Glasgow Disability Alliance Response to Social Security Bill Consultation – August 2017

Background to the response
Glasgow Disability Alliance is led by disabled people, with nearly 4000 members across Greater Glasgow, all of whom are disabled or have a long term health condition. Independent analysis of the GDA Member database postcodes (March 2017) highlights the stark level of poverty facing Glasgow’s disabled citizens:

- Over 33% of members live in the top decile i.e. 10% most deprived areas in Scotland
- Over 50% of GDA members (around 2000) are in the top two deciles
- 70% of GDA members live in the poorest 4 deciles in Scotland

Ahead of the launch of the Social Security Bill, over 500 GDA members were supported to participate through GDA in extensive engagement around the new Social Security powers in the past 18-24 months.

Consultation Process
This response reflects the views of around 250 GDA members who have reviewed and discussed the Bill since its launch, in a mixture of two small focus groups (15-20 people each time) and one larger event (200+), as well as others who have submitted written feedback to GDA staff. The majority of these participants had been previously involved in feeding in to the pre-Bill consultation.
Despite the richness of participants’ responses, it is worth noting feedback from many of these participants, that the time and support available for consultation ahead of the Bill enabled greater understanding of the scope of these important discussions. This was felt to contrast the scarcer time and resources available to support feedback on the Bill itself. This stage was felt to be of much more crucial importance, but was also a lot more complicated for participants to understand in order to give meaningful feedback. GDA’s capacity building approach led us to brief participants ahead of each meeting, and prepare accessible briefing papers.

During the smaller focus groups and the larger event, feelings of frustration were expressed, that the details of the Bill were lacking clarity and there was a concern that time is scarce to seek clarifications or amendments before the Bill is debated. Participants also felt that more in-depth sessions were needed to discuss, understand and meaningfully feedback on the Bill. The importance of allowing sufficient time and resources for disabled people’s meaningful participation was also raised in many of the recommendations made in relation to the Bill and the development of our new Social Security System.

**Headline Responses**

- **GDA welcomes The Social Security Bill and this crucial opportunity to comment and feedback on it.** In particular, members welcomed the attendance of Minister Jeane Freeman along with her colleagues from government. They also appreciated the considerable time the Minister gave to taking questions and answering concerns on some of the details of the Bill.

- **GDA members overwhelmingly support and welcome the principles on the face of the Bill, and feel that on the whole these strongly reflect the contributions they have been making throughout the pre-Bill consultation period.**

- **Respondents felt strongly that the principles both signify and necessitate a huge and much needed culture change in comparison with the current system.**

- **A concern was that the Charter will need to hold considerable weight, detail and be carefully constructed drawing on disabled people’s lived experience, in order to be more effective than the DWP’s disused customer charter. This should include independent scrutiny enabling greater accountability.**

- **Greater emphasis is needed on the accessibility of system: accessible venues for face to face; accessible information; duty to promote uptake. This latter duty should be included in the Bill.**

- **Much of the detail discussed in the pre-bill consultation period are now found in the policy document, rather than the Bill itself. Many of the responses below highlight factors supported in the policy document but these are considered by disabled people to be indispensable to the Bill itself in order to safeguard the principles and rights-focus behind the Bill. Leaving critical rules to subordinate legislation does not provide sufficient safeguards for people receiving social security assistance and it was felt that the balance between primary and subordinate legislation compromises human rights.**
• It was felt absolutely crucial to establish an **Independent scrutiny body**, involving disabled people (and others who use the system) in order to **safeguard accountability and co-production**. This is in line with 92% of respondents on this topic in the original consultation, the majority of whom thought such a body would be essential and should be established in law (Research Scotland 2017 p66-68).

• Co-production should be embedded in the **rules** to ensure that any future changes can only be made with disabled people’s involvement, thereby ensuring principle 7. This also related to the views of respondents who articulated the need for involvement of disabled people led organisations alongside Experience Panels.

• There was a real concern about the **lack of any detail on eligibility**, and deferral of this to the Regulations. Based on disabled people’s experiences with Self-Directed Support and Community Empowerment, there were widespread fears that the **good intentions behind the Bill could be lost in practice, or easily reversed in the event of a change in policy or government**.

• There was widespread demand for **stronger language committing to a rights based foundation**, linking **this Bill to UN and European Conventions**, particularly the UNCRPD- United Nations Convention on the Rights of Disabled People and ICESCR- the International Covenant on Economic, Social and Cultural Rights. It was felt this international legislation and treaties could also be useful in strengthening definitions of eligibility and dignity in the law to protect against future erosion of rights such as have been experienced under Westminster’s welfare reforms.
Principles

Disabled people overwhelmingly support the Principles on the face of the Bill, and felt these generally reflect their contributions to the pre-Bill consultation process. It was felt that the Principles signify a seismic culture shift from the current welfare system; and there was extensive discussion about the practical provisions the Bill needs to make to support this shift. Much of this centred around additions aiming to strengthen the principles; further practical suggestions will be covered in the sections to follow, regarding the Charter, Rules and Regulations, and Schedule 4.

- Principle 1: “Social Security is an investment in the people of Scotland.”
  It was felt this could be strengthened by adding an explanatory clause such as “...an investment in the people of Scotland, designed to help level the playing field, underpin equality of opportunity, and support individuals to participate on an equal basis and fulfil their potential.”

- Principle 2: Social Security is a Human Right essential to accessing other human rights
  It was strongly felt that the human rights basis of the Bill could be greatly strengthened by explicitly relating the Bill to existing domestic and international Human Rights legislation: particularly the Human Rights Act, the European Convention on Human Rights (ECHR) and UNCRPD. These could be incorporated at this stage as well as more detail being drawn from them in following sections of the Bill.

- Principle 3: Respect for the dignity of individuals is at the heart of the Scottish Social Security System.
  It was felt that this could also be emphasized by adding ‘and is upheld throughout the system in all its interactions with people receiving social security assistance’. It was further felt that a checklist for dignity and respect could be developed by the Experience Panels, Disabled People led Organisations and Carers organisations who could also be involved in “testing” standards.

- Principle 4: The Scottish Government has a role in making sure people are given the social security assistance they are entitled to.
  It was strongly felt that the wording of this should be strengthened here, and further elaborated in the rules of the Bill.
  There is a strong preference for the Bill to place a duty on Ministers to promote the availability of social security benefits, in order to ensure people get the social security assistance they are entitled to.
  We are aware that maximizing uptake has been a deliberate and positive intention of the present government, and strongly feel that for the principles of the Bill to be upheld, this policy should be enshrined in the Bill and the foundations of our system.

- Principle 5: The Scottish Social Security System will be designed with the people of Scotland.
  To help uphold the intentions of co-production and keeping people at the heart of the system, it was felt this principle could be enhanced by adding ‘designed, developed and monitored with the people of Scotland’. Alternatively, this could be combined with Principle 6 to read ‘The Scottish Social Security system will be designed, developed and continually improved in coproduction with the people of Scotland, putting the needs of those who require social security first.”

- Principle 6: The Scottish Social Security system should always be trying to improve. Any changes should put the needs of those who require social security first.
  There is a further opportunity here to strengthen the co-production by including that changes should be designed and developed with the people who require social security, putting their needs first. In addition, it was felt that this linked to organizational culture and the need to get this right from the outset: principles should be embedded by new agency staff into performance management targets and again “tested” out by those using social security.
- **Principle 7: The Scottish Social Security System is efficient and delivers value for money.** There was a fear that this principle could in future be reinterpreted along very different lines from its current intended meaning: it was feared that recent Westminster ‘welfare reforms’ were also argued to improve efficiency and value for tax payers – by diverting money from recipients into a costly reassessment system to reduce claimant numbers. It was suggested, therefore, that the values behind this principle could be strengthened by including the Minister’s commitment to minimize operational costs and maximize uptake, ensuring maximum benefit for the people and economy of Scotland.

**What’s Missing?**

- A strong theme in feedback from all participants was that a commitment to accessibility of the system should be embedded in the principles. We would ideally like to see it included as a principle in and of itself, e.g. “The Social Security System will be flexible and accessible to accommodate the diverse needs of the people who require social security assistance.”
- However if necessary this could be included as part of principle 4 or 5 e.g.: ‘4. The Scottish Government has a duty to ensure people get the social security assistance they are entitled to, by promoting uptake and ensuring the system is accessible and accommodates the diverse needs of the people of Scotland’; or ‘5. The system will be accessible to the diverse needs of the people who require social security, and will be designed and monitored with the people of Scotland.’
- Accessibility would need to be elaborated in the Charter and the Rules; it would refer in particular to communications, staff training, and premises.
Charter

There was wide support for a **co-produced Charter with strong monitoring and accountability mechanisms** in place. These elements were felt to be absolutely crucial to achieving the culture change laid out in the principles. Many people cited concerns this could be as ineffectual as the Customer Charter of the Department for Work and Pensions, which is scarcely known and felt to be tokenistic and largely meaningless at best and ironic in reality. To mitigate the risks of this happening in Scotland, it was felt this Charter should be co-designed, and should enshrine mechanisms for measuring and independently scrutinizing how the key principles in the Bill are being interpreted and upheld in practice: particularly dignity, respect, human rights, coproduction and investing in people as Scotland’s greatest asset.

We realize the content of the Charter will be discussed in depth, in consultation with people with experience, after the passing of the Bill. However the Charter’s scope will be determined by the provision in this section of the Bill at this stage.

Disabled people want the Bill to ensure at this stage that the Charter will be equipped to:

**Strengthen Rights**
- It was felt the principles could be strengthened by using rights language in the Charter, outlining rights and entitlements that link the Bill with other Human Rights legislation, e.g. “Everyone has the right to be treated with dignity and respect in their interactions with the Scottish Social Security system.”
- We recommend therefore that the Bill could put a duty on Ministers to ensure the Charter reflects the Principles AND outlines a rights based approach, in keeping with Scotland’s broader Human Rights commitments. (This would particularly help to strengthen principle 2).

**Define dignity, respect, and how these will be measured**
- As the founding principle of the system, this should be detailed in the Charter; linked with international treaties and conventions to which Scotland and the UK have committed; and embedded in monitoring including “testing” by those using social security assistance.
- **Enshrine a default trust in individuals’** self-reporting, in contrast to the default disbelief experienced widely in the current system. Valuing people by trusting them as experts in their own lives, and conditions.

**Enshrine accessibility**
- Improving accessibility is a key concern for disabled people, as shown in previous consultation response. We have already advised on including accessibility within the founding principles of the Bill, as ensuring rights to accessibility is fundamental to upholding rights to social security in Scotland.
- The Charter should outline what is meant by a commitment to ensuring an accessible system: such as accessible ways of communicating, giving individuals the choice as to their preferred method of communicating; using digital and non-digital systems; a commitment to using only accessible venues for any face-to-face contact; accessibility training for staff to ensure they uphold accessibility commitments in their work.
Guide agency performance
- The Bill should place a duty on ministers and all employees to uphold the Charter and its principles.
- The charter should be embedded in job descriptions, covered rigorously in staff training, and should guide ongoing performance management including target setting, observed practice and open discussion amongst staff and managers.
- All of this should be transparent and publicly reviewed each year.
- We similarly advocate for human rights training for staff and ongoing reflection on how this impacts on their work, as part of performance monitoring.

Define the commitment to coproduction
- Co-production and co-design principles were widely supported in the original consultation and are strongly advocated by disabled people as the most genuine way to ensure people’s needs and experiences are at the heart of the new system.
- It was strongly felt that the charter must embed a definition of the co-production envisaged, along with benchmarks and protocols for the meaningful and ongoing involvement of disabled people and others who rely on Social Security. These should adhere to the newly revised National Standards for Community Engagement, whereby capacity building and peer support are crucial to support genuine meaningful contributions.
- The use of Experience Panels was supported as one means of co-production and suggestions were made that these could be independently supported by DPOs who provide capacity building. At the very least it was felt that these should be matched by input from disabled people involved in DPOs where independent information, support and capacity building are provided.

Everything in the Charter and Bill should protect individuals in need – no ‘back door’ clauses to erode people’s rights and security. GDA member
Define accountability - including independent scrutiny

- To help ensure ongoing involvement of those with lived experience in the design and monitoring of the system, disabled people call for an independent scrutiny body to uphold accountability.
- We believe, along with the majority of respondents to the original consultation, that the scrutiny body should be established in law, and its role enshrined in the Charter as well as the Rules of the Bill.

Rules vs Regulations

Disabled people were highly supportive of specific aspects of the Rules, which we will detail below (e.g. continuation of payments throughout the appeals process).

However there was widespread concern about the general approach of deferring most of the details around the functioning of the new system to the regulations. Disabled people fear that this approach does not sufficiently safeguard their rights against potential erosion under future policies or governments. The preferred approach would be to put more detail into primary legislation. If, moving forward further changes are required, it was suggested that further primary legislation be brought forward for consideration.

With regulations being much more easily changed, the eligibility goalposts can be much more easily moved as they have been by the UK government, with the consequence of eroding and systematically violating disabled people’s rights under the UNCRPD. For this reason, GDA members felt strongly that this historic opportunity to advance human rights can only be seized by embedding the fundamental entitlements to dignity, respect and eligibility rights in the Bill itself, using international human rights law as a basis.

Dignity and respect

- It was strongly felt that the language of dignity and respect should be embedded in the Rules of the system, not just the Principles.
  Wording might include “all social security benefits should be delivered in cash rather than in kind in line with the principles of dignity and respect”

Eligibility

- Disabled people feel there is a real need to establish a baseline definition of eligibility in the language of the Bill, to safeguard rights, and ensure Ministers are accountable to Scotland’s International Human Rights commitments.
- As regards disability benefits, this should also enshrine the core aim of the assistance i.e. to help level the playing field by assisting with the extra costs of disability. Underpinning this in the Bill was felt to be crucial to guarantee this right against future corrosive discourse framing this assistance as a ‘luxury’ for ‘scroungers’.
- For example, the Bill could state that Ministers have a duty to provide assistance to persons with impairments or conditions which limit their ability to carry out day-to-day activities, resulting in a need for assistance with associated additional costs to achieve an adequate standard of living. This would be based on an assessment of needs along the lines of the Social Work (Scotland) Act which also seeks to promote social welfare.
- There was a concern about enabling powers in the Schedules being so wide as to potential allow fundamental changes to eligibility or assistance to be made by regulations alone.

If future changes are to put the needs of people who use the system first, then their genuine and ongoing involvement needs to be safeguarded in law.

If you truly believe your principles, then make it impossible for a future administration to abolish lifetime awards. GDA member
Accessibility
- As described above, there is a need for the accessibility of the system to be guaranteed, if the system is to live up to its principles.
- Disabled people emphasized that accessibility can never be presumed or left to chance, as their experiences of multiple persistent institutional barriers attest. Here is an opportunity to create an exemplary public institution with accessibility commitments built in from the start.
- Disabled people call for these commitments to be enshrined in the principles, as detailed above, and reaffirmed in the Rules, e.g. stating that Ministers have a duty to ensure that the Social Security system pro-actively accommodates and supports the diverse access needs of the people of Scotland, in particular with reference to its communications and premises.

Assessment
- It was felt that core to the system’s accessibility commitments should be a more flexible approach to assessment, with an emphasis on self-assessment, where trust in the individuals’ expertise is embedded.
- As the Bill stands, this is an area where lack of detail could result in practice being governed by non-statutory guidance which could undermine rights e.g. to appeal
- The minister has committed to reducing the number of face-to-face assessments, and as mentioned above disabled people felt this could be very effective if included in the principles / Charter as a mechanism to ensure efficiency and value for money. We would also hope to see it embedded in the Rules, as this will have an impact on the design of the regulations on assessment, and would legally establish a system whose spend is weighted towards recipients and not towards curtailing eligibility, as was felt to be the case in the UK system.
- The nature of the assessment criteria in the current system was felt to be fundamentally degrading and much of it totally unnecessary. Many disabled people felt that assessors, and decision makers, should have expertise on how impairments can affect your life.
Some suggested that questions should be tailored to the individuals’ condition and circumstances: e.g. different forms / questionnaires for mobility, cognitive, sensory impairments or fluctuating conditions, specially designed in co-production with people with lived experience, as well as a range of professionals. It was also felt the assessments could benefit from

- The policy of excluding private companies from the running of assessments was absolutely welcomed – disabled people call for this commitment to be embedded in the Bill, to protect this tenet of the Scottish System from any future corrosion.
- Disabled people wanted provision to be included that would commit our new system to using only transparent assessment methods – no covert surveillance of people in waiting rooms, and no appearance-based judgments which totally contradict the applicants’ words and experiences.
- Fundamental to embedding dignity and respect in the Rules of our system, disabled people call for a presumption of trust to be included in the Bill. This is absolutely crucial to legally establishing disabled people’s credibility as experts in our own lives, experiences and conditions.

**Choice of evidence sources**

- An example of how the system could ensure flexibility would be to widen the scope for what supporting evidence is to be accepted by Ministers.
- In this way, allowing evidence from a range of appropriate persons – medical and non-medical e.g. third sector – and giving the applicant the power to decide who is best placed to comment on how their conditions effect their lives, would help uphold the Principles, by ensuring individuals’ needs are at the heart of the process.
- It was also felt to be crucial that individuals have the right to review and comment on any supporting evidence provided – many people cited multiple errors in letters from their GPs. It was felt that these rights can only be firmly guaranteed – and the corresponding principles upheld - by being included in the Bill, rather than being left to the regulations.

**Advocacy**

- Provision for advocacy support is essential to ensure equal access to the social security system. Disabled people felt very strongly that advocacy support is already difficult to access, and that the right to advocacy, under the UNCRPD, should be embedded in the rules of our Bill i.e. the primary legislation.

**Duty to promote uptake**

- While the section on Discretionary Housing Payments confers important duties on Local Authorities to publicize and encourage uptake of the payments, there appears to be no parallel duties placed on Scottish Ministers.
- While the benefits take-up campaigns have established Ministers’ intentions to encourage awareness and uptake, disabled people felt that to uphold the principles and ensure Scotland makes the most of our Social Security System, there should be a duty on Ministers, set within the Bill, to promote awareness of available assistance and eligibility, and encourage up-take.
Cash vs in Kind
- Disabled people vehemently felt that to safeguard rights to choice and control – the fundamentals of independent living - cash must be the default form of assistance provided.
- There were grave concerns that the wording of the provision for ‘in-kind’ benefits i.e. ‘assistance may or may not take the form of cash’ leaves disabled people’s right to choice and control open to potential erosion, should ministers decide to mandate an ‘in-kind’ form of assistance.
- Therefore we ask that the language of choice and control be embedded in this aspect of the Bill, and that the Bill firmly establishes cash as the default form of assistance.

Appeals and Re-determinations
- There was extensive concern expressed about the retention of a two-tier appeals system. It was felt by many that this could potentially impede access to justice and entitlements. A solution proposed is that whereupon a mandatory re-determination is unsuccessful, the decision automatically goes forward to appeal – this way the person only has to initiate the process once, making justice more accessible. To avoid unnecessary progressions, there could be an opt-out option for those who do not wish their appeal to progress further.
- Disabled people also advised that where a decision is upheld on re-determination, support and advice be available as standard, to understand the reasons for this and address any issues that may have caused their application to be unsuccessful.
- Moves to ensure that re-determinations are carried out by a different assessor were welcomed, though if remaining internal to the agency this was not felt to guarantee impartiality. It was felt this proposal could also be strengthened by being included in the Rules, not just the policy memorandum.
- While the continuation of payments during the appeal process is warmly welcomed, it is not clear in the Bill whether this will apply to payment during the mandatory re-determination process.
- Many disabled people suggested that part of the system monitoring should involve an aim to reduce the number of re-determinations being made – this would safeguard against the two-tier process becoming a route to reduce appeals statistics as has been seen with the UK system; and would be a measure of success if the system were making more decisions ‘right first time’.

Timescales
- It was felt that the Bill could better guarantee dignity and respect by setting a baseline time period for determinations and particularly re-determinations. This would uphold dignity and respect and a rights based approach.

Offences: failure to notify
- Many disabled people were concerned about the criminal offence of ‘failing to notify of a change in circumstances’, stating that for disabled people failing to notify could be a direct result of their impairment.
- Disabled people therefore ask for leniency and flexibility around this, for example provision to ensure no one is prosecuted if their failure to notify can be shown to be impairment related.
- It was also asked that supportive measures to prevent these scenarios be built into the system, e.g. semi-regular prompt letters reminding people that they should notify of any change in circumstances.

Pursuit of overpayments
- There was great concern about the scope of the powers conferred by the Bill to pursue erroneous payments with no backdated time-limit. It was feared this could easily result in very large sums being pursued, causing huge amounts of stress, as well as unmanageable debt and poverty.
- While the Policy memorandum advises the current government intends only to pursue ‘where appropriate’, and abide by a time-limit, exceptions provided here e.g. for pursuit of a ‘very large and obvious sum’ could be interpreted in a wide range of ways. The government’s policy to take the debtors’ circumstances into account is also reassuring, but as part of the policy memorandum is not
binding. Disabled people felt it very important that these intentions, which do support the principles behind the Bill, be firmly embedded in the Rules around pursuit of overpayment to prevent a future erosion of the Principles.

**Embedding co-production in law**
- As described above, disabled people emphasized that co-production needs to be strengthened by embedding it in the Principles, Charter and the wording of Bill.
- We welcomed the duty conferred on Ministers to consult with disabled people on the yearly monitoring of the Charter, and on any changes to be made following this yearly review.
- However, as emphasized above and supported by a great number of other representative community organisations such as Inclusion Scotland, Glasgow Disability Alliance members felt very strongly that an independent scrutiny body must be established in law, with significant representation of disabled people and others who use the system.
- It was also strongly felt that to allow meaningful participation of grassroots communities who use the system, ongoing co-production with their user-led community organisations would be essential, in the monitoring and ongoing development of the system.
- GDA members discussed together a multitude of ways that those who use the service could have their feedback gathered and acted on – such as anonymised telephone surveys after a phone call to the agency; mystery shopping; paper-based evaluations asking if people felt they were treated with dignity and respect; involvement in training of staff.
- It was felt very strongly that capacity building and peer support is essential for this involvement to remain meaningful.
Schedules (Schedule 4)

As described at the very start, the distinctions between Rules, Schedules and Regulations were not easily understood by all participants within the timeframe of this consultation. As a result, many of the responses above, seeking to have disabled people’s key priorities embedded in the primary legislation, may be items which are more suited to be included in the Schedule e.g. additional parameters about how assessments must be regulated.

The previous section covers all the key issues which disabled people felt were missing from the language of the Bill. This section, therefore, will offer specific comments only on the items contained within Schedule 4 (relating to disability benefits), rather than on things which were felt to be missing overall.

- Clearer definition of ‘disability’ or ‘impairment’, referencing social model and intention of disability assistance to address barriers and inequality.

There were concerns about:

- Provision for eligibility to be made dependent on residence and presence. It was queried whether this relates to individuals moving into institutional care settings, and the transfer of payments to their care provider – however it would appear that this is covered under the section 2.11 ‘payment to someone else’. It would seem, therefore, that the provision to make eligibility dependent on residency could allow for a future decision to instigate a post-code lottery; or could impose a further barrier on portability and freedom of movement. This was felt to require clarification and discussion.

- Provision to make eligibility dependent on an individual being in receipt of another type of assistance. As has been raised by our colleagues in other DPOs, this would be a retrograde move, as the intention behind disability assistance has been to level the playing field regardless of income or other forms of support being received.

- Provision to impose a deadline for applications (2.7: application within a specified period’) – disabled people queried the potential use of this clause except to restrict access to those otherwise eligible.

- Provision, without the individual’s consent, to make payments to a third party who is believed to use it to benefit the individual (paragraph 11). There was confusion about the purpose of this and concern that it might compromise principles of dignity and respect.