

# **HEALTH COMMITTEE**

Tuesday 6 March 2007

Session 2

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# CONTENTS

Tuesday 6 March 2007

Col.

<b>FREE PERSONAL CARE .....</b>	<b>3437</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>3460</b>
Regulation of Care (Scotland) Act 2001 (Commencement No 7 and Transitional Provisions)	
Amendment Order 2007 (SSI 2007/67) .....	3460
Food Supplements (Scotland) Amendment Regulations 2007 (SSI 2007/78) .....	3460
Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Treatment	
Certificates) (Scotland) Regulations 2007 (SSI 2007/100) .....	3460
National Assistance (Assessment of Resources) Amendment (Scotland)	
Regulations 2007 (SSI 2007/102) .....	3460
National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2007 (SSI 2007/103) ..	3460
Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2007 (SSI 2007/104) ...	3460
Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland)	
Regulations 2007 (SSI 2007/105) .....	3460
Quick-frozen Foodstuffs Amendment (Scotland) Regulations 2007 (SSI 2007/106) .....	3460

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## HEALTH COMMITTEE

### 4<sup>th</sup> Meeting 2007, Session 2

#### CONVENER

Roseanna Cunningham (Perth) (SNP)

#### DEPUTY CONVENER

\*Janis Hughes (Glasgow Rutherglen) (Lab)

#### COMMITTEE MEMBERS

Helen Eadie (Dunfermline East) (Lab)

\*Kate Maclean (Dundee West) (Lab)

\*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

\*Mrs Nanette Milne (North East Scotland) (Con)

\*Shona Robison (Dundee East) (SNP)

\*Euan Robson (Roxburgh and Berwickshire) (LD)

\*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

#### COMMITTEE SUBSTITUTES

\*Mr Kenneth Macintosh (Eastwood) (Lab)

Dave Petrie (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

Stewart Stevenson (Banff and Buchan) (SNP)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Paul Gray (Scottish Executive Health Department)

Lewis Macdonald (Deputy Minister for Health and Community Care)

Paolo Vestri (Hexagon Research and Consulting)

#### CLERKS TO THE COMMITTEE

Karen O'Hanlon

Simon Watkins

#### ASSISTANT CLERK

David Simpson

#### LOCATION

Committee Room 1



# Scottish Parliament

## Health Committee

*Tuesday 6 March 2007*

[THE DEPUTY CONVENER *opened the meeting at 14:00*]

## Free Personal Care

**The Deputy Convener (Janis Hughes):** I welcome to this afternoon's meeting of the Health Committee Paolo Vestri and the people in the public gallery. We have received apologies from Roseanna Cunningham and Helen Eadie. Kenneth Macintosh will join us as a substitute for Helen Eadie, but he is running a bit late, as is Euan Robson. They will join us in due course.

Item 1 on the agenda is scrutiny of the Executive's evaluation of free personal care, "Evaluation of the Operation and Impact of Free Personal Care", which follows on from the Health Committee's report of June 2006 on its care inquiry, in which we examined the implementation of the Community Care and Health (Scotland) Act 2002 and the Regulation of Care (Scotland) Act 2001. As well as free personal care, we focused on the work of the Scottish Commission for the Regulation of Care and the low take-up of direct payments.

In its response at the time, the Executive said that it was undertaking a major policy evaluation of the implementation and operation of free personal and nursing care. That piece of work—which was undertaken by Paolo Vestri, director of Hexagon Research and Consulting, who joins us for today's meeting—was published last week. It does not cover all the issues that the committee raised in its report—it focuses solely on free personal care and excludes matters relating to the policy's funding and costs.

I invite Paolo Vestri to make an opening statement on his report.

**Paolo Vestri (Hexagon Research and Consulting):** I thank the committee for giving me the opportunity to present a summary of the report's findings. I hope that members appreciate that, given that the report is more than 100 pages long, it is difficult to summarise it in 10 minutes, but I will do my best.

The evaluation of free personal care was commissioned by the Scottish Executive almost exactly a year ago. The aim of the evaluation was to provide information on the operation and impact of free personal care and to set out how the policy

could be further developed to deliver cost-efficient and high-quality free personal care for older people in Scotland.

The research that we undertook examined the four key stages of the operation of free personal care: the application process; the assessment process; the provision of free personal care and care services; and the reviewing and monitoring of free personal care. The report is structured around those four key stages in the operation of free personal care. In addition, we were asked to evaluate the impact of free personal care on informal care, the balance of care, care providers—in the context of both home care provision and care home provision—and the quality of care received by recipients of care services.

The research had an explicit focus on the practical operation of the policy and included a range of specific objectives—I think that there are about 20 of them—which are highlighted at the beginning of each chapter. The objectives focus on those areas of operation in which improvement may be required to enhance the delivery of free personal care to elderly people throughout Scotland.

The methodology that we used to carry out the evaluation is outlined in some detail in the appendices to the report, so I will not spend any time on it, other than to highlight the fact that there were three key parts to the research.

First, there were interviews with a range of national stakeholders. Secondly, there was a survey of the general population, which was part of an omnibus survey, and a postal survey of 4,000 people aged over 65 and carers. The third key element was six in-depth case studies in six areas of Scotland. We interviewed a large number of local authority staff who are on the front line of delivering free personal care and more than 100 service users and carers.

As the deputy convener said, the funding cost of free personal care was not within the remit of the evaluation and is not covered in detail in the final report.

The key findings of the research and evaluation are detailed in both the report and the executive summary. We found that the primary aim of free personal care, which is to remove discrimination against older people who have chronic or degenerative illness and who need personal care, has been achieved. More than 9,000 self-funders in care homes who are aged over 65 are currently receiving £145 per week as a contribution towards meeting their care home costs without means testing. Around 6,000 of those self-funders are also receiving £65 per week towards their nursing care costs. More than 42,000 people are now

receiving personal care services at home at no charge and without being means tested.

We found from the public attitudes survey that a large majority of the general public support the view that both personal care and non-personal care services

“should be provided free to all older people who need help.”

There is also strong public support for personal care being provided free without means testing. There is therefore public support for the policy that the Executive and local authorities are implementing.

The vast majority of people receiving free personal care under the Community Care and Health (Scotland) Act 2002 have received free personal care payments or personal care services without undue delay or complication. By and large, the policy is being implemented effectively and efficiently.

Free personal care has helped to support unpaid carers in their caring role and has made a positive contribution and a difference to the lives of the carer and the person for whom they care.

The majority of service users who we interviewed for the evaluation were generally positive about the experience of receiving personal care and the dedication of care staff who provide personal care services.

However, the evaluation identified some problems in relation to the operation of the policy, which need to be addressed. The assessment process works well for most people in most areas, but there are legitimate concerns in some areas about delays in assessments, which are due mainly to staff shortages or vacancies.

Local authorities are taking a number of approaches to reduce the number of people waiting for assessments and to manage waiting lists and the processing of people waiting for assessments. Some local authorities are back-dating the payment of free personal care or free nursing care to self-funders in care homes if their assessment is delayed beyond their target time for completing assessments. That is contrary to the guidance on free personal and nursing care, which states that free personal care and free nursing care payments should not be back-dated.

In the latest survey, which we carried out in December last year, we found that some councils reported that people were waiting for a care home place and free personal care payments mainly because of a lack of care home vacancies. Councils also reported that people were waiting for all or part of their care package at home because of problems in purchasing or providing services. Lack of capacity to provide personal care services at home either in the location or at the specific

time of day requested was reported as the biggest factor contributing to people having to wait for all or part of their care packages to be put in place. However, the majority of people waiting for services are already receiving some personal care services from their local authority and/or are having their care needs met by informal or unpaid carers.

On the guidance on free personal care, we found that, despite the clarification provided by the Scottish Executive last year, most local authorities still believe that there is ambiguity about the guidance covering assistance with the preparation of food. We also found that there might be some hidden unmet need for free personal care, mainly among older people who are currently receiving support from unpaid carers.

We found that there is limited collection and analysis of information about key issues, such as the number of people waiting for free personal care payments or services, unmet need and the level and type of support provided by unpaid carers. The report contains a number of recommendations to try to address most of, if not all, the issues that we highlight as possible concerns about how free personal care is being implemented and operated.

The evaluation was also asked to consider potential barriers to the sustainability of the policy. We focused on three key issues: guidance, workforce matters and the relationship with the national health service. The report highlights some key recommendations in each area.

On guidance, we recommend that the Scottish Executive should establish a short-life working group with representatives from local government and other stakeholders to review and clarify the guidance on free personal care, especially on assistance with food preparation and medication and on the extent to which local authorities can take resources into account when they make decisions about the delivery of free personal care.

On workforce matters, we recommend that local authorities should be asked to report to the Scottish Executive on how they have tackled or are intending to tackle the workforce issues that have constrained, or may constrain, the delivery of free personal care.

On the relationship between free personal care and the NHS, we recommend that joint future partnerships should report to the Scottish Executive on how they will support the implementation and operation of free personal care, with particular reference to the interface between personal and nursing care, the implementation of the single shared assessment to reduce delays in assessments and the funding of care services through resource transfer and other joint funding initiatives.

In conclusion, a fundamental issue that needs to be resolved by policy makers is whether free personal care is a national policy that aims to deliver the same range and quality of service throughout Scotland, or whether local authorities should continue to be given discretion—taking into account their financial resources—in respect of how they deliver free personal care. The former will require the establishment of national criteria for prioritising access to services, national target times for assessments to be completed and services to be delivered and national guidance on whether the cost of home care packages can be capped. The latter will require an acceptance by policy makers and the general public that access to care services and free personal care may differ throughout Scotland, depending on local policies and priorities and the level of resource available in individual local authorities.

**The Deputy Convener:** Thank you.

The committee welcomes the fact that you concur with our report. We stated that

“the policy of free personal care ... has been a success”.

I note that your report states that

“The vast majority”

of free personal care recipients

“have received their FPC payments or personal care services without undue delay or complication.”

I will kick off the questioning by asking about the comments you make in the report about delays in assessments. The executive summary of your report states:

“No local authority reported that assessments are being delayed because of funding pressures on their budget for providing FPC.”

You said that delays in assessments were due to staff shortages. Did you explore the issue further? Were delays due to staff sickness and absence or an inability to recruit staff? Were councils working proactively to deal with the issue?

**Paolo Vestri:** It is a bit of both. The situation varies among authorities. The reason given also varies when you speak to different people. Obviously, if authorities have staff vacancies, one hopes that they are filling them. Most authorities have policies in place to try to recruit social workers. However, the issue does not affect only social workers who carry out assessments. The 21<sup>st</sup> century social work review, which was a major review that was carried out over two years, examined in a great deal of detail the problems that local authorities have in recruiting social work staff. A range of recommendations are now in place, and local authorities are working with the Scottish Executive to try to implement those recommendations and address the general

problems that they face in recruiting social work staff.

Obviously, in some areas, vacancy levels or sickness problems can exacerbate existing problems caused by a lack of staff resources. The problems faced vary, depending on the size of an authority. In a very small authority with very few staff, it takes only one or two staff to be off for any length of time for waiting lists and delays in assessments to build up. That is a particular problem in some areas. There are also problems with recruiting staff to work in some rural areas and with there being a lack of staff generally to fill vacancies in those areas.

A range of problems were found, but a range of strategies to tackle them are now being implemented by most, if not all, local authorities.

14:15

**The Deputy Convener:** That is reassuring.

**Shona Robison (Dundee East) (SNP):** From my calculations, the research shows that although 27 of the 32 local authorities operate some kind of waiting system, whether for assessment or for services, only four of them say that the reason for that is purely the financial allocation. Are the waiting list systems that those four councils operate to cope with the situation similar to those in other councils?

You say that we have a dilemma and must choose between a national system or local systems. As part of the research, did you talk to the local authorities about what would happen if we had a national system with, for example, national target times for assessments to be completed and services to be delivered? Did you get into a dialogue about the staffing and capacity challenges that that would create for the authorities?

**Paolo Vestri:** On your second point, we did not get into dialogue with local authorities about that possibility. Dialogue is on-going between individual local authorities, the Convention of Scottish Local Authorities and the Scottish Executive on national targets and criteria for a range of local authority services. That is part of a much bigger on-going debate between the Executive, COSLA and individual local authorities that will continue after the election.

On your first question, I am sure that most authorities have in place similar policies and practices for dealing with waiting lists and reviewing cases regularly. People who are waiting for a care package to be put in place should and will have their case reviewed regularly, depending on the risk to the individual or to their relatives and carers. The four authorities that mentioned funding

as a particular problem and as a major reason for the waiting lists all have similar policies in place on reviewing cases regularly. However, the people who are waiting in those authorities are waiting for different things. Some are waiting for care home places, which is a specific problem, whereas others are waiting for a home care package to be put in place. There are a range of reasons why people are waiting for a home care package and a range of methods that can be used to resolve the problem, such as ensuring that emergency service cover is provided, relying on informal and unpaid carers, or other methods of ensuring that people do not suffer unduly because of the delay. However, that situation is different from the situation in which a person is waiting for a care home place and must, in essence, wait until a place becomes available.

**Shona Robison:** How well are the local authorities communicating with people who are waiting and their families about the reasons for the wait and the progress that has been made with their particular cases?

**Paolo Vestri:** We did not go into the detail of individual cases, as that would have been difficult, so it is difficult to comment on individual cases. However, in general, local authorities could be better at informing people about the reasons for delays and the length of time that they might have to wait. That is partly because local authorities might not know how long the wait will be, especially when people are waiting for care home places. It is difficult to say exactly when a care home place will become available and whether it will be next week, next month or two months down the line. It is difficult to give clients and their carers a specific target for when a care home place will become available. However, it is slightly less difficult to do that in relation to care packages—one hopes that authorities should have a clearer idea of when the services might become available.

When the matter comes down to funding, a large part of the problem is the uncertainty as to when funding will become available. When I visited Argyll and Bute Council, which has the biggest problem with funding, it had instigated a moratorium on new care packages being put in place. The service had to wait for new money to be released by either the Executive or the council, and when new money was released it went to those who were at the top of the priority list for care home places.

**Dr Jean Turner (Strathkelvin and Bearsden)**  
**(Ind):** My question is mainly on the workforce. I do not think that a council can run a service or implement a policy if it does not have the staff. You have highlighted the way in which social workers, care staff and so on go about delivering the service. Angus Council has said that one in six

of its 600 care staff are about to retire, as they are aged 59 or over. Do you think that the local authorities are looking towards the recruitment and retention of staff? That is one concern that you have highlighted.

Another concern is the inability of staff to take time off for training if there are not enough social workers to replace them and do the assessment work. I think that Glasgow City Council pays its social workers more than other authorities. I wonder whether there is any indication, from what you have found out, that how much staff are paid makes a difference to whether people want to stay in what is a very stressful job.

**Paolo Vestri:** I will address your last point first. We did not look in detail at pay and conditions because they vary, to an extent, although pay varies less. Local authorities are implementing a range of different schemes to recruit and retain staff, such as golden handshakes. They are also working closely with the Executive and the universities and colleges at which training takes place to ensure that enough social workers are coming through the system and gaining employment in local authorities. Indeed, the latest staffing figures show that vacancy levels have been reduced in most local authorities over the past year or so. Those schemes and initiatives are beginning to bear fruit, but the number of vacancies in social work is still causing problems.

You raise an important point about training. Especially in a small or rural authority, problems can be created if staff—not just professional social work staff, but care workers—who need training to enable them to undertake personal care tasks have to be away from their jobs for a period in order to undertake that training but there is no flexibility in the authority's staffing to allow others to fill in for them while they are away. Local authorities are trying to resolve that issue, among many others.

**Dr Turner:** Especially in the area that you have been talking about, the implications of upskilling the workforce are very important. If domestic care staff are to be upskilled to enable them to undertake personal care tasks such as handling clients and assisting with medication and treatments, it is important that that is factored in.

**Mrs Nanette Milne (North East Scotland)**  
**(Con):** Mr Vestri, could you elaborate on the quality of the care that is provided? Both users and carers have concerns about the way in which services are provided because of the amount of time that is allocated to tasks; the times at which the services are provided; the lack of flexibility; and continuity of care. We hear of such concerns anecdotally from people who are seeking to use the services.



**Paolo Vestri:** Those are key points. When we looked at the quality of the care that is provided, we found that the vast majority of people who receive care services are complimentary about the care that they are getting and about the dedication of the staff who provided that care. Nevertheless, some concerns were expressed that have been exacerbated since the introduction of free personal care. The timing of care—when care is provided—is one of the biggest issues for people who are receiving free personal care. It comes down to logistics. If everybody who gets a service to help them get out of bed wants that service at 8 o'clock in the morning, even with the best will in the world it will be impossible for local authorities to provide that service at that time. There is a similar problem when people need assistance in getting to bed. There are blockages in terms of the time that is available to local authorities to try to work their way around.

There is also an issue around flexibility. Some authorities are now delivering personal care separately from non-personal care and have two different teams of staff—one providing personal care services and one providing domestic services. There are probably good logistical reasons for that, but it creates problems for some recipients of care services, who have a large number of different staff coming in at different times of day to provide different services. That is an issue for vulnerable, frail older people. Local authorities grapple with those issues, but they have an impact on the quality of care that is received by individuals.

**Mrs Milne:** Continuity of care is another issue that I know about through personal experience in my family. If a carer does not come to work, perhaps because they are on holiday or on sick leave, there is often a gap in the service, which can really throw an old person.

**Paolo Vestri:** That is true. Continuity of care depends largely on the local authority's capacity. Local authorities do not have spare staff who wait around to fill in when a care worker does not turn up for work because of illness or other reasons. Staff absence creates problems because it is difficult to find emergency cover. However, local authorities do their best, either by providing their own staff or by contracting with voluntary or private sector providers.

**Shona Robison:** On pages 58 and 59 of the report, you comment on the lack of robust data, on which the baseline study commented as well. Have you seen the work that Jim and Margaret Cuthbert submitted to the Executive? They say that robust data are fundamental to the way in which decisions are made on funding allocations. If the original data are unreliable, that could have caused some of the problems. Jim and Margaret

Cuthbert say that the Scottish Executive's statistics, which were released in March last year, are unreliable.

You did not consider funding, but you considered the quality of the data. Do you agree that the data lack robustness, to say the least?

**Paolo Vestri:** We did not examine in detail the data on funding—either local authorities' income or the expenditure on free personal care and free nursing care—so I cannot comment on that issue. I am aware of the Cuthberts' work and their criticism of the work that was done previously by the care development group and more recently in the baseline study, but we did not look into that.

The reference to data in the report is specifically about the statistics on the delivery of free personal care and the concerns about those. I am sure that the committee shares those concerns, because, as members will know from trying to find out the number of people on waiting lists for assessments and the median time for carrying out assessments, the information exists to a certain extent but is not necessarily robust. We need certain statistical information, but local authorities do not gather it regularly or robustly.

**The Deputy Convener:** Thank you for coming along today. You are welcome to take a seat in the public gallery and listen to the evidence that we take from the Deputy Minister for Health and Community Care.

14:28

*Meeting suspended.*

14:29

*On resuming—*

**The Deputy Convener:** I welcome the minister and his officials, Adam Rennie and Paul Gray, to the committee for the second part of today's scrutiny of the Executive's "Evaluation of the Operation and Impact of Free Personal Care". I invite the minister to make an opening statement.

**The Deputy Minister for Health and Community Care (Lewis Macdonald):** I am grateful for the opportunity to talk to the committee about the report and our response to it. For a major new policy such as free personal care, evaluation a few years after implementation is very important and gives us an opportunity to review whether the original policy aim has been met and to consider what improvements might be needed. I welcome the report—it is a major piece of work, as befits such a major policy.

It might be helpful to the committee to recall the statutory position prior to the introduction of free personal and nursing care, and the context in

which we introduced changes under the Community Care and Health (Scotland) Act 2002. Prior to the act, local authorities had a number of duties and powers under social work legislation, principally the Social Work (Scotland) Act 1968. Those duties included a duty to assess people in need of care, and a duty then to provide services to meet that need. Authorities had a power to charge for services where the recipient had resources above a certain level. At the time, however, those who were on lower incomes received personal care services at home free of charge, if that was their assessed need.

The Community Care and Health (Scotland) Act 2002 extended that approach to free personal and nursing care. It removed from local authorities their ability to charge for certain specified services delivered to anyone over the age of 65, regardless of their means. It did not change any other substantial aspect of the legislation. Consequently, free personal care is not a service as such. It is the removal of local authorities' powers to charge certain people to pay for certain services. That is an important point about the context in which we consider the issue. All the other provisions of the earlier social work legislation remain in place, including those aspects that relate to the duty to assess, the subsequent duty to deliver services, and the discretion over how and when that is done. Those duties and discretions apply equally to all services, whether or not they come under the free personal care banner. It is therefore important to make the point that free personal care is the manifestation of our commitment to put personal care services on the same footing as health services, whereby they are provided to all without charge where there is an assessed need. The evaluation report considers how that has been done since the law was changed.

The committee heard in some detail Paolo Vestri's conclusion, which is much the same as the conclusion that the committee reached in its care inquiry last year: free personal care has been a success, but there are some teething problems, which need to be fixed. The report finds that the policy has achieved its primary aim in relation to support for older people; that free personal care has "strong public support"; and that there is a successful and effective system, in most cases, whereby people move

"from first contact with the local authority ... through to ... delivery of services (or payments)".

The report also finds that free personal care supports unpaid carers—an important area for many of us—and that

"the vast majority of people"

have received the services or payments for which their need has been assessed

"without undue delay or complication."

It is important to recognise the significance of those positive conclusions. Fifty thousand vulnerable people are benefiting from this policy, which was designed and introduced by ministers, approved by Parliament and delivered by councils the length and breadth of Scotland. I want to put on record, on behalf of those 50,000 older people and the other people who have benefited over the past five years, the Executive's appreciation for all the hard work and dedication of those local authority staff who have brought about free personal care. They deserve credit for that.

The report is clear about that, which is welcome, but it is clear that there are still issues to be resolved. The report identifies a number of those issues, because we specified that the evaluation should include several objectives that focused on areas in which improvement might be required to enhance the delivery of free personal care. None of the issues will have come as a surprise to members; the committee is aware of them all in one way or another. The report concludes critically that we need better information for service users, nationally and locally; speedier assessment and service delivery; and clarity about issues such as waiting lists and assistance with food preparation.

As the committee has heard, the report identifies some wider issues than free personal care or, indeed, community care; those issues include workforce matters, and so on. As I said in my letter of last week to the convener, none of those issues that require to be resolved is a show-stopper. They need to be fixed, but they should not overshadow the bigger picture of a policy that is being delivered successfully to thousands of people in all 32 council areas across the country.

Members have seen the Executive's response to the report's 20 recommendations. Some of those recommendations are for local authorities to consider rather than the Scottish Executive; some are for councils to consider in conjunction with the Executive; and some are specifically for the Executive to consider. We accept, or will consider further with other stakeholders, all the recommendations that are for the Executive and we welcome the intentions behind those recommendations that are for others to address.

The success of the policy depends on effective co-operation between central and local government, so the best way of addressing the issues raised is through joint action between the Scottish Executive and the Convention of Scottish Local Authorities. I am therefore very pleased that COSLA has agreed to work with the Executive to take forward the recommendations. We will also seek to involve representatives of other key stakeholders, such as Age Concern Scotland, Alzheimer Scotland and the Scottish Commission for the Regulation of Care, all of which were

involved in the reference group that oversaw production of the evaluation report.

The report focuses primarily on free personal care, but many of the recommendations relate to community care services more generally. For instance, recommendations relating to assessment and the delivery of services might apply to other people who are not eligible for free personal care in the same way as they apply to those who are eligible; the development of a common framework for recording social care data goes well beyond free personal care, as do some of the social care workforce issues that have been raised.

Our response sets out what we will do in these areas. Broadly speaking, we support the recommendations in principle and we will work with COSLA, the Association of Directors of Social Work and other key stakeholders to consider how best to progress them. A workforce development change programme has already been set up to help drive forward the changing lives agenda to help build workforce capacity in social care services in general. That programme will no doubt take into account the report's recommendations.

There are issues to be addressed, but we are focused on addressing them as best we can in partnership with others. We should not allow the issues to obscure the success of the bigger picture policy that has made a difference to many thousands of older people. That is a success story made in Scotland and in this Parliament, and we should seek to build on it in co-operation with other partners who have a stake in the policy's delivery.

**The Deputy Convener:** As we have stated, the committee welcomes the fact that the report accepts that free personal care has been a successful policy and that the majority of people who have requested care under the scheme have received it

"without undue delay or complication."

One of the problems that was highlighted in our report was delays in assessment. Paolo Vestri's report states:

"No local authority reported that assessments are being delayed because of funding pressures on their budget for providing FPC."

However, there are still some delays in assessments being done. What are your views on the findings in the report?

**Lewis Macdonald:** The statutory position is clear. There is a requirement or an obligation on local authorities to perform such assessments and we expect them to do it. As with the delivery of services, however, we recognise that it is a matter for local authorities to secure those assessments.

Having done that, it is for local authorities to put in place the appropriate services. The report seeks to encourage us to ensure that people better understand that process and that the information is made available to those who are, or may become, service users. We certainly accept the spirit of that. Paul Gray or Adam Rennie might want to add something on the assessment process and the report's recommendations.

**Paul Gray (Scottish Executive Health Department):** One way in which we propose to take up the report's recommendation on assessments is through our work with local authorities and other partners on developing outcome agreements. We will take the recommendation into account as part of that work. As Mr Macdonald said, local authorities nonetheless have some discretion in how they deliver services and we do not want to do something that cuts across that artificially.

**Lewis Macdonald:** The committee may see from our responses that we want whatever requirements we put on councils, whatever requirements they make of themselves and whatever they choose to do to be focused on outcomes rather than on processes. That point is important. The purpose of process is to achieve the right outcomes. In any discussion that we have about going forward, we will ensure that the outcomes for service users are the central point that is measured.

**The Deputy Convener:** Free personal care is a national policy, so is it not reasonable to give councils national guidelines on such assessments?

**Lewis Macdonald:** Yes. How assessments are performed and services are delivered is already the subject of guidance from the Executive. That is as it should be. However, that falls within work on which we expect local authorities to perform their duties according to local priorities and resources.

**Mr Duncan McNeil (Greenock and Inverclyde (Lab):** The committee has expressed concern about food preparation and medicines; that is confirmed by chapter 7 of the report, which is entitled "Potential Barriers to the Successful Operation of Free Personal Care". It has seemed to the committee that, despite the issuing of guidance and further guidance, poor understanding and lack of clarity remain about that issue. We have observed council policies changing and people have had money refunded, but people have also been charged for food preparation—it goes on and on and the issue has some way to run. Do you accept that we need to go further than issuing guidance to achieve the clarity that we need to deliver our objectives under the policy?

**Lewis Macdonald:** The report helps in exploring some of those issues and bringing together relevant evidence. As you suggest, it confirms that local authorities still interpret in several ways the guidance and the further assistance that we offered them on understanding what they should deliver under the policy. We want to resolve that. In working with COSLA and other stakeholders on how to implement the report's recommendations, I will ask them first to consider not whether we need to update guidance but whether we need to legislate—perhaps through an affirmative order, which the committee would have an opportunity to consider.

Through guidance, we have sought to indicate to local authorities a reasonable expectation of the requirement in the Community Care and Health (Scotland) Act 2002. The act makes it clear that assistance with preparing food should not be charged for when it is an assessed need under free personal care. However, that has proven to be open to some interpretation.

If we simply made regulations or provided a regulatory framework that laid down the interpretation, that might cut to the chase. An affirmative order would be the subject of full consultation before the appropriate committee considered it. I hope that that would give people who are concerned the opportunity to debate the issue fully before we went down the statutory route, which would remove some of the existing flexibility.

14:45

**Mr McNeil:** But you now believe that we should take the statutory route?

**Lewis Macdonald:** The evidence for that is significantly stronger. I will not lay down to those who are considering implementation that there is only one option, but I will certainly indicate to them that that seems to me to be the stronger option.

**Mrs Milne:** I am pleased to hear what the minister says, but the position on the preparation of food needs to be clarified. There are major differences around the country.

You will be aware that my colleagues have raised the issue of charging for food preparation with the City of Edinburgh Council, Dumfries and Galloway Council and West Lothian Council. Those authorities took independent legal advice and have acknowledged that they erroneously charged for food preparation. Indeed, they have embarked on reimbursing people who have been charged. In the interests of achieving equity throughout the country, would you consider suggesting to other local authorities in the same situation that they, too, should pay back money that pensioners have paid out?

**Lewis Macdonald:** I am not privy to the legal advice that individual authorities have received, but it may be that the legal advice to which you refer has taken into account the letter that the Health Department sent to all local authorities last May, indicating how they should understand the 2002 act and the guidance that was issued to accompany it.

As I am not privy to the advice, I cannot comment in detail on the decision-making process in the case of those local authorities, but it is my view that the expectation under the law is that local authorities should provide, free of charge, assistance with the preparation of food where that is assessed as a person's need under the free personal care legislation. That does not appear to me to be an open-ended requirement under the law that local authorities must pay for any food preparation. One of my concerns in the period during which the evaluation was done was that, even in moving position, local authorities have perhaps taken different views. That has tended to persuade me that, as Mr McNeil suggested, we may need to go down a statutory route to remove the ambiguity. It is clear that, at that point, all local authorities would be required to follow the mandate of the law.

**Euan Robson (Roxburgh and Berwickshire) (LD):** Have local authorities indicated to you that they would need extra resources? Have they set out a bill for doing what you suggest they need to do?

**Lewis Macdonald:** One or two local authorities have been in touch with the Executive on the issue, but our view is that the legal position was clear. We are not minded to consider those matters in detail, because clearly the obligation that lies in law is upon the local authority to provide the service and to provide it free of charge.

Having said that, we are at the point in the spending cycle at which we are approaching the spending review. From some of the other work that we have taken forward on free personal care, it is clear that we are at, or are approaching, the point at which it is appropriate to review the quantum of funding for the policy. Therefore, I strongly expect COSLA and its constituent councils to bring forward proposals on funding for this, among other items, as part of the negotiations and discussions on the spending review.

**Shona Robison:** I wonder why it has taken so long to get to this point. We have had four sets of guidance, but it is clear that different interpretations remain. After all that, I am concerned that only now are you getting round to talking about going down the statutory route. In relation to other outstanding issues such as the basis on which local authorities can operate

waiting lists, you say that you will discuss revised guidance with COSLA and others. In the light of our experience, do you think that we should have faith in yet another set of guidance? Would it not be better to consider going down the statutory route for all those matters? If we do not do that, are we not in danger of continuing to revisit different interpretations of the same guidance?

**Lewis Macdonald:** Duncan McNeil highlighted the issue that has thrown up the greatest ambiguity in the interpretation of the law. It is not for me to seek to account for other people's interpretations of the law. As I said, I hope to pull together an implementation group, which will include local government, central Government, Age Concern Scotland and other bodies that have an interest in the matter. I hope that the group will consider the report's recommendations and the statutory and non-statutory options that would achieve the best outcomes. I take the view that the statutory route is probably the right one in relation to the preparation of food, but I am not persuaded that the statutory route is the right one in relation to other areas. However, if ambiguity persists in certain areas, the implementation group will give full consideration to what needs to be done to remove that ambiguity.

**Shona Robison:** You said that you would consider the new statistical formula for distribution between local authorities. A general concern has emerged from a number of reports, including the evaluation report that we are considering, about the quality of the data on which the Health Department bases its decisions. For example, there were serious questions about the quality of the Executive statistics that were published last March. Of course, much of the information was gathered from local authorities. I could give examples of statistics that do not stand up to scrutiny, for example on differences in cost per hour. Given that there are so many doubts about the data, should the statistical basis for future decisions about allocations be revisited?

**Lewis Macdonald:** It is important that all statistical sources that we use in this context are under review, as a matter of course. A specific piece of work is being progressed on funding for free personal and nursing care for people in care homes, which is a large part of the policy area. That work is going on in the joint Executive and COSLA three-year settlement group, which is seeking a statistical formula that better reflects the experience of the period in which the free personal care policy has operated. I agree with your fundamental point about the need to ensure that the statistical basis for our decisions is reliable. The work on the care home sector will be helpful.

We must ensure that there is a common understanding of the whole area. The evaluation

report makes useful recommendations about how we can ensure that the social care data that are gathered by the Executive and presented by local authorities are better and more consistent in the future. We support the principle behind the recommendations and will consider how we might implement them.

**Dr Turner:** Table A6.1 in Paolo Vestri's report shows the number of people who are waiting for community care assessments. The figures for the City of Edinburgh Council, Glasgow City Council and East Lothian Council, for example, are quite different. To what extent are those differences due to workforce issues? Glasgow has a row of zeros in the table, whereas in Edinburgh 1,594 people are waiting at home for an assessment. The rest of the figures are not too bad. East Lothian Council has 254 people waiting at home for an assessment.

There might be a difference between the payment of social workers in Glasgow and the payment of social workers in other parts of the country, or difficulties with the recruitment and retention of staff. The whole policy—good though it is—could fall down if you do not assist the local authorities to sort out the workforce problems that have been highlighted in the report. What do you think about that? There are loopholes. People cannot get assessments if the staff are not there to carry them out.

**The Deputy Convener:** For clarification, I point out that the zeros in the table indicate that the information is not held centrally, rather than that there is no one on the list.

**Dr Turner:** The point is the difference in the figures. Some councils have the information and some do not.

**The Deputy Convener:** Some councils choose not to hold the records.

**Dr Turner:** Is the service to be national or local, where it can be all things to all people, depending on the money that the local authority has available? That was at the back of my mind.

**Lewis Macdonald:** The table to which Jean Turner refers was in front of the committee last year. It shows not the findings of Paolo Vestri's investigation, but the figures to which Shona Robison referred a moment ago, which have been overtaken by the findings of the evaluation report.

The general point that Jean Turner makes is fair and the evaluation report acknowledges it. As I said at the outset, the workforce issues are not confined to free personal care but relate to the wider question of modernising the social care workforce and ensuring that it has the capacity to do the various things that are required of it. That work is progressing in the context of "Changing

Lives: Report of the 21<sup>st</sup> Century Social Work Review” and we will continue to support it. Those who are doing that work will be assisted by the evaluation report, which was published last week, which provides a sounder basis for consideration and highlights some of the workforce issues that need to be addressed as part of the overall approach.

**Dr Turner:** You talked about food preparation, but what is important is how we get food into people. Usually, people like consistency, as Nanette Milne said. Continuity of care is important for elderly people. The workforce is important in that regard. We do not like to go into houses and see uneaten, curled-up sandwiches. In such situations, people can end up in hospital.

**Lewis Macdonald:** I agree that quality training and professionalism of the care workforce are important. We have such issues in mind.

**Mrs Milne:** You are moving forward and are perhaps considering statutory commitments. I am a bit concerned about the timing. I regard the situation as urgent. A number of people who are eligible for an assessment for free personal care are not getting it. People are currently paying for assistance with food preparation who probably should be eligible to get it free. What is the soonest that something can be done about that?

**Lewis Macdonald:** Having received the report and considered its recommendations, we published it last week and made available our responses to it. That indicates that we agree that we want the matter addressed quickly. There are events coming up that make it difficult to bring affirmative instruments to a committee in the immediate future, but I believe that the work that officials need to do to address implementation, including where a statutory approach is required, can proceed irrespective of the election period.

**Mrs Milne:** I accept that some things cannot be done imminently. However, if it is found that people are paying for food preparation when they should not be paying, will you consider reimbursing them?

15:00

**Lewis Macdonald:** Councils are responsible for their own interpretation of the law and implementation of it. A number of councils have taken different approaches. We want to achieve a consistent approach in future.

The key issue for most local authorities—I recognise that there may be exceptions—is the future funding of the policy as a whole. That is the point on which we wish to focus our discussions with them, as it offers the way forward. In our view, the policy as a whole has been fully funded in its

initial years. The financial figures that the committee saw last week indicate that it was more than adequately funded in that period. The challenge is to provide the necessary funding now and in the future. It is our aspiration that, by the point at which future funding decisions are made—around summer this year and the spending review—any remaining ambiguities about what is within the scope of the legislation and what is not will be removed, so that in the next spending period we, local authorities and service users can have confidence in both the scope of the legislation and the funding thereof.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I have a question about the funding formula. The figures that you provided last week, to which you just referred, are welcome and show once and for all that the policy is fully funded from an Executive point of view. However, we know both from the evidence that the committee has taken and from Paolo Vestri’s report that some local authorities experience a financial shortfall and are struggling financially. East Renfrewshire Council is a good example of such an authority. East Renfrewshire has had to make particular local decisions to find resources from elsewhere to fund the policy, because of its commitment to it.

Given that a difference exists and that there is no evidence that services in East Renfrewshire or anywhere else are gold plated or that there is huge variation in services, the only conclusion can be that the distribution mechanism does not work for all authorities. I note that you have accepted the committee’s recommendation that you revalidate current costs, based on demand, and that you intend to look at the funding formula. What assurances can you give us and authorities such as East Renfrewshire that the new funding formula will meet the demands that they face? How will you ensure that the resources that you are making available find their way to the individuals in East Renfrewshire and elsewhere who need them?

**Lewis Macdonald:** I will start with a small qualification of your positive opening remark. I put on record that the funding work that has been done and that we made available to the committee recently demonstrates that the policy has been fully funded. Given the figures that are before the committee, it would be difficult to say that we have come to final conclusions about 2005-06, 2006-07 and the period after that. That is why the timing of the spending review is particularly helpful.

It is also helpful that there is a process for reconsidering the funding formula. I suspect that East Renfrewshire Council would confirm that the area of particular pressure for it in respect of free personal care is people in care homes. That is the area that we are re-examining, in conjunction with

COSLA, as part of the three-year settlement group. However, the situation both of those in care homes and of those receiving care at home will be subject to discussion within the scope of the spending review. That is an important consideration.

**Mr Macintosh:** I hesitate to speak on behalf of East Renfrewshire Council, but my perception is that it, like most local authorities in Scotland, has always met the needs of those who do not have sufficient resources in old age. However, the demand that we have placed on local authorities by implementing a new policy comes from self-funders, who may be in a care home or may have care packages at home. In East Renfrewshire, as elsewhere, a huge amount of effort goes into sustaining people in their home, rather than in a care home. I am not sure that I agree that the main area of concern is people in care homes. The pressure is coming from people who used to be self-funders, who are placing a demand on the service that local authorities are having difficulty meeting. There is evidence that some self-funders are still not coming forward to claim free personal care, so we can expect the figures to rise.

**Lewis Macdonald:** I agree that the additional element is self-funders. As I said, care homes are a specific consideration, but the whole range of policy will be considered as part of the spending review. We expect the people who are involved in those discussions to take into account the evidence that they have about demand and need and to measure unmet need as far as possible.

Grant-aided expenditure is not a budget but an indication, as members are aware. In doing work to agree on future figures, we expect COSLA, as the representative of local government, to take all its member councils' views into account. It will be for COSLA, acting on behalf of its member councils, to put to the Executive propositions that are well founded on the evidence that councils provide.

**Euan Robson:** Will you estimate roughly how much resource transfer from the NHS contributes to overall budgets? Some evidence shows that resource transfer has been used to establish projects, which is fine, but Mr Vestri's report contains an interesting discussion about mainstreaming resource transfer. If resource transfer has helped in the delivery of free personal care, should that become permanent or should it be restricted to specific projects? Alternatively, is there no overall pattern, because the tune that is played varies so significantly between NHS board and local authority?

**Lewis Macdonald:** I am not sure whether I am in a position to answer on the quantum and I am not sure whether I follow entirely the technical point that you seek to elicit. I would be happy to

write to you with a detailed response. If you could offer examples, that might help.

**Shona Robison:** I will ask about the issue of whether the policy is fully funded. You will be aware of the continuing concern that funding for free personal care has not been raised in line with inflation. Given that local authorities' staffing costs have risen and that they have other inflationary costs, local authorities are experiencing a squeeze on the budget. They cannot get more out of the pot if their costs increase. As part of the wider examination of funding, is consideration being given to raising the ceiling on free personal care funding in line with inflation?

**Lewis Macdonald:** There are two aspects. I take it that you refer to the payment that is made for personal or nursing care for an individual in a care home.

**Shona Robison:** Yes.

**Lewis Macdonald:** The funding of free personal care has increased beyond the inflation level.

We expect the point that you raise to be considered as part of the spending review. Funding for the policy has increased in line with the numbers that the committee has seen. In the context of increasing funding, we have sought to consider whether the elements for personal care and for nursing care are appropriate to the need and the expenditure. We expect that to be revised as part of the overall examination of those issues under the spending review.

**Shona Robison:** Given that costs were going to rise that would have an impact on how far the money goes, do you think in hindsight that an oversight was made?

**Lewis Macdonald:** No. I cannot speak for those who had responsibility at the time, but I do not think that there was an oversight. I do not know whether Paul Gray can cast any light on that. The understanding was that the policy would be funded principally through the resources that central Government made available to local government, rather than through specific payments for individual people in care homes.

**Paul Gray:** The provision to provide the funding for the two elements to which the deputy minister referred was clearly part of the debate that took place at the time. The issue was recognised and debated, so there was no oversight in that sense; the provision on funding was passed as part of the legislative provision.

**Lewis Macdonald:** It is worth referring to the on-going work that we are doing on costs. It is our view that, as a general proposition, the element for personal care has perhaps been greater than the actual spend on that and the element for nursing care has perhaps been less than actual spend.

The balance has perhaps not been far away in respect of the individual. As I say, that is only a general indication of work that is in progress as we look to come to conclusions in the context of the spending review.

**The Deputy Convener:** I will wind up the evidence session by asking about the extension of free personal care. One of the recommendations for consideration in our report was that free personal care be extended to those under 65. Given the acknowledgement both by the committee and in the recent report of the success of the policy, can you update us on your deliberations on the extension of the policy?

**Lewis Macdonald:** As you say, the success of the policy is widely recognised and it is something to celebrate.

On extending the policy to those under 65, it is important to note that nursing care is already available to those under 65. The issue of personal care for those under 65 is not one that we have taken forward thus far. We want to ensure that the existing policy is brought up to date in the context of the spending review and the other matters that we have discussed. It is perhaps a matter for another day to consider whether the principles of what has clearly been a successful policy can be applied to other groups that might benefit from it.

**The Deputy Convener:** I thank the minister, Adam Rennie and Paul Gray for their attendance.

## Subordinate Legislation

**Regulation of Care (Scotland) Act 2001  
(Commencement No 7 and Transitional  
Provisions) Amendment Order 2007  
(SSI 2007/67)**

**Food Supplements (Scotland) Amendment  
Regulations 2007 (SSI 2007/78)**

**Adults with Incapacity (Conditions and  
Circumstances Applicable to Three Year  
Medical Treatment Certificates) (Scotland)  
Regulations 2007 (SSI 2007/100)**

**National Assistance (Assessment of  
Resources) Amendment (Scotland)  
Regulations 2007 (SSI 2007/102)**

**National Assistance (Sums for Personal  
Requirements) (Scotland) Regulations  
2007 (SSI 2007/103)**

**Adults with Incapacity (Medical Treatment  
Certificates) (Scotland) Regulations 2007  
(SSI 2007/104)**

**Adults with Incapacity (Requirements for  
Signing Medical Treatment Certificates)  
(Scotland) Regulations 2007 (SSI 2007/105)**

**Quick-frozen Foodstuffs Amendment  
(Scotland) Regulations 2007 (SSI 2007/106)**

15:12

**The Deputy Convener:** Item 3 is subordinate legislation. There are eight Scottish statutory instruments to consider today under the negative resolution procedure.

The Subordinate Legislation Committee has raised no issues in relation to the instruments. However, it wrote to the Executive noting that the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2007 are the ninth relevant amendment to the principal regulations, the National Assistance (Assessment of Resources) Regulations 1992, which have been amended more than 20 times in total. At its meeting this morning, the Subordinate Legislation Committee accepted the Executive's response. No comments have been received from members and no motions to annul have been lodged. Are we agreed that the committee does not wish to make any recommendations on the instruments?

**Members** *indicated agreement.*



**The Deputy Convener:** That ends today's business for the public. I ask those who are not members of the committee to leave the room.

15:14

*Meeting continued in private until 15:16.*



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