

PE1533/I



Petitioner Letter of 19 January 2015

We would like to thank the committee for the opportunity to comment on the 6 responses received to our petition on care charges. Our approach through all of our work is to emphasise that getting the right support to live good lives in the community is about fulfilling the human rights of disabled and older people. Charging for social care forces people in Scotland to trade off the right to have nutritious food or to be warm and secure in their own home with help to get out of bed in the morning. Scots law recognises that people should be given the support they need (Robertson 2002) but social care charging threatens this vital response.

We were disappointed that only the response from Argyll & Bute seemed to wrestle with this truly important matter. Both COSLA and the Scottish Government focus very heavily on the Financial Assessment Templates as if human rights only apply to poor people. Even the EHRC seemed too concerned with the technical details of policy to realise that there is a real challenge that affects real people.

Mr Sneddon from Argyll & Bute recognises that a question mark must be placed over whether it is “appropriate to charge individuals for services which are organised or delivered based on assessed needs.” In this we would agree with him.

However Mr Sneddon and Ms Coleman from North Lanarkshire repeat the recurring fallacy that councils are using the income from charges to invest in more and better services. The reality is something different. In the 4 years from 2009 to 2013, total spending on social work in Argyll & Bute rose by 15%. The amount collected in charges in the same period rose by 133%. In North Lanarkshire overall spending fell by 2.8% while income from charges rose by 16%. Charges are being used to substitute for other ways of raising money. Disabled and older people are being punished because they are dependent on the people who charge them for the basic care they need to live a decent life. Our information comes from information published by councils themselves, the committee can draw its own conclusions about why these councils present this type of argument. Falkirk Council has at least the honesty to say that they are increasing charges in response to their own failure to manage their budgets.

We welcome the limited comments from Mr Pringle of the EHRC although we would have liked to see the national body for ensuring the rights of minorities take a more active part in this process. For example, rather than just saying that they “would require further information to consider whether national or local policy may be unlawful” they could have set out what this information would be and then set about collecting this.

We think it is particularly weak of the EHRC to ask councils to review how they carry out their Equality Impact Assessments. Equality Impact Assessments are currently little more

than window dressing. Midlothian's 2011 EIA on increasing care charging notes "lower income families will be impacted by charging policies as a higher percentage of their income will be required to meet charges." But what does it propose to do about this for those already claiming state benefits? – nothing! The 2010 Argyll & Bute EIA noted the negative impact on younger adults but made NO proposals to deal with this. This is all perfectly legal - councils are not obliged to change their policies to mitigate negative impacts, they simply have to note them.

Nonetheless the EHRC response shows that the Human Rights and Equality law is untested in this matter and that there may be a case for the courts to determine the legality of the way that care charging is implemented throughout Scotland.

Taking a legal route is not our first preference as we believe that this issue is best settled politically through the work of the Scottish Parliament. We have had discussion with leading Human Rights lawyer, Tony Kelly and are now supporting individuals to challenge a number of local authorities over the question of age discrimination in the differential application of Income Disregards.

This will be a slow process and we have therefore had further discussions with one of Scotland's leading QCs, Niall McCluskey. Mr McCluskey has indicated he will, without charge, if requested, prepare a legal opinion for the Committee on the application of Human Rights and Equality law in this matter. We think, such an opinion would be advantageous to the committee as we are sure that you, like us, do not agree that human rights should be for sale or that decisions should be resolved by a squabble over who pays between local and national government.

If local councils have been illegally charging disabled and older people for years, then this needs to be addressed. Better to do it by consensus now than leave it to the courts to make large backdated awards for compensation later.

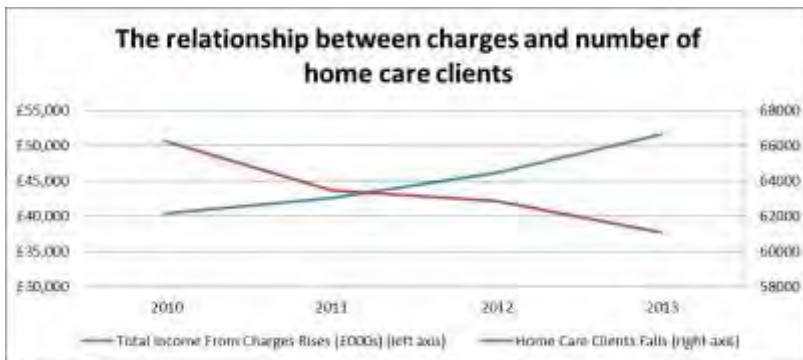
We have not commented on the question of compensation for local authorities which exercises many of the respondents. This is not the time. If the committee would like to talk about this later then we have some thoughts we would be glad to share in a future presentation.

COSLA has supplied the longest response to the committee. Most of it has been about the work they have been doing on care charges. We found it interesting that COSLA wanted to introduce the term "Co-Payment" into the discussion. This is a term used in the USA health care system by insurance companies and its underlying philosophy is that with no co-payment, people will consume much more care than they otherwise would if they were paying for all or some of it. In other words it is used as a rationing tool.

Co-payment is controversial in medical insurance circles as it is recognised that co-payment will discourage people from seeking necessary medical care and higher co-

payment levels may result in non-use of essential medical services and prescriptions, thus rendering someone who is insured effectively uninsured because they are unable to pay these higher charges.

The parallels with our concerns over care charges should be obvious. Given this we were surprised that COSLA then said they did not find our evidence on people stopping services compelling. We provide a simple chart below to restate the case.



Over a four year period from 2009 to 2013, the amount of money collected from older and disabled people has risen from £40 million to £51 million, while the number of home care clients has fallen from 66,000 to 61,000. Correlation may not equal causation but there is a compelling case for members of COSLA to

answer as they are in control of both of these factors.

However we do want to spend some time looking at the question of the standardised Financial Assessment Template (FAT). This is promoted by COSLA as being bringing standardisation to care charging across Scotland. What is not revealed in the response is how they plan to introduce standardisation – by making tens of thousands of older and disabled people worse off!

Their plans for standardising the Income Disregard will mean that people under the age of 60 in ten local authorities representing 40% of the Scottish population will be worse off as the level of income they are allowed to keep before being charged is driven down from £173 per week to £122. The standardised FAT will reduce the income that the most vulnerable in our society have by up to £50 per week. North Lanarkshire Council who are currently low charging would be one of these.

People with some savings with which they plan to buy a house, save for their retirement -or more likely buy equipment not provided by the state - will also be affected. One of our case studies tells how he has had to buy a specialist powered wheelchair with a unique tie-down facility for safely travelling in his vehicle; a wheelchair adapted vehicle – not provided by Motability; an indoor powered wheelchair; a powered arm support and weekly physiotherapy from his savings. COSLA’s proposals will leave those with even modest savings over £6,000 worse off in 17 local authorities representing 58% of the Scottish population.

COSLA proposes to make partners who care for a disabled person be jointly assessed to pay for care charges, taking their own personal income into account. Many of these people are providing a substantial amount of care to their partners - care that might otherwise have

to be resourced by local authorities. They are saving local authorities money yet COSLA wants them to do even more by making them contribute financially to their partners care charges. The paper may talk about co-payment but what about co-production?

This FAT is simply an excuse to start charging more and more people more and more money. Yet COSLA is too shame faced to admit this in their response. We have to assume that the Scottish Government who is waiting for this new template to sort the matter doesn't know this.

There is some talk inside COSLA of Transitional Protection for those who already pay care charges but this would exclude the 40% of social care clients who start services for the first time each year.

Our estimate is that this new template will increase the income to Scottish local authorities from older and disabled people by £12 million in the first year alone and over a period of time by up to £30 million in total. You would almost think that whoever was designing this FAT was determined to discredit COSLA by making a mockery of the concerns of disabled people, carers and MSPs. None of the proposals that have been put forward improve the situation for anyone having to pay for their social care.

This is why we continue to say that COSLA cannot reform this system except by making it worse for disabled people. Councils who understand this, like Fife and Fulham in London, decide that charging people for social care needs to be completely stopped.

We are disappointed that some replies were not received, particularly the one expected from NHS Scotland. We believe strongly that care charging threatens the successful integration of health and social care and believe the NHS in Scotland can demonstrate this. In conclusion we urge you to

- Take up the offer of a legal opinion on the legal position from Niall McCluskey QC.
- Write to the Child Poverty Action Group and the Poverty Alliance for an opinion on care charging pushing people into poverty.
- Ask SPICE to carry out further research into the costs of abolishing care charges based on our paper and on the effects of welfare reform on care charging.
- Write again seeking a view from the NHS on the effects of social care charging on bed blocking and emergency admission into health care.

Human Rights are at the core of the argument here and we believe that the Scottish Parliament has a proud record of promoting and protecting the rights of every Scottish citizen.

