

ILiS submission to the Commission on Local Tax Reform

1. Background

About us: the Independent Living in Scotland project (ILiS)

1.1 The Independent Living in Scotland (www.ilis.co.uk) project aims to; support the delivery of the rights of disabled people, in particular those rights in the United Nations Convention on the Rights of Disabled People (UNCRPD)¹, and; entrench the principles and practice of independent living across Scotland. To achieve this, ILiS works with Disabled People's Organisations (DPOs)² to support them to collaborate, coproduce and influence change at national and strategic levels. ILiS is the Scottish Government's lead partner in its wider approach to equality for disabled people via the national UNCRPD/Independent Living Programme. Through this programme, the shared aspirations for disabled people's equality and human rights of Scottish Government, their partners and disabled people, are set out in "Our Shared Vision for Independent Living in Scotland"³.

Human Rights

"Empowerment is a core pillar of the human rights approach... when people feel they can influence what happens in their community and can contribute to delivering change, there can be many benefits."⁴

1.2 All human rights belong to disabled people. The UNCRPD is one of a number of international treaties (e.g. UNCRC, UNCEDAW, UNCERD) that the UK is signatory to. It was developed by disabled people, for disabled people. It is supported internationally because of the recognition that disabled people are still frequently denied basic rights and freedoms that non-disabled people take for granted. Crucially, the UNCRPD requires the full participation of disabled people in the development and implementation of legislation, policies and programs to implement the Convention. This is something that sets it apart from other international treaties. The UK signed the Convention in 2007 and ratified it in June 2009.

1.3 For disabled people to; enjoy their basic human rights, participate in society and lead an ordinary life, and *influence what happens in their community*; **all**

¹ <http://www.un.org/disabilities/convention/conventionfull.shtml>

² DPOs are organisations run by and for disabled people. This means that at least 51% of their Board are disabled people. You can read about DPOs and find out how to get in touch with them, here:

http://www.ilis.co.uk/uploads/Directory%20of%20Disabled%20Peoples%20Organisations%20in%20Scotland_July%202014.pdf

³ <http://www.scotland.gov.uk/Publications/2013/04/8699>

⁴ Community Empowerment (Scotland) Bill, Policy Memorandum; 2014

local policy, practice and services – and crucially the ways in which money is raised to pay for them – must; take account of human rights and the UNCRPD and; promote disabled people’s freedom, choice, dignity and control. Sadly, this is not yet the case.

1.4 Despite the fact the UNCRPD is legally binding on the UK, the rights set out in the UNCRPD are not yet a reality for disabled people in Scotland⁵. Whilst signed by the UK Government, its ‘provisions... extend to all parts of federal States without any limitations or exceptions’⁶. This means that the Scottish Government, Non-Departmental Public Bodies, Health Boards and local authorities (and others) have obligations to implement it. Addressing this and ensuring implementation of the Convention therefore requires a number of actors to play their part to make rights a reality – including local government.

1.5 Our submission to the Commission is in this context. It seeks to highlight; the role of local government in disabled people’s human rights, the difficulties disabled people have in influencing local government spend (including as a result of a lack of enjoyment of their human rights) and; the impact this has on the ways in which essential services for disabled people are funded locally (we will use an example of social care). As such our submission contributes to 2 of the specific questions in your call for evidence:

- Scotland’s current system of council tax: to what extent does the current system of council tax deliver a fair and effective system of local taxation in Scotland?
- Local priorities: how well do you think that communities’ local priorities are accounted for in the way that local taxation operates at the moment? If there is room for improvement, how should things change?

2. Disabled people and local democracy

2.1 Disabled people are an extremely marginalised group of people whose human rights are not always respected or protected⁷. Local government has a key role to play in addressing this. Many of the services that local government provide/commission have an impact on the protection, promotion and progression of disabled people’s equality and human rights. We are pleased that shortly, COSLA will publish a draft Disability Delivery Plan for consultation setting out how local

⁵ “Inquiry into implementation of Article 19 of the UNCRPD”; Joint Committee on Human Rights; 2012

⁶ <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁷ ILiS; “Evidence to the Scottish Government’s Finance Committee re the budget”; 2014

government will do this. The Scottish Government will also publish a draft Disability Delivery plan for consultation, setting out how it will progress implementation of the UNCRPD (see section 4 for more detail on both).

- 2.2** We acknowledge the role of local decision making in determining local priorities and agree that it creates opportunities for local communities to decide on solutions best suited to them. However, we are concerned that disabled people – both as members of a geographic community and as a community of interest within it – are not always involved in local decision making structures. This means their ability to influence local priorities and thus for local government to take account of them, is limited.
- 2.3** Disabled people access local government services that are available to the general population (e.g. bin collection), but they also access services that are disproportionately relied upon by them as a specific group of people (e.g. social care, support for learning etc.). This means that sometimes, disabled people need local government to raise and spend money differently from the ways in which other members of the community might, in order to ensure their rights are protected – simply put, they have different, but important, priorities for tax and spend.
- 2.4** For example, if a local authority chooses to spend more on bin collection but not on social care, this decision will have an impact on the equality and human rights of disabled people in a way that it wouldn't necessarily on the wider community – section 3 covers social care as an example, in more detail.
- 2.5** As such, tax *and* spend decisions of local government (and the services it provides/commissions) can have a huge impact on disabled people – both as users of the services everyone uses, and as users of services that disabled people use more specifically to meet their needs and support their rights.
- 2.6** We recognise and agree that asking local communities to make decisions about tax and spend is important and we acknowledge that decision makers must respond to the needs and wishes of the whole community. However sometimes, the competing priorities outlined can create tension in communities – particularly when marginalised communities are not engaged in such decisions. When local

communities are more ‘empowered’ in general, marginalised communities, such as disabled people, can be disempowered.

2.7 It is essential that the rights of disabled people are not unduly affected by, and that opportunities to promote equality are not ignored in favour of, the majority voice in the community. This is especially true in this, a time of squeezed budgets where the minority voice of disabled people must not be discounted or negated against a stronger majority voice. To ensure that this doesn’t happen, and that disabled people’s ability to influence local priorities and thus to ensure that local government take account of them, we make a number of comments and recommendations at sections 2.8 – 2.14 below.

The disproportionate impact of decisions on disabled people

2.8 Where decisions on tax and spend disproportionately effect a specific group of people, this can have an impact on both their equal enjoyment of human rights but also on their role as active citizens. It is therefore not only morally important to recognise the potential for disabled people to be disproportionately affected by decisions (including financial decisions) but it is also widely acknowledged – and the need to address it recognised – in law⁸.

2.9 For example, public authorities must demonstrate that they have had ‘due regard’ to the aims of the Public Sector Equality Duties⁹ in their decision-making. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had ‘due regard’. In their guidance to public authorities on this, the Equality and Human Rights Commission note that for local government, this means “document[ing] your assessment of the impact on equality when developing financial proposals”¹⁰.

2.10 **We recommend** that the Commission on Local Tax reform consider the requirements and spirit of the Public Sector Equality Duties (Equality Act 2010) and the Human Rights Act (1998) in their design of

⁸ Under the equality duty (set out in the Equality Act 2010), public authorities must have ‘due regard’ to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Disability is a protected characteristics covered by the equality duty. It is also important to note that local authorities are also subject to the Human Rights Act (1998) and thus human rights must also be taken into account in decision making.

⁹ Set out in the Equality Act 2010

¹⁰http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Making%20Fair%20Financial%20Decisions%20Guidance%20for%20Decision%20Makers%20January%202015.pdf

a new system of local taxation – and on any recommendations it makes on how local communities subsequently spend it. This would include that any system it recommended must ensure that the rights of citizens were enjoyed equally; and; that sufficient funding to do so was raised in a way that did not place disproportionate requirements on those citizens who use specific services. This would also mean that effective mechanisms must be in place to ensure disabled people can contribute equally to decisions on tax and spend.

Involvement of disabled people in local decision making

- 2.11** We believe it is crucial that all local decisions on tax *and spend* must take account of the needs, wishes and rights of disabled people, and that this must be through effective engagement and involvement of them in decision making. Not doing this will mean that; services fall short for disabled people; their priorities may be over-shadowed, their rights may regress and decisions might disproportionately and negatively impact on them. In short, not involving disabled people in local tax and spend decisions means that public finances are not spent in the most efficient way, and disabled people's rights may not be properly taken account of or upheld as a result.
- 2.12** **We recommend** that the Commission make recommendations on mechanisms to ensure that seldom heard voices are supported and are not drowned out in favour of the majority – both in terms of the way in which a new form of taxation is designed and the mechanisms developed locally to spend that tax.
- 2.13** Disabled People's Organisations (DPOs) have a unique role to play in this. DPOs are organisations run by and for disabled people themselves. They work to collectivise the voice of disabled people to influence and lobby for change at all levels. DPOs work to empower and build the confidence and capacity of disabled people so that they can contribute to the civic and economic life of their community – including for example, in decisions on tax and spend. In addition, DPOs have the trust of disabled people and their allies and a wealth of experience in capturing and marshalling the voice of disabled people. As such, they have a critical role in helping establish and maintain the vital link between disabled people and public services.
- 2.14** **We recommend** therefore, that the Commission recognise, the vital role of DPOs in supporting local government to make decisions on tax and spend through the inclusion of recommendations to involve and engage disabled people in such decisions locally.

2.15 We will use the rest of our response to highlight an example of local government expenditure that disabled people believe needs further investment and how current responses to funding the service disproportionately impact on disabled people.

3. Funding for local services that disabled people rely on

3.1 Social care services are funded, provided and organized by local government in Scotland, through a combination of local taxation, grants from the Scottish Government and charges to service users. As it stands therefore, local government in Scotland has a crucial role to play in ensuring the system is fit for purpose, and crucially that it is fairly and appropriately funded.

3.2 Many disabled people rely on social care services to enjoy their basic human rights. Despite its role in supporting human rights, the provision of social care is largely discretionary – local government choose how much of its funding it allocates to this essential service. This discretion also means that there is variation in how social care is funded, delivered and enjoyed by citizens, across Scotland.

3.3 The ability to choose how much funding is allocated to social care, and the fact that this may vary from area to area, can result in some disabled people enjoying a service that meets their requirements and others who do not. It can also mean that some disabled people pay a higher charge than other disabled people, for the same service, depending on where they live.

3.4 There is strong evidence to suggest that wherever it is delivered, there is not enough money in our social care system in Scotland¹¹ to fund a service which supports independent living and human rights. The ability of local government to raise money to fund social care is therefore of paramount importance to disabled people – as is the ability of disabled people to influence decisions on raising money to spend on social care. We do not believe that the current system of local taxation gives local authorities the ability to do this in a fair and just way to meet their obligations to disabled people.

¹¹ COSLA submission to Scottish Government Finance Committee on demographic change and ageing population; 2012; Prof David Bell (2012:19), Fiscal Sustainability: Issues for the Finance Committee Work Programme 2012; <http://www.scope.org.uk/news/massive-economic-benefits-providing-social-care-disabled-people>; COSLA Guidance on Charging for LA, 2012-2013; Care charging league, Learning Disability Alliance, 2013; In control, 2012; "Destination Unknown"; Demos report, 2010; Office for National Statistics - (LFS Apr-June 2013); Inclusion Scotland; "Know the Score: Welfare Reform Briefing", 2013; Leonard Cheshire Disability, 'Disability Poverty in the UK', Jan 2008, <http://www.lcdisability.org/?lid=6386>; <http://scotlandagainsthethetax.org/>

The social care crisis

3.5 Scotland spends £2.93bn on social care¹². Whilst there are many people who benefit hugely from this sizable spend, for some, this fails to deliver the social care needed to ensure the dignity of our citizens, to prevent illness and to empower communities. As our population ages¹³ and disabled people live longer, demands on our social care services will increase¹⁴. This rise in demand is happening at a time when public sector finance is declining and local authorities' have limited ability to raise revenue. It is expected that we will see even greater financial pressure on our social care services than on our health services in coming years. The result is that there is not enough funding in the social care system in Scotland.

3.6 Underfunded social care has led to: the isolation and exclusion of those who need it but don't get enough of it (or indeed any of it)¹⁵ ¹⁶; high levels of unmet need (and the resulting higher costs for the public purse)¹⁷; an under-resourced and under-paid workforce¹⁸; well-intended policies and practices being undermined¹⁹; and unpaid carers not being adequately supported²⁰.

The response to the crisis and why it is unfair

3.7 With a fixed grant from the Scottish Government and limited ability to raise money locally, there have been 2 main responses to this underfunding. First, to raise eligibility criteria for social care, leaving disabled people without essential support; and secondly, to ask the people who use it, to pay more for it²¹.

3.8 Managing finances by raising the bar to access services disempowers disabled people, and leaves a public sector financial strain falling disproportionately at their door. Social care is not a luxury but indeed essential for the equal enjoyment of human rights.

3.9 In addition, despite the fact social care is essential for the equality and human rights of those who receive it, the amount people are asked to pay is

¹² Taken from p56 of the Local Government Financial Statistical Return to the Scottish Government in 2013, the figure is for all social work spend in areas associated with social care, and excludes strategy, criminal justice and the children's panel <http://www.scotland.gov.uk/Resource/0044/00444846.pdf>

¹³ Age UK; "Care in crisis", 2014

¹⁴ Grant & Wood, DEMOS; "Destination unknown", 2012

¹⁵ <http://www.ageuk.org.uk/scotland/latest-news/archive/social-isolation-increases-death-risk-study-finds/>

¹⁶ JCHR; "Inquiry into implementation of article 19 of the UNCRPD in the UK"; 2011

¹⁷ <http://www.scope.org.uk/news/massive-economic-benefits-providing-social-care-disabled-people>

¹⁸ Unison; "Time to care", 2014

¹⁹ Scottish Parliament Equal Opportunities Committee; "Report into the Scottish Government's Draft Budget 2014-15"; 2014

²⁰ <http://www.carersuk.org/for-professionals/policy/policy-library/carers-at-breaking-point-report>

²¹ <http://scotlandagainsththecaretax.org/>

increasing by as much as 20% in some areas²². It is disabled people's view that charging for essential support to meet their basic human rights, equates to asking some people (who receive social care) to pay more money than anyone else to achieve the same basic human rights and to participate in their communities. They also believe that as a group of people who are; living in poverty²³, more likely to rely on benefits (and are disproportionately affected by their reforms)²⁴ more likely to be out of work than non-disabled people²⁵; they cannot afford to bridge the funding gap in social care.

- 3.10** Both of these responses to the funding gap in social care locally mean that disabled people are being asked to plug a gap in public finances in a way that non-disabled people are not. Disabled people do not believe it is fair or just to do this and that everyone in local communities should share the cost of meeting the demands of such services – like they do for bin collection or cycle lanes.
- 3.11** In successful ageing societies, an effective social care system is as important a part of the infrastructure as transportation, schools, hospitals and digital broadband. Everyone has a stake in getting it right – older and disabled people, families, women, the NHS, business and our political leaders.
- 3.12** We note that the issue of funding social care may indeed need people out-with local government to react and respond to the crisis – this includes the Scottish Government. However, we raise it here as an example of the interaction between monetary decisions and the enjoyment of human rights, the ability to raise and spend taxes locally and the involvement of disabled people in such decisions more generally. We believe that this example highlights the unfairness of the current system. It shows that the needs of the non-disabled majority have been put before the needs of the disabled minority by elected representatives and local government officials. This results in unfairness, a breach of disabled people's human rights and of the equality duty placed on public bodies.
- 3.13** Furthermore, we believe that addressing the issues of variation and discretion noted at 3.2 above may go beyond consideration of how taxes are raised locally. If the current arrangement is to remain (where social care is

²² Inclusion Scotland; "Vision for an inclusive Scotland"; 2014

²³ <http://odi.dwp.gov.uk/disability-statistics-and-research/disability-equality-indicators.php>

²⁴ Briefing for Scottish Parliament debate Welfare Reform Committee Debate: The Impact of Welfare Reform, 13 March 2014

²⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406369/labour-force-survey-disabled-people.pdf and <http://www.gov.scot/Resource/0047/00471945.pdf>

locally delivered and funded) we believe it will be important to address not just the underfunding of it, nor the ways the gap in demand and supply have been addressed; but also to consider how we can ensure local discretion and variation do not result in inadequate resources being allocated to meeting the needs of disabled people as a minority group.

3.14 We recommend that the Commission consider how best to ensure the fair allocation of resources to social care.

3.15 We recommend that the Commission consider and make recommendations both on a new system of local taxation as well as on a new system of how decisions on spending it are taken. We believe that both come hand-in-hand. *A fair and just system of raising and spending* local tax must not only include measures to ensure there are no disproportionate requirements on those citizens who use specific services (2.10 above) but also measures to ensure that all members of local communities (including communities of interest within them) have a fair chance at determining spend. This will not only empower the local community, but will also help give local government a stronger mandate to spend more on ‘specialist’ services where this is needed.

4. Further information

4.1 ILiS have recently set out to the Scottish Government, Scrutiny Bodies, MSPs and Local Government; what progress has been made, and what still needs to be done, to implement the UNCRPD in Scotland. This work has involved; tailored seminars, briefings, and one to one meetings. A report of the work ILiS did with Local Government, Scrutiny Bodies and MSPs is available to download at http://www.ilis.co.uk/uploads/docs/Ready%20for%20action%20too_FINAL.pdf.

4.2 In response to the information they have received through the above processes, the Scottish Government will publish a draft Disability Delivery Plan on implementation of the UNCRPD in Scotland, for consultation. This plan will include a set of commitments on action to progress the UNCRPD. The plan will set out actions for the Scottish Government and its agencies over the next 10 years. In addition, recognising the key role of Local Government in making the rights in the UNCRPD a reality, COSLA will also publish a draft Disability Delivery Plan for Local Government in Scotland, on implementation of the UNCRPD in Scotland. This plan will include a set of commitments on action to progress the UNCRPD. The plan

will set out actions for the 28 councils that are members of COSLA between 2015 and 2018.

- 4.3** Both of these plans when published will have implications for tax and spend and **we recommend** that the Commission take account of them, and disabled people's wishes/rights, when designing a new system of local taxation.
- 4.4** In addition, **we recommend** that a set of principles are developed, in coproduction with disabled people and DPOs, on the ways in which any new system of local taxation is designed.

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