



Waiving of Charges Case Study

THE IMPORTANCE OF RECORDING ANY IDENTIFIED NEEDS FOR A BREAK FROM CARING IN THE ADULT CARER SUPPORT PLAN OR YOUNG CARERS STATEMENT

THE IMPORTANCE OF HAVING AN UP TO DATE ADULT CARER SUPPORT PLAN OR YOUNG CARERS STATEMENT

Background

We were approached in September by a carer (J), who looks after his adult son (S), and also cares for his wife. He wanted clarity on the section of the Carers Act which referenced the waiving of charges for carers in relation to short breaks.

J is well-informed on the Carers Actⁱ, and very much engaged with his local Carers' Centre. He was aware that there is a duty on local authorities to waive charges for breaks that were for the benefit of carers. J's son S had been for a number of respite breaks. These had been charged against his son's budget, even though J was clear that the break was for his benefit as a carer, and not for the benefit of his son. This was recorded in an Adult Carer Support Plan dated August 2018.

J was in discussion with his local authority to request that the charges were refunded from the date of the implementation of the Carers Act. He had already received confirmation that charges would be waived for two blocks of respite taking place after May 2019, however there were nine other blocks of respite that fell between the implementation of the Act and the date when the refund would be initiated.

J was looking for the relevant sections of the Act and Guidance in order to best prepare himself for further correspondence with the local authority.

Our response

In response we signposted J to the Carers Act Statutory Guidanceⁱⁱ, specifically parts 3.3.2–3.3.21. This includes:

3.3.3. As set out below, charges for support to carers must be waived under the Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 whereas support to cared-for people may be charged for. It is therefore necessary to establish whether support is being provided to the carer or cared-for person [65] in order to establish whether it may be chargeable.

3.3.10. Charges must be waived for all support under section 24 of the Act in order to meet an individual carer's identified needs as set out in their ACSP or YCS. Such support might include, but is not limited, to:

- advocacy;

- emotional support and counselling;
 - training for carers;
 - translation and interpretation services;
 - cost of transport to meet the carer's identified needs;
 - breaks from caring that enable the carer to meet their personal outcomes (as set out in their ACSP or YCS), for example the cost of a leisure or other activity. The overall cost of a break from caring may include the cost of providing replacement care to the cared-for person (to replace that routinely provided by the carer) to enable the carer to take a break, recognising that the break would not be possible without replacement care; and other personalised support.
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We also signposted J to sections **3.3.27 – 3.3.46** of the Statutory Guidance for detail on replacement care and examples and **Part 3, Chapter 2, chapter summary** as background on the duty of the local authority to support carers through the provision of breaks. We also referenced **Section 3. 2. 14** in relation to Adult Carer Support Plans so that J could satisfy himself that the correct process had been followed to establish that the break was to meet his identified needs and not those of S.

Finally, we also signposted to the Scottish Government worked examples regarding [waiving of charges](#).

Scottish Government input

Throughout his enquiry J kept us informed of the steps he was taking on the waiving of charges. In addition to speaking to us and the local authority, he also wrote to Scottish Government to seek further clarification. Asking the following:

It is my understanding that the client contribution towards respite charges was to be waived as per the 2016 Carers Act. I have some questions which I am hopeful you can answer for me.

- Can you clarify for me if this is a countrywide requirement or at the discretion of individual local authorities?
- If it is a statutory requirement do you know if this has been instigated in all the local authority areas in Scotland?
- I have been paying a contribution to my son's respite care since he first started to use the service. If the charges are waived should this be backdated to the instigation of the Act in April of last year?

J sent us a copy of the following response from Scottish Government.

The charging rules you mention mean that support provided to carers to meet their identified needs following an Adult Carer Support Plan cannot be charged for. These rules are Scotland-wide. The situation is different for social care support provided to someone because of their own health or disability, which is subject local authority charging rules (apart from the requirements for free personal care).

Therefore, when it comes to a break from caring which involves providing care for the cared-for person, the local authority needs to look at the individual circumstances and the reasons for providing that support, to decide whether it should be treated as:

- support provided to a carer to meet their identified need for a break from caring under the Carers Act – which cannot be charged for; or as
- support provided to the cared-for person to meet their assessed needs – which may be charged for.

There may be cases where this type of support appears to be of equal benefit to the carer and the cared-for person. In this circumstance, a local authority would have to decide whether it would be appropriate to treat part of the care as support for the cared-for person (which may be charged for).

Once your adult carer support plan is completed, and if a need for a short break has been identified as an eligible need, you will have an opportunity to discuss how any replacement care for your son can be provided. Your social worker will be able to explain what support is being provided to you as a carer to meet your needs and what support is being provided to your son to meet his assessed needs, as well as any charges that may apply. If after these discussions you are unhappy with any costs, you may wish to raise a formal complaint using the authority's complaints process

Outcome

J was clear throughout that he was pursuing this on principle so that other carers may not have to have the same experience. He was also clear that the regular blocks of respite for S were entirely for the benefit of him as a carer, and not to meet the outcomes of S.

In mid-October J received written confirmation that a refund was being applied from the date of the Adult Carer Support Plan (August 2018) *"if it can clearly and consistently substantiate the waiving of client contributions."* As it had been recorded in the Adult Carer Support Plan that the breaks were for J, seven blocks of respite were refunded. This leaves a further two blocks for which payment has been made from the budget allocated to S.

Although J had Carer's Assessments prior to August 2018, most recently in 2016, these **assessments did not stipulate that breaks were for his benefit**, therefore the local authority maintained the view that charges would not be waived.

Following this email decision J recalled that in early 2018 his local respite coordinator had indicated that she felt J should be accessing/needed more respite. This was 'diligently recorded' on his notes and said that this would be of direct benefit to J. This had also resulted in an increase in respite from 28 days to 35 days per annum.

J is still awaiting a response from the finance department at his local authority to see if the remaining two blocks of respite can also be refunded. There is also an outstanding question in the requirement to have a review of an Adult Carer Support Plan annually. He has made enquiries regarding having a review – as his last one was in August of 2018 – but has had no further response.

The local Carers Centre have been reporting to J that other carers are having charges waived for short breaks/respite where it is for the carers benefit without further question now.

Learning points

If the respite/short break is for the benefit of the carer to meet their identified personal outcomes, then it is essential that this is recorded within the Adult Carer Support Plan or Young Carer Statement. If it is for the benefit of both the carer and the person with care needs, then this should

also be stated and the benefit apportioned appropriately. Without this evidence there could be cases where the right to have charges waived is disputed.

Carers should be made aware of their rights to, and the importance of having, an up to date Adult Carer Support Plan or Young Carers Statement. It should also be made clear by local authorities what they would regard as an 'up to date' statement. The statutory guidance does not indicate fixed review dates (2.1.77-2.1.88) but instead details the circumstances under which a review can be triggered e.g. circumstances change, deterioration in health of the carer or the cared-for person etc. The focus is very much on what works for the individual however, if local authorities are only reviewing carers assessments on the basis of substantial changes, then the requirement to waive charges could potentially be missed.

This particularly applies to the refunding of charges for short breaks/respite as there may be instances where carers have had a carers assessment prior to the introduction of the Act and have not moved to an Adult Carer Support Plan as their caring role is fairly stable. There is therefore the possibility that, although the respite/short break is for their benefit, charges may still be being made.

Shared Care Scotland has a vision for a Scotland where everyone who receives support or provides unpaid care can live a full and satisfying life, with the assistance they need to take regular, quality breaks from the everyday demands of their caring routines.

We aim to improve the quality and provision of short breaks in Scotland. To do this we offer services including [events](#), [publications and research reports](#), and an [online directory of short break services](#). As one of seven National Carers Organisations we also contribute to the development of policy and best practice for carers.

We also operate the [Short Breaks Fund](#) on behalf of Scottish Government, providing grants to third sector organisations that support unpaid carers to take a break.

To find out more about Shared Care Scotland visit www.sharedcarescotland.org.uk or call our office on 01383 622462.

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ⁱ The full text of the Carers Act can be found here <http://www.legislation.gov.uk/asp/2016/9/contents>

ⁱⁱ The full statutory guidance to the Carers Act can be found here <https://www.gov.scot/publications/carers-scotland-act-2016-statutory-guidance/pages/5/>