# Health, Social Care and Sport Committee

# 5th Meeting, 2023 (Session 6), Tuesday, 20 February 2024

# Post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013

# Note by the clerk

## Background

1. At its meeting on 27 June 2023, the Committee agreed to undertake post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013.

The Act

2. The main provisions of the Act came into effect in April 2014.

3. The Act was intended to ensure that care and support is arranged, managed, and delivered in a way that supports choice and control for individuals.

4. Four fundamental principles of SDS are built into the legislation – participation and dignity, involvement, informed choice and collaboration. The legislation stipulates that all social care in Scotland should be provided in line with the principles set out in the Act.

5. In addition to the principles, and along with some other requirements, the Act contains a duty on local authorities to offer four options to people who have been assessed as needing a community care service:

   • Option 1: The individual or carer chooses and arranges the support and manages the budget as a direct payment.
   • Option 2: The individual chooses the support, and the authority or other organisation arranges the chosen support and manages the budget.
   • Option 3: The authority chooses and arranges the support.
   • Option 4: A mixture of options 1, 2 and 3.

6. The Scottish Government published statutory guidance to support the implementation of the Act, published in 2014 and updated in 2022. This guidance "explains what authorities should do to make sure that people are able to get the support that is right for them" and "is based on the Social Care (Self-directed Support) (Scotland) Act 2013 ('the 2013 Act')". It further explains: "This is the law that tells local authorities what they must do to give

access to SDS in a way that supports people's rights to choice, dignity and being able to take part in the life of their communities".

# The Committee's scrutiny

7.  At its meeting on 5 September 2023, the Committee agreed its scrutiny would focus on:

    - **The current picture of SDS -** The Committee would seek to better understand what SDS looks like to individuals in receipt of care and other key stakeholders, exploring the implementation gap that exists between the policy intent behind SDS legislation and what happens in practice.

    - **Improvement plan 2023 to 2027 -** The Committee would scrutinise the newly published Self-directed support: improvement plan 2023 to 2027 and look at how or whether this will help deliver the original aims of the Act where earlier plans have not.

    - **Monitoring and evaluation -** The Committee would explore how SDS is currently monitored and evaluated, given the findings of the Scottish Government commissioned research into the implementation of self-directed support.

8.  As SDS is the statutory vehicle for delivering social care, the Committee also intended that this scrutiny would be timely in informing and contributing to the Scottish Government's work on the development of a proposed National Care Service.

9.  The Committee also agreed a two-phase approach to its scrutiny:

    - Phase one is an informal information gathering stage, taking place November 2023 – February 2024.
    - Phase two to follow later in 2024, following analysis of the information gathered during phase one.

## Phase one

10. The Committee worked with several stakeholder organisations to inform phase one. As a result, it agreed that all its information gathering should centre on four key groups:

    - Individuals with experiences of self-directed support
    - Carers
    - Frontline social care and social work staff[1]
    - Social care providers

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[1] During discussions with stakeholders, it was agreed at an early stage in the Committee's scrutiny that social care staff and social work staff should be separated out into two key groups and two resulting workstreams.

11. The Committee worked with partner organisations to carry out the following activities:

- Informal briefing to the Committee: On 14 November, the Committee spoke with four partner organisations about experiences of implementation of SDS.

- Call for views: The Committee launched a call for views on implementation of the Social Care (Self-directed Support) (Scotland) Act 2013.

- Informal engagement workstreams: The Committee set up five workstreams with the above stakeholder groups to explore views of the implementation of SDS and what areas the Committee should focus on as phase two of its scrutiny.

12. The Committee's call for views, which was open for submissions between 3 November 2023 and 12 January 2024, received 142 responses. Individual responses were not published. Instead, a summary of these responses has been published on the Committee's webpage and is available at **Annexe A**.

## Informal engagement workstreams

13. The Scottish Parliament's Participation and Communities Team (PACT) worked with stakeholder organisations to identify a group of individuals from each of the five groups listed above to gather their views over a series of meetings throughout phase 1.

14. Using a deliberative democracy approach[2] to enable the views of the public to inform the Committee's scrutiny, the Scottish Parliament's PACT team, Scottish Parliament Information Centre (SPICe) researchers and Health, Social Care and Sport Committee clerks met with each of these five groups twice during December and January to:

- Develop parliamentary awareness and understanding, including in relation to the role of the Committee;
- Introduce the concept of post-legislative scrutiny, alongside examples of inquiries undertaken by other parliamentary committees;
- Provide background to the Social Care (Self Directed Support) (Scotland) Act 2013 and the Scottish Government's latest improvement plan;
- Work with participants to develop recommendations for the Committee on what it should focus on during phase 2 of its scrutiny;
- Prepare participants to present collective recommendations to the Committee at its formal meeting today.

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[2] Deliberative democracy approaches involve convening groups of people to learn, deliberate, and develop collective recommendations that consider the complexities and compromises required for solving multifaceted public issues.

15. A list of recommendations from each of the five workstreams has been published on the [Committee's webpage](#) and is available in **Annexe B**.

# Today's meeting

16. The substantive engagement undertaken as part of phase one provided the opportunity for a wide range of key stakeholders to discuss their experiences of SDS in depth. This included a detailed and nuanced picture of how SDS is currently working, how this is different from the policy intentions of the Act and areas for improvement. The Committee will hear a summary of these views at today's meeting.

17. At the meeting today, the Committee will speak with representatives from each of the five informal engagement workstreams, in two separate panels:

**Panel 1**

- Becs Barker and Michael Collier, representing the social care providers workstream
- Peter McDonnell, representing the social work staff workstream
- Ryan Murray, representing the social care staff workstream

**Panel 2**

- Lucy McDonald and Julia Smith, representing the individuals with experiences of self-directed support workstream
- Ann Marie Penman, representing the carers workstream
- Supported by Dr Pauline Nolan, Head of Leadership and Civic Participation, Inclusion Scotland.

18. The representatives will set out their workstream's recommendations to the Committee in a short opening statement, followed by questions from Members of the Committee.

**Clerks to the Committee, SPICe and PACT**

**15 February 2024**

# Health Social Care and Sport Committee

# Post-legislative scrutiny of Social Care (Self-directed support) (Scotland) Act 2013 – Summary of Evidence to support Phase 1

## Contents

## Background

The main provisions of the Social Care (Self-directed Support) (Scotland Act) 2013 ("the Act") came in to effect in April 2014. The intentions were to ensure that care

and support be arranged, managed, and delivered in a way that puts individual choice and control at the forefront of social care.

The Act contains a duty on local authorities to offer four options to people who have been assessed as needing a community care service.

- Option 1: The individual or carer chooses and arranges the support and manages the budget as a direct payment.
- Option 2: The individual chooses the support, and the local authority or other organisation arranges the chosen support and manages the budget.
- Option 3: The local authority chooses and arranges the support.
- Option 4: A mixture of options 1, 2 and 3.

The Health, Social Care and Sport Committee ("the Committee") conducted a call for views to support phase 1 of the post-legislative scrutiny of the Act. The consultation ran from 3 November 2023 to 12 January 2024. Respondents were invited to provide their thoughts on the implementation of self-directed support (SDS) to date. The individual responses have not been published.

The purpose of Phase 1 is to assist the Committee to decide on areas where it might wish to focus its scrutiny. This has been done by gathering evidence through a call general call for views asking about people's experiences of SDS, whether they work in implementing it or are in receipt of SDS. In addition, Parliament staff have worked more closely with groups of stakeholders to suggest and present recommendations for where they believe the Committee should focus their scrutiny. These recommendations will be presented by representatives of the groups on 20 February 2024.

# Respondent Characteristics
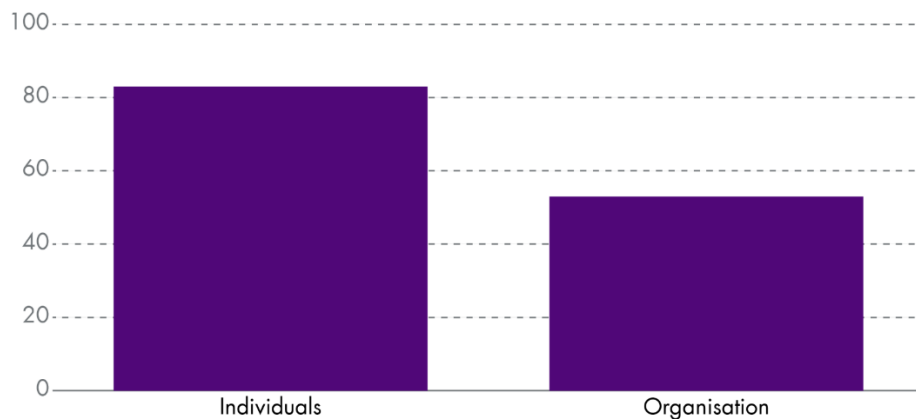


The Committee received 140 responses to their call for views: 83 individuals and 57 organisations.
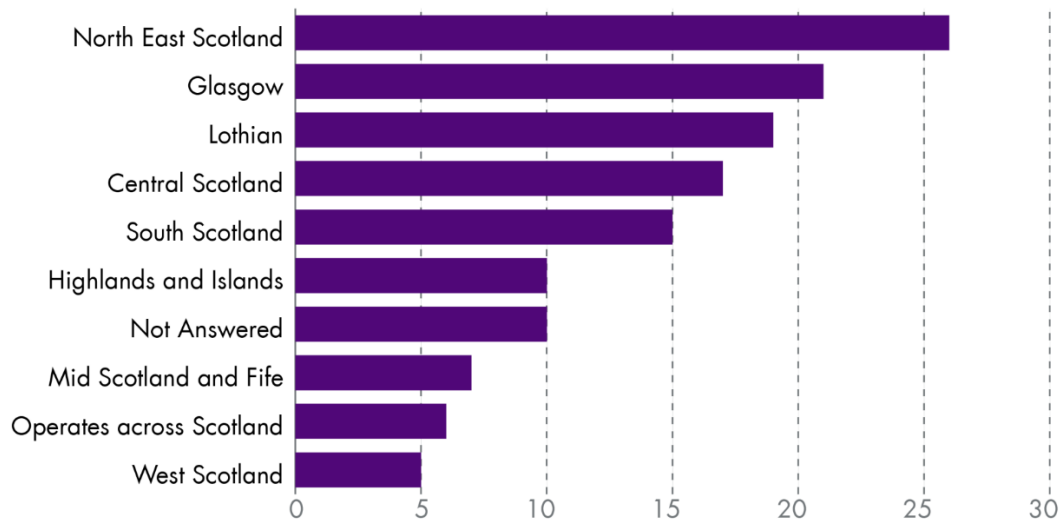
The consultation received responses from individuals and organisations in regions across Scotland, primarily North-East Scotland (26), Glasgow (21) and Lothian (19). 110 respondents reported they, or the person they're representing, have had direct experience with SDS; 19 have had no experience whilst 11 did not answer.

# Summary of Responses

The responses touched upon several key themes which are outlined below. The report breaks these down into areas of good practice and areas where respondents expressed a need for improvement. Some quotes are provided from organisations and individuals to highlights the issues and lived experiences of those who use and work in SDS.

# Data Visualisation

SPICe carried out automated textual analysis of the responses to highlight words and phrases frequently mentioned by individuals and organisations.
Below are two sets of diagrammatic analyses, organised as a word cloud on the left-hand side and a network map on the right-hand side, distinguishing between responses from individuals and organisations.

- A "word cloud" shows the frequency of words used in the submissions, excluding very regularly used words.
- A "network map" shows the frequency with which words are connected to each other. A darker line indicates a stronger, more regular connection.

## Please tell us what you, or the person you represent, think about the implementation of self-directed support to date.

### Responses from - Indiuiduals



Excludes: support, care, sds, directed, social

### Responses from - Organisations



Excludes: support, care, sds, directed, social

# Areas of Good Practice

In some areas and for some people, SDS has been transformational. Some supported users have had very positive experiences with SDS. Several respondents stated that the legislation has transformed social care for them, whilst one individual called it a "lifesaver". The section below will outline areas where respondents have noted the positives of SDS.

# Theme 1: Increased choice, flexibility, and control

Several respondents highlighted the greatly increased choice, flexibility and control that SDS has provided to users due to its person-centred approach. A social care provider noted the positive impact of a personalised approach to social care for one user that they support:

> "[…] because the individual budget allows for flexibility, it has been possible to pool resources and share support with others supported by our organisation in the local area."

Some individuals highlighted the benefit of increased control for the user as it allowed them to schedule their care around their existing schedule. One stated:

> "I can direct my care staff and support hours to fit with a working life."

Another individual said that SDS provides "flexibility to lead an independent life and be spontaneous about arranging support when I need it." Several respondents highlighted that SDS provides them with more choice around the support they receive. Individuals noted that they can engage with services and receive opportunities that may not otherwise be available to them such as crafting, church and sport activities, and short holidays.

# Theme 2: Respite for unpaid carers

Respondents highlighted that SDS has allowed unpaid carers to receive respite from their caring duties. One individual said:

> "I use it to pay my son to support me with my husband who is in later stages of dementia he also looks after his dad to give me respite."

Another stated:

> "[…] the package includes a budget for personal care and day activities for my husband and respite for me."

# Theme 3: Independent organisations

A national organisation that supports the use of SDS highlighted the importance of local independent support organisations in SDS implementation. They said:

> "Independent SDS Support services have, since before the introduction of the legislation, played a fundamental role in raising awareness of SDS among people who may need social care, and providing the services which enable the SDS Act to be implemented as intended."

An organisation that provides information and advice about SDS highlighted the broad range of support that such organisations can provide. They said:

> "They have advocated for people, offered community brokerage support, connected people into informal support arrangements to reduce the need for formal support, and have supported people through the end-to-end process of gaining support. The end-to-end process involves from referral to the independent support

organisations, pre and post assessment and all that is needed to put support in place using any of the 4 SDS options."

However, many people do not or cannot access this independent support and find that little information or comprehensive support is available from some local authorities/social work teams.

# Areas for Improvement

An overarching theme across most responses is that SDS is a good idea, that has largely failed due to poor implementation. One individual said:

"I believe the policy is excellent. Fully engaging the individual served in deciding and planning the care they receive is truly transformational. Or it could be were it to be comprehensively implemented."

Many respondents provided views that 'unpacked' the experience of poor implementation. Several others reflected that implementation had started well following the Act, but has deteriorated over time in many areas, including:

- the reduction of budgets,
- the reduction in overall funding of social care,
- the disappearance of flexibility,
- the loss of services,
- the lack of clarity about what is 'allowed' in terms of support,
- the pressures caused by lack of staff, both social care and social work
- the impact of financial pressures on eligibility, and the perceived manipulation by local authorities of eligibility criteria
- the lack of information and knowledge in local authorities, and among social work staff
- the challenge of managing a direct payment (as an employer, complex reporting requirements).
- The lack of accountability and support when things go wrong – no independent process

Views on these issues are covered thematically through this summary.

# Theme 4: Knowledge, clarity, and support during assessment

A common issue raised was the clear knowledge gap and uncertainty around SDS legislation. Many respondents stated that in the early stages of pursuing SDS they were not provided with sufficient information to inform their decisions. One individual said:

"The SDS advisor from the council seemed to be unaware of key facts about the service or the legislation that underpins it and it was

a continuous back and forth to change set ideas about exactly how the service should work."

This same individual highlighted their struggle dealing with the local authority, and that they did not feel urged to pursue SDS:

"Trying to get information from the council regarding the service was near impossible and I felt that there was a concerted effort not to offer it or dissuade us from requesting it."

One individual highlighted a distinct lack of guidance and information to help with their situation:

"There is very little advice or guidance available for people in our position - everything online including at SDS Scotland seems to be predicated on SDS as a scheme for disabled young people/adults and young people/adults with learning disabilities and that SDS budgets are only ever used to employ a personal assistant. I have found no sources of public sector, third sector or peer advice/guidance about SDS that is very relevant to our particular situation, i.e. an SDS package awarded to an older person with debilitating long-term conditions that have arisen late in life."

Another individual highlighted that they struggled to find services and agencies as local authorities couldn't offer suggestions or recommendations. They said:

"It took me a long time to put the package together because the care providers are so varied and do different things, with very different charging rates. It was really hard to navigate this very crowded arena on my own, as local authorities can't recommend or suggest particular agencies. It took months to find the right agencies who could offer the right service; this also had to change quite frequently, as my husband's needs changed."

Respondents stated that legislation and guidance is vague and has impacted the implementation of SDS. One Health and Social Care Partnership said:

"Staff have highlighted that the legislation and guidance for the spending of Option 1 budgets are too vague and open to interpretation, leading to inconsistent practice within the partnership."

# Theme 5: Inconsistency between local authorities

A commonly cited issue by respondents is the inconsistency of SDS implementation between local authorities. A few respondents refer to this as a "Postcode Lottery" of delivery.

There are nationally agreed eligibility criteria and statutory guidance, however the "nuanced and complex" legislation means this criteria is subjective and open to

interpretation – an issue that has been identified by respondents. One individual said:

> "Allowing each council to set their own eligibility criteria based on what leftovers they have in their budgets is shameful and wrong. Time the Scottish Government did their job and held councils to account."

Respondents have highlighted their own personal experiences of the inconsistencies between local authorities, where they have seen their support being "reassessed and reduced drastically as a consequence of moving area." An organisation that provides information and advice about SDS said:

> "[…] when people move from one local authority/HSCP area to another [they] cannot take any support arrangement with them and there is no guarantee of the same level or even kind of support available in their new location. This has restricted the social mobility of people who need support and impinges on their rights."

On the other hand, one individual stated they moved to a different local authority area because they knew they would receive better social care services and support.

# Theme 6: Workforce-related issues
## Staff shortages

Recruitment and retention of the social care and the social work workforce was highlighted to be an issue affecting SDS implementation. These issues have an impact on local authorities carrying out assessments in the way the Act requires – with choice and control at their heart, and the number of social care staff available to deliver services. One unpaid carer stated:

> "Social work have a staffing shortage, and there's been no social worker since his social worker left for maternity leave in the summer."

An occupational therapist stated:

> "[...] inadequate staffing in social work teams causes delays in assessments, reviews, etc...[Also,] lengthy processes plus inadequate staffing cause huge delays in getting SDS packages up and running - identity checks for banking paperwork etc takes time"

Another occupational therapist, working with SDS assessment and authorisation, noted the lack of social care staff, and a lack of diversity within the existing workforce, namely a shortage of Black, Asian and Minority Ethnic (BAME) carers. In addition to workforce shortages in social work, a shortage of social care staff was also highlighted by an individual:

> "There's basically no staff available and no providers are taking on new packages."

Another respondent said:

> "Ultimately my family ask the question, what chance do you have of choice and control through SDS when Social Care appears to be so utterly devalued as a profession and is starved of resources in material and financial terms. Carers are paid so little for what they do […]. Whilst I agree and support the values and intentions behind Self Directed Support, this cannot be done on the cheap. We can put all the bells and whistles we like on our legislation, without adequate resources care services will die on their feet and choice will be further limited."

## Employment conditions

The rate of pay and terms and conditions of employment of social care staff were identified by respondents as a reason for staff shortages. Respondents said that they believed social care staff are not appropriately compensated for the nature of the job they undertake, and further difficulties arise as pay rates are determined by local authorities. One individual stated that:

> "Staff can make more in less stressful and demanding environments making the roles in social care unattractive."

A third sector organisation highlighted that existing terms and conditions of employment do not accurately reflect the role of the social care workforce in the community. They also said:

> "There is a clear correlation between terms and conditions, recruitment and retention, and quality of care provided."

## Workforce training

Respondents expressed a need for social work staff to receive more, and better, SDS-specific training and education. A national organisation that supports the use of SDS said:

> "We understand there is currently very little coverage of SDS in social workers' undergraduate education, with some courses offering as little as half a day's teaching on Self-directed support across a whole degree programme."

They stated that this impacts on the social worker's understanding of the intentions of SDS and how to implement social care in practice to realise these intentions. One individual said:

> "[Social workers] develop their own take on what Self-Directed Support should look like."

A national organisation that supports the use of SDS said the extended team of professionals responsible for effective SDS implementation also require the appropriate training to do so – including local authority commissioning and finance teams.

Some respondents highlighted that personal assistants have insufficient access to training and support, and they should have to achieve certain qualifications to do their job. One said:

> "It should also be compulsory for PAs to register with SSSC whereas it currently isn't, and there should be a facility to enable option 1 PAs to do their SVQ II minimum, again this is not an option currently.

# Theme 7: Moving goalposts

Many respondents highlighted that the goalposts, regarding eligibility criteria and how funding can be spent, have been moved since the Act was introduced. Some said that the flexibility they initially had has become more restrictive over the years. Several individuals noted that in recent years the package they access can now only be used for "hours" of support, with less of a focus on personal outcomes. One unpaid carer said:

> "Since his review in April this year his budget can only be used for 'hours'. This has left us having to financially support him to still [attend] his clubs as we could not take them away from him. This is probing a burden and a huge worry once we are no longer here. He needs so much more than somebody providing 'hours'. The recent experience has left us wondering [if] it is worth it anymore."

A third sector organisation conducted research of their own, and said:

> "One person was informed by their social worker at their last review that the criteria had changed, and their support package would now be reduced."

One individual noted that the intentions of widening eligibility criteria with SDS have not been recognised – this has led to less focus on preventative care and early intervention. They stated:

> "The intention was to widen eligibility for accessing support but in fact this has reduced greatly. Thresholds for accessing support have been raised and every local authority is operating at the critical risk level with occasionally addressing substantial risk Individuals, where the risk is moderate or low are unlikely to receive support."

Some respondents highlighted that unspent funding – often unspent due to insufficient service availability or to save money for certain periods of the year – is often "clawed back" by local authorities. An organisation that provides information and advice about SDS commented on this:

> "To achieve balanced budgets many local authorities/HSCP clawback funds by reducing support arrangements or failing to recognise that for some people money is accumulated to meet needs which are far greater at some points in the year than others."

# Theme 8: User responsibility
**Stress and second job responsibilities**

The introduction of SDS proposed a shift in power, where the user, or the unpaid carer, had more responsibility and control over how the social care was organised and delivered. As a result, respondents have highlighted they have experienced stress, often due to the employer responsibilities they take on with option 1. One individual said:

> "The problem comes when your staff go sick and no one can cover, this has [led] to some really stressful and upsetting times."

Another individual said they have experienced ongoing stress as their mother's carer and power of attorney, as their mother is £8,000 out of pocket, pending reimbursement after becoming entitled to SDS 16 months prior.
Many stated that opting for option 1 is akin to taking on a second job. One said:

> "People should be in no doubt that option 1 is indeed like having an additional job running alongside your caring role and responsibilities, and in our case our paid employment."

Another individual said that despite having the legal responsibilities of an employer they could not make decisions that an employer should be able to make. They said:

> "I also do not like having the legal responsibility of being an employer but without the control or discretion to use the funds accordingly. [For example,] why can't I give my son's carer a pay rise."

**Administrative support for employer and unpaid carer responsibilities**

A respondent who organises SDS on behalf of their husband said that the system has worked for them. However, they expressed that help with the administrative duties is required and proposed that an online register of providers is developed to help supported users access services suitable to them. They said:

> "Help with all of this admin would have been so good; plus help with identifying suitable agencies, or an online register of providers and of care homes offering respite would have been a massive help."

A human rights organisation also expressed a wish for "infrastructure and mechanisms" to support employers with their obligations and to fill gaps in care times when they cannot do so themselves.

# Theme 9: Services
**Access to services**

Inadequate access to a broad range of services was a theme, commonly cited amongst respondents, that is believed to be hampering the effective implementation of SDS. An unpaid carer said:

> "There is a budget available but he has not been able to spend it due to a lack of resources. Part of his package is option 1, and some of the agreed options have no availability leaving the money unspent."

Some respondents believe group provision of services should be incorporated into social care delivery again. One respondent said that doing so may see individual costs decrease and staff availability increase. They also said:

> "Individual one to one support should always be available where needed, but group support and social inclusion is equally important, as well as being both cost and resource effective."

**Difficulty accessing services in specific groups**

An inadequate number of services is an issue that can be amplified in remote and rural areas, as staff shortages and scattered services have a more profound impact in such locations. One Health and Social Care Partnership said:

> "Those living in rural areas are particularly disadvantaged. Even if people do manage to get an Option 3 as their preferred choice, due to the availability of staff, most of the time people either don't get all the support hours they need, or they are receiving support times out with their preferences."

Respondents said some people, such as those with dementia, autism, or sensory loss, are also affected greatly by the lack of service availability. One third sector organisation said:

> "Certain groups of people still struggle to access SDS. These groups include people with dementia, autism, addictions, mental health conditions, or sensory loss; people from black and ethnic minority communities; and unpaid carers. Many ISOs describe how young people can 'fall off a cliff' at the point of transitioning from children to adult services. Where there is provision for these groups, services are often under-resourced."

# Theme 10: Processes and their impact on flexibility

Respondents noted the processes involved in accessing and utilising SDS are often tiresome, time-consuming and a barrier to accessing care services.

**Assessment process and personal outcomes**

Some respondents highlighted a flawed assessment process and the damaging effect this can have on developing the personal outcomes for a user. A human rights organisation conducted research of their own on 'Self-directed Support and personal outcomes'. One personal assistant said:

> "Too often I believe assessments are not done properly and they end up getting the sort of support service that suits the [local authority] rather than what suits them."

The human rights organisation added:

> "In [the] view [of some participants], the decision about their care was made before the assessment, so their opinions about their personal outcomes did not have an impact on the final decision"

Several responses expressed a need for group services (i.e., day centres) that would better suit a supported user and their personal outcomes. One respondent said:

> "SDS needs an overhaul, the pendulum has swung too far to individualised support, and needs to balance back to the middle. The options available should not just be individual support, there needs to be elements and availability of group support within the system… bringing back group support options will decrease costs and increase staff availability."

Following assessment processes, some respondents to the call for views said that they felt too encouraged to pursue a particular SDS option. One said:

> "Too many people [are] being encouraged to take Option 1 or Option 1 [is] being seen as an easy fix as it is the only option available."

A number of organisations highlighted a need to move towards a "relationship-based" approach, away from the current time-and-task approach that social care operates in. A social work representative indicated that this style of approach would facilitate better personalisation of outcomes for users:

> "[…] success in a relationship-based practice model looks like whatever works for the supported person - bolstering family supports, making use of community services, nurturing independence, navigating systems to get the best outcomes, and only if then needed, funded support."

**Waiting times and approval processes**

The time taken for decisions to be made and long waits throughout the needs assessment phase of SDS were commonly mentioned. A third sector organisation reported hearing that some people have had to wait longer than six months for a needs assessment or a review. They also said:

> "One individual reported waiting for two years to get a care plan signed off. When she contacted her local authority, she was told that her support plan is waiting to be signed off by a social worker."

This highlights another process that respondents noted as being a barrier to effective SDS implementation – the need for a care plan to be approved by care managers and financial officers. One individual highlighted their frustration at having a care plan agreed that still required authorisation for individual items. Another said:

> "The only disappointment is that we have to have expenditure approved by a Care Manager before applying the funds."

**Administrative processes – financial returns and complaints**

Respondents stated that administrative procedures, including financial returns, processing payments and complaints procedures, could be far clearer and more streamlined. Regarding financial returns, one individual said:

> "I still haven't quite got the answer of what exactly the financial records need to be - an example proforma would be useful."

Other respondents mentioned the "cumbersome" financial returns process, and one individual touches on the difficulties they have faced as the system does not accept Google Drive files. One HSCP noted the issues with IT systems experienced in their area:

> "[…] we are going through an IT system change for social care functions, but some finance work in still ongoing on the old system, which staff feel is slow and paperwork heavy, resulting in more bureaucracy and it [is] taking more time to set up SDS for people we support. It has been said that a shared system across Scotland, where information could be shared, would be of huge benefit to everyone involved, especially when there is movement for people we support, between partnerships/local authorities."

Respondents noted the complaints procedure and the difficulties they have experienced navigating it. Several stated it is an "in house", and "biased", procedure that bounces SDS users round in circles reaching no resolution. One social care provider that champions SDS highlighted the tenacity and persistence often required on the part of those making the complaint to reach the point of review and resolution. Some expressed that an independent body responsible for investigating complaints would be beneficial.

**Online systems**

A handful of responses stated that they have had issues with the SDS systems they're required to use being online. One individual highlighted that they require additional help from their family to use the systems, which influences their control of their SDS package, whilst another respondent highlights that many may have difficulties with the system if they're not "digitally literate" – digital systems may increase accessibility to some people, however it may ostracize others.

# Theme 11: Investment, funding, regulation, and accountability
**Scottish Government investment**

A running theme throughout the responses is a desperate need for greater investment from the Scottish Government to support better SDS implementation, to recognise its value and deliver on its initial vision. A HSCP said:

> "[…] the lack of adequate and sustained funding from Scottish Government is not congruent with the expectation of consistent and fair positive outcomes for the community through SDS."

Respondents stated they believe that SDS is underfunded, starved financially, and may be because social care is an undervalued profession. This underfunding leads to a short-staffed workforce and a lack of adequate resources, in areas across Scotland, hampering access to services. A local government representative said:

> "For the principles of Self-directed Support – promoting choice and control over support in a way that meets the needs and outcomes of the individual – to be fully embedded there must be improvements to the way social care, and Local Government more broadly, are valued and invested in to create the conditions for success."

**Regulation, accountability, and data collection**

A national organisation that supports the use of SDS and other respondents highlighted the need for a regulatory body to ensure accountability. The former said:

> "There is currently no effective legal mechanism for individuals who need social care support to uphold their rights under the legislation."

Independent regulatory bodies and more stringent regulation procedures have previously been mentioned – concerning complaints – as respondents believed these would help them to overcome the "opaque" and "bureaucratic" processes associated with SDS. Local authorities are provided with statutory guidance and powers to ensure the implementation of SDS, yet at present, there are not appropriate measures in place to ensure the accountability of the local authorities. There is very little data and information available in the public domain pertaining to the number of people accessing SDS, their experiences with the system and its processes, and importantly the level of unmet need. An organisation that provides information and advice about SDS stated that by failing to quantify unmet need, there will never be a true understanding of how much a holistic, comprehensive social care service would cost:

> "Unmet need must be captured and reported on to ensure the demand and need for social care is what 'politically' influences the budget allocation."

**Ring-fenced funding**
Several respondents said that funding provided to local authorities should be ring-fenced, so that it can only be spent on SDS delivery. One individual stated:

> "The money given to local governments should be ring fenced. It is used for other things and supported people have to go without."

**David Collins & Anne Jepson, Health and Social Care Team, SPICe Research 9th February 2024**

**Annexe B**

# Post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013

## Informal engagement workstreams

Participants from five informal engagement workstreams were asked to develop a set of recommendations for the Health, Social Care and Sport Committee on what it should focus on in phase 2 of its scrutiny. This paper sets out those recommendations.

## Individuals with experiences of self-directed support

### Recommendations

- The Committee should focus on clarifying where the decisions around finance are made within local authorities and prioritise training for finance staff on SDS legislation and statutory guidance within councils because often decisions around finance and budgets are not taken by the same people establishing social care and support needs and this results in changes being made without further discussion.
    - This includes both national budgets as well as individual care budgets and decisions around how Councils use care budgets. The Committee should also seek to clarify what approach to national, local and individual budgeting will be taken through the proposed national care service.

- The Committee should focus on the eligibility criteria and the assessment process because at the moment it is inconsistent across and within local authority areas and too time consuming. The use of eligibility criteria prevents many people from having their care and support needs met and can result in people ending up in crisis situations.

- The Committee should focus on the involvement of independent advocacy during the assessment process because this may make the process more understandable, transparent and any complaints process more robust.

- The Committee should focus on inherent biases in the process because at the moment, not all care and support needs are recorded. Local authorities are

reluctant to advertise/record unmet need because it opens them up to accusations of withholding support.

- The Committee should focus on SDS being person led rather than person centred, where regardless of the option someone chooses, they should still be in control of the allocated budget because personal care and social care are often divided and there is sometimes a feeling that if personal care is taken care of then social care is optional.
    o Specifically, the person in receipt of self-directed support should have full control over how they use their budget when employing PA's through option 1 including the use of contingency budget. Maximum flexibility should be part of a direct payment, (examples rather than a very detailed list of activities) to support identified outcomes.

- The Committee should focus on establishing a consistent approach to the assessment process (while maintaining an individual approach to needs and requirements) because too often the legislation is interpreted differently by different local authorities. Consistent staff training across local authorities is also important to ensure that a care package can be easily transitioned when someone moves to a different area.

- The Committee should focus on the co-production, mutual trust and collaboration in the design of care packages because at the moment the process isn't always transparent, and people aren't trusted.

- The Committee should focus on accessibility in all its forms because sometimes the process isn't always communicated in a way that is accessible for the individual (email, voice notes, easy read etc).

- The Committee should focus on ensuring transparency so that the cared for person has access to all notes and can track their journey through the process, and understand what has been agreed.

# Carers

## Recommendations

- The Committee should focus on the availability of independent support before, during and throughout the SDS process because this will provide better support for individuals and their carers and help them feel more confident to manage their social care package and won't create a barrier to them accessing and receiving support.

- The Committee should focus on a more consistent and transparent approach to referrals, the application process, assessment, allocation of resources, eligibility criteria processes and decision making to ensure an equity of provision that doesn't create a barrier to accessing and receiving support.

- The Committee should focus on how effective local authorities are at providing timely and relevant information because at the moment carers and supported people can find it to be a fight to access the support they need.

- The Committee should focus on the length of time it takes for an assessment in some local authority areas because at the moment it feels like there is an emergency response with sifting being based around crisis situations only. Also, children aged over 13 are not being assessed but rather they are having to wait until eligible for adult services (16).

- The Committee should focus on the knowledge and training and skills that HSCP staff have because there is generally very limited knowledge of legislation and requirements.

- The Committee should focus on suggesting/creating an accessible complaints system for meaningful redress when councils and HSCPs fail to meet their statutory SDS obligations and how resulting complaints decisions then inform the SDS process because there does not seem to be transparency around decisions or investigating and upholding complaints. The same Council department who is receiving the complaint is also responsible for investigating the complaint.

- The Committee should focus on how people's outcomes are monitored, and what data and statistics are collected to monitor both the uptake of SDS and funding/spending decisions within Local Authorities because sometimes individuals do not always agree to or want the packages they receive. Sometimes people are told their budget can only be used for hours of support and not for the things they feel will improve outcomes.

# Social care staff

## Recommendations

### Understanding and Education

- The Committee should focus on training for social workers because at the moment SDS isn't covered in enough detail at University – this is about holistic training regarding outcomes for individuals rather than just teaching the four options so that social workers can effectively communicate what the options are.

- The Committee should focus on a proper plan for supporting social carers because at the moment there is a disparity in pay across different sectors, terms and conditions aren't standardised and employee wellbeing is suffering.

- The Committee should focus on wider training and education for care managers and social workers because these are the people who are dealing with assessments and need to be better at giving the power to those in receipt of support.
    o There also needs to be wider awareness and understanding across the sector so  these principles can be put in to practice.
    o It isn't enough to tell people options because this can be overwhelming so reassurance and support is needed to support people to feel confident in choosing each.

### Consistency

- The Committee should focus on ensuring the legislation is fair and is followed because at the moment different authorities seem to interpret it in different ways which leads to a huge disparity in terms of what people are able to access and the support they receive, leading to a lack of fairness. This should involve focusing on:
    o Local Authority leadership
    o Whether a consistent framework is followed across all areas and associated monitoring/scrutiny of preferred choices and what support they receive
    o funding and budgetary processes in relation to SDS - different people have different restrictions on the support they can access, both across different LAs and within areas.

### Monitoring and Transparency

- The Committee should focus on how Local Authorities capture data in relation to SDS, are accountable for ensuring people are living good lives and the legislation is interpreted in the right way, and how funding is spent, because otherwise how can you promote good practice and ensure fairness is applied across all.

- The Committee should focus on social care capacity, workforce and structure because otherwise you will never have the staff to deliver the ethos of SDS.

- The Committee should focus on regulation of social care providers because we need to ensure the right workforce is in place to deliver SDS.

**Awareness**

- The Committee should focus on how Social Workers can be given the time they need to be involved in the community that they are a part of because most are still working to a time and task model which the legislation was supposed to have been removed.

- The Committee should focus on education of social workers at the ground level and understanding of what SDS and other assessments are, because there does not seem to be up-to-date materials to describe and promote SDS or what it involves.

- The Committee should focus on what constant and consistent information is available and if that is updated regularly because people get SDS but are not aware of it. They should know about it and know they have rights and their choices. (Some people do know, but others do not). This should not be an individual awareness campaign but ongoing and constant support and information.

- The Committee should focus on recommending that the Scottish Government consider developing a one-stop shop on resources that are available online because online information seems to be focused on the legislation instead of support for individuals and what they can expect from SDS.

## Social work staff

### Recommendations

### Resource/budgets

- The Committee should focus on resources and how that relates to other areas because we need people to understand the inter-connectedness of issues. It's not a simple solution, but a careful combination of things that need to happen.

- The Committee should focus on the resources that support making SDS a reality for more people - resource in terms of financial and budget aspects, but also on other aspects such as - workforce (social care and social work), capacity, work-load, community resources, individual resources - that can hinder the ability to deliver because if there is a finite resource you have to think outside the box and be a bit more creative. If we can't recruit into the SC and SW workforce, we don't have the manpower to deliver the resources that support making SDS a reality for more people.

- The Committee should focus on making sure spend delivers on people's outcomes because not all direct payments are not used as intended and exploring the reasons for that.

- The Committee should focus on unmet need and the assumption that this is on hours because people are not being supported to focus on improving their outcomes. There also need to be a recognition that people's outcomes change and the process at the moment does not necessarily allow for growth to happen

- The Committee should revisit the initial assumptions of cost neutrality of SDS because to deliver more choice, flexibility and control and to provide support to people to make decisions = additional investment. When in house services were stopped, the money wasn't reinvested in social care, but used for savings. This was because Las had to make budget cuts.

- The Committee should carefully consider the impact of the introduction of the NCS on social care, because the introduction of integration created unforeseen challenges for all the partners which in turn profoundly affected social care and the delivery of Self -directed support.

- The committee should focus on eligibility criteria from the point of view of overall resource, expectation management and assessment because it is a tool to identify needs and acuity of need.

- The Committee should focus on university training of Social Workers on SDS as the delivery mechanism for social care because it is the way it should be delivered.

- The Committee should focus on the challenges created by other legislation in delivering SDS – such as procurement, Adult Support and Protection, Public Bodies Act and the NCS to ensure that all are directed at delivering SDS.

- The Committee should focus on the challenges of Option 1 around expectation management, availability of services, accountability because this is one element that produces inconsistency (financial risk aversion, lack of clarity on what social care is for).

- The Committee should focus on parity between children's social work and adult social work because the legislation applies to both equally. Children's services tend to have more relationship based practice (rather than caseload based, as in adult services). We need relationship-based practice in adults services to support the person-led nature of SDS.

- The Committee should also focus on workforce planning according to demand rather than supply and looking at upcoming retirals.

- The Committee should focus on a national approach to terms and conditions for social work staff because they are not consistent nationally.

**Workforce challenges**

- The Committee should focus on the ability to recruit into social care because it is the worst it has been for many years. There are lots of pressures facing workers and there is not always the time to do all of the introductory preparation that is needed, they have to go in and deliver care or do assessments straight away. Better pay would be good, but it's not just about money, the support is not there – there are not enough managers to provide compassionate support for staff so they have the confidence to raise issues and to promote risk-enablement and risk management. Staff do not have the professional confidence. There does not seem to be the buy-in from leadership to have the time to have conversations. People want the autonomy to deliver the work, but they also want a set process.

- The Committee should focus on the ability of areas to join the dots between HSCP areas and whether they have the leadership to support and mentor staff because fragmented leadership is an issue in social work; due to integration many social workers are managed by NHS managers under a medical model approach. The Committee should focus on training and buy in from health colleagues because it is less about the availability of training around SDS, but health colleagues having the time to avail themselves of the training.

- The Committee should focus on working with individuals in a relationship-based way – this is foundational to making conversations a reality instead of a budget-led process – resource allocation etc. Practitioners need to feel empowered and skilled to deliver an asset-led approach, which becomes a golden thread then throughout the SDS process. The budget should follow that – the budget is just part of that asset map. This approach needs investment in staff and leadership to deliver.

- The Committee should focus on appropriate skills-based and outcomes-focussed training (rather than process-driven training) for staff, as most training just now focuses on navigating operational systems, rather than how SDS should be implemented in practice.

- The committee should focus on the overarching framework and legislation as it is too open to interpretation – some variances across local authority areas are understandable but this requires a more appropriate balance in the legislation.

**Outcomes focus**

- The Committee should focus on shifting the focus to practitioners being free to deliver the work because there needs to be collaboration between service users on outcomes, without money getting in the way. We should start with a relationship-based approach and staff should be supported to do so.

- The Committee should focus on defining what outcomes are, rather than defining support in terms of time. Individuals often are not interested in social work terminology and just want a certain amount of time as this is easier to understand. There is still a bit of work to do with people about what SDS is and what it means and not just about allocating time. There are also different specialities within social work, some social workers are not bought into the conversation about outcomes or SDS. There is a heavy influence from health colleagues who are time and task based. NHS is a stronger voice than social work – need to give parity to the professionalism of social work.

- The Committee should focus on putting relationship-based practice at the forefront of SDS delivery (rather than case-management practice) – focussing on service-user choice and control in a way that will not overwhelm the user – because this will allow for the intentions of SDS to be realised.

**Consistency**

- The Committee should focus on lack of consistency within Local Authorities, as well as across different Local Authorities, which is down to the categorisation of different care groups because SDS has been rolled out differently in different care groups which causes a disparity and unfairness.
  - Different areas sometimes have more budget to meet those needs. Where does it make sense to have variation and where is there unnecessary variation?
  - Need a national approach that has national consistency, but allows for necessary variation that is needed. Bigger picture of how it is shaped across Scotland.
  - There is also a need to allow for movement from one area to another without a change in the level of care and support.

- The Committee should focus on standards that sit at a useful level, and an overarching framework which demonstrates what good looks like in SDS and allow space in the National Care Service and NSWA to unpack how that works and what that looks like.

- The Committee should focus on all aspects of consistency:
  - Between local authorities

- o  Within local authorities – different for children, older people, people with disabilities, addiction/homelessness
- o  Different geographies within and between local authorities – what's available in an urban setting and rurally within the same authority
- o  Consistency of practice between different staff as well as different areas.

Because if consistency isn't defined in all these and other contexts, then talking about improving consistency is meaningless.

- The Committee should focus on social work and social work practice because social workers are the key to delivery of SDS: through their practice, their duties, the relationships with people needing care and support and with other functions within the local authority and in the MDTs (other professions and social care staff).

- The Committee should focus on public understanding of social care, not only SDS, but assessment processes and finance because of the very varying expectations of what SDS is for and how it is delivered.

# Social care providers

## Recommendations

### Rural/Consistency

- The Committee should focus on why all local authorities are not recognising people's right to choice, control and dignified support regardless of where they live, because by not doing that human rights are being contravened and the legislation is not being followed. Some individuals don't have a choice because they're not offered it, others are not because there is no one to fulfil it.

- The Committee should focus on how commissioners develop marketplaces because there are areas where choices aren't available because there aren't marketplaces and providers in that area to deliver that support.

- The Committee should focus on all geographies in Scotland in a way that's unique to them because it's not just rural areas that experience issues with SDS. (There may be more issues in rural areas, but that's a delivery mechanism. It's about everyone having access to SDS regardless of where they live.).

- The Committee should focus on why local authorities do not discuss SDS options at assessment and then put that out to external providers.

- The Committee should focus on equity of SDS implementation across all rural and urban areas because it should be viewed as an investment and a catalyst to improve lives in different ways, by generating employment and income, which potentially can build towards developing infrastructure.

- The Committee should focus on understanding why there are different approaches to SDS in different local authority areas – such as 'time and task' in Glasgow and opportunity-focused in Falkirk – because these differences lead to inefficient and inequitable service delivery.

### Pressure

- The Committee should focus on how we ensure we have the workforce for the future, which includes fair work and fair pay across all sectors because a lot of the pressures are created due to disparities between providers and sectors. There needs to be a focus on the human rights of the whole workforce and not driving that workforce into the ground trying to deliver everything.

- The Committee should focus on a move away from time and task because a different approach can be transformational for people's support.

- The Committee should focus on financial pressures on providers because all funding is per-hour and not conducive to the care that people need.

- The Committee should focus on why we're not taking a whole system approach where health and social care are valued in the same way because it is becoming increasingly difficult to recruit into social care.

- The Committee should focus on Section 19 of the SDS Act – sustainability of the sector - in terms of workforce because that urgently needs to be addressed.

- The Committee should focus on a way of working where there is less micro-management of, and more trust in, service providers, because the providers have great experience and knowledge in SDS implementation and collaborate well to share information – there has to be a shift in power, and a willingness of some to let the power go.

**Ethical commissioning**

- The Committee should focus on why ethical commissioning does not happen because there have been great experiences of initial collaborative commissioning conversations only for tenders to then be put out via restrictive procurement processes.

- The Committee should focus on why competitive tendering still takes place because it is not right for social care as it doesn't respect the rights for individuals to choose who provides their care and it's not right for organisations providing that care.

- The Committee should focus on why people are getting less budget depending which option in SDS that you choose, because sometimes if you choose option 3 you get free care, if you choose options 1 or 2 you have to provide a top-up fee.

- The Committee should focus on local authorities using resources efficiently, because third sector and independent providers are under far more pressure to do so than the public sector.

- The Committee should focus on building towards a relationships-based practice again, as this way of working has been replaced with something more transactional – i.e., hours of care met, 15-minute meeting completed. This involves understanding the price of something, compared to the value of something.

- The Committee should focus on building trust and candour between all parties involved with SDS (Scottish Government, local authorities, providers, communities) as a lack of trust and joined-up-thinking is a hindrance.

- The Committee should focus on ethical commissioning because we need to move towards a culture of openness, trust and collaboration; where we (supported people, communities, providers and local authorities) help each other out as equal partners and our approaches are underpinned by learning and continuous improvement approaches to enable everyone to reach their full potential.

- The Committee should focus on ensuring there is a process of constructive, overt and explicit test and challenge because there needs to be a process for active and transparent continuous improvement. There is nothing in the system currently that pushes improvement. Mistakes are made over and over and nothing to address system failure.

**Choice**

- The Committee should focus on the infrastructure of support around SDS because people don't know what it is and see it as a complicated thing and can be too tired or burnt out to make a choice. It works for some people but not for others.

- The Committee should focus on the mistrust in the system because individuals and providers are not abusing the SDS process.

- The Committee should focus on why people are not trusted to make the decisions that are right for them, and providers to provide the support people need.

- The Committee should focus on ensuring SWS understand SDS because without that, there is no chance.

- The Committee should focus on developing the understanding of rights around choice, as SDS should be used as a tool to deliver on people's human rights and treat each other with dignity.