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

Dumfries & Galloway Health Board and Council

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

Dumfries and Galloway Health Board and Council are supportive of the Social Care SDS Bill (Scotland 2012) and that support is reflected in the Council’s single Outcome Agreement and its early participation in this agenda as a Scottish personalisation test site. The Bill’s provisions are appropriate and accord with what many professionals, carers and service users have long been seeking. There is a clear need for legislation to underpin the Scottish 10 year SDS strategy and the Government’s aim to “encourage a significant increase in the number of people who actively direct their own support.” The 1996 Direct Payments legislation is insufficient to support the ambition of the agenda to enshrine choice and control in mainstream health and social work cultures and we agree that the current position “fails to place direct payments in their proper context and fails to provide a comprehensive framework of choice.”

2. What are your views on the principles proposed?

The principles of the Bill are fundamental to Council policy and accord with the D&G Community Health and Social Partnership Board and GIRFEC strategy. The experience of D&G as a test site has been that progress towards SDS can give a greater level of choice and control to individuals and so create a much more equal relationship with professionals, giving front line social work staff and managers permission to readily access the principles of their training around empowerment and participation and the promotion of the social welfare, which is the fundamental duty contained in the Social Work (Scotland) Act 1968. It is our strongly held view that the principles of the Bill require cultural as well as policy and legislative change.

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

The four SDS options reflect the Council’s experience to date. Some families/individuals seek the full direct payment route whereas others simply wish to exercise more choice and control within existing support arrangements. Many seek assurance that choices can be reviewed and revised.

Option 2 and 4 bring complex issues of procurement, quality assurance and risk. In section 8 of the Bill it states that “The authority must give the person an explanation of the nature and effect of each of the options for self-directed support.” The most difficult Option to understand from a contractual perspective is “Option 2” which seeks to devolve choice and control to an individual service user or carer but where the authority remains the “Purchaser”. Scotland Excel has done some detailed work on developing a standardised “Individual Service Fund” (ISF) contract for use by Scottish
Councils but as yet there has been insufficient time to test this model comprehensively. Drafting the Excel ISF contract has thrown up a number of complex risks for Councils (sub-contracting to third parties within an ISF). A range of other questions have been raised such as would an ISF only be suitable for Providers registered with the Care Inspectorate or would this be an unreasonable limit on individual choice?

This presents a challenge to Councils- If we do not restrict ISFs to Providers registered with the Care Inspectorate, what safeguards would a Local Authority need to implement before being satisfied that it was appropriate to contract with a Provider on behalf of a member of the public? It is clear when discussing what an Individual Service Fund is that there are different interpretations of its legal application. Whilst this Council would not want to impinge on any individual's right to direct their own support unless absolutely necessary, that is a different question from Councils being comfortable entering into contractual relationships with personal assistants or service providers we have little or no knowledge about, especially given Council's responsibilities in respect of Adult Support and Protection. However, as an authority we would welcome the opportunity to fully explore the potential options around this in order to find a solution which supported the shift of choice and control and enabled the authority to offer an appropriate and safe level of support to this option.

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?

We do believe in principle that the Bill’s four options should be available for children and their families. It allows families an opportunity to be in control of the services that they need to best meet their needs and it offers them flexibility, control and choice that they often reflect is missing in their lives. It provides an opportunity to consider mainstream options for their children and helps to make them feel included within their families and communities. It also allows families to get together and consider how their needs can be met. For those confident and able it also helps to reduce dependency upon statutory services.

From a statutory perspective the Bill supports families to retain the responsibility for their children and does not allow this to be devolved to others. It can help encourage independence and give them a feeling of being in control and managing their lives as opposed to feeling they are at the “mercy” of others for their support needs.

As an authority we are working towards the implementation of a personalised approach across all service areas through the embedding of the key principles to choice and control in both the assessment and care planning stages to identify outcomes and consider how these can best be achieved. The
principles of SDS sit within the overall framework of an integrated approach to children’s services through the GIRFEC model.

As for the child having full control, this is an aspirational goal but realistically for many of the children who will be eligible to receive this their capacity to communicate their thoughts might be significantly impaired. For all children wherever possible their views should be sought in the services that are being delivered for them whether arranged by parents/carers or provided by statutory services. Skilled communication experts such as Speech and Language Therapists can support professionals and families alike in communication around personal wishes and plans and this is a good example of the role of the wider multi-disciplinary team across agencies in supporting more personalised approaches.

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?

To realise the provisions on information and advice within the Bill we would suggest that the importance of independent advocacy is introduced to the Bill. We would suggest that there needs to be explicit reference to Councils (& partners) distributing quality information about independent advocacy services - to assist people to make decisions & have their views heard. This is different from 'independent advice & support' - as independent advocacy aims to allow the person to express their own views (even if this is against advice & others don't feel it's in their best interests). The Bill refers to family & friends being involved - but in certain cases, the views of family & carers are diametrically different to the person themselves - thus the importance of professional independent advocacy. A strong independent advocacy sector should also help to protect some people at risk of becoming involved in a potentially negative/abusive relationship - e.g. in employment of relatives/friends - where there may be conflicts of interest.

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

“Local authorities should be empowered to allow the employment of close family members where this is the supported person's and carer's informed choice and where it is appropriate to do so. The Bill therefore contains a power for Ministers to issue regulations in order that they can guide authorities who may need to sanction such arrangements.”

The current regulations limiting the employment of close relatives is clear and acts as a protective measure. The regulation is also rooted in a genuine concern about exposure to financial irregularity. However, it is difficult to reconcile a desire to recognise the huge role that close relatives have in society in terms of their caring role and also deny them access to fair remuneration for their role through a direct payment. D&G Councils experience as a test site was to take a positive view of the option to allow
employment of direct family members and to date this has proved successful. We should be very clear though that by removing the current restriction, however discriminatory we find it, we expose Councils to the possibility of having to fund the previously unfunded and massive contribution of family carers. In some circumstances however it is easy to predict that financial support to Carers through a direct payment would in the long term deliver savings to Councils and society generally. It is also important to maintain a clear balance between what is in effect normal family activity which may need some external support and an expectation that all care would be funded (as this would be unsustainable).

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

The Bill has the capacity to support the type of flexibility and creativity into the support of adult carers that many people have been seeking. Subject to the availability of adequate resources then carers assessments of need will, under the proposed legislation, have the potential to lead to more than just statements of need. There is a need for carers assessments to be put on the same footing as self-directed support with a similar process which could include self assessment, identification of outcomes and the development of a personal plan for the carer. The SDS bill has the potential to liberate social work practitioners’ creativity and provide a responsive mechanism to make available relatively small amounts of funds which can have significant impacts in supporting someone to remain in a caring role. Therefore the provisions within the bill are to be welcomed. It is noted though that support to carers remains a “power” and not a “duty”. D&G Council policy will remain that carers will be offered the opportunity for an assessment of their own needs.

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?

From an Adult Support and Protection perspective the regulation of personal assistants has always been an issue. What specifically are the safeguards in place to ensure that vulnerable people are not exposed to further risks of harm? As per para 28 in the Policy Memorandum there needs to be a balance struck between the right to self-determination and choice and the attendant risks that those choices bring;

“Balancing empowering practice with support for people to manage risk will require the input of skilled social care professionals and statutory guidance will elaborate on this question in greater detail”. Skilled professional judgement during assessment and support planning has always previously been the main mechanism by which these risks are managed and the SDS Bill upholds the discretionary power of Councils in deciding if an individual’s choice of service provider is likely to deliver legitimate outcomes or not. The effective deregulation of the social care workforce however will add significantly to the burden upon Councils in assessing the risks presented by individuals wishing to be personal assistants.
without having undergone any of the regulatory checks associated with a Provider registered with the Care Inspectorate.

It is also important to recognise the gaps in the current Protecting Vulnerable Groups Scheme (PVGS), in particular the restrictions on disabled people who employ their own support staff from accessing information through the Disclosure Scotland arrangements. It is strongly suggested that work to close the gaps in the PVGS should be undertaken to complement the introduction of the SDS Bill.

A shift in the balance of power from organisations and professionals to service users/patients and carers will not be without risks and challenges. Maintaining a focus on the outcomes to be achieved through SDS should provide the perspective necessary to mitigate against the most obvious risks. Risk aversion should not be allowed to undermine a shift from a system defined by the services it delivers to the outcomes it secures. This will require a different way of defining and managing risk whilst maintaining the important balance key to which is a greater level of involvement by the individual.

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

The interface between Social Work, Social care and Health in respect of Self-directed support is complex and many lessons remain to be learnt by experience. The delegation of functions between NHS bodies and Councils to facilitate individual care packages is an approach likely to deliver better outcomes in many people’s lives and the innovative work underway in Lothian & Fife will be useful indicators of what some of the issues are for the NHS in contributing to SDS support packages. It is D&G Councils opinion that Individual budgets can create a more patient centred and integrated health and social care system. In this sense D&G Council is supportive of COSLA’s position that the scope of the Bill is too narrow; "There is an obvious deficiency in ascribing responsibility for SDS to local authorities alone". SDS has huge potential to improve health outcomes, prevent individuals becoming dependent on specialist services and has the potential to make the NHS more efficient.

Dumfries & Galloway Health Board and Council
23 April 2012