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

Capability Scotland

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

1.1. Capability Scotland is strongly in favour of the Social Care (Self Directed Support) (Scotland) Bill and its provisions. The Bill signifies a shift towards a more personalised approach to care and support for disabled people. It is in line with the principle of independent living and will hopefully give disabled people maximum choice and control over their lives and the services they receive.

1.2. As one of Scotland’s larger providers of education, employment and care services for disabled people, Capability strives to provide choice and control in its services. The Bill should facilitate the achievement of these outcomes for our service users and other disabled people across Scotland. As one disabled person commented:

“This should ensure that we control the support we get – rather than the support we get controlling us”.

1.3. The Scottish Government must, however, be aware that the Bill is being introduced at a time of massive cuts to local authority budgets and welfare benefits. As a result, Self Directed Support is understood by many disabled people to be a way of making cuts to their entitlement and their care packages, rather than a means of facilitating independent living. This is largely because several local authorities have used the process of assessing for Self Directed Support as an opportunity to ‘redistribute’ their resources. While this may have lead to a fairer and more transparent system for some (and in some cases possibly freed up resources which were being misused), in many cases it has lead to reduced entitlement, choice and control.

1.4. Laura is in her early twenties and has cerebral palsy and learning disabilities. She and her family had worked with her local authority for years to develop a package of care and find an accessible flat that would allow Laura to live independently. Soon after Laura moved into this flat, her care needs were reassessed as part of Self Directed Support implementation (despite the fact they had not changed) and her package was reduced by 30%. It is likely that Laura will soon have to move back in with her parents despite the effort and expense that has gone into the arrangement. The family are concerned that putting in a complaint will affect the relationship they have built up with the council.

1.5. Laura’s experience is a reminder that if the Scottish Government and local authorities want to introduce choice and control in a meaningful way they must accompany this legislation with adequate funding for social care services. Otherwise, as an employee of a care provider put it, Self Directed Support will do little more than ‘take from the poor to give to the poorer’.
1.6. It is also essential that the resources allocated to each individual are sufficient to cover incidental, consequential and run-on costs of their support. Capability Scotland believes that a provision to this effect must be included in the Bill. For example, where a person chooses to receive Direct Payments the cost of training personal assistants, covering sickness pay and holiday pay must all be included in the calculation, along with any redundancy pay arising at the end of the contract.

1.7. We are also concerned that the redistribution of resources that will result from Self Directed Support will lead to more people being charged for the care and support they receive. In addition, we have concerns that those receiving Direct Payments will continue to have individual contributions deducted or ‘netted off’ of the payment. This unfairly removes their right to challenge care charging decisions before any changes are made. We have raised both of these issues through our membership of COSLA’s Care Charging Working Group and will continue to work with our colleagues on this.

1.8. We also believe there is a need for an independent appeals system relating to local authorities’ decisions on the allocation of support. We do not believe that either internal complaints procedures or judicial review provide an adequate mechanism for appeal. The importance of an independent appeals system goes far beyond the settlement of individual disputes. An awareness that decisions can be quickly, easily and effectively challenged by an external tribunal will impact on the culture of local authorities; hopefully leading to decisions being better documented and easier to understand.

1.9. An independent tribunal should also help to address the imbalance of power between individuals and their local authorities. In many cases disabled people feel disempowered by a lack of information and a fear that using internal complaints procedures will lead to retribution of some kind. Jim, a wheelchair user from Glasgow who attends our policy reference group told us,

“To be honest, even if they had given me information about challenging their decision about how much they charge me, I’m not sure I would have done anything about it. I would have been scared that this would have made them cut or reduce my services. That just can’t happen. The services are too important to me.”

2. What are your views on the principles proposed?

2.1. We agree with the proposed principles. However, we would suggest that principle of ‘involvement’ is replaced with that of ‘meaningful involvement’. There is a real concern that whilst disabled people might be involved in decisions (attending the relevant meetings etc), if they are not always well informed, well supported and confident enough to express themselves then that involvement won’t be meaningful.

2.2. It is essential that disabled people can access advocacy services, as well as any necessary communication support. Capability Scotland staff and service users have provided countless examples of instances where public bodies – including local authorities – have failed to take the views and
concerns of disabled people into account. This is usually because they have underestimated the person’s mental capacity or failed to communicate with them effectively. Users of Capability Scotland’s services have made the following comments:

“People in the community can see my disability and assume that I can’t make decision for myself and talk over me.”

“Lack of confidence is an obstacle as I feel I am unable to speak up for myself.”

2.3. We would also like to see the inclusion of the principle of independent living in the Bill. We believe that this would serve to remind that local authorities that the objective of the legislation is to ensure that disabled people have the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. As yet, the principle of independent living is not enshrined in legislation, despite the Scottish Government’s declared commitment to it. Including the principle in the Bill would be both an important practical and an important symbolic step.

3. What are your views on the four options for Self Directed Support proposed in the Bill?

3.1. We are in favour of the four options presented. The legislation should also make it clear that people can move from one option to the next at any time.

4. Do you have any comments 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?

4.1. We are strongly in favour of the proposals being applied to children and families. It is often families that struggle to access support services which fit in with the needs of the family, including other children, as well as the disabled individual.

4.2. The parents of children who use our schools had told us about the problems they face on a day to day basis. These include the need for more individualised support for their children and for better access to sport, social and recreational activities to allow their children to develop their independence and friendships with their peers. Capability Scotland believes that accessing activities of this kind would be facilitated by Self Directed Support.

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?

5.1. Whilst we agree with the principles outlined, we would highlight that it is essential that local authorities have a duty to provide information on all of the
options that are available. In particular, disabled people should be made aware of the services and support they could potentially use their resource allocation to fund.

5.2. There is widespread concern amongst the staff and users of Capability Scotland services that local authorities may, either knowingly or unknowingly, be directing disabled people towards the cheapest and/or preferred provider rather than facilitating a free choice. Such an approach not only limits the individual’s choice, it also puts other care providers at a competitive disadvantage.

5.3. Joanne who has Multiple Sclerosis told us, “Our local council are ‘discouraging’ people from the service provider of their choice, in favour of the council ‘preferred’ provider.”

5.4. Local authorities should also make information available about what each of the options involves. For example, in relation to Direct Payments, information should include guidance on planning their care and support, developing terms and conditions, job specification, annual leave, sick pay, absences, handling grievances and paying national insurance contributions. This will help to ensure that those who choose Direct Payments to have a comprehensive understanding of what their responsibilities will be.

5.5. Subsection (3) of the Bill places a duty on the local authority to take reasonable steps to identify people with an interest in the care of the supported person and to involve the relevant people in the assessment.

5.6. There has been extensive discussion amongst Capability Scotland’s staff and services users about who should be involved in the assessment of an individual’s needs and the subsequent development of their support plan. Our main concern is that local authorities do not always involve the individual’s current care provider in the assessment of their needs. We believe that, unless the individual being assessed has any objection, the care provider should always be given the opportunity to contribute to the process.

5.7. This is essential for individuals who do not have an allocated social worker and, as such, have no one with a comprehensive and professional understanding of their requirements and care needs. The involvement of such a person in the assessment is vital for individuals with learning and/or communication difficulties and those who are reluctant to articulate their support needs for fear of appearing to be ‘pushy’ or ‘greedy’. Again, access to an advocacy worker is also essential for all those going through the assessment and care planning process.

5.8. Finally, when we discussed Self Directed Support with those who use our services, one strong theme came through. This was that it should be the individuals themselves, rather than their families, who should have the final say on the support they receive. Most participants agree that their families had their best interest at heart but felt that they were more concerned with keeping safe than supporting them to live a full and independent life. Jordan told us:
“It should be my choice, not my family’s. I lived with my mum as an adult for years because she said I couldn’t cope without her support. It took a big health scare for me to move into where I am now. I always wanted to move out of my Mum’s but I didn’t think it was an option.”

5.9. It is therefore essential that the legislation specifies that family members and other interested parties should only be involved with the individual’s consent.

Thank you for the opportunity to submit evidence to the committee.

Capability Scotland
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