses from COSLA want to comment? I am not suggesting that you should respond directly at this point to everything that Mr Tait said, but you might want to talk about the general situation and speak to the written evidence, so that we can get a balance and the committee can ask questions of both sides.

Councillor Peter Johnston (Convention of Scottish Local Authorities): I thank Mr Tait for his positive and welcome comments about COSLA. However, I am not clear how COSLA, which is the Convention of Scottish Local Authorities, could exist without its membership being from local authorities.

The first thing that we want to say is that COSLA believes absolutely that, because each local authority has to design and deliver non-residential social care in different geographic, demographic and socioeconomic circumstances, local decision making is by far the best way to deliver such services and local decision making should determine whether charges should be levied. That is fundamental to the issue.

As I am sure that members are aware, COSLA produces guidance for our members—local authorities—on how they should approach charges, which is set out in an annual document. How we go about that can be summed up in the PANEL approach, which comprises participation, whereby we look to involve communities in co-production; accountability for the charging regime—a clear level of accountability, which Mr Tait did not pick up on, is that he has the opportunity to go to his elected member for representation throughout the process if he is dissatisfied with what his local authority is doing, so we are not talking about a faceless

bureaucracy; non-discrimination and equality, whereby we look to ensure that whatever charges are levied are fair and equitable; empowerment of individuals, to ensure that they can engage throughout the process; and legality, because of course we must follow the law.

COSLA takes that approach seriously, as do our member local authorities, and we review the process. Members will be aware that the Community Care and Health (Scotland) Act 2002 introduced free personal care and included powers in that respect. Since 2002, the guidance that COSLA has issued has been reviewed at least five times and, as I speak, we are actively engaged in further reviews, which we are doing through engagement with communities and key stakeholders, as Mr Tait rightly said.

We are not saying that we have got things perfect. We are absolutely willing to pick up on any thoughts about how we can improve the situation. However, we would strongly oppose the national regulation of charges, which we argue would limit local authorities' power to prioritise resources to meet local need. Regulation would constrain innovation and creative solutions and it would restrict local authorities' ability to tailor services to local circumstances, which we think is fundamental.

Richard Lyle: Mr Johnston has answered some of the questions that I was going to ask.

Mr Tait, good morning. I am sorry that you went through a process about which you feel aggrieved. As Councillor Johnston said, COSLA is the Convention of Scottish Local Authorities and survives only because Scottish local authorities pay a subscription to it. It is a meeting point for council leaders and councillors to discuss things.

On your petition, I do not want to know where you stay, but what council area do you live in?

William Tait: East Dunbartonshire Council area.

Richard Lyle: To ensure that your complaint is looked at, and taking on board the point that Councillor Johnston made that local councils should have autonomy and be allowed to make their own decisions, do you believe that there should be a national policy?

William Tait: There should be a policy that generates greater fairness. The policy as it stands does not do that. The fact that COSLA does not wish to alter it does not mean that it should not do so if that will make it fairer. I am not talking about my personal circumstances; I am talking more broadly, about the Scottish people.

I have involved members of Parliament and councillors, but they do not stay the course. If a benefit has to be calculated using an X, Y and Z formula, it is only fair that that formula is the same

throughout Scotland; otherwise there will be a postcode lottery. The formula can be embellished by councils, but the very minimum that we should all get in Scotland is that the formula is used and not adjusted to suit the council. Doing that is very wrong. The pick-and-mix policy should not be allowed, but it is, and I have examples of that.

The Convener: Can you give us an example of the pick-and-mix approach, Mr Tait?

William Tait: Yes. My daughter was asked for an additional charge. If it had gone through, she literally would have been made bankrupt in nine months, as they wanted to reduce her income by 30 per cent and her expenses by 25 per cent. That was bad enough, but the calculation did not take heed of a disregard that COSLA said should have been taken heed of. That pick-and-mix approach increased the amount of money that they wanted from my daughter. If the guidelines and disregards that had been set down for that calculation had been taken into account, she would have paid the same as a person in Aberdeen.

That is where things are unfair throughout Scotland. If a council wants to embellish the formula because it is a nice council, it should do so, but it must use a minimum standard of a set of rules that is not made by councils. It certainly is a case of, "It's my ball and it's my rules." Not only do the councils make the rules, they can change them during the game. People have no chance. They start to play the game with a set of rules that are different by the time that they are halfway through the first half.

There must be a commonality in how things are charged. That is necessary. I am not being stupid, but if that means that COSLA has to be renamed, that has to be done. An independent body that makes up a set of rules—a bible—for the councils to adhere to is needed. With that bible, councils should be asked to adhere to the minimum; they can do anything that they like beyond that. However, everybody must be treated the same using the same formula.

Richard Lyle: I have a final question for Mr Johnston. Basically, housing benefit is the same throughout Scotland. On the point that Mr Tait has just made, why should councils be able to charge differently?

11:15

Councillor Johnston: I think that your answer lies in the differences between council areas. If we compare a rural council with a big city council, we can see that geographical distances, travel distances and a range of factors have to be taken into account. We think that local authorities are best placed to make local decisions about how best to allocate scarce resources to meet the

needs of their communities. We argue strongly that local authorities are directly accountable to their local communities for their decisions.

It is interesting that, since 2002, the Scottish Parliament has had the power to regulate but has decided not to use that power. We think that that was the correct decision over the decade and that regulation would be a major step backward. As resources become even scarcer, it is more important that we have local flexibility, so that we can get more from less, and so that we can design services that are efficient and effective and meet the needs of local communities.

Richard Lyle: Thank you.

The Convener: I will let you back in, Mr Tait, but I want to invite other witnesses to comment.

Ian Hood (Learning Disability Alliance Scotland): We like the petition, because it calls on the Scottish Government to play the role that Mr Tait says that a revised COSLA could play. The Scottish Government has the power to do that, but the petition simply asks for a review of how care charging works throughout Scotland, because, wherever we look, we find that the system is extremely complex and hard to understand. Councillors and council officials do not really understand how charging is done, and there is a tremendous degree of variation. We cover a range of examples in our submission; I will mention one. The minimum income per week that councils think that disabled people should have to live on varies from £120 in East Ayrshire, which is a semi-rural area, to £170 in North Lanarkshire, which is another semi-rural area. There is no difference between the two areas that justifies such a difference.

That pattern happens all across Scotland in the pick-and-mix approach that Mr Tait described. That is the real problem. Why should disabled people in East Ayrshire—or another local authority area; I have a list with me, for members who are interested in what their local authorities are doing—have £120 to live on, when people elsewhere have £170?

That is not local democracy; it is discrimination against people with disabilities. What we are asking for is justice, because as long as such discrimination goes on, people will feel that it is wrong, whether or not they are paying care charges. We would like a simple system, which people can understand, so that when they pay charges—and most people accept that they should pay something—they feel that the charges are fair, because the same thing happens in Edinburgh, Aberdeen, Motherwell and Kilmarnock.

The Convener: Will the COSLA witnesses say why the guidance is not working?

Garrick Smyth (Convention of Scottish Local Authorities): A central motivation behind the more fundamental review that COSLA is undertaking is to achieve greater fairness and address the issues that arise from perceived variation. We started the review in 2011 and we have made substantial changes to the guidance since then.

We appreciate that there is some variation. There will be legitimate variation in local authorities in relation to transport costs, given the sparsity of areas such as the Highlands, but there might also be areas where variation is unwarranted. We want to identify and reduce unwarranted variation. The review is on-going, as Peter Johnston said, and a working group is looking at introducing elements that would reduce inconsistency across Scottish local authorities, while preserving authorities' democratic mandate to vary and tailor services according to local demographics and need. We really do take on board concerns about fairness. The working group is happy to take on board information that people have and see what can be done to improve consistency from the user's perspective.

There are a number of elements to the issue. We have focused on charging but, to an extent, that is of lesser importance, because what matters is the means and income of each individual who receives care. A central element of the charging guidance is the minimum charging threshold, which is based on a number of Department for Work and Pensions benefits, with 16.5 per cent added—do not ask me about the history of that. The intention is to establish a minimum income below which people are not charged a penny for the services that they receive. If a person's income is above the threshold, they might contribute a certain amount towards care, but they will certainly never be charged more than it costs to deliver the service.

To sum up, we are keen to make the system fairer and to tackle the points that Ian Hood made.

The Convener: Do charges relate to the cost of the service? Is the heart of the issue the fact that people are paying more than the actual cost of delivery of the service?

Councillor Johnston: You might be interested to know that overall spend on adult and older people's services in Scotland is about £1.4 billion, whereas charges bring in £42 million.

The Convener: I have seen that figure.

Garrick Smyth: On a point of clarity, in answer to your question, the guidance sets out that a charge should never exceed the cost of providing the service.

Ian Hood: That sounds all right in theory but, when councils work out the charges, it turns out that that is not quite accurate, because what councils charge for an hour of home care in Scotland varies from £7.68 to £23. It is easy to go to a private care company and arrange for an hour of home care for between £10 and £12. In some areas, people can get a cheaper service, and many people in Scotland have chosen to take themselves out of the social work care system. Since the early 2000s, the number of home care clients has declined in Scotland as people have chosen to exit from social work services and buy private care, because it is cheaper to do so.

It is true that the social work department will not charge a person more than the cost of their service, but people can buy cheaper services and pay for them themselves. There is a declining number of home care clients in Scotland. In the region of 13,000 people have dropped out of the care system—the number is probably higher if it is adjusted for population.

The Convener: Mr Tait, I know that you have tried to get in a couple of times. I also have a long list of people who want to speak.

William Tait: I really believe that people should be treated on the basis of the same formula, whether they live on a farm or in a tenement. It is about equality. The Scottish Parliament's own document says that it is looking for fairness. What could be fairer than having everybody's charges calculated on the same basis, as opposed to allowing a postcode lottery? The Scottish Parliament wrote that it wanted fairness. That is laudable. I want fairness throughout Scotland; that is all that I am here for. However, while councils are allowed to be in charge of the system and to alter and play around with it, there will never be fairness, because if someone has the upper hand, they will use it—that is a natural state of mind.

I do not see why an organisation—a renamed COSLA—cannot make a bible that the councils can use. Beyond that, the councils can have as much freedom as they like in their areas. It would not stifle freedom if fairness were put into the system.

The Convener: On that theme, which has emerged today, we must be careful. I have looked at the petition, and I do not know whether it is appropriate for this committee to talk about how local government and COSLA are organised; that might be for another committee. For the purposes of this committee, we need to focus on the question of differential charging. That is obviously of interest to this committee, which has done work on delivery of care in the community.

The deputy convener is looking for clarification on some of Mr Hood's figures. After that I will definitely get to the members who have questions.

Bob Doris (Glasgow) (SNP): I thank committee members for their forbearance in letting me jump the queue, and I hope that this will be brief. Ian Hood said that 13,000 people have disengaged from the traditional format by which local authorities provide care. Can you give a breakdown of the figure? An aspect of interest to this committee is people who take on self-directed support and manage their budgets directly. Are such people part of your 13,000 figure? When the council is no longer providing a care service for a person, but the person has a budget and commissions their own service, will the person be included in your figure?

Ian Hood: This is part of a bit of work that we are doing for a different committee in the Parliament, which is not quite ready. For your interest, I have produced a wee graph. There were roughly 80,000 home care clients in Scotland in 1998. By 2012, the number was down to 64,000. That was long before self-directed support really came into effect. Once councils were given guidance on how to charge in 1997, the number fell away sharply, but it went back up with the introduction of free personal care. As councils tightened up and began to charge more, the number began to go down again. There might be other reasons for that; we are still working on some of those.

Bob Doris: It is maybe not for today, but it would be quite good to get some more information on that at a later date.

The Convener: Yes. We would welcome that information, Mr Hood.

Rhoda Grant: From listening to what people are saying, it seems to me that there are minimum standards in place, but the minimum standards for charging are not altogether fair—we have a minimum income guarantee, but councils are then putting in their own income guarantee on top of it.

We have talked about the issues; I hope that we can find a solution. I want to ask COSLA about the working group that is reviewing consistency of charging. Are service users involved in that? I understand that service users cannot be part of COSLA, but surely COSLA has consulted them. How are they involved in this review?

Garrick Smyth: Indeed. As Peter Johnston said, the working group is trying to go forward on a co-productive basis. The membership comprises representatives of a wide range of stakeholders. I do not think that we have an individual service user on the working group, but we have representatives of Age Scotland, the Coalition of Carers in Scotland, Inclusion Scotland, Alzheimer

Scotland, the Scottish Consortium for Learning Disability, the independent living project Scotland and Capability Scotland, as well as a number of representatives of local authorities. The membership base is fairly wide, but I am happy to consider any suggestions that will broaden it out to serve the purpose of achieving greater consistency.

Rhoda Grant: What do you hope will be the outcome of the review? I understand that COSLA wants local decision making to be protected to an extent, but you have heard the petitioner and Ian Hood talk about the huge disparity, which looks and feels very unequal.

Garrick Smyth: Sure. I do not think that we were set up to produce a final report per se. We undertook a public consultation in 2001, which comprised a listening event and contributions from the general public and a range of disabled people's organisations, and we then quickly formed the working group. It did not really take a lot of time to come up with a set of outcomes that we felt were worth while in order to improve the guidance.

There are essentially eight outcomes, which are set out in the charging guidance. The outcomes are around such things as partners' income; understanding information; facilitating movement, which is portability of care; benchmarking across councils, so that we can reduce the variation; financial assessment; and treatment of disability-related expenditure, on which we are hoping to include a revision in the guidance for next April. That informs where we want to go with the work. I do not know whether you have a copy of the charging guidance, but I will see that you get a full copy of the outcomes that we are heading towards.

The Convener: That would be appreciated.

Garrick Smyth: Touching on a point that was made earlier, we are trying to improve consistency from the user's perspective. We are doing a little bit of work around financial assessment, with a view to maybe developing a standard financial assessment template, which I think would go some way to improving fairness, and incorporating it within the guidance.

Rhoda Grant: What is the status of the guidance? Are all COSLA members tied into it? Will they sign up to it and will it become universal? Is it simply guidance that councils can pick and mix from, to coin a phrase?

11:30

Councillor Johnston: On all issues, COSLA can issue guidance, but it is down to individual local authorities whether they accept it. Clearly,

each local authority is bound to follow the law but, within that framework, they have absolute flexibility.

Rhoda Grant: Is there any way in which the guidance can be strengthened? Given that COSLA is an association of local authorities, could it decide that every local authority will adhere to the guidance in order to give some confidence that it will work? I know that budgets are tight, that local authorities are struggling to make ends meet and that care is a big part of the budget. We could implement legislation to change things, but that would take control away from individual councils. If councils signed up to the guidance and, to an extent, policed themselves, that would create fairness and would strengthen any guidance that comes out.

Councillor Johnston: In issuing guidance, COSLA tries to ensure that it highlights best practice and shows the way forward. However, we recognise that, at the end of the day, it is down to the judgment of each council whether they accept that guidance. COSLA has no powers to force guidance on local authorities.

Rhoda Grant: Are you receiving any signals from your members that, should guidance be produced, they would sign up to it and implement it, or will it just wither on the vine?

Councillor Johnston: The process for agreeing COSLA guidance includes every council leader in Scotland. We would certainly expect that, on the back of their having signed up to guidance at that level, there would be local sign-up. However, as I say, it comes down to individual councils having the right to determine their view.

Rhoda Grant: So there is no prior instance of councils agreeing to be bound by guidance that COSLA has produced jointly.

Councillor Johnston: COSLA agrees guidance jointly with our membership of local authorities. All 32 councils send representatives to the health and wellbeing executive group. The way that the guidance is produced is that the elected representatives of councils in the health and wellbeing group agree it and it is then approved further up the decision-making chain by the COSLA leaders forum. If necessary, it would go to the COSLA convention. The COSLA membership agrees the guidance so, at one level, there is complete sign-up for that. My point is that, once that has been done, it comes down to individual local authorities to implement it.

Rhoda Grant: A service user might see the guidance and decide that it works for them and looks fair, but their council, although signed up to it, might not have implemented it. In that situation, is there any comeback, redress or appeal?

Councillor Johnston: There are internal council appeals procedures leading right up to a social work complaints body that would come before local elected members to determine whether things had been done properly. Of course, outwith the council, once the internal appeals procedure has been completed, there is the route to the Scottish Public Services Ombudsman, if necessary. Very few issues end up going down that route. We would hope that matters could be resolved internally through meetings with the individual service user and, if necessary, the local elected member fighting their corner. There is no basis for a complaint being upheld on the basis that COSLA guidance says X and the council is doing Y. That would not be a reason to uphold a complaint.

The Convener: The guidelines could be strengthened through legislation by the Scottish Government. I suppose that the question is, what is the extent of councils breaching their own guidelines? Mr Tait's experience is that they changed the rules midstream and that guidelines are not being applied. If COSLA takes that seriously, what analysis has been carried out and what monitoring takes place to establish where the problem is? I presume that that is the process of review, if you agree something as leaders but are told when you go back to your councils that it does not work. What is the extent of breach of the guidelines?

Garrick Smyth: We run an annual survey of non-residential social care charges and we have done some preliminary analysis. The variation in the tariff of charges is not huge. There is a handful of outliers, as Ian Hood said, and if there is unwarranted variation then we will want to have a look at it. However, a lot of the time it is quite difficult because we are comparing apples and pears: a service specification for home care in one local authority may differ significantly from that in another. For example, one might include the cost of transport and another might not, or one might include lunches while another does not but, generally speaking, I would argue that the variation is not huge, although there are some significant outliers.

On the other hand, when it comes to how much individuals pay for the services that they receive, we are looking at bringing in a standard financial assessment to introduce a bit of fairness and consistency. I could come back to the committee with some more detailed information on the full extent of the variation. A couple of years ago, there was some information in the public domain about really huge variation, but I do not think that that is the general picture.

The Convener: I can see that Mr Hood is trying to catch my eye. Do you agree that there is not much variation, Mr Hood?

Ian Hood: We did a wee spreadsheet called the universal calculator, which went through the different local authority charges. Anybody could come along and use it; it was online for a while, and you could just type in how much income you had, what your expenditure was and, whatever you picked, there were huge variations in any service, from home care to very sheltered housing to day care.

I wanted to comment on Rhoda Grant's important point about what could happen with the guidance. The COSLA guidance is an interesting document. There are a number of things that could be tightened up, but there is nothing to stop the Scottish Government from using the powers that it already has to set a national standard to adopt the COSLA guidance and, in effect, to give it the backbone that COSLA itself cannot give it. COSLA can only say, "We would like you to do it, but it's up to you." The Scottish Government has the powers—it took them in 2002—to set the charges, and it does not have to do a whole lot of work. All it needs to do is say, "COSLA, you've come up with a good policy. We like it. Make it work."

Malcolm Chisholm: It seems hard to disagree with the thrust of the petition in terms of a review of how care charges work, but I would go further than that. I have a great deal of sympathy with what William Tait and Ian Hood are saying.

I was the minister who introduced the 2002 act, which suggests to me that there is no principled objection to having regulations. Clearly, COSLA was given a chance to produce guidance, and it has been doing that for 10 years, but the evidence that we have heard suggests to me that that approach has failed, so I would certainly be minded to support regulations.

I suppose that there are two questions. If we are not going to have regulations, how could the guidance be made more effective? My first question was going to be about enforcement powers, but we have already heard from COSLA that there are none, so I do not need to ask that question. That seems to be the fundamental flaw in the guidance and the fundamental reason why the guidance has failed and why we need regulations.

The second point is about how the guidance could be improved. Ian Hood has suggested that it could be translated into regulations but if that is to happen it must be effective guidance, so I suppose that my main question is how the content of the guidance could be improved. I may have misunderstood Garrick Smyth, but I was concerned by his suggestion that the bedrock of

the guidance was establishing a minimum income and that, beyond that, people could charge what they liked, provided that it was not more than the cost of the service.

Even if you disagree with my conclusion about needing regulations, how can we make the guidance more effective and more fit for purpose? The Learning Disability Alliance has raised the issues of the minimum income and disability-related expenditure, which are two areas that could be improved. I ask Ian Hood to elaborate on that and other improvements. You said that you would quite like the guidance to be turned into regulations, but what improvements would you like before that takes place?

Ian Hood: There is a number of improvements. Some people are happy to contribute to the cost of their care, although I do not think that people should have to make a contribution towards getting out of bed in the morning—that should be a human right. However.

We have had a suggestion from people who would like to find a way of changing things that the minimum income should be a standard £170, but many people with learning disabilities get state benefits such as income support in excess of £170, because of their disability—they may get up to £186 a week. However, even though the state says that people need that amount to live on, councils say that that is too much.

People have also talked about a cap on charges. A number of councils, such as Falkirk Council, say that the maximum that people must pay in a single week is £23.90 and other councils say that the maximum is £45, but some councils charge whatever they want. When we did a freedom of information survey earlier this year, we discovered that one council claimed that it had charged somebody £564 for a single week's service. A cap of £23.90 or of £50, as in Wales, would limit what people must pay, although that is still a lot of money.

The standard financial assessment that Garrick Smyth talked about is an important step forward. It should include the disability-related expenditure that people incur, which can vary from the cost of holidays to that of washing and changing sheets and the extra cost of fuel. It is already well within councils' powers to consider that as part of the discretionary housing payment system, when people are asked to go through what they spend in detail. There is no reason why that could not be part of the care-charging system.

There is a question mark over people who pay charges towards things such as the independent living fund, which has its own question marks. It should be clear that, if people already pay

something towards their care, they should not have to pay a second time.

A cap on charges, a minimum income and a standard financial assessment that allows for disability-related expenditure would make the system much fairer. There is always an argument about levels.

Malcolm Chisholm: That answer was helpful. I will ask COSLA about a cap on charges. You justified the significant variation on the basis of different circumstances—particularly geographic circumstances—in different council areas, although Ian Hood challenged that. What argument could you use against having a cap? Even if it is more expensive to deliver a service in a rural area such as the Highlands, is there not still a case for capping charges? Why should somebody in a rural area pay two or three times as much as somebody in an urban area?

Councillor Johnston: Garrick Smyth and I will have a go at that. The fundamental point is that councils establish the specification of a service, work out its cost and charge for the service that they provide in a range of local circumstances. They certainly take into account service users' financial circumstances. Our data show that charges are broadly similar across Scotland—there are no extreme variations. There are variations, but the amount that is charged might be lower than the council's tariff because of the financial assessment that the council makes, which is done not on a computer but face to face with an individual.

The COSLA charging guidance working group actively considered national regulation. We rejected that not just because it would take away local decision making—and be a return to ring fencing, which local authorities would not welcome and would vehemently oppose—but because it would have a financial impact on the national Government and could lead to more people having to pay than currently pay.

National regulation would have not just an upside, but a big downside that should be taken into account. The best way forward is to allow local authorities to proceed by working through COSLA—we do not exclude service users and we are keen to engage with them to determine the best way forward.

11:45

As I said, regulation would limit the ability of local authorities to prioritise local resources. If we ring fenced a certain amount for adult and social care services and said that that could not be touched, that would mean that another part of local authorities' budgets would have to be raided to pay for that, which would raise a whole new

dimension. It would stop local flexibility, which flies full in the face of what the Public Bodies (Joint Working) (Scotland) Bill seeks to do. Through that bill, the Parliament is actively looking to ensure that there is local flexibility to determine how local integrated services will be delivered. To go down that route—which we in COSLA applaud—and, at the same time, to look to impose a charging regime on local authorities would not be a joined-up approach. We would argue that to do that would not make logical sense.

Garrick Smyth might be able to go into more detail.

Garrick Smyth: I will not necessarily go into more detail; I will simply add that although the idea of capping charges has been discussed in outline by the working group, the development of further detail has not yet been thought through. That is something that can be discussed.

I would like to pick up on a couple of points that Ian Hood made about disability-related expenditure. We have identified that as an area in which there has been some uncertainty as a result of its omission from the guidance. We propose that that issue should be included in the guidance for 2014, although that will be subject to leaders' approval. We hope to provide more substantive guidance on that to give a bit of consistency and to ensure that local authorities are a little more proactive about disregarding disability-related expenditure. The treatment of the partner's income is another element that should comprise part of the standard financial assessment template.

I would welcome Ian Hood's contribution to the work of the working group through the provision of information now and on an on-going basis.

Malcolm Chisholm: We could have a long discussion about the contents of any future guidance or regulations, but we do not have time to do that, so let us just consider the existing guidance and any revisions that are made to it by the working group. Given that that guidance will have been accepted by COSLA, why should it not be translated into regulations? The fundamental problem with the guidance, regardless of its content, is that there is no means of enforcing it, which could lead people to say that it is not worth the paper that it is written on. That might be a bit harsh, but without some enforcement powers, how can people have any confidence in whatever revised guidance you come up with?

Garrick Smyth: I will have to defer to Peter Johnston on that.

Councillor Johnston: I suppose that the difference between guidance and regulation is that guidance allows for some flexibility. For those of us who are at the chalkface of delivering such services, local flexibility can be vital to improving

them and getting more from less, whereas regulation can be too stifling. We believe that working with councils on a voluntary basis through guidance is the best way to proceed, and that it protects local democracy and delivers better local services.

Malcolm Chisholm: Okay. I will leave it there for now.

Gil Paterson (Clydebank and Milngavie) (SNP): Mr Tait, I know that your petition is not specific to the circumstances of you and your daughter. In response to a question from the convener, you gave an example of councils' pick-and-mix approach, but there was something that I was not quite clear about. You indicated that pressure was applied for an additional charge to be made, but I am not sure whether that succeeded and you were made to pay the charge.

William Tait: It did not succeed, because it withered away. It got to the stage of final appeal and, because the council had never had a final appeal, it withered away.

My point was that the council had disregarded one of the basic disregards that COSLA said should have been heeded in the basic formulation, which artificially inflated the charge to my daughter. That was reprehensible—a council should not disregard disregards that COSLA says should be taken into account, because to do so artificially makes money for the council and takes valuable money away from a disabled autistic person.

Gil Paterson: Eventually, that charge did not happen.

William Tait: The charge did not happen. I am not here to talk about my personal circumstances, but we are away again. The council seems desperate to get me. The situation has been on-going for a year, but we are still fighting this new issue. Councils are free to adopt that approach, because there is nobody to say, "Enough's enough—we're going to investigate this." I am not a special case—I absolutely and genuinely believe that the same thing is happening throughout Scotland. People have different abilities to fight the situation. Some cannot fight it and they capitulate; others can, but the stress and anxiety of doing so for more than a year is absolutely ridiculous.

This might be simplistic, but I think that COSLA rules or regulations should be used and the guidelines should be taken away. Then, we will start to introduce fairness. The approach seems to be, "There you go—do what you like with them." COSLA is doing a lot of work on a financial assessment template, but that is of no use, because one council might use it while another can decide not to do so. It is pointless unless the guideline-based approach goes and councils have

to take a particular action. That has to be the position.

Gil Paterson: I know that you said that you are looking to remedy not the personal aspect but the system, so feel free not to answer my question, because it is of a personal nature. I am not asking about the cost, but what service was provided that your daughter was asked to pay for?

William Tait: My daughter is in independent living. The council came along with another charge, which I think was called a non-residential care accommodation charge—I had never heard of it before. The first time that we were told about it was a letter of charge on the doorstep, so no face-to-face explanation took place, as COSLA suggests should happen. The council just banged out the letters to everybody. The same happened many years ago with the calculation of respite nights. The council just halved the number of respite nights without telling anybody first; instead, it just wrote to everybody with the respite nights recalculated. People were taken aback because the amount had halved. Such cavalier, loose-cannon attitudes that councils operate with must be stopped. I do not believe that putting in regulations will hinder that, because regulations are put in to build a good basic foundation and, once the foundation is there, the council, quite rightly, can operate in its area as it needs to.

Richard Lyle: Mr Campbell has not had an opportunity to say anything and I am interested in his view as North Lanarkshire Council's financial inclusion service manager. Where does your council stand on Mr Tait's comments?

John Campbell (North Lanarkshire Council): I will comment on the financial assessment, because the council's position on a minimum weekly living income of £170 was mentioned.

I have been a member of the COSLA review group for quite a while. North Lanarkshire Council is committed to following the guidance that COSLA issues on charging policy. We are slightly different in the sense that our £170 is made up of pension credits plus the 16.5 per cent buffer. We apply that rule to everybody who receives a non-residential service. Other councils use the benefit rates for people aged 18 to 24, 25 to 59 or, because of the change in the pension age, 25 to 61. They may well have three different levels, but that will depend on the make-up of the council area, including the demand for services and other issues that Garrick Smyth mentioned.

Of course, having a threshold of £120 or £170 is not the only issue; because we also disregard rent and council tax costs, so the taper can go higher than £170. In some cases, people are liable only for their water rates, which we would also

disregard. After all, we do not want to leave people unable to live.

In short, our policy is based on people's ability to pay rather than the cost of the service, which in many cases is irrelevant. Moreover, if an individual who gets an hour-a-week service is assessed as being able to pay, say, £28, we would charge them not that amount but our hourly rate. Our policy is fair and equitable and, as I have said, is based on people's ability to pay.

Richard Lyle: As an official who works this system, do you think that it should be left to councils to implement or do you take Mr Tait's point that it should come back to the Scottish Government?

John Campbell: I think that it should be left to local authorities, because this is all about local discretion, local needs and local demands. As a North Lanarkshire Council officer, I find it difficult to answer your question because I think that our policy is fair; nevertheless, we would like to be the people who decide what our policy should look like and what, having regard to the COSLA guidance, should or should not be disregarded.

The guidance makes it clear that before councils charge anything they should maximise people's income and, in 2011-12, we generated income benefits of £6 million for those assessed for non-residential services in North Lanarkshire. Ultimately, the charging policy at the time meant that only £800,000 came to the council and the other £5.2 million went directly into people's pockets. I am not sure whether you would get away with putting that kind of service into regulations—I do not know how that would fit—but I believe that implementation of the system should be left to local authorities.

The Convener: The committee has a number of other questions on this topic, after which we will need to make progress.

Nanette Milne: I am interested in COSLA's proposal to establish a standard financial assessment template, which has been called a medium-term aspiration. Where are you with that? Can you give us some idea of timings? Moreover, can you elaborate on the comment in your submission that

"This is a more challenging piece of work"?

Garrick Smyth: Yes. Our intention is to firm up our thinking on and proposals for a standard financial assessment in the new year. We also plan to carry out some costing work to find out how much it will cost local authorities to align themselves with the template, because that information will certainly be needed to inform leaders' decision making on the matter before they make any commitment to signing up to it.

Another element that comes into play is that of tapers or the maximum amount of residual income that local authorities can take as a charge for social care costs. In fact, that is the “challenging piece of work” that I refer to in my submission.

Nanette Milne: You said that it was a medium-term aspiration, but it seems to be relatively short term, in that it should be available early next year.

Garrick Smyth: Yes.

The Convener: Does anyone else have anything to add?

Ian Hood: The taper issue is incredibly important, because it relates to the amount of money that, after a financial assessment of an individual's spare income, goes towards charges. It varies in Scotland from 15 per cent in the Orkneys to 100 per cent in half a dozen councils. Is it really okay to take 100 per cent of a person's spare income when the tax rate for our society's richest people is 40 per cent? I think that Garrick Smyth has underestimated the real problem in getting councils to shift that.

If the figure is brought down to an average level, some councils will lose out dramatically. Part of the problem is how we can balance the change that would result from having a standard policy in councils and the effect on those who will lose out. We are concerned that people will end up having to pay more, and COSLA is worried about whether some councils will be able to balance the books. It is a real difficulty and I have no answer to the problem, but I know which side I am on.

12:00

Bob Doris: I would like to make a brief comment and then ask a more substantive question. I do not want to pick away any more at the quite complex issues that the witnesses have started to deal with, but I am sympathetic to the idea of a minimum income, and the tapering issue reflects just how complicated that is. We also have to take into account United Kingdom benefits, which are undergoing dramatic change at the moment; what those UK benefits are supposed to sustain people to do and what they are not; and what local authorities are supposed to sustain an individual to be able to do. That whole relationship between the UK benefits system, the Scottish Government, local authorities and assessed care needs is murky at best, so I do not want to say anything other than that I am fairly convinced by the idea of a minimum income commitment but I am not sure how to get there, given the complexities of the situation. I just wanted to put that on the record.

I also want to put on record the fact that some of the charges will depend on the resource allocation

that each local authority puts in, and that is a matter of political priority. Some local authorities allocate far more resource to the area than others. I will not name names, but they clearly do, because of local political priorities, and that is what my questions relate to.

Mr Hood talked about a freedom of information request to get some charging information. I would have thought that, in terms of transparency, there should be an annual outturn report for every local authority's charging regime. I represent constituents in Glasgow and in South Lanarkshire. To give a seemingly trivial example, some local authorities will charge people to get their grass cut and some will not, some will charge £2 and some will charge £15. If I was having that service, I would want to know whether my local authority was the most or least expensive of the 32 in Scotland, how close I was to the least expensive and whether I could get it for free. That is the idea of transparency.

Might COSLA consider the charging regimes that exist across all local authorities? Those are local decisions, but as a constituent I would expect my council to have a duty to tell me, when it charges me, whether those charges are the highest of any local authority. Politically, that would focus the minds of all the politicians at local authority level, irrespective of the parties that they represent. MSPs travel across the country to various by-elections and, depending on which part of the country they are in, they will find care charges being used as a political football, but sometimes it is a Labour authority, sometimes it is a Scottish National Party authority, and sometimes it is a coalition authority. It should not matter. I just want to know how my care charges compare with those in other local authorities in the country—whether they are the most or least expensive, or average. If I know that, I can then go to the ballot box as a constituent at the next election and make a decision as to whether the local priorities that my council has set are appropriate for the kind of local authority area that I want to live in.

I would like to hear from the COSLA representatives about how readily available such information is, whether there are agreed areas that they could focus on and how they would feel about making it a duty on every local authority to state where they stand in relation to the other 31 local authorities in the country.

Garrick Smyth: As I mentioned, we run an annual survey that collects information about what each local authority charges for its care services. That is now available on the COSLA website. It is a little bit complex and could probably benefit from reformatting or from consideration of how we can make it more publicly accessible, not just by

presenting the data but by making it easier to digest.

Over the past couple of years, we have encouraged local authorities to submit their local charging policies to COSLA so that we also have council charging policies on our website, but we may need to look at that again to see whether the information can be presented in a more user-friendly way. Those are positive steps, and the availability of that information to provide clarity and transparency is one of the key outcomes for the working group. Incidentally, Scottish Government civil servants are included on the working group.

Bob Doris: I was asking specifically whether you believe that local authorities should have a duty to tell their residents where they rank among other local authorities for charging. Let us take, for example, local authority charging for a sleepover that requires social care staff. If one local authority charges individuals £10 and another charges £20, that gives those local authorities ranking positions. I take into account what you say about income disregards, tapering and everything else, but COSLA could carry out a piece of work to equalise the position. If local authorities reported in a standard format, you could see the contrast and that would be effective for local democracy. How do you feel about carrying out a piece of work on that?

Garrick Smyth: As an officer, I think that that is fine in principle. Peter Johnston may want to comment further on that.

Councillor Johnston: I think that it would have an interesting political dimension. Politicians do not often put into the public domain or through every letterbox in their area adverse information regarding their own political decisions. As Garrick Smyth says, the information is available, and COSLA has a range of benchmarking for local authorities. I add the caveat that, sometimes, it is not a case of comparing like with like. Let us take the example of grass cutting. Someone could pay £10 to get their grass cut—well, they would pay an annual bill—but how many cuts would they get? Would we be comparing apples with apples or apples with pears? That has to be looked at.

There is also the reality that the costs of a range of things vary across Scotland. The council tax is different in 32 local authorities, but I have not heard anyone argue that the council tax should be exactly the same in every local authority. That is pretty fundamental to local government finance. The cost of a pint of milk varies in every local authority area, but nobody is arguing that that should be standardised.

Honesty and transparency are dear principles, and we expect local authorities to be honest and straightforward. COSLA would not seek to defend

the examples that we have had of decisions being made without appropriate local consultation—such decisions are indefensible. We expect the full participation and involvement of service users before charges are implemented, not after. That is fundamental to the work that we are seeking to do.

In essence, it comes back to the fact that we believe that such decisions are best left to be made locally, so that we get the best value, the best local services and services that are best attuned to local needs.

Bob Doris: I have no further questions, convener. I simply point out that Councillor Johnston has added a number of caveats. I completely accept that we cannot be simplistic, but I think that I heard some mood music around the fact that some consideration might be given to how we can make the process more open to the individuals whom we represent. Thank you very much for that.

The Convener: This morning's session has been useful for the committee. We have received some initial evidence, and we will return to the petition after we have reflected on that evidence. I thank you for the information that you have provided and, in advance, for the information that you have promised to provide, which will help our considerations. Thank you for your attendance, the time that you have given and your evidence.

12:09

Meeting suspended.

12:10

On resuming—

Assisted Suicide (Scotland) Bill

The Convener: We move to agenda item 6, which is approval of the specification for an adviser to assist us in scrutinising the Assisted Suicide (Scotland) Bill. The specification is required if we are to get permission from the Parliamentary Bureau to appoint an adviser. The paper that members have before them details what we would expect from the adviser, the remit and so on. Do members have any comments on the specification as it is laid out in the paper?

Nanette Milne: I have no specific comments. However, having been on the committee that considered the previous assisted suicide bill, I presume that the specifications for the adviser for that bill were looked at and taken into consideration in preparing this specification. I am getting a nod from the clerk.

The Convener: Okay. Are we agreed to approve the specification?

Members *indicated agreement.*

The Convener: We will now move to agenda item 7. As previously agreed, we will take the item in private, as is normal for discussions on our work programme.

12:12

Meeting continued in private until 12:33.

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