

Health, Social Care and Housing Committee

10:00, Tuesday, 26 January 2016

Proposed Abolition of Social Care Charges (Scotland) Bill - Response to consultation issued by Siobhan McMahon, MSP

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|-------------------|-----------|
| Item number | 7.2 |
| Report number | |
| Executive/routine | Executive |
| Wards | All |

Executive summary

On 6 October 2015, Siobhan McMahon, MSP for Central Scotland lodged a consultation document on a proposal for a Bill to abolish charges for non-residential social care. The consultation deadline is 30 January 2016. The intention is “to begin a debate on how to reform the law, in the hope and expectation that a Bill can be introduced – and passed – in the new session (beginning after the 2016 election)”.

Councils have a statutory power to charge for non-residential care services. Charging for non-residential adult social care services raises income of around £55 million per year for Scottish councils and £3 million in 2014/15 for the City of Edinburgh – mainly for domiciliary care and community alarms. Staffing costs involved in income collection account for about 16% of the income raised. Social care charging therefore makes a significant contribution to the funding of care services.

The consultation paper includes a number of arguments in favour of abolition of non-residential care charges, based on human rights, equalities and anti-poverty considerations. These are considered in the main report below.

Links

| | |
|--------------------------|---|
| Coalition pledges | P30 , P38 , P43 |
| Council outcomes | CO10 , CO11 , CO12 , CO13 , CO25 , CO26 |
| Single Outcome Agreement | SO2 |

The experience of Free Personal Care for older people in the first decade of this century showed that removing charges significantly increased eligible demand for care. Initial estimates by the Scottish Government indicate that the full cost of meeting additional eligible demand for care, if such a Bill became law, could grow to as much as £300 million per year. Council officers believe that this is unlikely to be funded.

For this reason, the recommended Council response to this consultation is to support the proposed abolition of charges only if the financial impacts on local authorities are fully funded by the Scottish Government, and the abolition of charges could be shown to deliver better outcomes for people who need social care than investing these funds in additional care services.

This is one of four linked reports to Committee today on the subject of charging for non-residential Adult Social Care. The other three reports are:

- Item 7.3 Contribution based charging policy change - analysis of consultation responses
- Item 7.4 Contribution based charging policy change - Equalities and Rights Impact Assessment
- Item 7.5 Contribution based charging for self-directed support.

Proposed Abolition of Social Care Charges (Scotland) Bill - Response to consultation issued by Siobhan McMahon, MSP

Recommendations

- 1.1 To agree or amend the attached draft response to the consultation launched by Siobhan McMahon MSP, on a proposed private member's bill to abolish non-residential social care charges.
- 1.2 To note that the response:
 - (a) supports the proposed abolition of charges only if the financial impacts on local authorities are fully funded by the Scottish Government, and the abolition of charges is shown to deliver better outcomes for people who need social care than investing these funds in additional care services
 - (b) in the event that the Scottish Parliament does not vote to abolish non-residential social care charges, supports additional anti-poverty measures within the financial assessment of a person's ability to contribute to the cost of their care services; and
 - (c) supports placing these financial assessment rules on a statutory basis, as is the case with charging for residential care.

Background

- 2.1 The consultation document on *A Proposal for a Bill to Abolish Charges for Non-Residential Social Care* is available on the Scottish Parliament website at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/92913.aspx>.
- 2.2 It sets out the case for abolishing charges mainly on human rights and equalities grounds, as well as providing useful information on variations between Scottish councils in charges for some services, and in the way in which they apply the COSLA guidance on means-tested charging and financial assessments of a person's ability to pay. The Scottish Government's response to the Scotland Against the Care Tax petition to the Scottish Parliament to end social care charges is also covered in the consultation paper.
- 2.3 Seven consultations questions are set out the document, covering: the principle of free care services, the need for legislation, the current variation between councils, whether small charges for some services such as meals and alarms should be

exempt for the proposed abolition of charges, the financial implications for councils, the equality impacts for people with disabilities, and any other comments.

Main report

- 3.1 A draft Council response to the consultation is attached at **Appendix 1**.
- 3.2 The draft response acknowledges the importance of the debate on charging, which is a significant issue for many people with disabilities who rely on social care services. The response considers the human rights, equalities and anti-poverty arguments, which are articulated very clearly in the consultation paper, but also considers the likely financial impacts.
- 3.3 The consultation paper contains three key arguments about human rights and equalities. The first is that access to social care is a basic human right for people with disabilities of all ages. The consultation paper puts this case with compelling clarity and conviction in the opening paragraph on page 5:
- For those people who use it, social care is an example of the essential practical assistance and support needed to participate in society and lead an ordinary life. Without such support, disabled people and other social care users cannot enjoy their human rights on an equal basis to non-disabled people. As such, social care provides an essential infrastructure for the equality and human rights of disabled people and others who use social care and support.
- 3.4 The second argument is that social care charging causes some disabled people to live in poverty, or further impoverishes their economic circumstances: “Social Care Charging leads to many disabled people being driven into poverty and many others being unable to enjoy the things in life that non-disabled people take for granted” (page 1).
- 3.5 Council officers agree that poverty is a human rights issue, and that poverty has a higher prevalence among people with disabilities; we are less convinced that charges are driving people into poverty. People only contribute to the cost of their care where they are assessed to having sufficient income to do so. But if this second argument were true, it could be met by more generous income disregards within the financial assessment of a person’s ability to pay, rather than by abolishing charges altogether.
- 3.6 Serious concerns about poverty have been raised by organisations representing disabled people, and by people with disabilities themselves, for example in the responses to the Council’s own consultation in 2015 on its social care charging policy (also on today’s agenda). For this reason, the main report on charging on today’s agenda recommends some changes to the financial assessment process to strengthen anti-poverty measures.

- 3.7 The third argument in the consultation paper is that disabled people who are charged for social care have to pay for a service that is necessary for them to enjoy their human rights on an equal basis to non-disabled people. Irrespective of whether people can afford to pay, paying for social care itself places them in an unequal position compared to people without disabilities who do not have to pay for social care to realise their human rights.
- 3.8 Council officers believe this is a valid argument, but one that requires some consideration about the costs of abolishing non-residential social care charges and how these might be met. Among other things, public expenditure supports a wide range of human rights and the opportunity cost of funding the abolition of social care charges also needs to be considered from a rights perspective.
- 3.9 Charging for non-residential adult social care services raises income of around £55 million per year for Scottish councils and £3 million in 2014/15 for the City of Edinburgh – mainly for domiciliary care and community alarms. Staffing costs involved in income collection account for about 16% of the income raised. Social care charging therefore makes a significant contribution to the funding of care services.
- 3.10 In addition, the experience of Free Personal Care for older people in the first decade of this century showed that removing charges significantly increased eligible demand for care. Initial estimates by the Scottish Government indicate that the full cost of meeting additional eligible demand for care, if such a Bill became law, could grow to as much as £300 million per year. While both the £55m and £300m figures are currently disputed by campaigners against “the care tax” (i.e. social care charges), Council officers believe the final figures will not alter concerns about the affordability of free non-residential social care. Whatever the precise figures, the financial implications of the Bill for local authorities would be a loss of income from charging currently used to help fund social care, and significantly increased demand from people with care needs for services when free at the point of delivery.
- 3.11 In the current financial climate of public expenditure austerity it will not be possible for Scottish local authorities to find compensating additional funding from further efficiencies, transfers from other council services, increased charges for other council services, or increased council tax. The Scottish Government has published its 2016/17 Draft Budget, but is giving further consideration to spending priorities for the remaining three years of the Spending Review period. The local government financial settlement for 2016/17 includes an overall revenue funding reduction of £336m (3.4%) and a total £585m (5.4%) reduction in total revenue and capital funding for councils in Scotland.
- 3.12 Additional funding of almost £400m was also announced for the NHS in 2016/17, including “an additional £250 million to support the integration of health and social care and build the capacity of community-based services” (Draft Budget page 5).

The Scottish Government will distribute this money (via health boards) to health and social care partnerships “to support the delivery of improved outcomes in social care”. It is not intended to fund the abolition of social care charges. Indeed, if the longer term costs of abolition are £300m per year, this would more than use up the additional £250m per year in the Draft Budget.

- 3.13 If social care charges were abolished without additional funding to cover the loss of income and the additional eligible demand, it is highly probable that the costs for local authorities would lead to a reduction in social care expenditure on services that people need. Council officers believe this would be a far worse outcome for the human rights and equality of people with disabilities than the benefits conferred by the abolition of social care charges.
- 3.14 The draft response to the consultation supports increased anti-poverty measures where these are needed within the national charging guidance, in the event that the Scottish Parliament concludes that the full abolition of non-residential social care charges is not affordable. It also supports putting the financial assessment rules for means-testing a person’s ability to pay social care charges onto a statutory basis (as is the case for residential care charging), because this is the most effective way to deliver more consistency between Scotland’s local authorities, and greater transparency for people who use care services, their carers and families. However, the actual charges levied would still need to reflect the real differences in unit cost of provision across Scotland, allow local decision making to reflect the different local labour markets, varying population need, and other local cost factors faced by some councils, such as rurality.
- 3.15 Finally, the draft consultation response argues for a much wider public debate on the current and future funding of social care and health services.

Measures of success

- 4.1 A successful response to this consultation is one which adequately recognises the serious human rights issues involved, acknowledges and evaluates the key arguments made, and supports measures that address poverty issues raised.

Financial impact

- 5.1 The financial impact of the proposed Bill is covered in the main report and is a major influence on the recommended response to the consultation paper.

Risk, policy, compliance and governance impact

- 6.1 Financial risks are covered in paragraphs 3.9 to 3.13 above.

- 6.2 One policy issue to note is that the draft consultation response differs from the current COSLA position in one respect. COSLA is opposed to statutory regulation of the financial assessment of people’s ability to pay non-residential social care charges on the grounds that this should be a matter for local decision making, while at the same time striving to increase consistency between councils on a voluntary basis. The draft response distinguishes between maximum charging levels – which should be locally determined since they are tied to legitimate local variation in unit costs of services – and the financial assessment rules used to assess ability to pay, which the draft response considers are best standardised via statutory regulations, as has long been the case with residential care.

Equalities impact

- 7.1 Elected members have a duty under section 149 of the Equality Act 2010 to have due regard in their consideration of reports such as this to the need to: eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between different groups; and foster good relations between different groups, in respect of their protected characteristics. Officers advise that the characteristics in scope of this report are age and disability; and that those not in scope are: gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

Sustainability impact

- 8.1 The proposals do not affect carbon emissions.

Consultation and engagement

- 8.2 The Council undertook its own consultation on social care charging in 2015 and this is covered in a separate report on today’s agenda. The most relevant table is reproduced below:

| Question | Groups | Yes | No | Don't know | Not Answered | Grand Total | |
|--|---------------------------------|-----|-----------|------------|--------------|-------------|------------|
| Question 1: Do you agree that people who can afford to contribute to the cost of their social care should do so? | 1. Both Carer and Service User | 8 | 12 | | | 20 | |
| | 2. Service User Only | 21 | 14 | | 1 | 36 | |
| | 3. Carer Only | 11 | 15 | | | 26 | |
| | 4. Organisation Response | 0 | 6 | | 1 | 7 | |
| | 5. Other | 13 | 23 | | 3 | 39 | |
| | Grand Total | | 53 | 70 | | 5 | 128 |
| | Service users and carers | | 40 | 41 | 0 | 1 | 82 |

- 8.3 Among 81 service users and carers who answered this question, opinions were divided almost equally. However, it should be emphasised that this was a

consultation in which respondents were almost all self-selected; it was not a large-scale randomised social survey of general public or service user and carer opinion. We do not know whether a majority of all service users or carers oppose charging, although it may be safe to conclude that significant numbers would prefer charging to be abolished.

Background reading/external references

[Consultation document issued by Siobhan McMahon MSP, on A Proposal for a Bill to Abolish Charges for Non-Residential Social Care](#)

[Health, Social Care and Housing Committee, 17 June 2014: Charging for Care and Support. Report by Director of Health and Social Care](#)

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Links

| | |
|---------------------------------|--|
| Coalition pledges | P30 – Continue to maintain a sound financial position including long-term financial planning P38 – Promote Direct Payments in Health and Social Care P43 – Invest in healthy living and fitness advice for those most in need |
| Council outcomes | CO10 – Improved health and reduced inequalities CO11 – Preventative and personalised support in place CO12 – Edinburgh’s carers are supported CO13 – People are supported to live at home CO25 – The Council has efficient and effective services that deliver on objectives CO26 – The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives |
| Single Outcome Agreement | SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health |
| Appendices | 1: Draft response from the City of Edinburgh Council to consultation on a proposal for a Bill to abolish charges for non-residential social care. |

Appendix 1

A Consultation on a Proposal for a Bill to Abolish Charges for Non-Residential Social Care – response from the City of Edinburgh Council

The City of Edinburgh Council welcomes the opportunity to participate in this important consultation¹, lodged by Siobhan McMahon MSP, on a proposed Bill “to ensure that social care services provided to people in their own home are free of charge”².

The City of Edinburgh Council endorses the strong statements in the consultation paper about the essential role of social care in enabling people with disabilities to live at home as independently as possible, with good links to their local communities.

However, social care services are increasingly under pressure, both from increased demand due mainly to increases in longevity, but also from the UK Government’s continuing “austerity” policy of reducing public expenditure as a share of national wealth. A recent Scottish Parliament Information Centre (SPICe) analysis³ of Local Government Finance found that Scottish Government funding for local government, fire and police, fell by over £1 billion (8.1%) in real terms from 2008-10 to 2015-16. Similar pressures are also being experienced in the voluntary and private care sectors, particularly where their services are funded through contracts with local authorities. Whilst councils and other care providers have sought to improve efficiencies, redesign services to reduce costs, and protect investment in prevention, social work budgets continue to face severe pressures from demographic change, the need to improve pay and conditions in the independent care sector, and the NHS withdrawal from continuing care. The proposal to abolish charges for non-residential care has to be considered in this austere financial context.

The City of Edinburgh Council warmly welcomes the proposed Scottish Government investment of £250 million in social care announced in the Draft Scottish Budget for 2016-17. This amounts to over 6% of total Scottish local authority social work expenditure (in 2013-14) and over 8% of their total spend on adult social care in that year. However, it is a smaller amount than the Scottish Government has estimated as the full cost of abolishing non-residential care charges (£300m), including the cost of additional eligible demand (discussed further under **Question 5** below). Additional funding on this scale would also be needed at least every other year to meet the growing need for care due to the aging population and increased numbers of people with disabilities, and the other cost pressures facing social care. This seems unlikely for the remainder of the Spending Review period to 2019-20 and tough choices about priorities face national and local politicians, and their electorates.

We have structured our responses using the **seven consultation questions** listed on page 18 of the consultation paper.

Our response in summary is that the City of Edinburgh Council supports the proposed abolition of charges only if the financial impacts are fully funded by the Scottish

¹ <http://www.scottish.parliament.uk/gettinginvolved/92913.aspx>, The Consultation paper is at: http://www.scottish.parliament.uk/S4_MembersBills/Social_Care_Charges_Consultation_FINAL.pdf

² Consultation paper, page 1.

³ See: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-58_Local_Government_Finance_-_facts_and_figures_1999-2016.pdf and source data spreadsheets.

Government, and the abolition of charges is shown to deliver better outcomes for people who need social care than investing these funds in additional care services.

In the event that the Scottish Parliament does not vote to abolish non-residential social care charges, the City of Edinburgh Council would welcome additional funded anti-poverty measures within the local authority financial assessment of a person's ability to contribute to the cost of their care services, and supports placing these financial assessment rules on a statutory basis, as is the case with charging for residential care.

Before answering the specific consultation questions, we would like to comment on the human rights and equalities arguments contained in the consultation paper.

Human rights of access to social care

We agree with the arguments in the consultation paper that **access to social care is a basic human right for people with disabilities of all ages**. The consultation paper puts this case with compelling clarity and conviction in the opening paragraph on page 5:

For those people who use it, social care is an example of the essential practical assistance and support needed to participate in society and lead an ordinary life. Without such support, disabled people and other social care users cannot enjoy their human rights on an equal basis to non-disabled people. As such, social care provides an essential infrastructure for the equality and human rights of disabled people and others who use social care and support.

However, the key question is whether means-tested charging for such services, or modest flat-rate charging, is a breach of human rights, provided that the person has sufficient means to make it “reasonably practicable”⁴ for him or her to make a contribution to the cost of the care services.

Poverty as a human rights issue and anti-poverty arguments against charging

Many of the arguments in the consultation paper that “Social Care Charging in Scotland must be seen as representing a fundamental violation of a disabled individual's legitimate freedom to enjoy basic human rights” (page 5) are based on the proposition that **charging drives people into poverty**:

Social Care Charging leads to many disabled people being driven into poverty and many others being unable to enjoy the things in life that non-disabled people take for granted. Living as a disabled person means all sorts of extra costs, e.g. more laundry, special diets and extra heating. All this adds up and when you add in Social Care Charges many people fall below the poverty line. Worse than that, Social Care Charging may stop many people who need help from taking it up, leading to further social problems. (Foreword, page 1)

For those who are obliged out of necessity to accept local authority Social Care Charges, this situation often leads to a stunted life of poverty with insufficient resources to pay for anything more than the bare essentials of life, i.e. heating and food, at the level of spending deemed permissible by the local authority. (Page 5)

The argument in the consultation paper can be presented thus:

- (1) people with disabilities *on average* have lower incomes than people without disabilities;

⁴ This is the wording of section 87 of the Social Work Scotland Act 1968 which empowers local authorities to charge for social care.

- (2) living costs are higher for all or most people with disabilities⁵;
 - (3) many people with disabilities rely on state benefits which are being cut under “Welfare Reform”;
- and that *therefore* it is likely⁶ that:
- (4) paying social care charges tips disabled people into poverty if they are not already there, or makes their poverty worse than it would be otherwise.

We agree with the first three statements. The Scottish Government has recently published an analysis⁷ of DWP data for Scotland on households below average income (HBAI) drawn from the UK Family Resources Survey. From the table reproduced below, the report’s authors conclude that “while households with a disabled adult have a greater risk of relative poverty, there are no significant differences in the risk of severe and extreme poverty” (p35). The table shows 11% of families with an adult with disability in severe poverty compared with 9% of families with no disabled adult; the lack of “significant difference” will be due to the low survey numbers for Scotland which do not enable this difference to be distinguished from chance.

Risk of Severe and extreme Poverty 2012/13: Disability of adult

| | "Relative poverty" | "Severe poverty" | "Extreme poverty" |
|---|---------------------|---------------------|---------------------|
| | Below 60% threshold | Below 50% threshold | Below 40% threshold |
| Family with an adult with disability | 20% | 11% | 4% |
| Family with no adults with a disability | 14% | 9% | 5% |
| Total | 16% | 10% | 4% |

Source: Scottish Government: *Severe Poverty in Scotland*, Table7. (HBAI 2012/13, DWP).

Note: “below 60% threshold” means weekly household income is below 60% of the UK median.

The report noted that “One of the main reasons that disabled working-age adults are more likely to be in low-income households is because they are less likely to be in work”⁸, and that “There is also a higher incidence of low paid employment for people with disabilities”(p36). The report also noted that “Households with a disabled adult who are not receiving disability benefits face a higher risk of low income than those who do receive disability benefits” (ibid), an important finding at a time when the transition from Disability Living Allowance to Personal Independence Payments is intended to deliver 20% savings to the UK Government.

⁵ This also means that current definitions of poverty need adjustment for people with disabilities, a point well made by Learning Disability Alliance Scotland. See:

<http://www.ldascotland.org/docs/Understanding%20the%20levels%20of%20Poverty%20on%20disabled%20people%20in%20Scotland.pdf>

⁶ The argument presented can only conclude that poverty is the *likely* result. However, while case studies are not included in the consultation paper, Scotland Against the Care Tax will have examples of individual people with disabilities actually living in poverty.

⁷ *Severe Poverty in Scotland*, March 2015. Available at: <http://www.gov.scot/Resource/0047/00473036.pdf>

⁸ “The employment rate for disabled people remains at around half of that for people without disabilities. Within this, there are significant differences. For people with work-limiting disabilities only, the employment rate in 2012 was 60.5 per cent. For people who are disabled in terms of the Disability Discrimination Act (DDA) and had work limiting disabilities, the employment rate was 28 per cent. These figures compare with nearly eight in ten people who have no disability”. (ibid, page 36)

Mr Ian Hood, Coordinator of Learning Disability Alliance Scotland, recently produced a critique⁹ of this work, arguing that

It felt to us that these figures were a serious underestimation of the number in of disabled people in poverty because they failed to take account of the extra costs associated with disability. From additional laundry to special diets and extra travel costs, disabled people have to spend more to live the same type of lives as people without a disability.

Further for those who rely on social care services, the position may be made worse by the discretionary policy of charging for such support. If expenditure is a critical determinant of disability poverty, then part of the solution lies in the hands of those who apply such discretionary charges.

The City of Edinburgh Council acknowledges that people with disabilities generally have higher living expenses and we welcome further review of how these are taken into account in local authority financial assessments. We agree with Learning Disability Alliance Scotland that current definitions of poverty should be reviewed to establish whether and how they may need revision to capture disability related living expenses. That is something that the Scottish Government should consider.

Certainly, social care charging *may* make the poverty of disabled people worse, but whether it actually does so, and if so on what scale, are factual questions for which there is currently insufficient evidence. Part of the problem is that no information is collected nationally on the results of the financial assessments which councils use to decide whether a person has sufficient means to make a contribution to the cost of chargeable non-residential care services. Most people financially assessed to pay charges for care either do not pay at all or pay less than the full charge – the question is whether the people who paying something are those who are in poverty, or near the thresholds, such that the charges tip them into poverty, or whether most charges are paid by adults with disability who are not in relative poverty.

In assessing the argument that social care charging drives people into poverty the following facts also need to be taken into account:

- (a) Councils include “**income maximisation**” within the financial assessment as recommended in the COSLA Charging Guidance. This means identifying eligibility for DWP and other benefits not claimed, or not being received at the right levels, and supporting the person to claim these benefits. While data is not collected nationally, in some councils there is evidence¹⁰ that the additional benefit income gained is greater than the income collected from non-residential social care charging.
- (b) **Not all people who receive chargeable non-residential care services pay for them:** many are assessed as “no charge”, while others make a contribution on a sliding scale according to their means; for services with relatively high hourly costs, such as home care, only a minority of service users pay the full amount.

⁹ LDAS 2015: *Understanding the levels of poverty on disabled people in Scotland*, available at: <http://www.ldascotland.org/docs/Understanding%20the%20levels%20of%20Poverty%20on%20disabled%20people%20in%20Scotland.pdf>

¹⁰ For example, at a COSLA workshop on charging on 14 December 2015, a presentation on North Lanarkshire’s approach to social care charging stated that income of £19.9 million had been generated via income maximising social security benefits for people using non residential care services between 2010 and 2015, compared to £4.8 million collected in non-residential care charges over the same period.

- (c) **Not all non-residential services are chargeable** – some are excluded by law (such as free personal care for older people), while others are excluded by particular councils on policy grounds (for example many councils do not charge for community alarms regarding them as preventative services).
- (d) Financial assessment rules are intended **to prevent people falling into poverty** as a result of charging - this is explicitly stated in the COSLA Guidance¹¹. Local authority financial assessment rules are explicitly designed to prevent that happening, and also provide for charges to be waived in whole or part on a discretionary basis to relieve hardship.

People with disabilities who are charged for social care, their families or carers, are likely to respond to the above points with personal experiences of being asked to pay charges while they struggled to meet their daily living expenses, and many organisations¹² that represent people with disabilities or carers will have knowledge of people in such circumstances. Such experiences have to be treated seriously.

Certainly, if charging was forcing some disabled people into poverty, we agree that this would be a breach of human rights in such cases. For then some disabled people would only be able to acquire some practical means (social care) necessary to participate in society and lead an ordinary life at the cost of foregoing other necessary means (sufficient income¹³). It would also be a breach of the charging legislation empowering councils to charge no more than a person is able to pay.

However, it is still the case that **the argument that charging drives people into poverty does not entail the conclusion that charges should be abolished** because the option remains to **provide greater mitigation within the means test**, for example by increasing the amounts of income that are excluded from the charging calculations, in order to ensure charging does not force people into poverty.

For this reason, if non-residential social care charges remain, The City of Edinburgh Council would welcome **additional anti-poverty measures within the financial assessment** of a person's ability to contribute to the cost of their care services, including greater recognition of the higher living costs faced by disabled people and their families.

A further equality argument against charging

There is **another human rights argument in the consultation paper that does not involve poverty**. Disabled people who are charged for social care have to pay for a service that is

¹¹ "There will, ultimately, be a need for balance in the way that local authorities administer charges for care services: to ensure that the range and quality of local services are optimised on the one hand, and yet on the other, prevent people who are charged for services from falling into poverty" (para 1.9, COSLA Charging Guidance at: http://www.cosla.gov.uk/sites/default/files/documents/charging_guidance_2015_16.doc).

¹² Around 27 organisations have signed the petition to the Scottish Parliament calling for social care non-residential charges to be abolished: PE 1533 lodged on 01 September 2014 by Jeff Adamson on behalf of Scotland Against the Care Tax. See:

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/petitionPDF/PE01533.pdf>

¹³ People who are not disabled but live below the poverty line also lack some of the necessary means to pay for anything more than the bare essentials of life but are not in this position as a result of being charged for social care required on human rights grounds. This is central to the anti-charging case.

necessary for them to enjoy their human rights on an equal¹⁴ basis to non-disabled people. Whether or not people can afford to pay, *paying for social care itself* places them in an unequal position compared to people without disabilities who do not have to pay for social care to realise their human rights.

This is a strong argument that charging for care¹⁵ is in conflict with human rights and equalities considerations. Nevertheless, it still **does not follow that charging should be abolished**. In our answers to **Question 5** we explain why we do not think that the costs to local authorities of abolishing non-residential charges are likely to be met by compensating funding, or by further efficiency savings. If this is correct, these costs could only be met by social care service reductions. We believe this would mean a much greater impairment of the human rights of eligible disabled people than would be the case by continuing to charge and improving the anti-poverty elements in the financial assessments of people's ability to pay.

Among other things, public expenditure supports a wide range of human rights and the opportunity cost of funding the abolition of social care charges also needs to be considered from a rights perspective. Put simpler, we have to ask whether the additional public expenditure required to fund the abolition of non-residential charges would be better spent on other important priorities.

We now respond to the seven consultation questions.

Question 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)?

The City of Edinburgh Council conditionally supports the principle that health and social care services should be free at the point of delivery, provided that this can be fully funded by the Scottish Government and that the benefits are not outweighed by the costs. What this means is that **Question 1 cannot be answered without considering the financial implications**, including whether there are better ways of spending the additional funding required to make all (or more) care services free of charge at the point of delivery.

As well as “non-residential social care services”, charges are currently made for residential care services, and for certain key health services such as spectacles and dentistry¹⁶. The consultation paper does not consider these charged-for health services, or explain why the principle set out on Question 1 should not apply to them.

It is also important to note that Question 1 is not the same as the one asked on page 1 of the consultation; whether we should:

“Abolish all non-residential Social Care Charges and, in effect, treat social care needs in the same way that we treat health care needs – needs which intimately affect the

¹⁴ Or at least on a more equal basis than would otherwise be the case.

¹⁵ This argument also applies to the care (but not the accommodation, food, or laundry etc) elements in residential care charges, which local authorities have a legal duty to levy under the National Assistance Act 1948. Free Personal Care covers some but not all of these care costs for older people only. It is not clear in logic why the proposed Bill is confined to non-residential charges, although extending it would significantly increase implementation costs.

¹⁶ In addition, it should be noted that some absolutely essential health and social care services, such as end of life care in hospices, are provided by charities.

needs of our citizens and which, if we don't meet them, will damage their lives and damage our communities".

It is possible to support the principle of free social care yet believe that it is trumped by more important principles such as ensuring all people receive whatever care and other support they need to live independently. Our response therefore covers both questions.

In the current financial circumstances, The City of Edinburgh Council does not believe that non-residential social care charges should be abolished unless this policy was fully funded.

Most Scottish local authorities already provide greater budgetary¹⁷ protection for social care compared to other services and cannot simply switch further resources away from other important priorities to fund the loss of charging income and increased demand that a successful Bill abolishing non-residential social care charges would cause. Funding would need to come, therefore, from the Scottish Government at a time when UK Government block grant is set to fall. We discuss the funding issues in more detail in our response to Question 5. Without full funding, **the unintended consequences of a Bill abolishing non-residential social care charges would be less money to meet the social care needs of citizens in Scotland.** In addition, the Scottish parliament would need to consider the opportunity cost of abolishing non-residential care charges: is it probable that any additional funding that could be provided to implement an abolition of charges Bill would be better spent funding more care services than would otherwise be affordable for local authorities? It is arguable that that meeting unmet need for care would advance human rights to a greater extent than abolishing charges.

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

The consultation paper contains many issues not all of which would require legislation. Legislation would be necessary, of course, to abolish non-residential charges because councils currently have a power to charge for these services under section 87 of the Social Work (Scotland) Act 1968 provided that the person charged has sufficient means to pay for the service.

In our response to **Question 3** we support **greater standardisation of the financial rules for assessing a person's ability to pay for non-residential care.** For residential care, such rules are issued annually on a statutory basis¹⁸ and there is an argument for a similar approach to non-residential financial assessment. We do not think this would require new legislation as the 2002 Community Care and Health (Scotland) Act provided Ministers with the power to issue directions on matters relating to charging (as acknowledged on page 11 of the consultation paper).

Finally we acknowledge the point made in the consultation paper that some people who need care services are deterred by charging. If non-residential charging is not abolished, then

¹⁷ As evidenced by year on year changes in budgets and expenditure in the local authority financial returns, comparing social work services changes with other key areas of council spending. In Edinburgh annual budget allocations for adult social care recognise demographic and cost pressures.

¹⁸ The 2015 Charging for Residential Accommodation Guidance (CRAG) can be found at: <http://www.gov.scot/Topics/Health/Support-Social-Care/Financial-Help/Charging-Residential-Care>.

charges need to be capable of being seen as a legitimate contribution from people able to pay. Legitimacy is likely to require **greater recognition of the higher living costs faced by disabled people and firmer protection from poverty** by an increase in the income that people considered to have sufficient means are left with after paying any contribution to their care. Arguably it also requires **a statutory basis for the financial assessments** to underpin consistency.

Question 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?

We agree that there should be consistency in the rules which councils follow for financial assessments of a person's ability to pay social care charges. We do not agree that there should be the same consistency in the maximum amounts charged for particular services as these need to take into account variations between local authority areas in the cost of services, due to local labour market conditions, differences in population need, and other factors such as rurality. Greater standardisation of financial assessment would assist people moving between different local authorities and would also help to improve transparency.

Question 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)

No. The case presented in the consultation paper for free non-residential care services is much weaker where the service provides something that non-disabled people would also have to pay for. Using the list on page 7, such services would include:

- (1) the cost of the meals delivered to a person's home;
- (2) meals provided as part of day services;
- (3) shopping services;
- (4) handyman services;
- (5) the housing element of sheltered and very sheltered housing;
- (6) accommodation costs of residential short breaks (if not covered by the 2014 Regulations waiving charges for support to carers);
- (7) housing management and other non-care aspects of housing support services;
- (8) transport used for day activities;
- (9) elements of "individual self directed support budgets" intended to cover any of the above; and
- (10) community alarms/ telecare – see below.

Any Bill to abolish charges would require careful drafting to exclude such services.

The position of (10) **community alarms** is less clear for reasons very helpfully set out in the consultation paper:

The argument is less clear for community alarms but these services often do not provide support directly, rather they are simply a contact point for people in need of support which then contacts next of kin or other emergency services. In such cases the community alarm service could be seen as a replacement for a local phone point or mobile phone.

The services seem moderately priced – community alarms are between £1 and £5 per week while meals at home average £3 each - but the number of people having to pay on a

flat rated basis is quite large, meaning there is a significant overall contribution to Local Authorities from these services.

We believe that the consultation is correct in assuming that most councils¹⁹ charge for community alarms on a flat-rate basis. In our experience, service users are content to pay small charges for community alarms, and we see no merit in abolishing these charges.

Question 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?

The financial implications of the Bill for local authorities are:

- (a) loss of income from charging currently used to help fund social care; and
- (b) increased demand from people with care needs for services that are now free at the point of delivery.

In addition:

- (c) It is not very likely that local authorities will be able to find compensating additional funding from further efficiencies, transfers from other council services, increased charges for other council services, or increased council tax;
- (d) Currently the Scottish Government also seems unlikely to increase funding to local authorities to compensate for the additional costs and loss of income.

Therefore:

- (e) It is highly probable that the adverse financial consequences for local authorities from abolishing social care charges would lead to a reduction in social care expenditure on services which people need.

Some of these points are contested within the consultation paper, or by campaigners against social care charges, so further detail is provided below.

Local authority income from charges

Published local authority financial returns to the Scottish Government for 2013/14 show income from service user charges for non-residential social care at **£54.2 million**. The City of Edinburgh Council's financial return to the Scottish Government for 2014/15 shows income from service user charges for non-residential social care at **nearly £3 million**:

| | Gross Expenditure | Of which, Non-Residential care services | Income from Non-Residential service user charges | Income as % of Non-Residential Gross Expenditure |
|---|-------------------|---|--|--|
| | £'000 | £'000 | £'000 | % |
| Service Strategy | 1,982 | | | |
| Children's Panel | 79 | | | |
| Children and Families | 93,605 | 44,540 | 10 | 0.02% |
| Older Persons (aged over 65) | 158,414 | 59,078 | 1,855 | 3.14% |
| Adults with physical or sensory disabilities (aged 18-64) | 24,195 | 12,199 | 277 | 2.27% |
| Adults with learning disabilities (aged 18-64) | 64,132 | 35,931 | 330 | 0.92% |
| Adults with mental health needs (aged 18-64) | 15,917 | 5,358 | 280 | 5.23% |
| Adults with other needs (aged 18-64) | 7,986 | 4,531 | 217 | 4.79% |

¹⁹ Although some councils charge on a means-tested basis, as we do in Edinburgh.

| | Gross Expenditure | Of which, Non-Residential care services | Income from Non-Residential service user charges | Income as % of Non-Residential Gross Expenditure |
|---|-------------------|---|--|--|
| | £'000 | £'000 | £'000 | % |
| Criminal justice social work services | 13,836 | | | |
| TOTAL SOCIAL WORK | 380,146 | 161,637 | 2,969 | |
| Children's Services | 93,684 | 44,540 | 10 | 0.02% |
| Older People | 158,414 | 59,078 | 1,855 | 3.14% |
| Adults 18-64 | 112,230 | 58,019 | 1,104 | 1.90% |
| TOTAL ADULT SOCIAL CARE (excluding CJSW) | 270,644 | 117,097 | 2,959 | 2.53% |

NB Nearly £1m of the income shown for older people is for community alarms which we could not split between older people and other adults.

Whilst this charging income was only 2.5% of the Council's gross expenditure on non-residential social care in 2014/15, without this income there would be a **£3 million gap in funding**.

The Scottish Government has recently estimated that the comparable Scottish figure is **£55 million** in income from charges for non-residential social care. In addition "longer term costs" of **circa £300m** have also been estimated "factoring in those people who would currently meet eligibility criteria, but currently do not receive local authority-provided care [...] in the light of our experience of growth of demand in the roll-out of Free Personal and Nursing Care since 2002"²⁰.

The Scottish Government's calculation method for the c£300 million figure had not yet been made public at the time of writing. However, while the £55 million income from charging nationally is around 3% of gross social care expenditure, the additional demand would have to be funded at 100%: this is likely to explain much of the six-fold difference between the £55 million loss of income and the c.£300m cost of increased eligible demand.

On 16 December 2015, the Scottish Government published its Draft Budget²¹ for 2016/17. The settlement for local government was described as "strong but challenging" with a £318m (4.5%) reduction in General Revenue Grant, and a total £604m (5.6%) reduction in total revenue and capital funding. The Draft Budget proposed "the 9th successive freeze in Council Tax – a saving of £1,500 for an average band D household". The new Scottish Rate of Income Tax proposed for 2016/17 maintains the overall rates at their current level: "the rates paid by Scottish residents stay the same".

This figure is very close to a recent Scottish Government estimate of **£55 million** in income from charges for non-residential social care. In addition the Scottish Government also estimated longer term costs" of **circa £300m** after "factoring in those people who would currently meet eligibility criteria, but currently do not receive local authority-provided care [...]"

²⁰ Letter from Shona Robison MSP (Cabinet Secretary for Health, Wellbeing and Sport) to Michael McMahon MSP (Convener Public Petitions Committee), dated 2 November 2015: available at: <http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01533>

²¹ Available at: <http://www.gov.scot/Resource/0049/00491140.pdf>

in the light of our experience of growth of demand in the roll-out of Free Personal and Nursing Care since 2002”²².

Both figures have been criticised²³. The issues are technical but Council officers have examined the £55 million figure and conclude that the over-counting of income (due to a different interpretation of the statistical guidance in one council's return) is likely to be offset by under-reporting of income by other councils²⁴. The Scottish Government's calculation method for the **c£300 million** figure had not yet been made public at the time of writing. However, while the £55 million income from charging nationally is around 2.5% of gross social care expenditure, the additional demand would have to be funded at 100%: this is likely to explain much of the six-fold difference between the £55 million loss of income and the c£300m cost including increased eligible demand. The £300m estimate appears to represent £55 million loss of income plus £245m in increased demand building up to 10%-11% of current service expenditure over three or four years.

The question of how such a large sum is to be funded is central to the question of whether the human rights of disabled people who require social care are best met by abolishing social care charges or ensuring that there is a sufficient supply of care services or direct payments, even with charges for people assessed as being able to contribute to costs. Therefore, the calculations need to be as robust as possible and also completely transparent.

We turn next to the question of whether local or Scottish government will be able to fund these costs, assuming these are on the scale estimated by the Scottish Government.

On 16 December 2015, the Scottish Government published its **Draft Budget**²⁵ for 2016/17 and the **Local Government Finance Circular** with provisional allocations for 2016/17. The settlement for local government was described as “strong but challenging” with a £316m (4.4%) reduction in General Revenue Grant, within an overall revenue funding reduction of £336m (3.4%) and a total £585m (5.4%) reduction in total revenue and capital funding²⁶. The Draft Budget proposed “the 9th successive freeze in Council Tax – a saving of £1,500 for an average band D household”. The new Scottish Rate of Income Tax proposed for 2016/17 maintains the overall rates at their current level: “the rates paid by Scottish residents stay the same”.

²² Letter from Shona Robison MSP (Cabinet Secretary for Health, Wellbeing and Sport) to Michael McMahon MSP (Convener Public Petitions Committee), dated 2 November 2015: available at:

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01533>

²³ See Learning Disability Alliance Scotland December 2015 Newsletter:

<http://www.ldascotland.org/docs/Newsletter%20December%202015.pdf>. Also see:

<http://www.ldascotland.org/index.php/stop-the-care-tax>

²⁴ Under recording of income from charging in the social work financial return (LFR3) is due to: (a) Highland Council's return not including income from charges for adult social care transferred to NHS Highland under their lead agency model of Health and Social Care Integration (implemented early with Scottish Government support); (b) Direct Payments being paid net of client contributions, (c) other care providers also being paid net, and (d) some care services formerly funded under “Supporting People” being returned on the Housing financial return and not on the LFR3 Social Work financial return.

²⁵ Available at: <http://www.gov.scot/Resource/0049/00491140.pdf>; the Local Government Finance Circular is at: <http://www.gov.scot/Topics/Government/local-government/17999/11203/FC72015>.

²⁶ These figures come from Annex A to the Local Government Finance Circular No. 7/2015 (16.12.15) and differ slightly from those in the Draft Scottish Budget due to accounting adjustments.

These reductions suggest that local government will struggle to retain service levels at current levels and will not be able to fund the abolition of non-residential social care charges.

Additional funding of almost £400m was also announced for the NHS, including “an additional £250 million to support the integration of health and social care and build the capacity of community-based services” (Draft Budget page 5). Scottish Ministers “see health and social care as parts of the same interdependent system, and so, through this budget, we will protect both NHS and social care spending” (p.24):

The Draft Budget sets out the outcomes expected from this investment:

We will go further than the current annual investment of £130 million in the Integrated Care and Delayed Discharge Funds – by investing an additional £250 million per year through Health and Social Care partnerships to support the delivery of improved outcomes in social care. Integration will mean fewer people need to go to hospital to receive care, but where that is necessary and appropriate that they spend less time in hospital and are more likely to return home quickly, improving their outcomes, their experience of care and the sustainability of the system. We will work with Health and Social Care Partnerships to reduce the number of people delayed in hospital, when clinically ready to be discharged, developing innovative ways of providing care, including housing-based solutions and increased use of intermediate care, such as step-down beds. We will also better utilise data and commissioning to deliver services that meet the needs of the growing population of people with longer-term and often complex needs, many of whom are older. (Pages 25/26).

Funding the abolition of adult social care charges does not feature in this list and is nowhere mentioned within the Draft Budget²⁷. Indeed, if the longer term costs of abolition are £300m per year then this would more than use up the additional £250m per year in the Draft Budget.

All the above facts support the conclusion that **adverse financial consequences for local authorities from abolishing social care charges would most probably lead to a reduction in social care expenditure on services which people need**, unless the costs were fully funded by the Scottish Government.

Question 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.

If not fully funded, the positive impacts will be outweighed by negative effects

The proposed Bill is intended to reduce inequalities between people with disabilities, some of whom currently are expected to pay for at least some of the cost of their social care, and people without such disabilities, who on average have higher incomes and do not face care costs. We agree that this would be a **positive impact on equalities**.

²⁷ The Draft Budget is for 2016/17 only, whereas a Bill abolishing non-residential charges, if agreed by the Scottish Parliament, is unlikely to be implemented before 2017 or 2018. However, “in real terms the Scottish Budget is expected to fall by 3.9% over the period to 2019-20, compared to a fall of 2.2% in the UK as a whole” (http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-77_Spending_Review_and_Autumn_Statement_2015.pdf.) Given the protection being given to the NHS, funding reductions to Local Government to 2019-20 will be much higher.

On the other hand, our response to **Question 5** is that it is very likely that the income lost to councils from ceasing to charge, and the increasing demand that this would cause, would not be made up (either at all or fully) from other sources of funding. This means that a very probable implication of the Bill is that there would be a corresponding reduction in spending on social care services. This would be a **negative impact on equalities**, as significant numbers of disabled people would not receive the services they need. **We believe this would be a far worse negative impact than the positive benefit for the people receiving free social care.**

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

This consultation, the current petitions against charging to the Scottish Parliament, and the campaign by Scotland Against the Care Tax, all raise important issues and questions about the rights of people with disabilities. We understand that the experience of local authorities that have held consultations on social care charges is that the views of service users and carers are mixed, with many people deeply opposed to charging, but with many others accepting charges provided that there are fairly assessed and affordable. The wider population is also entitled to express their views on this subject, as taxpayers and users of council services – we do not know what priority they would accord the abolition of social care charges.

Demographic trends and improvements in longevity are increasing the numbers of frail older people and numbers of people with disabilities in all age groups. At the same time, fiscal austerity seeks to reduce public expenditure in the UK. Adult social care in Scotland is approaching the financial crisis that is already evident in England, where local authority funding has received less protection so far than here.

A much wider public debate is needed on the current and future funding of social care and health services, than is evident in the current narrower focus on charging – a debate that needs the same passion and commitment to a Fairer Scotland that so clearly and positively motivates this consultation.

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