

## **Health and Social Care Alliance Scotland (the ALLIANCE)**

### **Response: A Consultation on a Proposal for a Bill to Abolish Charges for Non-Residential Social Care**

31 January 2016

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The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 1,500 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

The ALLIANCE's vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

On 4 December 2015, the ALLIANCE hosted a members' roundtable on the issue of charging for non-residential social care. Our response is informed by this discussion, work with members over a number of years on this issue and engagement in the Scotland against the Care Tax movement.

### **Introduction**

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

For many disabled people and people who live with long term conditions, social care services are essential for their participation in society and their equal enjoyment of human rights. Care charging uncompromisingly demands that those who are entitled to use non-residential care services pay more to achieve the same basic human rights and, in some instances, can lead to people who are disabled or living with long term conditions deciding to forego much needed care and support, increasing the risk of harm or further deterioration of an illness or condition.

It is therefore the ALLIANCE's position that the receipt of social services should be universally free, as independent living is a right that should be afforded to all. Access to independent living is a critical tool to enable people to contribute as citizens, creating an inclusive and equal society. Supporting independent living is to support not just individual rights, but to value the qualities that disabled people and people who live with long term conditions have to offer.

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

Existing guidance for care charging, produced by COSLA on an annual basis<sup>1</sup>, has, in our view, failed to make services fairer or more consistent. Whilst there was general agreement among our members that local authorities shouldn't be dictated to, it was also recognised that COSLA guidance can only do so much and legislation should not be ruled out.

Legislation would also support the financial management and end the disparity of the social care charge across Scotland. At present however, there are varying claims over how much it would cost the Scottish Government to abolish care charges. On the one hand the campaign Scotland Against the Care Tax (SACT) propose that, based on local authority financial reports of the current 61,000 social care recipients, between £45m and £55m is needed to fill the social care budget should charges be abolished. Meanwhile, the Scottish Governments estimates, which are based on their extrapolations of potential social care recipients' cost of care, is a much higher figure of £300m<sup>2</sup>. It should be noted that that both figures may include ILF contributions which should not be counted as income. Without a clear picture of the actual cost require to abolish care charges, it has been difficult to take such steps through guidance alone. Therefore, a legislative approach should include a financial evaluation and a clear pathway towards abolishing care charges which does not put any recipient of social care at a disadvantage.

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<sup>1</sup> <http://www.cosla.gov.uk/about/how-we-work/health-and-social-care/charging/care-home>

<sup>2</sup>

[http://www.scottish.parliament.uk/S4\\_PublicPetitionsCommittee/General%20Documents/20151130\\_PE1533\\_Q\\_Petitioner.pdf](http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/20151130_PE1533_Q_Petitioner.pdf)

**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 would be?**

The ALLIANCE agrees that a huge variation exists in the charges which are applied for non-residential care services across Scotland. The current charging guidelines, in effect, create 32 different systems across Scotland (one for each local authority area). This ultimately means that 32 people who have exactly the same income and needs will pay different amounts dependent on where they live. The reasons for significant differences in charges (evidenced by the Audit Scotland's findings in 2013 that charges for a single hour of Home Care varied between £8.56 and £23.70 in different areas<sup>3</sup>) are not transparent or clear enough. Therefore, the ALLIANCE believes that there is an urgent need to address the inequity, and impact on people's ability to live well, created by the variability and inconsistency of charging and eligibility criteria across Scotland. We would repeat the call for an independent inquiry to be carried out into social care funding and how and who pays for it in order to better understand the implications of removing charges would have upon local authority funding.

Were charges to be equalised across the country, either by removing them all together or through creating national criteria for charging, the ALLIANCE believes the advantages would be:

- An equitable social care system whereby support is uncompromised by funding disparities throughout Scotland
- Greater transparency and accountability within and between local authorities enabling people requiring support to have more control and confidence over the services that they use.
- Greater independence between the local authority and individual as there would not be a potential conflict of interest in carrying out financial assessments prior to support being offered
- Greater portability of people who require support moving between local authorities as they would have a nationally agreed charge/no charge independent of where they reside.
- Local authorities would have better knowledge to plan future funding models as they would have a clearer income stream based on the population within their area.

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<sup>3</sup> [http://www.audit-scotland.gov.uk/docs/local/2013/nr\\_131031\\_hcw\\_charging\\_services.pdf](http://www.audit-scotland.gov.uk/docs/local/2013/nr_131031_hcw_charging_services.pdf)

The disadvantages of having no charge for care services or a nationally agreed charge would be:

- Local authorities may tighten eligibility criteria as a result of decreased income streams this may result in less people being considered eligible for support unless funding is continuously supplied based on level of need from the Scottish Government.
- It is possible that councils may use other powers to recoup the money, for example increasing general taxation but only in those areas where there is high need, which could disproportionately affect those in areas of high poverty.
- There could be an unintended response from private care services who withdraw or do not provide their services in area where there is less potential to profit from local authorities who tighten their eligibility criteria as a result of diminished charging income.

In 2011, the Welsh Government introduced a maximum rate of £50 weekly charge for social care. However, members expressed some concern that this led to charges gravitating towards the maximum for people who were previously paying less. Further research into the experiences of people who use support and services in Wales is required to consider the benefits of this approach for any future Scottish system.

**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 which services should be excluded, and why. (Please refer to the services set out on page 7)**

This issue was considered in detail by members at our roundtable event in December 2015 as it was believed that there needed to be a cautious balance between services which provide support to enable people independently, such as support to dress, bathe, cook and clean etc., and those which provide services that replicate the general needs of the population, such as meals on wheels or local authority transport. There was not a definitive view from our members as to whether there should be a blanket approach to charging, whether that be to not charge or to have a fixed rate charge, or to maintain charges those services which could be considered as a cost of living.

Members were keen that small interventions and preventative measures be included within the definition to protect them from potential cost saving features, for instance telecare, alarms, or Mary's meals. Some were worried there would be increased assessment for services which were not based on eligibility criteria before.

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

There was a general fear expressed by members that abolishing social care charging could be a catalyst which may shift the burden of expenditure and cuts elsewhere.

Councils budgets are expected to reduce further in the coming years<sup>45</sup>, and Social Work departments, as a large part of each Council's budget, are experiencing significant cuts. The option proposed would, presumably, result in central government having to help fund the gap created by abolishing social care charging. This leaves two considerations:

- a. How does the Scottish Government prevent local authorities from shifting the charge to other services?
- b. Whether an inflationary measure will be included in any forthcoming Bill to take into account growing costs of funding abolition of charges over time.

The group recognised that any new Bill was likely to take time to get through the Parliament (possibly by 2017 at the earliest), especially in light of further devolved powers. As health and social care integration is currently being rolled out, this Bill shouldn't be a "rush job".

**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.**

The ALLIANCE believes that any changes to social care should take an equalities and human rights based approach when considering its impact on people who live with long term conditions. There are two principals that we believe are relevant to this consultation:

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<sup>4</sup> <http://www.gov.scot/Resource/0049/00491140.pdf>

<sup>5</sup> <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-35119691>

- **Equality Act 2010<sup>6</sup> states:**

“149 – Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;”

- **UN Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>7</sup> states:**

“Article 19 - Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>7</sup> <http://www.un.org/disabilities/convention/conventionfull.shtml>

Both the Equality Act and the UNCRPD would suggest that disabled people, in this case including people who live with long term conditions, should have the right of opportunity to live independently on an equal basis and without any impact on their financial or social circumstances that puts them at a disadvantage to people who do not require support. Therefore, the ALLIANCE believes that the abolition of charges or the introduction of a national care charge must ensure that those requiring support services do not face any form of discrimination, intended or otherwise, as a result of such changes.

Lessons must be learnt from the implementation of Social Care (Self-directed Support) (Scotland) Act 2013 and the Public Bodies (Joint Working) (Scotland) Act 2014. No review of either Act's implementation are yet planned. With the abolition of the social care charge for example, there is a risk that unpaid carers could have increased pressures put on them if local authorities are compromised by a loss in income. Many family carers already provide a high number of unpaid hours of care. Depending on how local authorities adjust to loss of revenue, families caring for people with high care needs, such as a son or daughter with profound and multiple learning disabilities, may well be forced into providing additional hours of unpaid care. The ALLIANCE would urge that the transition to non-charged social care has protections in place to prevent families from having the onus of increased caring responsibilities placed upon them in the short or long term. We believe that a "sunset clause" should be inserted into any legislation related to abolition of social care charging that will ensure review and monitoring of implementation.

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

N/A

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## **For More Information**

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