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

The Scottish Disability Equality Forum (SDEF)

The Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers and the promotion of equal access for people affected by disability.

We are a membership organisation, representing individuals with any type of impairment, disability organisations and groups who share our values. It aims to ensure that the voices of people affected by disability are heard and heeded. SDEF promotes access in its widest sense, including access to the built and natural environment and access to the same opportunities as are enjoyed by other people in our community.

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

SDEF members support the Bill and are hopeful that it will lead to Self-directed support (SDS) improving the lives of disabled people in Scotland. General comments from SDEF members include:

‘If the ideals incorporated in the Bill are maintained in practice then it can only move closer to enabling disabled people to exercise greater choice and control over the community care they receive.’

‘Handled right, it will go a long way towards increasing choice and control over care, but at the same time people must have the option to go only as far as they want and at the speed they want.’

‘On paper, the idea sounds great but it needs regular, rigorous monitoring to ensure that the aims laid out are actually being met.’

2. What are your views on the principles proposed?

One of the most welcome aspects of the Bill is the use of the principles. Having a guiding statement of purpose within the legislation itself will hopefully focus the minds of Local Authorities on respecting and upholding a disabled person’s choice of support. The principles should have the effect of making the legislation adaptable to the needs of individuals, avoiding the situation where someone could ‘fall through the gaps.’

Our members expressed the following views:

‘The principles are a great and innovative idea and should at last allow the person needed assistance and care to make their own decisions as to what the need, when they will need it but to also decide if there is an alternative rather than as has been for so long in the past all the decisions made for them.’
‘These principles treat the individual as someone who knows what he wants and needs, not as someone in a stereotyped category. They allow for choice by the individual, not by the service providers only. They create room for negotiation, while emphasising openness by the providers. This honesty and respect for the individual would, if truly honoured, lead to trust in providers by the people requesting services.’

However, as with the other provisions of the Bill our members feel that the principles will only be realised with proper training, support and resource from the Local Authorities.

‘They [principles] require integrity and sensitivity from the local authority and workers involved. Thorough training and understanding of the issues would be necessary.’

‘I think these sound very laudable but can see that lack of funding will result in insufficient support being available to individuals.’

SDEF suggests that more of the language of independent living could be used within the principles. For example redrafting to include the words ‘freedom, choice, dignity, and control’ would be welcomed and would help demonstrate a commitment to upholding a disabled person’s right to independent living under Article 19 of the UN Convention on the Rights of Disabled People (UNCRPD).¹

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

Similarly to the principles our members also expressed enthusiasm for the four options.

‘I think each of the four options will be very favourable to a person depending on their needs and wishes. The greatest flexibility of choice and control must be offered to allow disabled people to live full and dignified lives.’

‘I think these are good option enabling the person to have as much flexibility as they can realistically handle. Some are more able to do this than others and the needs of the individual can then be met.’

However, although the Bill provides strong statutory language to ensure that ‘a duty to give effect to preferred option’ [s.9(2)], ‘SDS must be promoted’ [s17], and reasonable steps must be taken to support people make choices [s.5 and s.15], many members were concerned how this would translate on the ground. Regrettably much of the concern relates to front-line social workers. There is a real perception that social workers do not respect disabled people’s dignity and capacity to choose and control their own lives.

¹ A similar view is expressed in the submissions by our colleagues at Independent Living in Scotland (ILIS) and Inclusion Scotland.
‘This is great so long as your social worker isn't scared of applying for or biased against applying for direct payments.’

Furthermore there were concerns that there would be a conflict of interest for the social worker involved, leading to disabled people being ‘steered’ away from direct payments or having a different option ‘foisted’ on them.

It was also recognised that different people will require different levels of support and our members were pleased that the bill aimed to address this. (Through the range of options, the principles and the support provisions)

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 response from SDEF members was broadly consistent, with many making similar points. The overriding principle was well expressed:

‘At the heart of these matters, is the individual and they should be well informed and supported.’

Appropriate provision of information, advice and support is absolutely crucial for the Bill to make the best possible impact.

‘I think it is essential that the person is given all of the options, and that it is valuable to have an independent person, that can highlight or give some info on the reality of the choices available.’

The first requirement is to ensure the genuine independence of an information and support provider from the Local Authority. Secondly all information must be fully accessible. Hopefully given the nature of the organisations that are likely to be providing support this should not be a particular issue; however inaccessible information, both format and language, is a constant concern for disabled people.

It is also important that there is transparency in how, by whom and why particular support organisations are chosen, funded and promoted. This should address any concerns there may be in the independence (from the Local Authority) of the organisation. It will also help disabled people hold decision makers accountable. For example it will highlight how many, if any, disabled people’s organisations (DPOs) are involved. This is important as DPOs are best placed to know what disabled people need from a service. The Bill could be improved to put more of a disclosure requirement on a Local Authority in terms of which information services are promoted. There could be a specific mention of the desirability of using DPOs as support organisation. There could also be an explicit recognition of the role of advocacy services.
Regarding support for those who may have difficulty our members were pleased that this was recognised and that the Bill sought to address it. The main negative comment was questioning the interpretation of the phrase ‘reasonable steps’ [as in s.5(3), s.15(3)]. Most members that expressed concern in these terms went on to reserve their position on these provisions until there was more evidence of what steps would be considered reasonable.

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

We will use this section as general comments reflecting different areas raised by our members.

Many members are hopeful that the Bill will lead to the increase in uptake of direct payments and indeed see this as one of the measures of success for the Bill. Again, there is concern about front-line social workers acting as gatekeepers against people receiving direct payments. This is often linked to concerns around Local Authority budgets and cuts. One member stated that:

‘It’s obvious that cost cutting measures are in place and to be put quite bluntly “if you tell them about it, they’ll want it” So the advice appears to be “don’t tell them” Taking into account the misinformation from social work staff, (and the fact that SDS in all its forms is not widely advertised) and the incredibly difficult task of filling out the appropriate forms with very little appropriate guidance, it’s no wonder the uptake numbers are tiny.’

However, many members believe that with the correct information and support in place then many disabled people across Scotland will have the chance to take more control over their lives.

Another issue is that many important rules that will govern SDS are still to be set out in regulations. Of particular importance will be regulations on people who are ineligible to receive direct payments. It is crucial to ensure that Local Authority discretion is correctly constrained within suitable limits. Statutory guidance will also play an important role in the implementation of SDS and has the opportunity to make SDS a reality for disabled people. To best achieve this disabled people and their organisations should be closely involved in the design of the regulations. We ask the committee to recognise and reflect this in the stage 1 report.

Scottish Disability Equality Forum
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