

Policy Response

Capability Scotland

4th February 2016

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

Capability Scotland campaigns with, and provides education, employment and care services for disabled children and adults across Scotland. We work with disabled people, their families and carers to provide a mix of services that meet their aspirations at all ages and stages of their lives. We are also a campaigning organisation, committed to using our influence to ensure disabled people achieve the same human and civil rights as the rest of society.

Capability Scotland is a member of Scotland Against the Care Tax (SACT) campaign, 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)?

Yes, provided this change is affected without detriment to disabled people in terms of their eligibility for social care and the level of support they receive.

Capability Scotland believes that disabled people should not be charged for social care services which they are assessed as needing. For our customers, social care services are as important as health services in terms of getting the support necessary to live an independent life. Capability Scotland believes that charging disabled people for the support they need to exercise their right to independent living is discriminatory and 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.

We see no justifiable argument to levy a charge on disabled people who require a service to provide them with equal access to independent living and to participate in the workplace and in their local communities. We do not believe that the 'co-payment' model is legitimate given that the fundamental purpose of social care is to promote human rights.

Local Authorities throughout Scotland routinely charge for a range of non-residential care services, from Home Care to Community Alarms. Scottish Government figures show that over the last three years, care charges throughout Scotland have risen by 12%¹ on average and increases by some local authorities have been more than this².

¹ Scottish Government Finance Statistics – LFR3 2009-12

² In 2015-2016 Edinburgh Council has increased the charge it makes for an hour of care at home by 14%; Midlothian Council has increased its charges for Telecare by 50%; East Renfrewshire has plans to double their charging income by collecting an additional £220,000. West Lothian Council has brought forward plans to increase their charging income by £750,000 - an increase of 300%.

There are also regional variations in charges. An October 2013 report by the Audit Commission found that charges for a single hour of home care varied between £8.56 per hour and £23.70 in different areas of Scotland, while day care for younger adults can vary between being free of charge and £175 per week³.

The application of charges is subject to means testing which itself demonstrates a range of variation. For example, the Convention of Scottish Local Authorities (COSLA) recommends that the minimum income threshold - the level of income which a local authority believes that a disabled person should be able to live on - should be the Income Support level plus 16.5% (£177/week). However Local Authorities across Scotland set this rate at different amounts. For a single person under 60 it varies from £123 per week, in East Ayrshire⁴, to £169 per week in neighbouring North Lanarkshire – both less than the poverty threshold for a single person with no children.

The high marginal tax rate on both income and savings⁵ 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.

Charging for social care is also inconsistent with the principles underlying health and social care integration and the National Health and Wellbeing Outcomes. The Scottish Government accepts that there should be no charges for services supplied to meet health care needs but with integration this distinction will be less clear and clarifying these distinctions will cause further confusion and take up additional valuable staff time. Integration may see the return of debates over the “Health Bath” v the ‘Social Bath’ and who should pay care charges. A person who gets staff support for a bath in their own home for health needs will not have to pay care charges whereas if the bath is for social care needs then a disabled person MAY have to pay a charge. Similar complications may occur over the administration of medication, rehabilitation, physiotherapy and occupational therapy. Capability Scotland believes care charging will act as a significant barrier to achieving effective integration of health and social care services

The Self-Directed Support (Scotland) Act 2013 has also established the principle that carers should not be charged for services intended to support them in their caring role. Given that many of these services, respite for example, could just as appropriately be regarded as services to and for a disabled person rather than simply for the carer we believe this may serve to demonstrate the arbitrary and unfair nature of charging. It 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 a disabled person as part of their social care package. If carers are not charged in recognition of the vital support they provide, why should disabled people, who are effectively ‘self-caring’ have to pay for the same service?

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 of care packages and support needs possibly resulting in cuts, but may significantly affect how much they are charged for the social care services received. This may breach Article 19(a) of the United Nations Convention on Rights for Persons with Disabilities (UNCPRD) 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

³ Charging for services: are you getting it right Audit Commission 2013

⁴ East Ayrshire Health and Social Care Partnership, Community Care Charges, Charges for non-residential social care services <https://www.east-ayrshire.gov.uk/Resources/PDF/C/CommunityCareCharges2015-2016.pdf>

⁵ The “taper” – a percentage of the remaining income (above the income threshold) that will be charged can be as high as 100%. Savings disregards can be as low as £6,000 and savings between the disregarded limit and a local maximum are treated as generating income at between 10% and 20% per annum.

European Convention on Human Rights, the right to respect for private and family life and home.

Capability Scotland would argue that at present, the spread of charging, increases in charges and the variation created by the local differences in calculating charges create a post-code lottery for disabled people needing social care.

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

Yes. Through the Community Care and Health (Scotland) Act 2002 the Scottish Government has the power to regulate the practice of care charging but to date has not exercised this power, preferring to support self-regulation by COSLA. COSLA has produced national guidance on the implementation of care charges. However, as this guidance remains only advisory, Local Authorities are free to set their own charging policies, hence the variation in charging regimes already described. It has therefore failed to achieve the consistency sought by the Scottish Government who made a commitment to hold its regulatory power in reserve until the implementation of guidance issued by COSLA in 2002 could be evaluated. That evaluation has never been carried out.

The Scottish Government have a stated commitment to ensuring that charges, 'where necessary, are fair and affordable'⁶ However at present the Scottish Government's position is that the COSLA working group is the preferred method of achieving this.

Capability Scotland along with Disabled People Organisations (DPOs) and carers organisations left the COSLA care charging working group in 2014 because of our frustration about the groups inability to take pro-active, meaningful and sustainable action to address the unfair system. COSLA's standard financial assessment template provides no change in either the unfairness of care charging in its entirety or the inconsistency of care charging from area to area. Apart from one additional element which reflects current practice on 'capital upper limits' the template recasts a set of thresholds and allowances that are already set out in the latest COSLA Charging Guidance.

The COSLA Draft Disability Delivery Plan also includes 3 actions relating to care charging⁷ which we believe are insufficient to create meaningful change. COSLA has also lost 25% of Scottish Local Authorities from its membership⁸ and will no longer be able to produce national guidance that will apply to all Local Authorities.

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), Capability Scotland in line with the SCAT campaign believes that social care being free at the point of need is a fundamental principle that should be enshrined in primary legislation.

At present however, there are widely varying claims over how much it would cost the Scottish Government to abolish care charges for non-residential social care. The Scotland Against the Care Tax (SACT) campaign proposes that, based on Local Authority financial reports of the current 61,000 social care recipients, between £45m and £55m per annum is needed to fill

⁶ PE1533/L: Scottish Government Letter of 11 May 2015

⁷ 1. To encourage the involvement of DPOs and other stakeholder representatives in the ongoing revision of the COSLA Charging Guidance; 2. Examine alternative Local Authority approaches to the consideration of disability related expenditure ; 3 A commitment to publish an annual consistency report on the progress councils are making toward improved consistency of charging policies. The United Nations Convention on the rights of People with Disabilities (UNCRPD); Scottish Local Government Delivery Plan: 2015-18

⁸ Glasgow, Aberdeen City, Renfrewshire and South Lanarkshire Councils have all left COSLA and are now represented by the Scottish Local Government Partnership.

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.

Without a clear picture of the actual cost required to abolish care charges, it would be very difficult to take such steps through guidance alone. Therefore, a legislative approach that included a financial evaluation of abolishing charges is necessary.

3. The current system has resulted in varying charges in different areas for the same level and quality of service. What are the advantages and disadvantages of ending this inconsistency?

It is important that efforts to tackle inconsistency in regards to charging are not done in isolation. We must also consider the quality and consistency of the social care provided throughout Scotland, regardless of geographical boundaries.

Advantages

Care charges are currently applied to disabled people whose incomes are below the poverty threshold. Abolishing them would therefore help to alleviate poverty.

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. Abolishing charges would help in creating a level playing field for social care, supporting the portability of care so that disabled people can move from one part of the country to another to take advantage of informal support or other resources available to them without being adversely affected. Essentially it will generate a sense of fairness for disabled people who in receipt of social care services that they are not disadvantaged just because of where they choose to live.

It will also save on the resources involved in the creation and maintenance of 32 different charging systems cutting down on Local Authority bureaucracy.

Disadvantages

Legislation to abolish non-residential social care charges for disabled people is likely to coincide with what is in effect a 'perfect storm' in relation to reducing funding and increasing demand for social care in Scotland.

While most of the intended cuts to the capital budget in Scotland happened in the first two years of austerity, for spending on day to day services the biggest cuts are still to come⁹. It is estimated that the Scottish public sector budget is likely to suffer a £39 billion shortfall between 2010/11 and 2025/26, the year when the budget will finally return to 2010 levels in real terms.¹⁰

2016/2017 sees the continuation of the council tax freeze and a cut of 3.5% to local government revenues, a reduction in the total expenditure of Local Authorities of 2%. Whilst this may be off-set to some extent by an additional allocation of £250 million for social care, all councils across Scotland face growing demands for their social care services due to an ageing population¹¹ and the increasing complexity of needs.

⁹ Deaner, B & Phillips, D (2014) Government spending on public services in Scotland: current patterns and future issues Fiscal Affairs Scotland

¹⁰ Commission on Future Delivery of Public Services (2011)

¹¹ The population of pensionable age is set to rise by 26% between 2010 and 2035

In this context income from charging will be seen as increasingly important to councils in their efforts to maximise income and they may seek full compensation from the Scottish Government to abolish charging for non-residential care.

Even if this compensation is made available, the loss of future charging income may in practice result in Local Authorities tightening eligibility criteria for services to manage projected demand or reducing the levels of support provided to disabled people through self-directed support (SDS).

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.)

We firmly believe that all charges for non-domiciliary care should be free. In direct response to the two scenarios in the consultation paper;

Should Meals Services be charged for?

Food is something that everyone needs. Most people have some degree of basic income available to buy meals. Therefore, in line with the SACT campaign, Capability Scotland believes that a charge for the Meals Service should simply reflect what a disabled person would ordinarily spend. If there were no charge for these meals then a disabled person could be financially better off simply as a result of receiving social care services. As a result, for a disabled person who has had a social work assessment which identifies this service as a need that meets the eligibility criteria, it would be appropriate to charge for meals at a rate which reflects the cost of ingredients but not for their preparation and delivery.

Should Community Alarms and Call Services be charged for?

Community Alarms and call services are currently easily accessed by many people without the need for a social work assessment. For these people a small charge allows for the use of a Local Authority or a private service without financial hardship. Given that such services provide no care and simply serve to link the alarm holder with a nominated family member, friend or neighbour we do not see a reason to abolish charges for those who have effectively self-referred for a community alarm or call service.

In line with the SACT campaign however, Capability Scotland believes that for anyone who has undergone a social work assessment which has identified these services as needs that meet the appropriate eligibility criteria there should be no charge.

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??

Capability Scotland have concerns that Local Authorities might respond to the loss of income from care charging by reducing their investment in grant-funded services for disabled people or reducing the levels of individual support provided to those being re-assessed for self-directed support. These measures would have financial implications for Capability Scotland's customers and this would deprive them of the support they need to live independent lives.

In spite of these concerns we firmly believe that the abolition of charges, provided it went hand-in-hand with social care provision 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 customers. 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.

The Scottish Government has now conceded that the reported £55m raised through Social Care Charges is significantly overstated, by at least £10m¹². 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 per annum.

Set against the total cost of providing social care of around £2.3bn, this is a small amount yet the impact on those charged can be significant, leading to real hardship or, in some cases, disabled people being unable to access the social care services they need because of the cost.

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”¹³. However, we do not believe that to date the Scottish Government has provided robust evidence to justify its estimate.

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.

Furthermore, the small income disregard and high level of income tapers currently act as a disincentive for disabled people to seek work within the current system as they will lose most of their net earnings in care charges (on top of paying the same income tax and national insurance as everyone else). The abolition of means tested care charges therefore would also remove the poverty traps that are encountered in moving into work, again bringing potential savings through increased tax and National Insurance Contributions.

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.

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 on equality.

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

Capability 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

¹² PE1533/R: Scottish Government Letter of 11 January 2016

¹³ PE1533/R: Scottish Government Letter of 11 January 2016

context of the National Conversation on Social Justice and a Fairer Scotland, action is needed to address the unfair and unjust system of charging.

However, the issue remains that social care services are increasingly under pressure. This is in part due to;

- i) evidenced significant underfunding of current social care services
- ii) increased demand due to demographic shifts and the consequences of moving more people out of acute healthcare settings into the community as a result of HSCI
- iii) the UK Government's continuing "austerity" policy of reducing public expenditure.

Capability Scotland believes this proposed Bill comes at an opportune time to call for a wide ranging independent review of the current role and funding of social care which in turn should inform an ambitious new vision for social care in Scotland that is appropriately funding.

Contact Us

Thank you for the opportunity to respond to this review. If you require more information on this response, please contact:

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