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

Aberdeenshire Council Response

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

Aberdeenshire Council endorses the values and principles enshrined in the Bill.

2. What are your views on the principles proposed?

The Bill reinforces fundamental principles which underpin good social work practice.

The language of the Bill could, in places, be more progressive and it does not fully grasp the opportunity to put the individual and the principle of reciprocity at the heart of the process. We would like to see a greater emphasis placed on individuals with regard to personal responsibility, including the use of informal support networks, in line with the principles of co-production.

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

We support the four options, and believe this is essential to provide a broad spectrum of choice for people, however sections 3 (1) and 3 (2) are contradictory. Section 3 (1) clearly identifies the four options in which individuals can exercise choice and control over an individual budget. Section 3 (2) uses the term “relevant amount” only in the context of a Direct Payment. It is our view that an indicative budget should be identifiable for all individuals at an early stage in the process, whether they choose to receive this in the form of a Direct Payment or one of the other alternative options. We strongly believe that Section 3 (2) of the Bill undermines its overall ethos and would suggest it is reworded to support the identification of an indicative budget for all individuals.

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 need clearly acknowledge that children have different requirements from adults in respect of rights and responsibilities to self-determination and decision making etc. The Bill needs to reflect the fact that parents retain full parental rights and responsibilities in respect of their child until the child attains the age of 16 years (with the parents retaining residual responsibilities for providing advice and guidance until 18 years.) Although children have a right to be protected from harm/abuse and to enjoy family life etc (UN Convention), responsibility for their care and control remains with their parents.
Within this context we work within a spectrum, from parents who exercise full parental responsibility and authority with regard to their children to those parents who do neither. In attempting to meet our obligations to to "children in need", we take into account the extent to which a child's parents have the capacity to meet the needs of their children. In situations where the deficits in care that a child receives are obvious and identifiable, it would clearly not be appropriate to offer parents who are failing in their duty of care with choices about how their own needs (developing parenting skills) and the needs of their child (therapeutic intervention) can be met. Such children may be on the Child Protection Register and/or "looked after" by the local authority.

Moving between these positions on the spectrum, there is a need for caution in using SDS to determine the need for services and how they are delivered. We would support a risk-based, phased introduction to child care which includes in the first phase, e.g. children with disabilities.

It would be important that any developments with regard to SDS for children and parents are governed by the principles contained within the Children (Scotland) Act 1995 and, in particular, those which relate to a child's views being taken into account in matters/decisions relating to their welfare.

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?

Yes, we support the formal statutory responsibilities proposed.

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

We are generally satisfied that the areas under consideration are key to ensuring positive change. In the context of potential financial abuse, the extent of local authority monitoring responsibilities (to ensure funds are utilised for agreed purposes) would benefit from clarification by regulation/guidance. Similarly, any duties or powers available to local authorities (especially in relation to abuse by 3rd parties) should be explicit and it is recommended that workable, flexible provisions be set in place to allow investigation and remedy of financial abuse that has retrospective effect.

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

We believe these formalise and facilitate a more progressive and empowering means of supporting carers.

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 agree with the principle that individuals should be able to achieve their outcomes through having full choice over the means, including purchasing services from a provider or individual whom they consider fit to deliver a service. Whilst we acknowledge this position does not sit comfortably with a traditional approach, we believe any regulation may unreasonably restrict individual choice.

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

It is clear from our local SDS pilot, input required from professionals in relation to assessment and support planning, is more resource-intensive than current mainstream care management practice. It is highly likely that the process will be streamlined over time, as expertise and systems are established; however, we believe the resource assumptions within the Financial Memorandum substantially understate the cost implications.

In addition, the funding attached to transformation costs appears optimistic, especially in the areas of bridging finance and commissioning where forecasting at this early stage is speculative and we would suggest the level of additional grant funding is re-evaluated. We believe the proposed funding only reflects a fraction of the additional costs that local authorities will have over the 3 transition years, in order to fully and properly implement SDS.

In terms of eligibility criteria, it is our position that the legislation should make explicit reference, in order to manage expectations, to the role of local authorities in setting thresholds of eligibility.

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?

We are satisfied and see no problems in relation to equality.

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

1. To fully realise the benefits of SDS we think people should have the flexibility and choice to purchase any service which delivers their agreed outcomes. To put parameters around some services, such as residential care creates a two tier system and detracts from the principles and values of the legislation.

2. The term ‘social care’ limits the potential scope and contradicts the values and principles of SDS. It is important the title embraces duties and responsibilities for the NHS.

3. The Bill limits the involvement of the NHS whilst the principles are to allow service users to influence greater choice and control over achieving personal outcomes. This is inconsistent - health needs as well as social care needs should be addressed.
4. Neither the Bill nor supporting documents make any reference to how SDS will affect the provision of Free Personal and Nursing Care. If individuals are awarded a personal budget with few restrictions on its use, using creative and varied approaches to meeting outcomes it will be impossible, and indeed irrelevant, to establish the connection with levels of personal and nursing care. We do not believe an approach which retrospectively reviews an person’s personal plan with the aim of trying to identify elements of personal and nursing care is acceptable. We would recommend an approach which incorporates Free Personal and Nursing Care in a RAS.

5. We would ask the Committee to clarify whether the Bill places a duty on local authorities to apply the four options to housing support, particularly in relation to group living arrangements.

6. A difficulty which is likely to be faced is the issue of whether a person has the requisite capacity to make a decision / choice on service provision. If not, we may have to consider guardianship for the adult before such a decision is taken. In such an application there may be a potential conflict of interest if the Local Authority applies for Welfare Guardianship specifically to sign such a tenancy agreement when naturally the Local Authority would wish the service provider to adhere to choice (the agreed choice of all tenants).

Aberdeenshire Council
25 April 2012