



Ein cyf/Our ref: MB/FM/425/06

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National Assembly for Wales
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6th July 2006

Dear Nick

FREE HOME CARE FOR DISABLED PEOPLE POLICY

You asked me during First Minister's questions in Plenary on 6th June to say when the Assembly Government became aware of the statutory position in relation to providing free home care for disabled people. I promised to check the details and to write to you.

Local authorities have a discretion to charge for domiciliary care services under the Health and Social Services and Social Security Adjudications Act 1983 provided that it is "reasonably practicable" for the person being charged to pay. That Act does not supply a power to regulate charging, but we have previously used a general power under the Local Authority Social Services Act 1970 to issue statutory guidance to local authorities on their charging arrangements. This includes a requirement that, after charging, service users are left with at least a guaranteed level of income above Income Support levels and that earnings are exempt from charging. The issue was whether we could extend the use of statutory guidance under the 1970 Act to implement the free home care policy.

The issue was not clear cut and we sought Counsel's advice. His opinion, which we received in December 2003, was to the effect that we could not rely on our 1970 Act powers. However, he was content that we could institute a grant scheme where a condition of grant would be that a local authority did not charge for specified services and that the grant could be withdrawn if it did. You will recall my reference to "carrots and sticks" in our exchange in plenary. Virtually from the start, therefore, we sought to implement the free home care policy through this route. There are several other examples where we have worked creatively with local government to deliver an initiative without relying on specific powers.

Contrary to any impression you may have gained from the misleading account in the Western Mail, all this has been in the public domain for a considerable time and we have never sought to hide it. On the establishment of the task group in early 2004 we were entirely open with the organisations taking part (which included organisations represented on the Coalition on Charging) and the position was clearly explained to them and recorded in the group's report of its work. The group's terms of reference included the attributes of a

grant scheme which would deliver the policy. The position was also set out explicitly in Brian Gibbons' Cabinet Statement issued on 21st March 2005 to all Assembly Members.

The Western Mail also appeared to suggest that it was only because we did not have a specific statutory power to implement free home care that we would have to pay local authorities to implement the scheme. This is nonsense. Under any statutory or non-statutory arrangement we would have had to fund local government for the full costs of implementing the policy.

I am copying this to all Assembly Members.

Yours

Rhodri