

28 February 2006

Your Ref:

Roseanna Cunningham MSP  
Convener  
Health Committee  
Scottish Parliament  
EDINBURGH  
EH99 1SP

Our Ref:

Dear Ms Cunningham

### **Free Personal Care Inquiry (FPC)**

Following the round table meeting on 7 February, as you will recall, COSLA agreed to write to the Health Committee to clarify issues surrounding assistance with the preparation of food, waiting lists and funding. On the issue of waiting lists and funding, COSLA is in the process of pulling together information for the Committee and will endeavour to meet your request as soon as possible.

In the meantime, I thought it would be helpful to write to clarify the issues surrounding the charging or non-charging for assistance with the preparation of food and the issue of the point of provision of services.

When the Care Development Group considered the intent of this policy. COSLA understands, from members of the Group, that there was debate about the financial implications of having broad interpretations on issues such as food preparation and that the Group never intended all assistance to be free. The overall funding package for FPC did not therefore include resources for a broad definition.

### **Free Personal Care – Food Preparation**

The Community Care (Scotland) Act 2002, Schedule 1, details what should not ordinarily be charged for as follows:

#### ***(2) As regard the person's eating requirements –***

- ***assisting with the preparation of food:***
- ***assisting in the fulfilment of dietary needs.***

Whilst this all seems clear the law, interpreted by the original Scottish Executive Guidance, (CCD 4 2002, consolidated by CCD 5/2003 page 10 states:

WHEN CALLING PLEASE ASK FOR: Alan McKeown - 0131 474 9214 [alanm@cosla.gov.uk](mailto:alanm@cosla.gov.uk)

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## **Food and Diet**

**Food preparation and provision of meal are not included. However assistance with eating, assistance to manage specialist diets and the assistance with the preparation of specialist meals (pureed foods) is included.**

The law indicates that the issue centres not on the preparation of food as a global task but on the preparation for eating where preparation for eating is a specific task (to include reminders to eat). The confusion is therefore a subtle one. Local authorities supported the guidance, as it made clear that it was not the preparation/cooking of the meal that constituted personal care, but its preparation for consumption where the individual had special (as assessed) requirements or needed to be fed/prompted to eat. Given that there is no legal definition or guidance as to what constitutes assistance with food preparation, this means that, if challenged, this could only be resolved through the courts. In this regard cooking a meal is a hotel cost and therefore chargeable whereas assistance with the preparation/consumption of food i.e. once the meal is available, is a personal care task and not chargeable.”

COSLA has made its position perfectly clear to the Minister and to the Scottish Executive. Any confusion cannot be attributed to local government; any changes to the position on charging must be fully funded; and no retrospective payments for charges should be made. This is a significant issue for councils, as not being able to charge, and not having sufficient resources coming in to cover the additional costs, would create further substantial funding problems. If no additional funding can be secured, the likely way of managing the situation would be through direct or indirect service cuts, and reductions in staffing levels. COSLA’s best estimate at this stage is that if the Scottish Executive were to alter the current position on this issue then Councils would incur additional costs in the region of £30 million. It is important to stress that these services were never budgeted for when this policy was originally launched, as it was intended that their cost would be met through cost recovery.

## **Availability of Services**

The Committee also pursued the issue of the availability of services following the completion of an assessment. Presuming the client has an assessed need within the terms of the guidance, the local authority has a duty to provide that service. However, paragraph 18 of CCD5/2003 states that, “**Following a needs assessment, payment towards personal care should commence when the authority is in a position to arrange or provide the required services**”.

Local authorities are clear on their interpretation of this point. Services can only be provided when the resources are available to meet the assessed needs - in other words, when the local authority is in a position to arrange or provide these services. The cash limited nature of this budget sets the boundaries.

COSLA does not disagree that those services defined as personal care require to be free at the point of delivery, just like health services. Also, like health services, this does not mean that they can be immediately provided. Waiting lists in health are presumably the norm (partly) because they also have cash limited budgets. In this regard services differ from pensions and benefits because local authorities have cash limited budgets. The only possible way round this is to either create a large enough budget to avoid anyone having to wait for a service, or to develop a system for services like Income Support that authorities could simply assess, provide the service or payment, and directly bill the Scottish Executive for the costs.

I am aware that this letter raises some detailed issues and interpretations. COSLA would be happy to provide a private briefing for the Health Committee on these issues and will, as mentioned earlier, respond as quickly as possible to the Committee's request for more detailed financial information.

I feel, however, that I must conclude by emphasising that this is a Scottish Executive policy. Whilst we support the policy aims and are trying to implement it effectively, many of the questions on the policy intention and scope are more the domain of the Scottish Executive.

I trust the information contained in this letter is helpful.

Yours sincerely

Alan McKeown  
Team Leader, Health & Social Care