

Consultation Response

Consultation on a Proposal for a Bill to Abolish Care Charges for Non-Residential Social Care

Inclusion Scotland is a national network of disabled people's organisations (DPOs) and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people's everyday lives and to encourage a wider understanding of those issues throughout Scotland. Inclusion Scotland is part of the disabled people's Independent Living Movement.

Inclusion Scotland is a member of Scotland Against Care Tax (SACT), and supports the submission made by SACT in support of the proposed bill.

1. Do you support the principle that non-residential care services should be free at the point of delivery to those who have been assessed by a relevant professional as requiring them (as is the case with health care)?

- 1.1. There is a strong moral argument that charging for social care is wrong in principle. The Government does not impose charges on those in receipt of health care services at the point of need and social care services are just as essential to sick and disabled people as health services. Instead of the costs of health care being partially met by service users they are instead shared by all taxpayers. This was one of the strongest arguments advanced for the abolition of prescription charges and it is difficult to see why social care services are viewed differently.
- 1.2. Disabled people have consistently told Inclusion Scotland that charging for social care is akin to charging for Health services
- 1.3. Inclusion Scotland believes in a human rights based approach to the provision of services, including social care services. Article 19 of the United Nations Convention on the Rights of Disabled People (UNCPRD) establishes that disabled people have a fundamental right to independent living and inclusion in the community, including access to a range of in-home, residential and other community support services.¹
- 1.4. Disabled people have defined Independent Living as: "Disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life". This definition has been endorsed by the Scottish Government and COSLA.²
- 1.5. Social care provides essential support to daily living without which many disabled people would be unable to exercise their basic human rights. Inclusion Scotland

¹ <http://www.un.org/disabilities/convention/conventionfull.shtml>

² "Our Shared Vision of Independent Living In Scotland" <http://www.scotland.gov.uk/Publications/2013/04/8699>

believes that charging disabled people for the support they need to exercise their right to independent living is discriminatory as it amounts to a tax on disabled people to enable them to have the same freedom, choice, dignity and control at home, at work and in the community as other citizens.

- 1.6. Charging for support equates to asking some people (who require social care) to pay more money than anyone else to achieve the same basic human rights and to participate in their communities.
- 1.7. Disabled people are being forced into poverty as charges for social care rise. Over the last 4 years Social Care charges levied by Scottish Local Authorities have risen by an average of 20%. Charges for Social Care vary between no charge for home care services in Fife to £23.70 an hour in Angus. The amount levied can vary between 15% of disposable income and 100%. The meeting of people's human rights should not be contingent on local priorities.
- 1.8. The high marginal tax rate on both income and savings faced by disabled people as a result of care charges traps disabled people in poverty, acts as a disincentive to working and saving and leaves disabled people with less opportunities and choice over what they do with their money than people who do not require social care.
- 1.9. Charging for social care is inconsistent with the principles underlying health and social care integration³ and the National Health and Wellbeing Outcomes⁴. Whilst health services are free, social care can be charged for. There are large variations in charging policies in different local authorities. We do not believe this is sustainable or equitable in an integrated system fit for the future. In short, continuing to charge for social care will act as a significant barrier to achieving effective integration of health and social care services.
- 1.10. It is also inconsistent with the policy intention that support provided to a carer as part of a Carers Support Plan⁵ will be provided free. Inclusion Scotland agrees that services to carers should be free, but argues that this principle should also apply to all social care services. Whilst services provided to a carer as part of a carer's support plan will be free, those supplied to the "cared for person" as part of a social care package may be charged for. The unfairness and illogicality of this situation is self-evident.
- 1.11. The Carers Bill recognises that the carer's needs could be met (wholly or partly) by the provision of services for the cared for person. The Scottish Government's response to the Finance Committee's Stage 1 report, states "At present, replacement care is usually agreed through the cared-for person's community care assessment and subject to local authorities' own charging policies, including means testing."⁶
- 1.12. This could lead to the perverse situation where a social care service is provided free to one person as part of a carer's support plan but charged for when provided to another person as part of a social care package. Waiving charges to carers only, could result in a (perverse) incentive for families to choose unpaid care where they may have otherwise chosen to have support provided direct to the cared for person.

³ <http://www.gov.scot/Topics/Health/Policy/Adult-Health-SocialCare-Integration/Principles>

⁴ <http://www.gov.scot/Topics/Health/Policy/Adult-Health-SocialCare-Integration/Outcomes>

⁵ Carers (Scotland) Bill 2016

⁶ http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/20151027-SG_Financial-Memo.pdf

- 1.13. This will add to the inconsistency and injustice that already exists, for disabled people and that will be further complicated by health and social care integration which will lead to integrated packages that may have some services which are free (health) and some that can be charged for (social care).
- 1.14. Social Care charges can also restrict the freedom of movement of disabled people. Moving from one local authority area to another not only means a reassessment – and possible cuts – to care packages, but may significantly affect how much they are charged for the social care services received. This may breach Article 19(a) of the UNCRPD that states that disabled people “have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others”. It may also be in breach of Article 8 of the European Convention on Human Rights, the right to respect for private and family life and home.⁷

2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?

- 2.1. YES: Although the Scottish Government has the power to regulate social care charges and therefore can in theory regulate to waive social care charges (in the same way it intends to do for Carers Support Plans), Inclusion Scotland believes that social care being free at the point of need is a fundamental principle that should be enshrined in primary legislation
- 2.2. The Scottish Government has to date chosen not to exercise its powers to regulate social care charges, leaving decisions on charging at the discretion of local authorities and guidance issued by COSLA. This has led to significant inconsistencies in what levels of social care are provided and what charges are levied in different local authority areas.
- 2.3. As stated above, social care charges have increased well above inflation in recent years. At the same time, Inclusion Scotland has frequently highlighted the crisis in social care which has seen the focus moved to meeting only critical and substantial (i.e. life and limb) need. This leaves many people who may need only a little bit of support confined to stay in their own homes, for example they may just need some help to get up or get dressed.
- 2.4. Disabled Peoples organisations have long argued for national standards in criteria, eligibility and assessment for social care for disabled people and for carers. National criteria would ensure a fair and equitable application of social care and support across Scotland. Although there is national guidance on eligibility criteria for social care, each local authority can set its own definition of these criteria and what, if any, support it will provide. This has led to significant inconsistency in the support and care packages available to disabled people in different local authority areas.

3. The current system has resulted in varying charges in different areas for the same level and quality of service. Do you agree that there should be consistency across Scotland? What do you think the advantages and disadvantages are?

- 3.1. YES. Whilst bearing in mind that where you live can have an impact on what you need - for example rural transport issues, housing adaptations, etc,- entitlement to social care should be based on your needs, not where you live.

⁷ http://www.echr.coe.int/Documents/Convention_ENG.pdf

3.2. In addition to using different income thresholds and taper rates, and despite the work of COSLA to standardise the assessment process, different local authorities treat income from certain sources, such as disability benefits, or disability related expenditure differently. The charging policies are difficult to understand, and result in people in similar circumstances paying different charges for the same services, just because of where they live.

3.3. Different policies of eligibility criteria for social care, what care packages are available and different charging policies all impact on the ability of disabled people to freely choose where they want to live. DPOs have regularly raised the issue about the lack of portability of social care packages, and despite past promises by the Scottish Government, this issue has yet to be addressed.

4. Should all social care related services be free at the point of delivery? If you answered Yes, please explain your reasons. If you answered No, please explain what services should be excluded, and why. (please refer to the services set out on page 7.)

4.1. The role of social care is to support independent living. It is not just health care in the community or life and limb support. Services to that support independent living and end that level the playing field should be free at the point of use. It not just a question of what services are free at point of use but choice to and control over how provided, by whom and to what end.

4.2. The underlying principle of Self-directed support is that the whilst the amount you receive as a payment for social care is determined by a needs assessment, how you chose to spend it towards meeting your agreed outcomes should be up to you. Social care charges is about being asked to contribute towards the total cost of your social care package, not about the pricing of individual services that may be accessed using the social care package funding.

4.3. However, Inclusion Scotland recognises that just as a disabled person should not be financially penalised as a result of receiving a social care service to meet an assessed need, they should not necessarily be financially better off as a result of receiving a social care service that includes an element that they would ordinarily spend, for example the cost of food provided as part of a meals services.

5. What are the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise??

5.1. There are no direct financial implications for Inclusion Scotland, but, as an organisation led by disabled people, the abolition of charges – provided it went hand-in-hand with a social care service that fully reflects the principles and values of SDS and promotes independent living and equal citizenship - could bring very substantial benefits to many of our members.

5.2. The Scottish Government must ensure that local authorities receive additional funding to make good any loss of income via social care charging. Given the swingeing cuts to local authority budgets, to simply 'pass the buck' would be no solution.

- 5.3. The Scottish Government has now conceded that the reported £55m raised through Social Care Charges is significantly overstated, by at least £10m.⁸ The direct cost of abolishing care charges, therefore, is the loss of income to local authorities of around £45m. However, this does not take account of the costs of financial assessments and the collection of care charges. This is estimated to be between £7.5 - £12.5m, leaving a net cost of between £32.5 - £37.5m.
- 5.4. Set against the total cost of providing social care of around £2.3bn, this is a tiny amount yet the impact on those charged can be significant, leading to real hardship or, in some cases, disabled people being unable to take the social care services they need because of the cost.
- 5.5. The Scottish Government has estimated that abolishing care charges may result in an additional £200 - £300m being required to meet “additional demand and unmet need”.⁹ However, we do not believe that to date the Scottish Government has provided robust evidence to justify its estimate.
- 5.6. Nor has the Scottish Government taken account of the savings that may accrue elsewhere, for example in the reduction of unnecessary admission to hospital or delayed discharges, if social care is fulfilling the preventative role envisaged as part of Health and Social Care Integration.
- 5.7. Inclusion Scotland recognises that social care charges act as a disincentive to some people seeking or taking up social care packages, and that therefore abolition of charges will increase demand. At a consultation event on the Bill proposal organised by SACT, a senior social work manager confirmed that charges were used to manage demand. This is unacceptable, as people should not be denied the social care they need by the use of charging policies.
- 5.8. Inclusion Scotland objects to the language used by COSLA in defining social care charges as “co-funding”, or attempts to liken essential social care to non-essential services that may be charged for such as leisure and recreation. Inclusion Scotland does not believe that disabled people should be expected to pay more and more to meet the funding gap in social care.
- 5.9. For disabled people who are subject to care charges, the abolition will give them the same freedom, choice and control over how they spend their money as anyone else. It will mean that disabled people will be able to receive the social care they need without the fear of financial penalties.
- 5.10. The small income disregard and high level of income tapers currently act as a disincentive for disabled people to seek work as they will lose most of their net earnings in care charges (on top of paying the same income tax and national insurance as anyone else). The abolition of means tested care charges therefore also removes the poverty traps that are encountered in moving into work – again bringing savings in the guise of increased tax and NICs.
- 5.11. They may also not receive the full benefit of any occupation pension they are entitled to. Capital limits restrict the ability to save to meet future needs.

⁸ Letter dated 11 January 2016 from Shona Robinson MSP, Cabinet Secretary for Health Wellbeing and Sport, to the Convener of the Scottish Parliament Public Petitions Committee regarding petitions PE1480 and PE1533.

⁹ *ibid*

6. What do you think the implications of the proposed Bill are for equality? (Positive/Negative/No significant implications/undecided). Please explain your answer. If you answered Negative, please suggest any ways this impact could be minimised or avoided.

6.1. Abolishing care charges will remove the current discrimination against disabled people whereby they are charged for the essential support they need to enjoy the same human rights as anyone else. Therefore the bill proposals will clearly have a very positive effect for equality.

7. Are there any other comments you would wish to make that are relevant to this proposal?

7.1. Inclusion Scotland welcomes this consultation on a proposal for a bill to abolish charges for non-residential social care. We recognise that this will not become law in this present session of the Scottish Parliament, but hope that it will highlight the social injustice caused by social care charges and lead to legislation in the next Scottish Parliament. Certainly within the context of the National Conversation on Social Justice action is needed to address this manifest social injustice.

7.2. The issue does, of course, remain of where adequate funding of social care is to come from, given the overwhelming evidence that social work is currently significantly under-funded, the increase in demand for social care in view of both demographic shifts and the consequences of moving more people out of acute healthcare settings into the community under HSCI and the removal of charges.

7.3. Discussion about charging/ wider funding issues has to be conducted in tandem with discussion of the role of social care. For example, if its role was to narrow to become nothing more than health care delivered in the community, then the removal of charges for so-called 'social care' entirely misses the point.

7.4. There is a need to set a new national framework for social care to address the current funding crisis. This should establish clear national criteria for eligibility and assessment for social care backed by adequate funding. All this points to the urgent need for thorough, wide-ranging exploration of the funding and role for social care, perhaps through the establishment of a Commission.

7.5. Inclusion Scotland supports a human rights based approach to public policy. Charging for social care is not consistent with such an approach, in particular is not consistent with Article 19 of the UNCRPD on the right to independent living.

If you have any questions on this submission, or for further information, contact:

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