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

Coalition of Care and Support Providers in Scotland and Providers & Personalisation

About CCPS
CCPS is the Coalition of Care and support Providers in Scotland. Its membership comprises more than 70 of the most substantial providers of care and support in Scotland’s voluntary sector, supporting approximately 270,000 people and their families, employing around 45,000 staff and managing a combined total income of over £1.2bn, of which an average of 73% per member organisation relates to service provision that is commissioned, purchased or otherwise funded by the public purse.

CCPS members provide services right across the spectrum of care and support, including services for older people; children and families; adults with physical and learning disabilities; and people facing a range of challenges in their lives, including mental health problems, addictions and involvement in the criminal justice system.

Providers & Personalisation (P&P) is a four year Scottish Government funded policy and practice change programme for third sector care and support providers, hosted by CCPS. The programme seeks to prepare providers for SDS by encouraging the sharing of best practice and ensuring a clear provider voice in policy development and implementation.

This submission is based on consultation with providers from the P&P network by email, face-to-face and in writing. The key points were then considered by the P&P reference group - a group of providers with specific interest and expertise in personalisation and self-directed support.

(1) Are you generally in favour of the Bill and its provisions? and (2) What are your views on the principles proposed?

We welcome the Scottish Government’s focus on Self-directed Support (SDS) and interest in the views of stakeholders as evidenced by the SDS strategy (2010) and the preceding consultations, including the consultation on the draft Bill.

Care and support providers view the Social Care (Self-directed Support) (Scotland) Bill, 2012 and the general principles set out within it as a positive move towards increasing choice and control for supported people. From a provider perspective, one of the most important elements of the legislation is that it will offer more options to people who wish to exercise choice within the market for social care, in contrast to the present situation where individuals are generally referred to services provided by organisations selected by the local authority, usually as a result of competitive tendering.

Further, we are very firmly in support of the general principle that “a person must have as much involvement as the person wishes in relation to…the
provision of support or services”, and we believe that this applies as much to services arranged by the local authority as to those services that a supported person might choose for him/herself.

In our comments on the draft bill, we expressed the view that the general principles ought to reflect the fact that self-directed support is a means to an end – that is, better outcomes: increased wellbeing, health and independence, and greater participation in society as a citizen – rather than an end in itself. We remain of this view.

CCPS is clear that proof of success following enactment will be in how the legislation is implemented locally. Our comments on the Bill therefore focus on areas where there needs to be a stronger steer (either in the Bill, regulations or guidance) to ensure that local implementation accurately reflects the principles of the Bill and is focussed on offering the maximum meaningful choice to the individual.

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

We support the four options outlined. In particular, as noted above, we very much welcome the “new” option (Option 2) whereby a supported person is empowered to direct their own support without necessarily taking a Direct Payment, as we believe this will widen opportunities for people to exercise choice in the market. However we would like to see the bill address a number of issues relating to resources and market diversity, as follows.

Equivalence of resource

We welcome the fact that the Bill does not focus on the creation of individual budgets for all supported people and instead, rightly, places at its centre the options that will enable a person to “have as much involvement as the person wishes” in the way their support is arranged. However our concern is that as it is currently drafted, the bill will not prevent the situation currently common among local authorities, where the amount of available resource for a person’s support differs depending on whether a supported person takes a Direct Payment, or has a service arranged for them. For example, many local authorities have a fixed rate for Direct Payments which is considerably lower than the rate(s) they pay to service providers. In our view, this significantly restricts a supported person’s choices. We believe that should a supported person choose a direct payment to purchase care directly from a provider, they need to be assured that the amount of this payment will enable them to secure the same amount of support as they would if the local authority arranged it for them (Option 3). The bill therefore needs to ensure that the choices of individuals are not fettered by assumptions on the part of local authorities that certain options will cost less than others. .
The Self-directed Support guidance¹ (2007) recognises this issue setting out that "The 1968 Act requires local authorities to ensure that the available budget is sufficient to enable the recipient to secure support of a standard that will satisfy the local authority that the person's needs are being met. It should meet the cost of providing a service which is of an equivalent standard to that which the local authority would provide." In Para. 63 the guidance goes on to add that: "It is best practice for local authorities to offer an individual budget of an equivalent monetary value of a council-arranged service to allow individuals to select their chosen option."

**Market sustainability**

As the bill currently stands there are no duties on local authorities to sustain and support a diverse market despite this being at the core of meaningful choice for supported people. While market sustainability is a complex issue and may require consideration within regulations and guidance, it is clear that core to sustaining a market is a commitment from local authorities to fund social care services at rates that are sufficient to cover all the costs of good quality support provision including workforce training and development, adequate management and supervision, regulatory and compliance costs and other organisational overheads. This would remove the need for third sector providers to cross subsidise core services from discretionary funds – where these exist - as currently occurs, and avoid potential market collapse through inadequate funding (note that more than 70% of providers in the third sector are running services at a deficit).³

Where there is no duty to maintain market diversity, specifically through adequate funding to sustain different types of support, there are several issues:

- People must have the option to choose lower volume, higher cost services where this meets their needs rather than the default being a low cost service at a higher volume.

- Specialist providers may be unable to compete equally as their costs reflect the higher skill level of specialist staff.

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 we welcome the Bill’s extension of the four options to children and their families, providers note concerns, expressed elsewhere, that age may not be the best determinant of a child’s capacity to exercise control. However given


this is a larger issue about decision making for children and young adults we
would not expect this Bill to diverge on this matter from existing legislation and
policy.

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?

We think that this provision is insufficient for the following reasons. Meaningful
choice is underpinned by high quality information and advice and it is
preferable that this advice be provided by an organisation independent of the
local authority or provider. While the provision of advice and information is
proposed as a local authority duty, we have some concerns as to how this will
be resourced and independence maintained.

Particular concerns relate to vulnerable people without family/carers and how
their decision making will be supported. We note the need for independent
advocacy for all groups and a number of our members would propose a right
to advocacy similar to that set out in s. 259 of the Mental Health (Care and
Treatment) (Scotland) Act, 2003.4

However, we are concerned about how independent advocacy will be funded:
if funding for advice, information, brokerage or advocacy has to come from the
resource identified for a person’s care and support, there is a risk that people
will not take up this type of essential support. We suggest that the resource
identified under the Mental Health Act for advocacy may give a sense of the
cost attached to this proposal.5

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

Current DP legislation can be difficult for individuals and organisations to
navigate. We support the consolidation of DP legislation and regulations as
this will go some way towards addressing this.
However we would note once again our concern that the issue of resource
equivalence for Direct Payments is not addressed in the bill. This is both a
problem of principle and an issue that directly impacts on market sustainability
and meaningful choice for supported people.

Delegated Powers Memorandum

We are in favour of the proposed variation of existing DP regulations to
minimise the groups of people who are excluded from SDS. However there is
less clarity on how practically some types of intervention (particularly
compulsory interventions) would be delivered through an SDS budget. We
should note, however, that there was no consensus among our members as

4 We refer the committee to the consultation response submitted by the Scottish Independent
Advocacy Alliance (SIAA) for further details.
5 http://www.sehd.scot.nhs.uk/publications/DC20030116LocalGovFin.pdf
to whether some services should be excluded from SDS. Most agree that the services suggested in the memorandum (child protection, domestic abuse services) should be excluded. Other services suggested for exclusion included drop-in/preventative services and crisis provision, as some providers believe that SDS could potentially destabilise crucial services such as crisis support and lead to the closure of low level open access preventative services such as drop-ins.

7. Do you have any views on the provisions relating to adult carers? no views.

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?

We understand the reason why Scottish Government has chosen not to place restrictions on who may be employed by an individual, as a key aspect of SDS is allowing individuals to make choices about who provides their care. However we are concerned that this will lead to a situation were there is effectively a two tier workforce: one regulated (support providers) and one not (PAs). There will be an attendant significant difference in the cost of care between these different types of support - something that has yet to be addressed by the bill and that closely relates to our concerns about equivalence of resource to enable choice for individuals.

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

We recognise the difficulty in predicting transitions costs to providers, as most existing work on SDS costs has been based on data about the cost of Direct Payments, and as such would question the claim that the move to SDS will be cost neutral. We agree with the list of cost areas in the Memorandum suggesting some additional areas:

**Staffing costs**

As individuals ask for more personalised care it is likely they will want more evening/ out-of hours support. Staff may also work more fragmented hours as people use their budgets flexibly for short periods of support throughout the day (e.g. staff accompanying an individual to meet their friends for coffee but not being required to support them during the meeting.) This has a range of implications for providers.

- Out of hours working usually attracts a higher rate of pay.

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http://www.scotland.gov.uk/Publications/2012/02/1217
- Providers need to consider how to pay staff working fragmented or highly variable hours e.g. in the situation above is the staff member on their own time during the meeting or are they ‘at work’?

- Providers need to train and support staff working to existing patterns on the principles of SDS and what this means for their practice and work patterns.

- Providers may need to recruit, support and train a larger staff team willing to work at high demand times of the day (e.g. early evening).

- Organising support becomes more complex and new rostering systems may need to be put in place.

**Budgets**

In the current system providers are funded primarily through block contracts from the local authority to deliver support and care to a number of individuals. Budgets are (reasonably) predictable and providers can plan for staffing and service needs. With SDS there will be a move to individuals (options 1 and 2) contracting directly with providers. The implications of this are that financial systems will need to change to handle individual contracting and invoicing.

**Business Risk**

Business planning also becomes more challenging in the move from block to individual contracting as it is difficult to predict income- particularly during transition. Additional business risk is posed by the fact that as the individual becomes a purchaser (and takes on the responsibility of paying for their care) providers may see an increase in people not able, or willing to pay for their service and thus carry increased levels of bad debt. Providers do not generally have significant reserves to draw on to manage this change (an estimated 70% of providers are currently operating at a deficit) SDS is a real challenge to business sustainability.

**Systems:** Looking beyond the Bill itself- implementation of SDS requires providers and local authorities to move to more focus on personal outcomes (the change a supported person wants to make in their lives) Current systems for collecting information about care and support, however, are focussed on outputs (time spent, numbers supported) and cost (hourly rate). The change in the type of information providers will need to collect is significant and implementing new outcomes monitoring systems is a costly process.

**Hidden costs:** Although it is maintained in the memorandum that SDS will be cost neutral in the long term there are hidden costs within the process. Learning from early implementers showed that providers gave advice and support, care planning and a degree of brokerage (supporting people to choose between care options) which was not resourced in any way- head of securing a contract with an individual. An additional hidden cost is the move
towards marketing support and care services to an individual instead of responding to a local authority tender.

**Smaller providers:** There are particular implications for smaller providers without the resources to make significant system changes.

**When costs will increase:** Some providers observed that the major costs won't come immediately on transition. Learning from early implementers suggest that when an individual is given a budget (options 1 and 2) they tend to stay with their existing provider as they have an established relationship with them. This means managing fluctuating need (as set out in the business risk section) may not be a significant cost until later in the change process. We anticipate that major costs will instead occur in 3-5 years time once the change has progressed and people seeking social care are routinely offered the four options.

10. **Effects on equal opportunities, human rights, island communities and sustainable development** 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 views

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

We have no other issues to raise with the committee at this time.

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24 April 2012