

PE1466/C

Petitioner Letter of 10 April 2013

Petition PE1466 – Calling on the Scottish Government to urge the Scottish Government to review the implementation and regulation of local authority charges for non-residential services

I wish to thank everyone who has participated thus far and for individual input, this reply has been written from my understanding and opinion of the current situation plus the contribution has been enhanced as a result of my speaking with various parties including COSLA, Client Agents etc.

It is clear to me by the replies that the various parties worked with good intention but the fly in this ointment comes about when the theory which may look good on paper is not fit for purpose operating in the field. This situation is in no way ameliorated by individual or multi Committee input regarding the creation of the theory.

It simply does not work when one side make the guidelines and that side operates the guidelines by picking and mixing (that is the nature of the beast), in their favour, thus introducing bias and unfairness. An example being two football teams and Team A is allowed to make up the rules and Team B has no input, Team B is at a disadvantage but even more so when Team B plays to Team A's rules and Team A adjusts these rules during the game to their advantage and Team B has nobody to complain to. Do you think that is fair?

Read the statement from the Scottish Government; "The Scottish Government's position on the issues raised by the petition is that we want to ensure fair, consistent and transparent charging policies for community care services." Laudable aims but they are simply not being achieved within the current framework in the field. The charging policy is simply a postal lottery and I suggest that two disabled people with EXACTLY the same circumstances should be assessed on the same formula and not on a set of Guidelines allowing manipulation if so desired by Councils to achieve their own goal thus allowing different variations of a formula regarding an assessment of absolutely similar circumstances resulting in bias and unequal results. I further suggest that the laudable aims have not been met mainly; ensuring fairness, consistency and transparency. Whilst all charging Councils operate from the same Guidelines with potentially minor, local adjustments, it is the writer's opinion by being able to simply ignore the Guidelines then the foregoing aims will never be met. The Guidelines should be so constructed as to achieve basically the same interpretation, if I write a sentence in Portuguese that interpretation will be basically the same for all Portuguese readers.

I accept that those working within COSLA have a desire to introduce improvement but whilst they operate within a remit which does not make them independent their goal will never be achieved. Whilst they create Guidelines and not RULES and whilst they are a Body bias to Councils and much of their input is as a result of input from Scottish Council Management/Staff bias must always exist no matter the amount of suggestion from Committee after Committee. COSLA must be independent and their Guidelines must be RULES; a Court Case in the London High Court found for the plaintiff, (the client), and the judgement was that Somerset Council had to review all their charging under their formula to make it display no Council bias and expenses that are associated with being handicapped/disabled should be counted as disregards. The writer knows of one Council who decided to pick and mix the COSLA guidelines and ignored a mentioned disregard thus artificially increasing the charge levied. This is a Council with a Senior Manager on the COSLA discussion group, it is simply nonsense.

One of the acid tests if not THE acid test is exactly what was pronounced within that Court that such a system MUST develop disregards pertaining to the need of disabled people and it simply does not, indeed the disregard list is impoverished and certainly omits many justifiable disregards which have been simply ignored. By adopting this approach at the conception of the Policy instantly makes it skewed in favour of the Councils and automatically creates over-charging.

Whilst "it's my ball" mentality pervades this system there simply can be no justice across the board for clients. Does anyone believe that justice will prevail in a system that is created by, in the writer's opinion, an inequitable group i.e. Council staff creating Guidelines and not rules and then being allowed to interpret their own Guidelines as they like with no recourse to any Authority by the client and that Guideline interpretation evens allows stated disregards to be excluded resulting in an artificially high charge.

The suggested recourse has a poor foundation and no wonder the SPSO complaint brochures are handed out like sweets by Councils, there is virtually no recourse, the remit of SPSO is Council bias as they basically only review procedure and not the actual complaint. If a client complains about an injustice SPSO are unlikely to look at the fairness and the justification of the injustice but merely was the injustice activated as a result of correct procedure. If the injustice has been achieved procedurally correctly then it is suggested the appeal will fail. The writer is able to give a first-hand example of this practice.

Therefore I suggest few client complaints will be upheld yet the irony must be the fact there is an injustice; there must have been a procedural breach and the interpretation of that procedure unfairly skewed.

It must be time for equality as opposed to Big Brother Councils being allowed to ignore Guidelines and make it up as they go along.

The matter is clear cut; the aim to help disabled clients must be balance and not place an undue burden on the client whilst seeking charges and within Committee or during Policy formulation such a goal I have no doubt will be raised but unless the Policy is robust when converted to one that translates to working in the field fairly for both parties and unless this is the case the situation remains unjust and unfair. The writer is aware in at least one case within the Council calculation they employed a selection method which did not fully take account of the Guidelines and without any exaggeration the client would have been made bankrupt within twelve months. It must be iniquitous that a Council is allowed to plough such a furrow knowing full well the only outcome. A Policy which facilitates such hardship and extremes simply is not just and should not be employed as a benchmark to calculate charges.

- How can you seriously believe a set of Guidelines will ever be fair and offer country-wide parity if these Guidelines are compiled by the party responsible for the charging?
- How can you seriously believe that the disabled clients and others will ever receive justice if the creators of the Guidelines are allowed with impunity to ignore them and create artificially high charges? I suggest the High Court Judge believed this to be completely unjust.
- How can you seriously believe that charges will be fair and not revert to a postcode lottery until the Guidelines become RULES; with rules local conditions can still apply but the same formula will have been employed as opposed to the pick and mix approach afforded to Councils today.
- How can you seriously believe that a disabled person's requested charge will be anything but inflated until Disregards take account of the true costs associated with the person's disability? There is presently so little regard to their needs in the fluid formula that in practice it is virtually nil.
- How can you seriously believe that true justice will be done until COSLA's remit is one of independence and is not a Body working for and working with the Councils. It is only when neither party is allowed to influence the content and then adjust that content at will shall we see justice occurring.
- There appears to be no independent channel that a client can take to receive justice when they identify injustice? The Appeal procedure is a farce as it is initially an internal Council appeal and who believes a group investigating themselves will ever find in favour of the other party. The final Appeal is a Panel of three; one independent and two associated with the Council. I wonder how many 2 to 1 votes are made.
- How can you seriously believe that a client can receive justice when there is no on-going help during the process and the SPSO only intervene under their pointless remit after the event? The local "advocates" that I have spoken with

do not understand the system and are able to offer the client little help. It would appear even if they do identify an injustice during the process the advocate or client has nobody to report to who can immediately engage with the Council and put right the wrong.

- It is understood by the writer that there is a Committee that reviews the fitness for purpose in the field but how do you believe that this by its very make up will not be subconsciously bias. This suggestion of bias is put forward as it is understood that this Committee is formed from Council Staff the very people operating a skewed interpretation within a flexible Guideline system as opposed to RULES. At the very least by COSLA a Council affiliated Body.

The pendulum has swung so far in favour of the Councils regarding the control and unchallenged implementation of the Policy that the client would need binoculars to see the pendulum before it swings towards them.

It is vital that SPSO and COSLA remits are reviewed as this forms a major part of the field operating system and their remit MUST make them independent. COSLA must be allowed to prepare RULES and not Guidelines and SPSO should have included in their remit the ability to arbitrate during a charging process and have their ruling adhered to by the Council and client during the negotiation with the client. Such deliberation must address fact and actions and not the blinkered quality of procedural approach. It may be considered prudent to introduce an independent appeal possibility that will act quickly to adjudge the right or wrong of the situation.

My colleagues and I joked in the Economics class “what would you like the answer to be” but operating a fluid set of Guidelines that can be manipulated at will without recourse supports this somewhat flippant statement and these Guidelines and their field operation are not justly serving the Scottish Government, and those experiencing injustice without recourse suffer in an imposed silence due to the systems and appalling appeal procedures in place.

I am sure that the Scottish Government, COSLA and SPSO have no wish for this injustice to continue and therefore I urge you to act now to stop it.

Thank you.