

PE1533/D

Andrew Howlett
Assistant Clerk to the Public Petitions Committee
Scottish Parliament
Edinburgh
EH99 1SP

17 December 2014

Dear Mr Howlett

CONSIDERATION OF PUBLIC PETITION PE1533

Many thanks for your letter of 17 November, requesting the Commission's views on petition PE1533, calling on the Scottish Parliament to urge the Scottish Government to abolish all local authority charges for non-residential care services as under Part 1, Paragraph 1, Subsection (4) of the Community Care and Health (Scotland) Act 2002.

The Committee requests comments from the Commission on the issues raised by the petition in general, and in particular on the question on compliance with domestic and international equality and human rights law.

The petitioners highlight a range of domestic and international equality and human rights laws and conventions. As they mention, the UK is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). However, it is important to clarify that the rights contained in the convention are not justiciable in the same manner as domestic laws. Rather, state parties to the convention are required to interpret domestic law and policy in light of the Convention articles. However, the UK has also ratified the optional protocol to the convention which allows for individual petition by a UK citizen to the UN Disability Committee, where opportunities for domestic remedy have been exhausted.

States are examined regularly (roughly every five years) by the UN Disability Committee¹, to measure progress and identify issues of concern to disabled people. The EHRC promotes, protects and monitors the convention as part of the UK's independent monitoring mechanism (UKIM), a role we share with our colleagues in the Scottish and Northern Ireland Human Rights Commissions, and the Equality Commission Northern Ireland.

¹ www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx

The UKIM has just published its interim report on the list of issues² it recommends be raised at the next UK state examination, probably in 2016. The report raises a number of issues under Article 19 (independent living) which are relevant to the petitioners' concerns, including the cumulative impact of the UK welfare reform agenda and changes to social care funding and eligibility criteria. The issue of charging for non-residential social care is therefore likely to be one of the areas where Scottish Ministers will have to demonstrate that current devolved law and policy is not having a negative impact on the realisation of Article 19.

The petitioners also mention domestic law in the form of the Human Rights Act 1998 and the Equality Act 2010. We would require further information to consider whether national or local policy may be unlawful under either the Human Rights Act 1998 or the Equality Act 2010 (it would of course be for the courts and not the Commission ultimately to determine this). However, there may be a locus for the public sector equality duty at both national and local levels.

Nationally, there could be scope for the Scottish Government to look at the wide disparity in charging levels for non-residential social care across the country, and how this impacts on disability equality. Locally, councils may wish to consider how they equality impact assess their charging policies, given the evidence provided by the petitioners on 11 November.

I hope this information is useful. If I can me of more assistance to the Committee, please don't hesitate to get in touch.

Yours sincerely

Alastair Pringle
National Director, Scotland

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