Social Care (Self-directed Support) (Scotland) Bill

Falkirk Council

1. Are you generally in favour of the Bill and its provisions?

Officers would generally be in favour of the provisions within the Bill.

2. What are your views on the principles proposed?

Officers would endorse the principles proposed in the Bill

- To demonstrate the application of the principles it will be necessary for providers to clearly evidence individual outcomes in the context of outcomes focused support plans. Staff will need to be trained to identify and measure outcomes. There are likely to be resource implications for providers to achieve this.
- Quality Assurance systems will also need to be more detailed and robust, and include good risk management approaches. While this is welcome there will again be resource implications for providers.
- Inspection processes need to recognise a system for acceptable risk taking/management and the individual’s responsibility in taking informed risks. Current processes are likely to stifle this.

3. What are your views on the four options for self-directed support proposed in the Bill?

Falkirk Council officers are supportive of the four options to be offered to individuals assessed as in need of care and support. There is still some concern that there are issues which need to be addressed to ensure local authorities are able to comply:

- The right to choice and control means individuals taking responsibility for their choice of support. Where individuals have reduced capacity there will be a responsibility on local authorities to ensure that the individual’s rights are upheld by families and carers. This can be a sensitive process but needs to be acknowledged.
- Reference to the allocation of a budget for options two and three, which was made in the draft Bill during the 2011 Consultation, is no longer included. If this marks a shift in emphasis towards direct payments it could weaken the impact of the other options.
- Rules on procurement of services by the local authority may mean that the individual’s preferences in relation to option two are difficult to deliver if it results in the local authority being compelled to put services out to tender to comply with current regulations on procurement. This option needs to be examined with regard to regulations for procurement.
- The release of funds from current services, to ensure that they can be allocated on an individual basis to be spent on alternative services,
could have significant resource implications in terms of staff resources and provision of funds to purchase alternatives. Local authorities will need to have adequate resources to implement the changes and to meet its responsibilities to current employees who may be affected by these changes.

- Service providers may struggle in some areas to deliver the options requested by individuals. There may need to be changes to working patterns etc to accommodate individual choices. This will need to be carefully managed and timescales for implementation should reflect this.
- There may be resource implications for providing services directly to carers as this could lead to increased demand from individuals who don’t currently seek support from the local authority.

4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?

- While there are some exciting opportunities which the provision in the Bill could provide, to attach it to section 22 could cause significant difficulties. Section 22 covers a wide multitude of childcare situations, from straightforward welfare advice and assistance (where we could be very innovative) through to high profile cases where the child is on the child protection register but we do not have sufficient evidence to pursue compulsory measures of care. The reality is that in some of these situations children can come to serious harm.
- If therefore section 22 as well as section 23 is to be the way for families and children to access self directed support, it is absolutely crucial that sufficient limitation and discretion is set on what type of section 22 cases would be eligible. It would be preferred that the Regulations for self-directed support provide some definition of the circumstances within section 22 where an individual would be eligible and to ensure that local authorities can refuse access to self-directed support in response to appropriate risk assessment.
- In relation to the age of the child, currently children over 12 are considered to have capacity, and be able to express a view, but local authorities are expected, rightly, to take their views into account at every stage. We would suggest that this is a reasonable standard, but there should be some guidance for situations where the child wants a different option from the parent/s.
- If young people aged 16/17 years lack the capacity to make decisions we hope the current situation, where parents are able to make those decisions until the young person reaches 18 years, would continue.

5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?
• The provision of support and advice, especially to those who may have difficulty in making an informed decision, is consistent with the Falkirk Council process of assessment and support planning. Where individuals want to take advantage independent support and advice, information on the availability of this is also provided.

• Local authorities may have work with families where there is disagreement and conflict within families where an individual has difficulty making decisions. Some guidance for local authorities and families on dealing with this in and ensuring the process is transparent would be useful in ensuring that the wishes and aspirations of the individual can be acted upon.

• There is some concern about the capacity of local organisations that currently provide support and advice to individuals, including direct payments support, to meet the expected increased demand. These organisations tend to be relatively small and a large influx of new requests would inevitably put them under pressure to respond. This is likely to lead to funding issues since increasing capacity will often require extra resources. In the current financial climate this is becoming increasingly difficult to achieve.

6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?

We are broadly satisfied with this aspect of the Bill. However there have been some issues relating to financial monitoring of direct payments.

• A ‘light touch’ approach to financial monitoring does not seem to meet with current Audit Scotland requirements to account for the use of public funds. Some changes will be needed to make this workable.

• Proper auditing of individual budgets is likely to increase pressure on staff resources.

7. Do you have any views on the provisions relating to adult carers?

We would view the provisions to include carers as a positive step.

Eligibility framework and charging guidance will need to take account of the inclusion of carers and how they will therefore be treated with regard to these. The SDS outcome options may be quite different for carers and could have an impact on commissioning for local authorities e.g. a carer may choose to have domestic support to enable them to carry out of personal care tasks. This will also have an impact on charging e.g. guidance will be needed on how this fits with eligibility for free personal care where the individual and carer option is for the carer to provide personal care and use self directed support to access services which would normally be chargeable i.e. domestic support.

8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?
There are two main areas of concern in relation to this aspect of the Bill.

Employment of relatives

We acknowledge that the Bill will provide some discretion to local authorities on the employment of relatives and would highlight the following to inform that position:

- Employing relatives can be complex and have a significant impact on the personal relationship between the paid carer and the person in receipt of care and support. The distinction between family member and employee can be a difficult one to manage and maintain. It can also cause difficulty in the wider family context when one family member is being paid to provide support and another is not (could lead to a reduction in unpaid support if others opt out).
- The distinction between paid and unpaid support can be difficult to establish when one person is doing both and it can lead to increased stress for the carer. Requests for employing relatives often propose employing the person who is providing significant levels of unpaid support and it becomes very difficult to ensure that sufficient breaks are built in for both the paid and unpaid support.
- There are also of issues around employment law regarding statutory breaks and statutory holidays – how does the unpaid support impact on the ability to take breaks and the European Working Time Directive? Normal practice is that, where there are a significant number of hours in the support plan, more than one person is employed to ensure that holidays, sick leave etc can be covered. Many requests for employing relatives propose employing one person, which means that cover for absences may not be well planned and can lead to difficulties in sustaining the support or fulfilling legal obligations as an employer.
- Paid support by a relative who is also providing unpaid support would impact on carer’s assessment and access to respite or short breaks? Local authorities would not normally assess paid carers as being eligible for short breaks but if they are providing both paid and unpaid support this could create conflict.
- There have been a number of requests from carers who have been granted Power of Attorney or Guardianship orders to receive a direct payment on behalf of a person in need and then to employ themselves. We are aware that the Office of the Public Guardian has expressed some concern that these circumstances could result in potential conflict of interest i.e. where there is a conflict between the interest of the individual and the needs or wishes of the carer. It would be difficult for the local authority to monitor the appropriateness of support in such circumstances.

Safe Recruitment and PVG

While we acknowledge that PVG Scheme membership is only a part of safe recruitment process we have the following concerns:
The current regulations for Protection of Vulnerable Groups mean that local authorities are unable to ensure that personal assistants are members of the PVG scheme. This is optional for personal assistant employers and the local authority can only advise, but not insist, that PVG checks are carried out. Since this is an unregulated workforce the risk to the individual is greater.

Where employers make an informed choice not to seek PVG Scheme membership they will need to take responsibility for this. However, some people may have difficulty understanding the process and the implications of their decision, which could mean employing a personal assistant is a less viable option for them.

Personal employers have access to the PVG Scheme Statement but not the Scheme Record. This means that some conviction information which may be relevant, but not necessarily bar someone from working with vulnerable groups, will be undisclosed e.g. theft, fraud, driving convictions. If managing finances or driving is part of the support plan this information could be important.

Current regulations don't allow employers to check against both lists. This means that an adult in receipt of services who is living with children can't access information about whether their personal assistant is barred from working with children.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

Falkirk Council participated in the consultation conducted by COSLA and have also responded to the COSLA draft response to the Financial Memorandum and concur with the detail of the response.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We are broadly satisfied with the outcome of the assessments.

Other matters

11. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Residential Care

We are concerned that people using direct payments to purchase residential care may be viewed by providers as being self-funding and therefore being asked to pay a rate which is higher than the rate agreed under the National Care Home Contract. Some provision or explicit guidance for local authorities and providers to mitigate this risk would be helpful.

Would the provision of cash rather than accommodation affect the statutory requirement for financial assessments? This relates to the
statutory obligation on the local authority to provide accommodation in certain circumstances.

Commencement

The timescales for Commencement should allow adequate time for local authorities to change systems, train the workforce, work with providers, service user, carers and communities to ensure an appropriate range of options are available. The local authority tests sites have demonstrated that sufficient time and resources will be required to ensure SDS is effective and has the desired impact on individual choice and outcomes.

Falkirk Council
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