

PE1533/B

SACT evidence to the Petitions Committee

Care Charges: Human rights and equality

For many disabled people, community care is one example of the practical assistance needed to eliminate discrimination, promote equality of opportunity and protect human rights. Without it, many disabled people cannot: participate in society on an equal basis to others; enjoy the right to a family life or live free from inhumane or degrading treatment; they cannot live their life in the way they choose, at home, at work and in the community or live a productive life.

All of the rights protected by the Equality Act, European Convention on Human Rights (ECHR), in the Human Rights Act and in subsequent human rights conventions, belong to disabled people. The United Nations Convention on the Rights of Disabled People (UNCRPD) strengthens and contextualises these rights. It also recognises the role of community care in doing so: Article 19 of the UNCRPD states that; to ensure disabled people equally enjoy the rights laid out in the ECHR states must ensure; “disabled people have a right to live in the community, with the support they need and can make choices like other people do”. In addition, at Section 1A, the SDS Scotland (Act 2012) further recognises the role of community care in supporting such rights to participate in society.

Charging for care breaches the following instruments that the UK has implemented or is signatory to: UN Convention on the Rights of Disabled People (UNCRPD), Equality Act (2010), Human Rights Act (1997) (HRA), and it is in indirect contravention of EU Directive on Freedom Movement.

There are at least 7 different human rights that are breached by charging for care.

UNCRPD

Art. 7 Disabled children – families face the same costs and variation (and reduced eligibility) as adults.¹

Art. 9 Accessibility – disabled people’s incomes allow them to access goods, services, local community, sports, etc. Care charges vastly reduce disabled people’s incomes and regress their right to access these things. Further, many LAs don’t even disregard Disability Related Expenditure that may be incurred in costs associated with lack of accessibility e.g. paying for taxis because buses aren’t accessible.

Art. 19 Living independently and being included in the community Care and support is a crucial service that enables disabled people to achieve the right to participate in society on an equal basis with non-disabled people, e.g. getting out of bed.

Charging changes care and support from a right (to independent living) to a commodity that people can choose to pay for. Disabled people cannot choose whether or not they want care – they either NEED it or they don't. By putting a price tag on it, it becomes a budgetary pressure that may or may not be affordable.

Art. 20 Personal Mobility This right is not realised if the cost for care support to mobilise is unaffordable. According to Art. 20, mobility includes mobility aids, devices, forms of live assistance and intermediaries; training and specialist staff... facilitating the personal mobility of disabled people *at the time of their choice and at affordable cost.*

Art. 23 Right to private and family life (HRA art.8), and art's 27 (employment) and 28 (Adequate standard of living); indirect contravention of the EU directive on Freedom of Movement many disabled people need social care to participate in all aspects of private and family life. Charging for this is inconsistent with preserving a right to it.

In addition, non-portability of care: Disabled people, like anybody, may have multiple reasons for wanting to relocate in Scotland. It may be to move for a spouse, or to be nearer family members or informal carers; it may be that the person or one of their family needs to move for a new job, education or training. The variable rates of charging across different LA's means that people cannot simply transfer, or 'port', their care package if they move from one LA to another, e.g. if they move from one with no or low care charges to one that has higher charging rates or different earnings thresholds (as in the case study). Each or all of these rights can be denied if a person cannot afford to pay the additional charges in new local authorities. It does not make sense that as a European citizen, a disabled person living in Scotland has the right to move (to live or work) freely between states, but faces barriers from doing so if they want to move between local authorities to do the same.

Art. 27 and 28 Employment and Adequate Standard of living Disabled people who work or want to work may need more care and support to enable to them to get ready for the working day/ for interviews.

Charges can be a disincentive to earning if earnings are accounted for in charge rates. Current COSLA guidance for example recommends that a mere £20 of earnings is disregarded – so you are £20 better off in employment than you would be out of work!

Equality Act (2010)

Age Discrimination People over the age of 65 in Scotland are no longer charged for their personal care and disabled people view this cut off as arbitrary and unequal, discriminating against disabled people of working age on the basis of age.

In summary, social care is as important an infrastructure as health, education, transport and housing, in achieving equalities and human rights. Charging for it does

not treat it as such. To put another way, removing the cost of community care from disabled people would increase their incomes, potentially lift them from poverty and allow more opportunities; promoting a more flourishing, 'healthier, wealthier and fairer' society in Scotland.

Enabling disabled people to participate in the economic, social, cultural and civic life of the community does not only allow them the freedom to exercise their human rights, it also benefits society as a whole and the values and principals of social care (to enable people to become independent and part of the community) recognise this. That is why social care is part of the Scottish Government's commitment to develop independent living for disabled people.ⁱⁱ

Dr Pauline Nolan
Policy & Engagement Officer
Inclusion Scotland

ⁱ Lancaster, Becki October 2012 'Social Work Services for disabled children and young people and their families: Assessment and Eligibility', research commissioned by The Children and Young People's Commissioner in Scotland

ⁱⁱ <http://www.scotland.gov.uk/Publications/2013/04/8699/2>