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

Loretto Care

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

Loretto Care is wholly in favour of the SDS Bill and the provisions contained because they are informed by sound principles of personalisation. This Bill is intended to improve services at a time when economic resources are limited; and a major driver is in repositioning supported people from being passive recipients of publicly funded services towards becoming active partners in their care provision. This is a commendable goal particularly in terms of our engagement with vulnerable individuals and groups who are frequently marginalised. Reforming public services should be aimed at improving the life opportunities for all of our citizens.

General principles underlying the Bill

Section one of the Bill proposes three principles, which are described as "the general assumptions under which professionals and individuals should operate." (Policy Memorandum, para 17). The principles encourage "involvement", "informed choice" and "collaboration". Local authorities would have a duty to have regard to these principles when carrying out their functions under the Bill.

2. What are your views on the principles proposed?

As described, the key principles are perfectly acceptable. However, we would suggest that more work is needed on those "general assumptions under which professionals and individuals should operate."

For example, ‘involvement’ is not immediately obtainable, particularly whenever an individual lacks capacity or is otherwise uninterested in engaging with the process, or where complex health or social factors constrain involvement. On this basis we would caution against ‘assuming’ involvement and instead urge a range of measures and safeguards are in place for promoting involvement, with independent advocacy as one way to achieve this.

Empowering vulnerable adults with complex health and social needs is a truly skilled activity and often requires a considerable time commitment - promoting and supporting involvement in the SDS process will be equally time consuming; however, as a Social Care Provider we already endeavour to encourage the people who are supported by services to be actively involved in their own lives by adopting Person Centred Practices. We recognise a corollary of this is whenever an individual has an active involvement in deciding on the level of paid support, and how support should be provided and by whom, and while these goals are all commendable, in reality, they can be quite difficult to achieve in the normal operations of organised services particularly as we aim to limit overheads. However, by working together towards these objectives we believe genuine
coproduction approaches should enable improved outcomes for each individual including achieving cost efficiencies.

The attitude of others, particularly professionals, is crucial in enabling people to be involved in a manner that best suits their needs, preferences and aspirations. In order to ensure this actually happens, ‘informed choice’ is another key principle which when handled skilfully ensures people understand their rights and responsibilities, and all of their options, and most importantly are also aware they can change their opinions. The Scottish Government have provided assurances that ‘SDS will be available to all and imposed on no-one’ so it is vital this undertaking is carried forward by Local Authorities particularly when introducing Personalisation alongside budget cuts.

At the heart of this is the fact that, in the current financial climate, continuing to fund services at current levels is not financially sustainable in the longer term. A genuine approach to collaboration and coproduction are now required in order to realise financial efficiencies in how individual outcomes will be achieved. Instead of imposing budget cuts on the most vulnerable members of our communities, we would urge a genuine partnership approach as the most effective way forward.

Options for self-directed support

Sections 3-4, 6-12 and 17 of the Bill contain the core self-directed support provisions. Included are that the local authority must offer an individual four options in how they would like to direct their support - "direct payment"; "direct available resource"; "mix of approaches"; or, "local authority arranged support". The provisions would relate to adults assessed as requiring community care services, and also children and their families where a local authority decides to provide services under the Children (Scotland) Act 1995. Other provisions include that individuals must be provided with information and advice to help them make that choice, and those who may have difficulties in making informed choices are provided the necessary support to do so.

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

We note that the Bill now includes four options including Direct Payments, and this builds on earlier experiences where previous legislation for Direct Payments did not result in significant numbers choosing to take control of their own care and support requirements. We would support the idea of four options as it provides people with choice and we particularly welcome the obligatory duty in which Local Authorities ‘must offer’ these choices to everyone who is eligible with community care needs.

The most important consideration is how LA workers interact with people to ensure they are suitably and accurately informed and can therefore exercise ‘informed choice.’ It is probably true that for many people who already have circles of support and family networks, this may not be a major difficulty, and
SDS may work well, but for many others, arguably the most vulnerable people in our communities, it is clear that other safeguards will be required to avoid individuals being exploited.

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 believe that self directed supported should be open to children and their families, giving consideration to any legal restrictions which may be in place within any one family unit.

The idea that any child having control over the process is linked to age may not necessarily enable safe and productive decisions to be made, given the individual health, social and educational issues they may be experiencing. As for all individuals who are protected under legal status, promotion of choice must be balanced with effective safeguarding measures within the SDS process.

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 information and advice to individuals, particularly the most vulnerable individuals with complex needs, will need to be resourced. As the Scottish Government have already declared that Self Directed Support will be ‘cost neutral’ it is difficult to see how the necessary investment in time and resources can be brought to bear on the neediest individuals. Practitioners already have a sense of insufficient resources within current arrangements for Community Care and that Care Managers’ caseloads do not always allow sufficient time to attend Reviews or to engage with Providers and the people they support.

We think it is vital that the provision of information and advice about SDS is underpinned within relationships that are founded on trust, respect and understanding. If current resources do not facilitate this process, it is difficult to envisage how it will achieve those positive outcomes without further targeted investment.

The principles are sound, but how this will work in practice will continue to be dependent on the quality of advice, information and support for the most vulnerable people.

Direct payments

The Bill seeks to modernise and consolidate current legislation on direct payments, in order to make it more flexible to respond to individuals’ needs. Whilst local authorities would retain a range of duties and powers, the Scottish
Government does not wish these to impinge on people’s ability to determine their own support. However, section 13 of the Bill would seek to do this through secondary legislation by granting Ministers powers to introduce regulations, rather than setting this out on the face of the Bill.

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

This raises a number of issues, and once again presents us with the fact that Local Authorities have a statutory duty to conduct Community Care Assessments, while SDS is predicated on the notion that individuals should be involved in Co-Production (e.g. through Self Evaluations). In terms of this innovative new Bill, we continue to confront the dilemma of how the role of the state interacts within the personal lives of vulnerable citizens. On this basis alone, we realise there is potential for some confusion so Regulations and Ministerial guidance will be critical in providing clarity, unity of purpose and achieving favourable outcomes.

In relation to Section 13, some brief responses now follow, which we hope will contribute to the debate:

- ‘The Scottish Ministers may by regulations make further provision about direct payments.’

- We think this will be essential especially to avoid regional variations which could arise from local interpretations of the new Act. Wherever someone with community care needs lives in Scotland, they should have a clear understanding of Direct Payments and full confidence that they can access this arrangement.

- ‘Regulations under subsection (1) may in particular make provision for or in connection with-
  - specifying descriptions of persons who are ineligible to receive direct payments.

Also essential in our view; we would recommend this should be produced in clear and compact guidance, appropriate to the audience, to avoid ambiguity. Thus far, there’s been some confusion about eligibility criteria, so further guidance would be particularly welcome, along with information on appeals, change of circumstances etc. One particular area of concern with eligibility is addictions, with the question being - what about people who are in recovery?

- (b) specifying circumstances in which a local authority is not to be required under section 4, 6 or 7 to give a person the opportunity to choose-
  - Option 1 of the options for self directed support, and
  - So far as relating to that option, Option 4
• This would be helpful, and we again urge that Ministerial guidance is reproduced in Easy Read formats and accessible for the general public.

• **(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,**

We believe that specifying the circumstances for personal contributions is desirable as part of those measures enabling people to make an ‘informed choice.’ We would urge that when calculating such charges they are fair (i.e. affordable), proportionate and transparent, and do not add to the anxiety of the poorest and most vulnerable people or otherwise detract from the most needy receiving the care and support packages which are necessary to maintain good health and wellbeing.

• **(d) enabling a local authority to assess or reassess a person’s ability to contribute to the cost of securing the support to which a direct payment relates,**

• In our experience, we have found that many vulnerable people’s support needs do vary from month to month, and for most the personal income from benefits does not vary widely, usually remaining at a fairly low level. Thus, we would ask for a light touch in this regard. Practice wisdom suggests a simple and uncomplicated reassessment, but one which does not impact on long standing support arrangements in the short term, enabling adjustments to match longer term outcomes (e.g. securing paid employment) would be preferable in these circumstances.

• It is arguable that the stress of debt can act as a tipping point. Any change should be clear and transparent and should take into account each person’s health and social circumstances including each person’s true level of disposable income after arrears, debt repayments and fines are deducted.

• **(e) specifying the ways in which direct payments may be paid or repaid**

• This is an important consideration and one for which concerns are frequently raised. We think some essential safeguards are needed because Direct payments are public funds, often for very considerable amounts, which will be handled within the personal support arrangements and the private sphere.
• Should financial improprieties be detected, regulations must specify how the funds will be recovered and from whom. Thus, we recommend that personal accountability should be established at the outset.

• (f) specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment.

• For all of the reasons given previously, we would agree that regulations are needed. We would assume this is an important stipulation in relation to those circumstances of financial impropriety, or where it is found that Direct Payments are not in an individual’s best interests, so, specifying the reasons why termination is taking place, along with an appeals process if applicable, will be helpful.

• (g) specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,

• If we understand correctly the new Bill will not debar individuals who lack capacity, or people in residential care, so it is important to specify the arrangements in which a named person, appointee or financial guardian can receive DPs on another person’s behalf, and the monitoring arrangements that should be in place, particularly in relation to (e) above.

• (h) specifying descriptions of person to whom direct payments may not be made under paragraph (g)

• We would agree wholeheartedly, this is a vital safeguard. There have been considerable debates around PVG and the accreditation of suitably qualified and competent persons. Within the regulated workforce these arrangements are already firmly established and open to scrutiny, however, the question arises in relation to unregulated Personal Assistants. In terms of the ethos of SDS and Personalisation, the Bill is about removing some of the professional veneer from a supported person’s life (giving each person a life, not a service; reducing reliance on paid support in favour of circles of support etc) and all of these arguments are compelling. However, we firmly believe that the introduction of Direct payments must be matched with appropriate safeguards and monitoring arrangements in order to avoid abuse and exploitation of vulnerable
individuals and, when it is found that an individual is no longer suitable, to intervene accordingly.

- (i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified.
- As with (h) above. Within organised services the issue of criminal records (from unpaid TV licences to speeding tickets, to BofP, etc) which were disclosed both at interview stage, and at repeated intervals during employment,
- has consistently tested the judgement and values of individual recruiting managers, so the introduction of PVG and individual listing was a most welcome development. We would suggest that individuals who are prohibited from working with vulnerable adults, or with children, in regulated services should also be prohibited de facto from providing support to which a direct payment relates, and we can foresee no reason why an individual’s discretionary judgement should apply in this regard.

- (j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

We would agree with this. As the regulated workforce must provide evidence of competence to practice, including continuous professional development (PRTL/SSSC) it is difficult to envisage how Personal Assistants can operate to similar standards, without additional resources or formal organisational support. This is therefore an area for further examination, in relation to the capacity which might be available from Providers who are already providing their own workforces with practitioner training (Epilepsy, First Aid, Moving and Handling, etc etc) and can include PAs in that process.

Adult carers

Currently, adult carers of other adults or children are entitled to have an assessment of their needs. However, section 2 of the Bill proposes that local authorities should have the power to provide support to a carer on the basis of that assessment. Where a local authority decided to provide such services, section 6 would require it to offer a choice of the four self-directed support options to the adult carer.

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

Section 2 quite rightly acknowledges the significant contribution that adult carers make in the lives of supported adults and children, and we agree that an assessment of their needs should ensure any change of circumstances which might impact on support arrangements should be acted upon. This will have
particular relevance for older carers whose own health and/or ability to cope will continue to be a factor. Since these arrangements already save the economy billions of pounds, according to recent research, it is in everyone’s interests to maintain carers with appropriate support measures.

We therefore agree that the 4 options should enable continuity within the caring and support arrangements without jeopardising relationships or compromising any individual’s health and wellbeing.

**Individuals’ responsibilities and risk enablement**

The proposals in the Bill could place a significant amount of responsibility on individuals and their families, particularly in managing risk. The Policy Memorandum (para 26) accompanying the Bill makes particular note of the current ability of people to employ personal assistants through the use of direct payments (option 1 in the Bill). Whilst the Bill does not place any restrictions on the categories of people that may be employed by an individual, the Scottish Government would publish statutory guidance which would cover ensuring individuals are aware of their duties as an employer and the risks in not adopting safe employment practices.

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?**

No – for the reasons given previously in (i) above, we are not particularly comfortable with this particular approach, although we can understand why this has arisen.

We would recommend instead that PVG is brought to bear as a necessary safeguard. As stated previously, professionals have been challenged by many of the ethical issues particularly in deciding on the criminal records checks, so ‘listing’ has provided much needed clarity. We can think of no reason why supported individuals when acting as Employers will not benefit from the same level of clarity when recruiting their PAs.

**Financial Memorandum**

The Financial Memorandum accompanying the Bill sees much of the Bill being cost-neutral in the long term. However there is an acceptance there will be transitional costs associated with transforming the culture, systems and approaches to social care provision as a result of the Bill and the Government's wider strategy.

9. **Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**
As an organisation we have benefitted with some funding for capacity building, and we are very grateful for that. We expect this funding will raise awareness of staff, and provide training in order to promote and develop Personalisation in the future delivery of cost effective and outcomes-focused services. We also plan to collaborate with other smaller providers in order to develop capacity within the sector.

However, in respect of the cost neutral nature of this groundbreaking innovation, we also note Ministerial comments that the Scottish Government has no plans at present for the individualisation of health budgets, so this does raise some further questions about the longer term strategy vis-à-vis the integration of health and social care, for which we offer no comment at present, but which should be considered alongside the current experiences of budget cuts in existing social care provision.

Effects on equal opportunities, human rights, island communities and sustainable development

The Policy Memorandum (para 52-63) accompanying the Bill outlines the assessments made by the Scottish Government on the potential impact, if any on equal opportunities, human rights, island communities and sustainable development.

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?

No further comments.

Other matters

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

No further comments.

Loretto Care
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