

## EQUALITY COMMISSION FOR NORTHERN IRELAND

### Response to the consultation by the Department of Health on the Reform of Adult Social Care Northern Ireland

June 2022

#### *Introduction*

- 1 The Equality Commission for Northern Ireland (the Commission) welcomes the opportunity to respond to the call for views on the Department of Health's plans for Reform of Adult Social Care<sup>1</sup>.
- 2 This response draws on our work across a range of equality grounds as well as work being progressed in our role as part of the 'Independent Mechanism' in Northern Ireland under the United Nations Convention on the Rights of Persons<sup>2</sup> with Disabilities, to promote, protect and monitor the implementation of the Convention here.
- 3 In setting out our recommendations, we acknowledge the ongoing impact and difficulties arising from the Covid-19 crisis. We also acknowledge external pressures on the current system, such as the changing demographics, the complexity of our current health and social care system, the sustainability and affordability of provision.
- 4 In our 2013 consultation response to the Department's Discussion Document: The Future of Adult Care and Support in Northern Ireland<sup>3</sup>, the Commission recommended, inter alia, that:

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<sup>1</sup> [Consultation on The Reform Of Adult Social Care | Department of Health](#)

<sup>2</sup> [United Nations Convention on the Rights of Persons with Disabilities](#)

<sup>3</sup> Equality Commission for Northern Ireland (2013): [Response to "Who Cares? The Future of Adult Care and Support"](#)

- any new proposals regarding social care should take into account equality and human rights obligations;
- the vision should be broadened to incorporate service user engagement at a strategic level as well as the engagement of service users within the various decision-making structures associated with the design and delivery of the future model of social care;
- consideration should be given to the exploration of all potential avenues for the future funding of our social care system;
- consideration should be given to the merits of a legislative framework, similar to the approach adopted in England, to guarantee minimum support to service users and carers.

5 We are pleased to note that the current consultation document has set out proposals to address a number of these recommendations.

***Convention on the Rights of People with a Disability***

6 The Commission notes that the Department's Vision for the Future Adult Social Care System includes a commitment to adopting a human rights-based system of service provision. We welcome this approach as corresponding well with the delivery of Northern Ireland Executive's obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

7 We note that further consideration has been given to expanding the vision beyond personalisation of health and social care so that disabled people's views and the views of other groups such as carers and older people are incorporated at strategic policy decision making level.

8 The CPRD makes clear that disabled people's voices and experiences, reflecting both the aspirations of the individual disabled person and the collective experience of disabled people, are an essential ingredient for the effective implementation of the Convention.

- 9 Article 3(a), General Principles<sup>4</sup>, of the CPRD requires consideration of the need for respect for inherent dignity, individual autonomy, including the freedom to make one's own choices and the independence to enable that choice to be made. Further, Article 3(c) calls for the full and effective participation and inclusion in society of disabled people.
- 10 In terms of understanding the collective experience of disabled people and their situation, Article 4(3), General Obligations<sup>5</sup>, requires the Department to closely consult and actively involve disabled people, through their representative organisations, in the development and implementation of legislation and policies to implement the Convention and in decision making processes related to them.
- 11 Article 19 of the CPRD, the right of disabled people to independent living, set alongside other Articles such as the right to individual autonomy set out in Article 3(a), General Principles, is consonant with the practice of self-directed support and the personalisation ethos upon which the Department's vision is based.
- 12 Article 19 sets out the right of persons with disabilities to equal access to mainstream services that are tailored to the individual service user requirements. Any new social care model must ensure that disabled people are free to choose the type of assistance they require to support a good quality of life and prevent isolation and economic hardship.
- 13 With respect to realisation of Articles 25, Health<sup>6</sup> and 28, Adequate standard of living and social protection<sup>7</sup>, the Department are required to ensure that disabled people are protected from any measure that would have the effect of diminishing the state's obligation to maintain these rights set out in the Convention.

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<sup>4</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 3: General obligations](#)

<sup>5</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 4: General obligations](#)

<sup>6</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 25: Health](#)

<sup>7</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 28: Adequate standard of living and social protection](#)

## Strategic Priority 1: Sustainable System Building

- 14 The Commission welcomes the Department's vision for the future that Northern Ireland will have an Adult Social Care System that delivers, inter alia, a human rights based system of service provision
- 15 The Commission **recommends** that the Department set out in writing the key human rights commitments which will underpin this system, including the Human Rights Act 1998<sup>8</sup>, the UNCRPD<sup>9</sup>, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>10</sup> and the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>11</sup> together with the associated General Comments by the respective Committees which interpret and clarify substantive provisions within the Conventions.
- 16 The Commission welcomes the proposal by the Department to introduce legislation to provide a cohesive legislative base for Adult Social Care Provision, including, inter alia, duties to provide information, choice and control of service provision to service users as consonant with the rights set out in Article 19 of the UNCRPD.
- 17 We also welcome the Department's proposal to uplift the Direct Payment rate to broadly match domiciliary care rates will take into account lower overheads and management costs for Direct Payments as likely to contribute to an increase in take up of self-directed support (paragraph 3.21).
- 18 We note that the Department proposes no change to current charging arrangements for Adult Social Care at present, pending the outcome of a detailed review of charging approaches which will make recommendations for future charging arrangements (proposed action 3).
- 19 ECNI **recommends** that the options outlined in the review are screened to identify any potential impact on individuals belonging to the Section 75 equality categories, in accordance with the Department's Equality Scheme commitments. Where the impact on equality of opportunity is identified as major, a full

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<sup>8</sup> [The Human Rights Act 1998](#)

<sup>9</sup> [United Nations Convention on the Rights of Persons with Disabilities](#)

<sup>10</sup> [The United Nations Convention on the Elimination of All Forms of Discrimination Against Women](#)

<sup>11</sup> [The United Nations Convention on the Elimination of All Forms of Racial Discrimination](#)

Equality Impact Assessment should be carried out. However, even if the impacts are identified as minor, in respect of one or more of the S75 categories, then consideration should be given to proceeding with an EQIA, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity.

20 The review of charging arrangements should take into account the impact of austerity on disabled people (as outlined by the UN Committee on the Rights of Persons with Disabilities<sup>12</sup>) and the impact of the current cost of living crisis on disabled people<sup>13</sup>.

21 The Commission also notes the Department's intention to review the current balance in the mixed economy of care and make recommendations as to what balance between statutory and independent sector provision there should be (proposed action 4).

22 The Commission **recommends** that the Department screen the options outlined in the review as per our advice in paragraph 18 above.

23 The Commission welcomes the Department's commitment, set out at paragraph 3.51, regarding commissioning objectives and outcomes, as part of its proposed action 5 to reform how Adult Social Care is planned and delivered within the new integrated care system model.

24 The Commission welcomes the Department's proposals for regulation of the Adult Social Care Market including the setting of regional cost bandings for all forms of Adult Social Care, informed by the criteria set out at paragraph 3.54. We also acknowledge the Department's commitment that Direct Payment rates will be broadly matched with these bandings as

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<sup>12</sup> United Nations Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 6 of the Optional Protocol to the Convention](#)

<sup>13</sup> Disability Action (2022): [Progress towards the implementation of the UNCRPD in Northern Ireland](#), page 111.

a positive development that is likely to support increased take-up of Direct Payments.

25 Furthermore, we also note the Department's commitment that publically funded care would be provided at the agreed regional cost banding with no provision for top-up costs to be applied, so as to ensure that high quality care provision is available to all of the population regardless of means.

26 The Commission acknowledges the introduction of increased powers of inspection in relation to overhead and management costs and levels of profit as steps likely to secure better value for money for the public purse.

27 The Commission also notes that the consultation document states that ' Domiciliary care providers are encouraged to match) the National Living Wage) or go much further than that in pay, terms and conditions' (paragraph 3.17). We welcome the commitment by the Department to provide funding to bring the Government National Living Wage into effect in the care home and supported living sectors (paragraph 3.18).

## **Strategic Priority 2: A Valued Workforce**

28 The Commission welcomes the Department's commitment (under proposed action 9) to improve the pay, terms and conditions of the lowest paid in the social care workforce, consonant with the recommendations of the Power to People report<sup>14</sup>.

29 The Commission notes that the Minister for Health has established a Fair Work Forum, including trade union representation which will take forward a regional, collaborative approach to pay, terms and conditions.

30 However, we also note the absence of any timeline for securing equalisation of pay, terms and conditions across the Adult Social Care sector.

31 The Commission welcomes the Department's commitment, via a Social Care Workforce Strategy, to actions to develop

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<sup>14</sup> Kelly, J. and Kennedy, p (2019): [Power to People - proposals to re-boot adult social care and support in NI](#), pages 57-59.

supervision and support, career pathways, support training and education for the Adult Social Care workforce and to raise the profile and recognition of the social care workforce (paragraph 4.08).

32 The Commission also welcomes the commitment by the Department to improve a range of supports for personal assistants and their employers (proposed action 12).

33 The Commission acknowledges the Department's proposal for a regional approach to data collection for all social care services to ensure consistency across the sector (proposed action 15).

34 The Commission **recommends** that comprehensive equality data should be collected to identify equality impacts and shape targeted actions to advance equality.

35 To inform effective policy development, tailored to the specific circumstances and needs in Northern Ireland, we **recommend** that all key measures within the Adult Social Care system are not only tracked in aggregate but also tracked for impact on individuals from across the Section 75 equality groups.

36 Consideration should be given by the Department to the inclusion of a facility in the Encompass IT system, currently under development, to capture data on the S75 categories.

37 The Commission welcomes the Department's commitments to introduce a requirement that all staff working in social care settings must be registered with a professional body (proposed action 17) and that a model to identify safe staffing levels will be developed (proposed action 23).

### **Strategic Priority 3: Individual Choice and Control**

38 The United Nations Committee on the Rights of Persons with Disabilities, in its concluding observations on the first report from the United Kingdom, recommended that the State Party, in line with the Committee's General Comment No.5 (2017) Living independently and being included in the community and the Committee's Inquiry concerning the United Kingdom of Great

Britain and Northern Ireland under Article 6 of the Option Protocol of the Convention (inter alia):

- (a) Recognise the right to living independently and being included in the community as a subjective right and the enforceability of all its elements and adopt rights-based policies, regulations and guidelines for ensuring implementation.
- (c) Provide adequate and sufficient and earmarked funding... to be able to provide resources allowing persons with disabilities to live independently and be include in the community and to exercise their right to choose their place of residence and where, and with whom to live.
- (e) Allow sufficient resources to ensure that support services are available, accessible, affordable and adaptable sensitive to different living conditions for all persons with disabilities in urban and rural areas<sup>15</sup>.

39 The Commission welcomes the Department's commitment to introduce legislation (paragraph 5.10) which will promote individual choice and control, but **recommends** that the legislation take account of the Committee on the Rights of Persons with Disabilities' concluding observations and recommendations on independent living (as outlined above).

40 The Commission also notes that the Disability Strategy Expert Advisory Panel established by the Department for Communities has drawn attention to the lack of standalone legislation guaranteeing the right to independent living and a dedicated strategy on independent living in Northern Ireland<sup>16</sup>.

41 In the absence of standalone legislation, the Commission supports the Department's proposals to develop a co-produced regional strategic 'In Control' action plan that will develop and implement actions which promote individual choice and control. We **recommend** that the strategy is underpinned by a commitment to interpret choice and control, with respect to realisation of the same by people with disabilities, in

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<sup>15</sup> United Nations Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraphs 44-45, page 9.

<sup>16</sup> Disability Strategy Expert Advisory Panel (2021): [Report and recommendations](#), page 36.



accordance with Article 19 of the UNCRPD<sup>17</sup> and the Committee on the Rights of Persons with Disabilities' General Comment No.5<sup>18</sup> on 'Living independently and being included in the community'.

42 We also **recommend** that service user and carer navigation and guidance systems (paragraph 5.09) should be developed in compliance with Articles 9<sup>19</sup> and 21<sup>20</sup> of the UNCRPD.

43 We also **recommend** that web-based information and digital portals (paragraph 5.15) be developed in compliance with the Public Sector Bodies (websites and mobile applications) (No.2) Accessibility Regulations 2018<sup>21</sup>.

44 The Commission supports the Department's proposals for improving Self-Directed Support (as set out in paragraph 5.19), including:

- A regional, transparent and consistent approach to costing HSC Trust services and resultant budget allocations to individuals;
- Regionally consistent Direct Payment rates;
- Training and Support for Personal Assistants;
- Reduction of the administrative burden associated with Direct Payments;

as likely to result in increased take-up and more effective use of Direct Payments and better choice and control for service users.

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<sup>17</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 19: Living independently and being included in the community](#)

<sup>18</sup> United Nations Committee on the Rights of Persons with Disabilities (2017): [General Comment No.5 Living independently and being included in the community](#)

<sup>19</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 9: Accessibility](#)

<sup>20</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 21: Freedom of expression and opinion, and access to information](#)

<sup>21</sup> The Equality Commission are responsible for enforcing the Public Sector Bodies (Websites and Mobile Applications) (No.2) Accessibility Regulations 2018.

## Strategic Priority 4: Prevention and Early Intervention

- 45 In our response to the consultation by the Department on ‘Transforming Your Care’, the Commission endorsed the key principles and intended outcomes set out in the overall ‘vision’ of the TYC proposals, including the aspiration to make our health and social care system responsive to both the medium and future long term demands on health and social care, providing more local provision, affordable and accessible to all<sup>22</sup>. We recognised the need to reduce reliance on tertiary care through early intervention and prevention.
- 46 The Commission therefore welcomes the Department’s proposal (proposed action 35) that eligibility criteria for certain services for those with more complex needs must run alongside preventative and early intervention services which have lower access thresholds.
- 47 The Commission has been a long-standing advocate of equality of opportunity and sustainable development in public sector procurement<sup>23</sup>. We therefore welcome the Department’s commitment to commissioning and procurement processes which include the use of social clauses which promote neighbourhood based, preventative and citizen-focused community support.
- 48 We also commend the proposal that service commissioners and providers develop participatory budget processes that support community involvement in funding discussions. We **recommend** that arrangements for participation are inclusive of persons belonging to the S75 categories.
- 49 The Commission also welcomes the Department’s proposal (proposed action 27) to explore and promote improved support to the community sector through work being taken forward to develop a new approach to planning, managing and developing services. We note that associated actions include a range of

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<sup>22</sup> Equality Commission for Northern Ireland (2013): [Summary response to Transforming Your Care: From Vision to Action](#), paragraph 4.

<sup>23</sup> Equality Commission for Northern Ireland and Department of Finance (2008): [Equality of opportunity and sustainable development in public sector procurement](#)

practical supports such as ring-fenced and sustainable funding, unburdensome procurement processes and grant making.

## **Strategic Priority 5: Supporting Carers**

50 The Commission welcomes the Department's commitment to conduct an evaluation of the 2006 Caring for Carers strategy (paragraph 7.11), to inform a new strategic approach, including the better provision of information of relevance to carers via a regional digital platform

51 The Commission also welcome the Department's commitment to promote the recognition of carers as a Section 75 group and to improve the assessment, monitoring and response related to equality impacts on family carers.

52 However, apart from the proposal to promote the availability of and support for Self Directed Support options for family carers in their own right (paragraph 7.20), the consultation document provides limited detail on what practical supports will be available to carers or plans to improve the proportion of carers accessing carer's assessments, improve the outcomes from such assessments or examine how well such outcomes meet the expectations of carers.

## **Strategic Priority 6 Primacy of Home**

53 The Commission welcomes the Department's proposed (co-produced) review of the Northern Ireland Single Assessment Tool (proposed action 33) so as to ensure that assessment is fully informed by the wishes of the person and any relatives or friends who support them.

54 Persons with disabilities have highlighted to the Commission their dissatisfaction with increasingly time-bound domiciliary care visits, often for only 15 minutes or less.

55 The Commission therefore welcomes the Department's ambition to see a regional standardised model of domiciliary care (proposed action 34). It would be helpful for the Department to indicate next steps towards realising this

ambition, including the necessary structural arrangements and the associated timescale envisaged.

- 56 The Commission also acknowledges the Department's proposed removal (proposed action 36) of any set limits on the amount or cost of a service someone may receive, as likely to ensure that services more appropriately meet needs.
- 57 The Commission welcomes the proposal by the Department (proposed action 43) to introduce a right of appeal against a decision to give notice to leave to a care home resident as consistent with the rights set out in Article 19 (a) of the UNCRPD<sup>24</sup>.
- 58 Research (2015) carried out for the Equality Commission on Housing and Communities' Inequalities in Northern Ireland highlighted that there was a limited supply of supported housing options for persons with learning disabilities and other complex needs<sup>25</sup>.
- 59 The Commission supports the Department's proposal (proposed action 44) to expand the availability of the Supported Housing model to more people, including those with complex needs who require more consistent support. We believe this commitment will help to realise the recommendations of the Bamford Review<sup>26</sup> as well as Article 19 of the UNCRPD<sup>27</sup>.
- 60 The Commission welcomes the Department's proposal to promote best practice principles across all types of housing and settings where Adult Social Care is provided, by establishing a panel of experts who could provide advice and guidance to providers (proposed action 45).

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<sup>24</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 19: Living independently and being included in the community](#)

<sup>25</sup> Wallace, A. (2015): [Housing and Communities' Inequalities in Northern Ireland](#), page 138, Centre for Housing Policy, University of York for the Equality Commission for Northern Ireland.

<sup>26</sup> Wallace, A. (2015): [Housing and Communities' Inequalities in Northern Ireland](#), page 137, Centre for Housing Policy, University of York for the Equality Commission for Northern Ireland.

<sup>27</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 19: Living independently and being included in the community](#)

61 The Commission **recommends** that the panel, in promoting best practice principles, take into account the rights set out in Articles 9<sup>28</sup>, 21<sup>29</sup> and 26<sup>30</sup> of the UNCRPD.

## Summary of recommendations

62 The Commission **recommends**:

- that the Department set out in writing the key human rights commitments which will underpin the reconfigured Adult Social Care system, including the Human Rights Act 1998, the UNCRPD, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) together with the associated General Comments by the respective Committees which interpret and clarify substantive provisions within the Conventions;
- that the options outlined in the review of charging arrangements are screened to identify any potential impact on individuals belonging to the Section 75 equality categories, in accordance with the Department's Equality Scheme commitments;
- that the Department screen the options outlined in the review of the current balance of the mixed economy of care are screened to identify any potential impact on individuals belonging to the Section 75 equality categories, in accordance with the Department's Equality Scheme commitments;
- that comprehensive equality data should be collected to identify equality impacts and shape targeted actions to advance equality and that all key measures within the Adult Social Care system are not only tracked in

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<sup>28</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 9: Accessibility](#)

<sup>29</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 21: Freedom of expression and opinion, and access to information](#)

<sup>30</sup> [United Nations Convention on the Rights of Persons with Disabilities - Article 26: Habilitation and rehabilitation](#)

aggregate but also tracked for impact on individuals from across the Section 75 equality groups;

- that the proposed legislation to promote individual choice and control takes account of the Committee on the Rights of Persons with Disabilities' concluding observations and recommendations on independent living;
- that the Department's strategic 'In Control' action plan is underpinned by a commitment to interpret choice and control in accordance with Article 19 of the UNCRPD and the Committee on the Rights of Persons with Disabilities' General Comment No.5 on Living independently and being included in the community;
- that the development of service user and carer navigation and guidance systems should be developed in compliance with Articles 9 and 21 of the UNCRPD;
- that web-based information and digital portals should be developed in compliance with the Public Sector Bodies (websites and mobile applications) (No.2) Accessibility Regulations 2018;
- that arrangements for participatory budget processes are inclusive of persons belonging to the S75 categories;
- that the panel established to promote best practice principles in housing, take into account the rights set out in Articles 9, 21 and 26 of the UNCRPD.

**Equality Commission for Northern Ireland**

June 2022