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

Glasgow Centre for Inclusive Living

1 Introduction

1.1 Glasgow Centre for Inclusive Living (GCIL) is an organisation which is run by and for disabled people (i.e. a Disabled People’s Organisation or ‘DPO’). GCIL provides a range of services which aim to help disabled people challenge the barriers to independent living. These include a variety of employment, housing, training and self-directed support (SDS) services. In terms of services which have a specific relevance to this consultation response, GCIL currently supports approximately 350 disabled people in Glasgow, and a further 100 in East Dunbartonshire, to manage their own packages of support using SDS.

1.2 In broad terms, GCIL supports the responses submitted by Independent Living in Scotland (ILiS), Self Directed Support Scotland (SDSS), and Inclusion Scotland (IS). In addition, we would like to make the following specific points.

2 QUESTION 1: Are you generally in favour of the Bill and its provisions?

2.1 In principle, GCIL supports the proposal to consolidate and update existing legislation on direct payments.

3 QUESTION 2: What are your views on the principles proposed?

3.1 We believe the principles outlined are broadly positive. However, we would like to see the Act based on the explicit principle that SDS should be implemented in such a way that it promotes independent living. For this to be realised it would be necessary for legislation to guarantee not just the level of control that an individual can have over social care provision, but that the level of that provision must extend beyond basic personal care and safety. In other words, it must guarantee minimum entitlements to supports that enable a disabled person to live as an equal citizen with the same opportunities to participate and contribute to society as non-disabled people take for granted.

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

4.1 As indicated in a previous submission, we still believe the options set out are slightly confusing and do not distinguish sufficiently between provisions which enable the individual to achieve greater day to day control over their support, and simply making a decision not to do this (or, indeed, making no decision at all).
4.2 Confounding the options in this way, and regarding all of these options as forms of self-directed support, devalues the genuine meaning of the term. SDS gives practical effect to an individual’s desire for more choice and control in the support they use on a day to day basis. Choosing to use local authority provided services, or expressing no preference about how needs are met (even if there exists a general entitlement to have more involvement in assessment and provision where desired) are not the same thing at all. Perhaps the term ‘personalisation’ could have been reserved for this broader redefinition of a more individualised and co-productive approach to social care assessment and provision.

5 QUESTION 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?

5.1 We strongly agree that self-directed support should be more widely available to children and young people. It is at this age that many disabled people develop low expectations regarding their future prospects. SDS is a crucial tool in building self-esteem, raising ambitions and aspirations, and showing disabled children and young people that independent living is possible and achievable.

6 QUESTION 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?

6.1 We would like to see a more robust duty on local authorities to ensure that service users and their representatives have access to comprehensive, accessible and independent information, advocacy and support. In practice, as the Bill is implemented over time, it may be that a number of organisations develop relevant services. However, we believe that local authorities should be required to make every effort to ensure that at least one such resource is run by disabled people and is able to offer independent information, advice and support. This should include the requirement to resource and arrange community development to build the capacity of local disabled people to provide such a service. Unless this is undertaken, it is all too easy for local authorities to claim that local disabled people have no appetite for developing a local user-led SDS support organisation.

6.2 Where a market of independent support providers does develop, it is crucial that the cost of purchasing such support does not act as a barrier to obtaining it. Services can be block funded so that they are free at the point of delivery, or the cost can be included in an Individual Budget which the individual then uses to buy in the help they need. If the latter option is developed, it is essential that the cost be identified
separately in such a way that there is no incentive for the individual to redirect the funding to what may be viewed as more pressing areas such as additional hours of help with personal care. The best way to do this would be for support organisation costs to be ring-fenced within the Individual Budget.

6.3 In addition to specialist SDS support, ‘generic’ advocacy can be vital in ensuring that disabled people have their voice heard in engaging with public agencies and service providers. The inclusion of an enforceable right to independent advocacy would strengthen the likelihood that the SDS system as a whole would be implemented in a genuinely empowering way.

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

7.1 No, the method will help, but it will not of itself guarantee the kind of empowering system of support that the Government is seeking to achieve. We know from experience that SDS can give people more choice and control over their social care and support and that it can lead to better outcomes and improved quality of life for individuals. However, whilst a right to SDS is essential, it cannot make up for the combined effect of increasingly restrictive eligibility criteria, cuts in individual assessed budgets, and increasing charges. These are in danger of wiping out any gains from the introduction of a theoretically more empowering framework for assessment and provision.

7.2 For example, at the present time, many people re-assessed within the personalisation programme being implemented in Glasgow have experienced such severe cuts in funding combined in many instances with increased local authority charges, that their quality of life has been severely degraded rather than improved by the new approach. Many people are coming to regard an Individual Budget as an invitation to ration their own support rather than as an opportunity to take greater control. It is no surprise that the redistribution of funding from some individuals in order to fund others who would not otherwise have been supported within the overall social care budget has been described as ‘the redistribution of poverty’.

7.3 To be absolutely clear: GCIL unequivocally supports the need to update the legislative basis for direct payments and SDS – we simply believe the crisis in social care is in danger of undermining all our efforts.

8 QUESTION 7: Do you have any views on the provisions relating to adult carers?

8.1 We would support the introduction of a discretionary power for the local authority to offer SDS to an informal carer, as long as this is
unequivocally to meet the carer’s own assessed needs, but not in order to meet what are in reality the needs of the disabled or elderly person.

8.2 In respect of these needs, we would re-iterate the position stated in a previous submission: ‘We believe that the disabled person should always be the main focus of any support or intervention. Receiving support from informal or unpaid carers should be a positive choice of all concerned, not the only option available. Where the individual disabled person has capacity, there is no reason why the payment should need to go to the carer, even for services which may assist the informal carer in their role. If the person does not have capacity, then existing (and proposed) mechanisms exist to deal with this. We believe this arrangement promotes and prioritises the empowerment of individual disabled people and we therefore do not support the suggestion to extend the right to receive SDS to informal carers.’

9 QUESTION 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?

9.1 Yes. We agree that it is vital for anyone contemplating employing Personal Assistants (PAs) to have access to good information, advice and support on the responsibilities involved in doing so, particularly with respect to employment law, training, safety etc. Nonetheless, many disabled people value the flexibility afforded by employing individuals who do not have pre-existing attitudes acquired through working within the ‘mainstream’ social care system.

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

10.1 Although we agree with the broad thrust of the Financial Memorandum, we are slightly sceptical regarding some of the costs as detailed. Firstly, as noted above, for SDS to work in the empowering way intended, we believe that support organisations run by disabled people (ie genuine DPOs) should play a central part in providing independent advice and support at the local level.

10.2 Whilst we welcome the recent funding made available to build support organisation capacity under the recent SDS implementation programme, there remains much to do in many areas across Scotland. We therefore question the position that ‘...local authorities will not require to set up or fund significant numbers of new organisations, but will need to work with existing organisations to ensure efficiency, effectiveness and value for money’(FM s88). The existing landscape of support organisations is unlikely to change significantly without a more targeted approach combining a legislative requirement with long-term funding either at the local or national level.
10.3 Secondly, workforce issues are inextricably linked with local SDS funding in as far as they affect Personal Assistants (PA) and agency workers. If employing PAs is to be a genuine choice within a spectrum of options using an Individual Budget, then funding must include the ongoing costs of training, employment insurance, recruitment, payroll etc together with the costs of meeting employment responsibilities such as redundancy payments where these apply. Individuals should not have to choose between paying for the essential support they need or meeting their legal employment responsibilities. At the same time, it is essential that PA employers can afford to pay hourly rates and other terms and conditions of employment that are comparable with traditional forms of service provision. Unless this is so, the role will not attract high quality staff, individual support arrangements will be jeopardised, and SDS will be open to allegations of being designed to provide ‘care on the cheap’.

10.4 Comparisons with costs under direct payments should be treated with some caution as the implementation of direct payments did not always reflect these important costs either.

11 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. QUESTION 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?

11.1 We would strongly agree that ‘self-directed support, if implemented in line with its core values and principles, can enhance wider human rights principles beyond those enshrined directly in legislation’ (PM s53).

11.2 However, as has been pointed out in other submissions (eg by Independent Living in Scotland), SDS could be much more effective in doing this if certain fundamental features of the entire social care system were addressed.

11.3 These include a re-prioritisation of social care nationally leading to more realistic resourcing, addressing the inequities arising from localism, the need for a more robust rights-based approach with minimum entitlements, and the abolition of charging for social care in line with health care. Clearly these issues are beyond the scope of this specific piece of legislation alone and warrant consideration through an appropriate mechanism such as a Scottish Social Care Commission.

11.4 In terms of the impact of SDS on different ‘protected groups’, a flexible approach to using budgets offers clear opportunities for individuals to use funding in a way which meets personal, or cultural needs.
However, it is important that local policies on issues such as the employment of relatives, do not act to undermine this potential. Clear national guidance on these matters would be welcome.

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

12.1 As noted in a previous submission, we are disappointed that the Bill does not remove the current restriction on the use of SDS to pay care home costs where, of course, residential care is genuinely the positive choice of the individual. We believe that this would fundamentally improve the relationship between care home and individual resident, ensuring greater direct accountability to the ‘customer/resident’ rather than to commissioners as at present. This would encourage more of a ‘hotel’ culture where care homes are in direct competition with each other and are motivated to provide high quality services, ‘customer care’ and value for money.

12.2 We also believe that individuals should be enabled to supplement care home provision with additional support funded through SDS. This could enhance the experience of residential care, enabling greater mobility and general autonomy in addition to the basic day to day support provided. We recognise that this would have significant resource implications. However, without such an option we remain sceptical that some care homes are capable of meeting the essential requirements of current human rights legislation (eg European Convention on Human Rights).

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