



City of Edinburgh Council Record of Equality and Rights Impact Assessment

Part 1: Background and Information

(a) Background Details

ERIA Title and Summary Description:

CONTRIBUTION BASED CHARGING FOR SELF-DIRECTED SUPPORT AND CARE AND SUPPORT SERVICES

PLEASE NOTE: THIS IS THE DRAFT EQUALITY AND RIGHTS IMPACT ASSESSMENT BEING ISSUED AS PART OF THE CONSULTATION – IT WILL BE REVISED TO REFLECT CONSULTATION FINDINGS AND ANY FURTHER RESEARCH

To see the consultation paper and participate in the consultation please go to: <https://consultationhub.edinburgh.gov.uk/hsc/draft-contribution-based-charging-policy/>. Responses to the consultation, including responses to this draft Equalities and Rights Impact Assessment, can also be sent by email to: hsc.chargingconsult@edinburgh.gov.uk.

The deadline for people to submit views is 12 July 2015.

Service Area	Division	Head of Service	Service Area Reference No.
Health and Social Care	All service groups	Monica Boyle, Head of Older People and Disabilities	To be allocated

(b) What is being impact assessed?

Policies and Services	Date ERIA commenced
Draft Contribution-based Charging for Self-Directed Support	February 2015
Phased replacement of current policies: <ul style="list-style-type: none"> Charging for Non-residential Care Charging for Short Term Residential Care 	

(c) ERIA Team

Name	Organisation / Service Area
Alex Black	Project Lead. Business Services Manager, H&SC
Mike Brown	Strategic Policy and Performance Manager, H&SC
Shenaz Bahadur	Equalities Officer, H&SC
Dorothy Hill	Engagement and Communications Manager, H&SC

Part 2: Evidence and Impact Assessment

(a) Evidence Base

Please record the evidence used to support the ERIA. Any identified evidence gaps can be recorded at [part 3a](#). Please allocate an abbreviation for each piece of evidence.

Evidence	Abbreviation
Report to the City of Edinburgh Council's Health, Social Care and Housing Committee, 27 January 2015: Contribution based charging for self directed support and care and support services . Explains legislation about charging; lists 2014/15 charges for care services; lists services that are excluded from charging; sets out implications of Self Directed Support Act for charging; summarises Scottish Government and COSLA guidance about impact of SDS for charging; describes scope of SDS; sets out principles to underpin charging; and describes how a new "contributions-based charging" policy is being developed, to be informed by consultation and to come back to Committee for a final decision.	HSCH-Report
Evidence submitted to the Scottish Parliament's Petitions Committee - Petition PE01533, submitted by Jeff Adamson on behalf of Scotland Against the Care Tax	None – see weblinks in 2(b) below
Consultation with organisations representing service users and carers, such as Lothian Centre for Community Living.	Consultation (Planned for 13 April to 12 July 2015)
Consultation with members of the public and individual service users and carers, via the Council's online Consultation Hub: https://consultationhub.edinburgh.gov.uk/	Hubresponse (Planned for 13 April to 12 July 2015)
Review of other local authorities policies on contributions and financial assessments. (In progress)	Other LAs
Analysis of internal data on current service user contributions. (Information on current contributions based on the current charging policy is being compared to information modelled on proposed SDS contribution based charging policy).	H&SC Charging analysis – (to be done)
Internal data on customer satisfaction and customer complaints relating to charging.	Satisfaction/Complaints

(b) Rights Impact Assessment – Summary

Please describe all the identified enhancements and infringements of rights against the following ten areas of rights. Please also consider issues of poverty and health inequality within each area of rights:

- Life
- Health
- Physical security
- Legal security
- Education and learning
- Standard of living
- Productive and valued activities
- Individual, family and social life
- Identity, expression and respect

Participation, influence and voice

Please indicate alongside each identified enhancement or infringement the relevant policy or service (see [part 1b](#)) and relevant evidence (see [part 2a](#)).

Summary of Enhancements of Rights

This draft assessment of the impact on rights considers the following question:

Question 1: Would the new charging policy, if adopted, enhance or infringe rights compared to the current charging policies?

The policy proposal is to replace the existing “service-based” charging policy for adult social care with a new policy based on a financial contribution to a personal budget. The new policy, if approved, would apply to people currently using adult social care services only when their care needs were reviewed.

It is not proposed to change the financial assessment of a person’s ability to afford any charges. The financial assessment includes a benefits check to ensure people are claiming all state benefits to which they are entitled: this will continue under the new policy. Cases of hardship will continue to be considered on an individual basis. Social care legislation also prevents councils from charging for certain services¹ – “free personal care” for people aged 65 and over is probably the best known example. This also will not be changed by the new policy, if adopted².

The consultation may identify evidence and views that change the current opinion of Council officers about the answer to Question 1. The current view of Council Officers (at the time of writing, before the consultation starts) is that **the new charging policy, if adopted, will neither enhance nor infringe rights compared to the current charging policy.**

There is an argument that the new policy would treat service users more equally. Under the proposed new contribution-based charging policy everyone within scope of self-directed support will be financially assessed using the same means tested non-residential financial assessment and charged no more than they can afford. However, while equality *within* the population of service users is important, the main focus of the rights assessment is *between* service users and the general population, and this is not expected to change as a result of the proposed policy.

Moving to one charging policy that is applicable to all care and support service users who are eligible for self-directed support should also be easier to understand. If agreed, the new policy will be described in leaflets and be available on the Council’s website.

¹ A list of such services is included in the Consultation paper and also in “HSCH-Report” listed in the evidence section on page 2 above

² For example, “free personal care” for people aged 65 or over would continue by excluding from any means-tested contribution that part of the personal budget required to meet personal care needs. People receiving other services excluded from charging will also not be charged for the corresponding element in their personal budgets

Summary of Infringement of Rights

Can these infringements be justified? Are they proportional?

As stated above, Council officers currently do not regard the proposed new self-directed support contribution-based charging policy as *reducing* rights, compared to the current policy.

However, Council officers are aware that this view may be contested by some disabled people and carers, or by their representative organisations, if they regard *any* social care charging as infringing human rights.

Strictly speaking a view opposed to any social care charges does not address **Question 1** above, but a different question:

Question 2: does charging for adult non-residential care infringe the rights of people who need care services compared to other adults who do not currently need care services?

The policy proposal, being assessed for impacts on rights and equalities, is not to abolish non-residential social care charges, but to change the way in which people are charged in order to better fit with Self-Directed Support. Nevertheless, the policy proposal very much assumes charging will continue. It is therefore appropriate, in this draft rights impact assessment, to address the more fundamental concern that charging for care *in itself* is not compatible with human rights.

This view is very clearly expressed in a current petition to the Scottish Parliament (Public Petition PE01533, submitted by Jeff Adamson on behalf of Scotland Against the Care Tax (SACT)):

Our petition starts from the premise that social care in any form is an equality and human rights issue. It is an essential part of the infrastructure of a fair and just society which respects, upholds and guarantees the equality and human rights of its citizens.

A society which pursues a policy of charging those who are entitled to use non-residential care services does not do this. Instead care charging uncompromisingly demands that they pay more than any able bodied person to achieve the same basic human rights. In some instances it can lead to a disabled individual deciding to forego much needed care and support, a decision which will entail significant risk of harm or further deterioration of an illness or condition.

For those who are obliged out of necessity to accept local authority 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.

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

Further evidence submitted by SACT to the Petitions Committee claims that

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 [...].

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. http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1533_B_Scotland_Against_The_Care_Tax_11.11.14.pdf

The submission goes on to identify in more detail “7 different human rights that are breached by charging for care”.

The Convention of Scottish Local Authorities (COSLA) has made a response to this petition to the Scottish Parliament Petitions Committee, which first sets out the financial context: “the changing structure of our population could generate a significant gap between supply and demand within the health and social care system over the next twenty years”. Therefore:

“..our view is that there needs to be a debate about how we increase the size of health and social care investment over time, and asses what combination of income streams - state income (generated by general and local taxation) and private income - should be used to support this growth”.

COSLA’s submission also seeks to address the human rights issues:

COSLA recognises the well-established political and philosophical position which contends that the realisation of human rights depends on access to certain fundamental goods. For disabled people and frail older people, we would agree that access to care can be important to the realisation of their human rights. The question, however, is whether the charging regime acts as a barrier to access. We did not find the evidence submitted by the petitioners to be compelling [...]. Our view is that co-payment is therefore not inconsistent with a socially just system of accessing health and social care.

http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1533_F_COSLA_07.01.15.pdf

“Co-payment” is COSLA’s term for the funding of care (and certain other public services) through a combination of taxation and charging. Their submission then argues that the local authority financial assessment of a person’s ability to pay for care does not in fact leave people with care needs in poverty, although these assessments are in need of further standardisation to reduce variation between individual local authorities. This standardisation work is being overseen by COSLA’s Charging Guidance Working Group and is regularly reported to meetings of COSLA Leaders (leaders from each council that is a member of COSLA, with their chief executives also in attendance)

The debate on the issues raised by this petition – and by an earlier one in the name of [Amanda Kopel](#) (PE01480) that sought to extend Free Personal Care to people aged under 65 years – was not yet concluded at the time this draft ERIA was written. COSLA’s Charging Guidance Working Group is also considering a number of financial assessment issues that affect how much service users are charged.

The view of Council officers completing this draft ERIA is that:

1. Human rights are reduced if social care is not available in sufficient quantity or quality to meet the social, personal and material needs of people with disabilities;
2. The argument that charging for non-residential social care is itself an infringement of human rights is plausible but not yet compelling. These arguments do not appear to have been tested in the courts, and we have not identified any case law that rules that charging for social care is itself in breach of human rights, or that the financial assessments that councils undertake to establish how much a person can afford to

- pay for their care are flawed on human rights grounds;
3. The current national financial assessment rules only apply to income that is significantly above³ the DWP minimum income levels, and also disregard certain benefits and income. Issues of financial hardship are considered on an individual basis and there is a right of appeal. The financial assessment starts with a benefit check to ensure people are receiving all benefits to which they are entitled. People who use social care services therefore should not be left in poverty.
 4. If social care charges were an infringement of human rights, it could be argued to be proportional and justified if the volume of care services currently funded by income from charges were no longer sustainable because the income lost could not be made up from other sources. Charging for non-residential adult social care services raised income of around £3.6 million in 2013/14 for the City of Edinburgh and this is used to fund more care services than would be the case if these charges were abolished.

The financial context is relevant to the arguments made in points 1 and 4 above. Funding for local government has been reducing year on year and this looks likely to continue. At the same time, demand for social care continues to increase due to demographic factors. It is becoming increasingly difficult to maintain services at current levels.

(c) Equality Impact Assessment – Summary

Please consider all the protected characteristics when answering questions 1, 2 and 3 below. Please also consider the issues of poverty and health inequality within each protected characteristic:

- Age
- Disability
- Gender identity
- Marriage / civil partnership
- Pregnancy / maternity
- Race
- Religion / belief
- Sex
- Sexual orientation

1. Please describe all the positive and negative impacts on the **duty to eliminate unlawful discrimination, harassment or victimisation**. Please indicate alongside each identified impact the relevant policy or service (see [part 1b](#)) and relevant evidence (see [part 2a](#)).

Positive Impacts

This draft assessment of the impact on equalities considers the following question:

Question 3: Would the new charging policy, if adopted, have positive or negative impacts on the duty to eliminate unlawful discrimination, harassment or victimisation compared to the current charging policies?

The current view of Council Officers (at the time of writing, before the consultation starts) is

³ Due to the Council's current financial assessment rules that base a person's "personal allowance" on the more generous pensioner DWP minimum income levels for all adults, plus a 16½% "buffer". A "taper" is then applied to a person's weekly income, *minus* this personal allowance, certain expenses and disregarded benefits, to establish the "assessed weekly charge" (the maximum someone can afford to pay): the taper is 30% of the first £20 of remaining income, 50% of the remaining £20, and 70% of the rest.

that the new charging policy, if adopted, has neither positive nor negative impacts on the Council's duties under the 2010 Equality Act to eliminate unlawful discrimination, harassment or victimisation, compared to the current charging policies.

People with disabilities, and people who have care needs because of frailty in old age, are within the scope of the Equality Act, (because "age" and "disability" are "protected characteristics" under this legislation). The likely impacts of the proposed change in charging policy are discussed below.

Age and Disability – The current charging policies impact on service users in different ways, some service users are assessed to contribute to the cost of their care based on their ability to pay, some pay a flat rate charge which is not based on ability to pay, while others are not charged only because historically the service has not been included within charges. Under the proposed new charging policy, all new service users, and current service users when reviewed, will be assessed to contribute to the cost of their care, based on a single charging policy that aims to ensure everyone is treated in a fair and consistent manner. It will continue to be the case that no charges will be levied for services that are excluded from charging by legislation – this will be achieved by excluding the corresponding element in the Personal Budget from the financial assessment of a person's ability to pay. There is therefore an overall increase in equality in the sense of treating people who use services in the same way in relation to charging.

The impact on individuals is harder to assess at this stage. We are doing further work to try to estimate the numbers of people in the following four groups – "no charge", "no change", "charged more", and "charged less":

1. **"No charge"**. The majority of people who use adult social care services do not currently pay any charge – either because (a) they have insufficient funds, or (b) they are only receiving services that the Council cannot charge for, such as free personal care for people aged 65 or over, or (c) they are only receiving services which historically has no charge (eg day care in respect of the care element). All people who currently would pay no charge for reasons (a) and (b) would also pay no charge as a result of the proposed change from service-based charging to a contribution to the personal budget. [Group (c) is further discussed under point 3 below].
2. **"No change"**. Many people who have sufficient income to pay all or some of the charges for social care will be assessed to make the same financial contribution to their personal budget under the new charging policy (if agreed) as they would have done under the current policy.
3. **"Charged more"**. Some people would be charged more under the new charging policy than they would under the current one. We believe that some people who receive day services may pay more under the new charging policy than they would under the current one – this is discussed further in the next section on "negative impacts".
4. **"Charged less"**. Some people would be charged less under the proposed new charging policy than they would have done under the current policy. We think that many people receiving a short-term residential break will be in this position. However, charges for people receiving short breaks in order to benefit a carer ("respite" care), following a carer's assessment, now cannot be charged for, under new legal Regulations⁴ introduced from 1.4.14. This means that it is people receiving short breaks for other reasons would be likely to benefit from the change in charging policy, because people receiving "respite"

⁴ The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014

short breaks already benefit from no charge, and this will continue under the 2014 Regulations.

Further work will be done to estimate the numbers of people likely to be in each of the four categories above. Initial indications are that the new policy may increase charging income by about £450,000 in a full year (this represents 12% of income from charging in 2013/14) – however further modelling will be undertaken which may amend this figure. While an increase in income from charging is not part of the policy intention of the proposed changes in charging, it would help fund care services which are under considerable financial pressure.

Negative Impacts

As already stated, the current view of Council Officers (at the time of writing, before the consultation starts) is that **the new charging policy, if adopted, has neither positive nor negative impacts on the Council's duties under the 2010 Equality Act to eliminate unlawful discrimination, harassment or victimisation, compared to the current charging policies.**

The likely negative impacts of the proposed change in charging policy on disabled people and older people who require care services are discussed below.

Age and Disability – The new charging policy, if agreed, will only apply to current service users when their needs are re-assessed or their current care package is reviewed. As stated above, initial modelling suggests that there will be an overall increase in the amount that people contribute to the cost of their care packages. So while many people will pay the same level of charges which they would have paid under the current policies, the number of people who will pay more in charges is likely to be greater than the number of people who will pay less. Any increase (or decrease) in the amount charged would only apply from the date of the new financial assessment or new personal budget.

The main group of people affected negatively (ie who are asked to pay more) are likely to be people using their personal budget for day care services, where there is no current charge for the care element. If they are currently receiving other chargeable services, they may be already paying as much as they can afford so there would be no extra charge involved in moving to "contribution-based charging". However, people only receiving day care services would in future be financially assessed to find out whether they can afford to make a contribution (if the new charging policy is agreed), and if they can afford to do so would be expected to pay a charge.

If the policy is agreed, all people with sufficient income to contribute will make a contribution to their personal budget by paying a fixed amount four-weekly, regardless of how and when they choose to use their personal budget. If for any reason any part of their personal budget remains unspent, the charging contribution will be adjusted as necessary in an annual review (if, for example, it falls below the level being charged). For some people, this might mean that they pay a little more over the year, than under the current arrangements. For example, someone assessed as being able to pay no more than £520 per year (£10 per week) for a care package costing £780 (£15 per week) would still pay £520 in the year even if there are two weeks when their care package is not needed. This is because they are still able to pay £520 towards their care package, whether or not the care package costs £780 a year (£15 x 52 weeks) or £750 per year (£15 x 50 weeks).

The financial assessment is intended to ensure that charging is fair. This will continue to

include a benefits check to ensure that all DWP and other benefits to which the person is entitled are being claimed, and the financial assessment itself is intended to ensure that no-one pays more than they can afford. People will be notified in advance of any changes to their charges and will be supported through the process by having contact information and staff available to meet with them. Hardship will still be considered on an individual basis and the current rights of appeal against changes in charges remain in place.

2. Please describe all the positive and negative impacts on **the duty to advance equality of opportunity** (i.e. by removing or minimising disadvantage, meeting the needs of particular groups that are different from the needs of others and encouraging participation in public life)? Please indicate alongside each identified impact the relevant policy or service (see [part 1b](#)) and relevant evidence (see [part 2a](#)).

Positive Impacts

The proposed Charging Policy meets the equality of opportunity duties by:

- (1) Treating all adult social care service users on an equitable basis;
- (2) Continuing to maximise people's incomes through a benefits check being part of the financial assessment process;
- (3) Continuing to treat service users equally in relation to the amounts of income that are exempt from charging;
- (4) Maintaining or increasing income from charges required to fund care services at the time of rising demand and reducing resources, recognising the importance of social care services to reducing disadvantage due to frailty in older age, disabilities, and mental health problems.

Negative Impacts

Council officers preparing this draft assessment have considered the following question:

Question 4: If more people make a financial contribution to their care costs under the new charging policy that they would do under the existing policy will this leave them financially worse off and therefore less able to participate socially and economically?

The benefits check and financial assessment should leave all service users with an income above the minimum levels used by the DWP. So, while the new policy, if adopted, may leave some people financially worse off than would have been the case under the current policy, they should still have sufficient means to participate socially and economically. There should be no negative impacts on the duty to advance equality of opportunity.

3. Please describe all the positive and negative impacts on **the duty to foster good relations** (i.e. by tackling prejudice and promoting understanding)? Please indicate alongside each identified impact the relevant policy or service (see [part 1b](#)) and relevant evidence (see [part 2a](#)).

Positive Impacts

The proposed policy has no impacts (either positive or negative) on the duty to foster good relations between social groups and people, as defined by the "protected characteristics" listed at the start of this section.

Negative Impacts

The proposed policy has no negative impacts – see above.

Part 3: Evidence Gaps, Recommendations, Justifications and Sign Off

(a) Evidence Gaps

Please list all relevant evidence gaps and action to address identified gaps.

Evidence Gaps	Action to address gaps
Modelling the likely future impacts on current service users (if the new policy is adopted) within next 2-3 years	Modelling is only possible for current clients who have had a financial assessment - further work is being undertaken to model the impacts.
Issues not currently expected but which come up during the consultation	These will be logged during the consultation and discussed by the officers undertaking the ERIA so they can be reflected in the final version after consultation has ended, and any charging policy or practice issues be considered, including amendments to the current proposals for the "contribution based" charging policy.
Experience in other councils that are also changing their charging policies to fit Self Directed Support	Request for information to (1) COSLA Charging Guidance Working Group, and (2) relevant Social Work Scotland Standing Committees

(b) Recommendations

Please record SMART recommendations to

- (i) eliminate unlawful practice or infringements of absolute rights;
- (ii) justify identified infringements of rights; or
- (iii) mitigate identified negative equality impacts.

NB THESE ARE DRAFT RECOMMENDATIONS WHICH WILL BE CHANGED OR AMENDED FOLLOWING THE CONSULTATION

Recommendation	Responsibility of (name)	Timescale
Address rights and equalities issues identified by the consultation. Amend ERIA.	Mike Brown/ Alex Black	Ongoing through consultation and by end of July 2015
Continue to monitor effectiveness of the financial assessment and associated benefits check in maximising income and in delivering fair charging that does not leave service users with insufficient income.	Alex Black	Ongoing
Continue to assess equalities implications for the Council of ongoing COSLA recommendations to change non-residential care charging policy or financial assessment rules	Mike Brown/ Alex Black	Annual

(c) Sign Off

I, the undersigned, am content that:

- (i) the ERIA record represents a thorough and proportionate ERIA analysis based on a sound evidence base;
- (ii) the ERIA analysis gives no indication of unlawful practice or violation of absolute rights;
- (iii) the ERIA recommendations are proportionate and will be delivered;
- (iv) the results of the ERIA process have informed officer or member decision making;
- (v) that the record of ERIA has been published on the Council's website / intranet, or
- (vi) that the ERIA record has been reviewed and re-published.

Date	Sign Off (print name and position)	Reason for Sign Off (please indicate which reason/s from list (i) to (vi) above)
27.5.15	Monica Boyle, Head of Older People and Disability Services	Draft ERIA only (i-iii)
July 2015		Final ERIA – to be done (i-iv, vi)
TBD		Publication (v)

DRAFT