

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK AND HEALTH COMMITTEE - 23RD MAY 2011

REPORT ON: SELF DIRECTED SUPPORT: DRAFT BILL AND DEVELOPMENT OF PERSONALISED SERVICES

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 252 - 2011

1.0 PURPOSE OF REPORT

1.1 This report provides the committee with information about the Social Work Department's recent response to the Scottish Government's Self Directed Support Draft Bill. This matter was first brought before elected members on 28th June 2010: report number 359-2010. This report also provides elected members with information on the Social Work Department's development of a Personalisation Strategy.

2.0 RECOMMENDATIONS

It is recommended that the Committee:

2.1 Notes the recently submitted Dundee City Council Social Work Department response to the Scottish Government's consultation on the Self Directed Support Draft Bill appended to the report.

2.2 Support the continued development of the personalisation agenda in Dundee and note the progress made to develop our local Personalisation Strategy in line with the Government's National Self Directed Support Strategy.

2.3 Receive proposals for the use of the additional funding outlined in paragraph 3.1 at a later date.

3.0 FINANCIAL IMPLICATIONS

3.1 A financial framework will be developed through the resource allocation workstream outlined below which will support the implementation of self directed support as part of the personalisation agenda. The Scottish Government has recently announced funding of £35,000 in 2011/12 to each local authority to support the implementation of the National Strategy for self-directed support in Scotland.

4.0 MAIN TEXT

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

The Scottish Government sought responses to a Self Directed Support draft Bill through a consultation period which ran from 16 December 2010 to 24th March 2011. During this time the Social Work Department set up, facilitated or was involved in several focus groups including a carers group, a service user group, a care management group, a legal services group and a contracts staff group. Each group was asked to consider general questions set out in the consultation document and ones specific to them and these responses contributed to the Social Work Department's response which as noted in point 2.1 of this report, is appended to this report.

4.2 Self directed support puts the person at the centre as a participant in shaping the supports and/or services they receive; and allows them to work with professionals, advocates (if

appropriate) and their carers. Self directed support is a way for people to get the support they need to be part of their community and to stay fit and healthy

4.3 The Self Directed Support draft Bill sets out four options for self-directed support:

- Option 1 will mean that the person in need of support, following assessment, will have an identified individual budget for the provision of their support by the local authority made known to them.
- Option 2 will mean that the person in need of support, following an assessment, will receive a direct payment from the local authority which will enable the person to arrange their own supports/services to meet their needs.
- Option 3 will mean that the person in need, following an assessment, will have their support arranged and delivered by the local authority.
- Option 4 will mean that the person in need, following an assessment, can have mixture of the above options in order to meet their assessed needs.

4.4 It is anticipated that if the Bill will be passed it will become a requirement of the Social Work Department to ensure that all four options are made known to Service Users and Carers at the time of assessment and again at review. This will enable service users and carers to make an informed choice about the service response they wish to have to meet their agreed assessed in line with current eligibility criteria.

4.5 **Personalisation Strategy**

As previously reported, to support the implementation of the Bill, a national ten year strategy for self directed support in Scotland has also been developed by the Scottish Government. It is anticipated that this will help take forward the personalisation of health and social care services in Scotland.

4.6 The increasing numbers of people accessing social care and the range of individual needs mean that services and supports will have to continue to become much more flexible and responsive in the future.

4.7 Over the past few years the Social Work Department has taken a staged approach towards the development of a local Personalisation Strategy. While personalisation has been adopted at an individual worker level, with varying levels of understanding and application, it is recognised that there is a need to set out a common definition, approach and strategy for taking this work forward both at the micro and macro level.

4.8. In order to meet this challenge the Social Work Department have established a Personalisation Project Board and Project Team in order to develop our approach and produce a local Personalisation Strategy. The Project Board has representatives from both Social Work and Health and progress on our strategy will be monitored through the Chief Officers Group as well as the Social Work Directorate and Community Health Partnership.

4.9 The Social Work Department's Personalisation Strategy will be a five year plan. It will clearly set out the outcomes which are anticipated and set out a framework for delivering this. This is a realistic timeframe given the complexities of several of the issues set out within the Personalisation agenda.

4.10 The Project Board and Team have already set out several essential work streams in order to support the implementation of the strategy and include:

- Workforce Planning and Development
- Commissioning and Procurement
- Resource Allocation Framework
- Governance
- Managing Risk
- Consultation, Communication and Stakeholder Engagement
- Assessment, Care Planning and Review

- Citizen Wellbeing and Outcomes
- Personal Planning and Outcome Tools

4.11 Each of the work streams has an identified lead officer and this individual is responsible for setting out an action plan specific to their specific area of development. It is recognised that dependent on the particular work stream there could be several layers of actions required. Participants within each work stream group have been agreed and include trade union representation, service users, and carers. Arrangements to learn from other Council areas involved in the current demonstrator sites, noted within the Self Directed Support National Strategy are in hand.

5.0 POLICY IMPLICATIONS

5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There were no major issues.

5.2 An Equality Impact Assessment has been carried out and will be made available on the Council website <http://www.dundee.gov.uk/equanddiv/equimpact/>.

6.0 CONSULTATIONS

6.1 The Chief Executive, Depute Chief Executive (Support Services) and Director of Finance have been consulted in preparation of this report.

7.0 BACKGROUND PAPERS

The Social Work Department response to the Scottish Government's Self Directed Support Draft Bill.
Equality Impact Assessment

Alan G Baird
Director of Social Work

DATE: 12th May 2011

Questionnaire and Respondent Information Form
Self-directed support: a draft Bill for consultation



Consultation Questions

1. Objectives for the draft Bill

Question 1(a): What are your views on the objectives that we have set for the Bill?

Comments

We welcome the objectives set for the draft Bill and acknowledge that it will help widen the understanding of self directed support beyond direct payments. The move to consolidate and update existing legislation is also welcomed by practitioners.

Question 1(b): Do you think that the draft Bill meets the objectives that we have set?

Comments

If not, why not and how might the Bill be changed in order to meet them?

We would welcome further clarity around the issue of eligibility for services and the application of criteria to determine eligibility.

2. General principles

Question 2(a): What are your views on the general principles included in the draft Bill? [Bill reference: section 1]

Comments

We welcome the core principles set out in the Bill and find them to be consistent with our preferred approach in developing the range of support options for our citizens. In particular, we believe that if we and our Health, Housing and Education partners are to successfully support our citizens achieve better outcomes in life we need to all see a cultural shift in our practice and embrace our citizens as equal partners. The principles support a move to better outcomes for people and person centred support and helpfully focuses on who can provide assistance.

3. Choice and control: the “framework” provisions

Question 3(a): What are your views on our “framework” provisions? [Bill reference: sections 2, 3, 6, 9, 13, 14 and 15]

Comments

Our view is that provisions set out in the framework support the provision of a clear route to informed choice and control for citizens.

We agree that those in need of care and support should have all options of support delivery made known to them and in a manner which they understand and which will lead to citizens being able to make informed choice. We also recognise that there is a challenge to ensuring that choice is consistently made known to its citizens as the route for assessment and service delivery will inevitably come through various pathways including our Single Shared Assessment.

We would also acknowledge that control is a very different matter and that our citizens should have the right to decide on the level of control they wish to have in the delivery of their support, care and services. We also firmly agree that this should not be a fixed position as individuals should be able to reconsider their choices as their circumstances change. We would have an expectation that the individual's choice and control options are formally reviewed at least on an annual basis in line with our current practice.

We have some reservations around the requirement to discuss and offer all choice options when an individual is in crisis and requires immediate support/services to be delivered. At such times it will not be practicable or indeed perhaps safe to wait for the individual to consider all of the support options available set out in the choice and control “framework” provision. We would therefore ask that a caveat be considered to exclude short term crisis, which could include measures to address support and protection concerns and enablement provision. We would see this as an interim measure in order to effectively deliver appropriate support while all options are explored.

We would also seek further clarity on “indirect” and “third party” direct payment and if these are being considered to overcome the difficulties some individuals face when having to deal with the practical management arrangements of a direct payment and if so who could these payments be made to.

Question 3 (b): Do you think that the rights, duties, powers and choices set out in the Bill are the right ones, specifically the four options, the duty on local authorities to provide those four options and the duty to provide the adult’s preferred option?

Yes:

As noted above, our view is that having a range of options is essential and allows flexibility for citizens changing or fluctuating needs. We are supportive of the four options set out in the Bill and are supportive of the

mix and match approach and the flexibility this gives to our citizens, some of whom already exercise this option. We recognise that in some situations there might be a difference of opinion as to the eligibility of the individual's preferred option for support, particularly with a direct payment option. To date we have responded to such differences within the legislative framework available to us.

Our view is that the support for individuals to make informed choice is paramount if good outcomes are to be achieved and this view has remained a constant for us. We recognise that support for individuals to make real and informed choices requires to be made available. We would see this as a further opportunity for partnership working with the voluntary sector.

Question 3 (c): Is there anything that you would change or do you think that something is missing from this legislative framework?

NO

4. Working together: links to health, housing and beyond

Question 4(a): What are your views on section 16 within the draft Bill? In particular, do you think that there should be further legislative provisions relating to self-directed support, individual care packages and joint working between social care, health and beyond? If so, what should be added and why?

In our previous consultation response around proposals to extend self directed support to areas beyond social care we were, in principle, supportive of this. We also suggested that any extension in self directed support should be subject to a testing arrangement with a robust evaluation for all to consider. As noted, this is being carried out presently, but in only one NHS area. We would therefore welcome more details as to how this pilot has been developing and more pilots in a number of NHS areas before any judgements are made. However, in saying this we welcomes the proposal that health and housing budgets could be combined to enable a self directed provision. We would also suggest that there is merit in including further and higher education budgets for people with additional support needs.

5. Children and young people

Question 5(a): What are your views on the provisions relating to self-directed support for children and young people? [Bill reference: section 8]

Comments.

The key principle of GIRFEC is compatible with the objectives of the Bill. Our view is that children and young adults with assessed needs should be able to benefit from the same range of informed choices as an adult. Young adults should also be able to express their own desired outcomes and support delivery preferences as these may differ from the parent or legal guardian.

In particular...

Question 5(b): Do you agree that all forms of self-directed support should be available to children, young people and their families, and that they should have the same options as adults directing their own care and support?

Yes with access to the same infrastructure for support and advise to make informed choice based within eligibility criteria. We would have the same expectation that the child or young adult's choice and control options are formally reviewed at least on an annual basis.

5(c): Do you think that sixteen and seventeen year olds should be empowered to direct their own support?

Yes with access to the same infrastructure for support and advise to make informed choice based within eligibility criteria. We would have the same expectation that the child or young adult's choice and control options are formally reviewed at least on an annual basis.

Question 5 (d): What are your views on how the various other provisions within the Bill apply to children and young people? For example, are there any specific circumstances where you feel that a particular provision should not apply to children and young people's support?

Comments.

We do not agree that that direct payments should be used for children and young people to purchase residential care.

Our view is that the choice and control principles should be equally applied across all care groups. There is evidence to confirm that partnership work and co-production of individual support plans lead is required in order to achieve improved outcomes.

6. People who need help to direct their support

Question 6(a): What are your views on providing a power to local authorities to facilitate an "appropriate person" arrangement where guardianship or power of attorney is not in place and where such applications under AWI procedure would be disproportionate? [Bill reference: sections 10 to 12]

Comments

We would recommend that the proposed "appropriate person" definition will need detailed scrutiny as certain legal obligations may inadvertently arise should such a person seek to

contract/handle monies on behalf of the service-user. This is already a potential issue when an agent is appointed through the use of a direct payment.

We also believe that there is a potential challenge to the decision - making of the local authority in choosing the "appropriate person" were that person to be found subsequently to be inappropriate.

We would ask, on the basis that the service-user is not incapax why is the presumption not that the service-user makes an informed decision as to who the "appropriate person" shall be?"

Question 6(b): What are your views on the "trigger point" to allow such powers to be used?

Comments

We agree that for individuals' where it has been established that they require assistance to direct their own support and who do not have a guardian or attorney with the necessary powers, alternative arrangements need to be considered to support the individual assert their choice and control over how their support is delivered. However we would not only direct you to our previous comments in 6a, but question whether this is actually about "people who need help to direct their support" or if it is more about validating a mechanisms which would allow an another person take control over an individual's life.

The fact that the Bill would provide local authorities with discretionary power to assign the responsibility for the relevant self directed support decisions to another person is cautiously welcomed. We would welcome guidance on resolution of situations where conflict of interest is thought to exist in relation to the appointment of an appropriate person. However, whilst not wishing to create further bureaucracy we would consider it appropriate to ask Ministers to expand on the definition in greater detail and define any steps that the local authority may or must take in determining is someone is appropriate to take on such a role and guidance on resolutions of situations where conflict of interest is thought to exist in relation to the appointment of an appropriate person.

We would also welcome clarity if this is seen to be applicable to all four options or a selected one such as direct payment, where it would be reasonable for the local authority to question the ability of the appointed person to manage the financial aspects of the direct payment if they had been made bankrupt.

Question 6(c): If enacted, the provisions in this Bill would join the current Section 13ZA of the 1968 Act. Section 13ZA provides quite wide ranging powers to local authorities. Do you think that section 13ZA should be amended in any way in light of this Bill?

Comments

"Scottish Law Commission is currently reviewing the use of S13ZA and any recommendations from SLC should be taken cognisance of.

7. Self-directed support for carers

Question 7(a): What are your views on the provisions within the draft Bill relating to carers? [Bill reference: sections 5 and 7]

Comments

Our views on this particular matter have not altered in that we still believe that carers should be eligible to receive self directed support and direct payments, in certain circumstances.

Our original comments, however, about requiring clear guidelines as to which circumstances remains as real for us today as it did when first asked to comment and it is disappointing that this does not appear to have been accepted.

We still have reservations and concerns as to how some carers might interpret this part of the Bill as their right as well as being concerned about that the potentially significant financial implications, raised by a number of local authorities, does not appear to have been reflected on or addressed in the Bill and this is a serious worry in the current financial position across Scotland.

We would also ask that recognition is given to the fact that carer's outcomes may well be different from those of the person they care for and at times may not be compatible.

8. Provisions on direct payments

Question 8(a): What are your views on the provisions within the draft Bill relating to direct payments? [Bill reference: sections 17 – 22]

Comments

We are supportive to the proposal of consolidating and updating existing legislation on direct payments as we recognised that that it was spread over a wide range of primary legislation and statutory instruments. The Bill has clearly tried to provide a clearer framework for our citizens, care providers, partners and staff. What is not evident

is whether CIPFA guidance is reflective of the spirit of the proposed Bill.

9. Regulation-making powers: when to enable and when to restrict?

Eligibility for direct payments

Question 9(a): We propose to remove the current restriction which prevents people subject to a Compulsory Treatment Order receiving their care and support as a direct payment. Do you believe that any of the restrictions on various other categories of people should also be removed? If so, which ones and why?

Comments

We would cautiously welcome the inclusion of a direct payment option for individuals on compulsory treatment orders. We view this as being particularly relevant for those individuals who have an existing direct payment arrangement, as this would enable continuity in the provision of their support.

We would not however be advocating the removal of restriction for any individuals identified under the existing 2003 Direct Payments Regulation (e).

The provision of services or support under a direct payment

Question 9(b): Some have asked for the regulations that limit the employment of close relatives via a direct payment to be reformed. What are your views?

Comments

We would not be supportive of the regulation on the employment of close relatives being reformed. Our view that agreement for a "close relatives" to be employed should only agreed in the most exceptional circumstances. For example we all recognise the difficulties a direct payment recipient may face if they reside in a particularly rural area where choice is restricted. We would also recognise that some individuals may have language and interpretation needs which could be a barrier in employing staff and similarly if the individual has specific cultural requirements. Our view has been that if the individual were to employ a close relative there is the distinct possibility that the nature of their relationship will change. It is also feasible to suggest that by employing a close relative, choice for the individual to develop wider social networks and interests could be restricted.

We also recognises that in a minority of instances there may also be additional risk placed on individuals who are already at risk of financial abuse from family members.

Direct payments for residential accommodation and co-operative models of care and support

Question 9(c): What are your views on making direct payments available for residential accommodation?

Comments

Our view on this has not changed since the last consultation. We are not persuaded that placing a duty on local authorities to offer a direct payment to facilitate a care home placement makes any real contribution to the personalisation agenda. Nor are we reassured that the individual would not be subject to a top up fee by the care home. Our other concerns centre firmly on the actual level of choice and control the individual would achieve in this setting as it would not be comparable with the range of choice and control other recipients of a direct payment will experience in their own home. Working in partnership with the individual and the home to develop a personalised care plan we feel would be more productive and provide better outcomes for the individual.

Question 9(d): If this were to be permitted under the law, do you consider that in practice there will be any adverse issues in relation to: i) The National Care Home Contract for those 65 and over – particularly in relation to the potential for top up fees being imposed; or ii) Ordinary Residence. If so, how might these issues be addressed?

Comments

We do not recommend that this is permitted for the reasons given above.

Question 9(e): Should we consider an alternative to the stark choice of imposing or removing a particular time limit on residential care? Instead should we consider new, reformed regulations that provide greater scope for local practice and circumstances? For instance, to define particular circumstances where direct payments *can* be used in residential settings as opposed to the current situation where regulations define only where they *cannot* be used?

Comments

We would not recommend reforming the regulations to provide greater scope for local practice and circumstances. Our experience when flexibility within regulations has been applied results in greater confusion for all parties as to what is permissible and what is not as all eventualities can never be included.

10. Additions and improvements: the option of making some further changes to the 1968 Act

Question 10(a): What are your views on bringing forward some additional amendments to elements of the Social Work (Scotland) Act 1968 in order to modernise the law in line with the theme of self-direction and person-centred support?

Comments

We would welcome the opportunity to discuss this further and would consider that any amendments to the Social Work (Scotland) Act 1968 require to be fully debated and discussed in their own right.

Question 10(b): In particular, what are your views on the additional changes put forward in the discussion document: the proposals to reform the “trigger point” for assessment, to secure adults’ rights to request an assessment and to raise the role and profile of the individual in the assessment process?

Comments

Whilst recognising that although there is not technically a specific legislative power for a citizen to request an assessment this does not mean that people in Dundee do not request and receive an assessment. Our organisational structure enables referrals and requests for assessments from a variety of sources to be received and acted upon. The role the individual has within the assessment process is shifting to one of more equality in our partnership and individuals are actively encouraged to consider their needs, but in a wide context and not just those pertinent to social work.

Question 10(c): If you think that there are major items that are missing from the draft Bill, what are your proposals for additions to the Bill and why do you think they will make a difference?

Comments

We do not consider that there are any major items missing from the draft Bill, neither are we proposing any additions to the Bill.

11. Business Regulatory Impact Assessment

Question 11(a): We have published a draft Business Regulatory Impact Assessment. What are your views about the potential costs, benefits and impacts provided within the BRIA?

Comments

12. Equality Impact Assessment

Question 12(a): We have published a draft Equality Impact Assessment. What are your views on the draft EIA?

Comments

We appreciate the thoroughness of the Equality Impact Assessment Process regarding the "Target" Audience of the policy.

There has clearly been dialogue with relevant Direct Payment Service Users and consideration of potential issues. It is acknowledged that further work is planned with people with some of protected characteristics where less is known about them.

We would like to see a broader consideration of views and the impact of changes for those who do not currently receive Direct payments and might not chose this option ever, especially regarding the "default" position changes.

With respect to consideration of equality issues in employment we would ask that there should be consideration of robust monitoring of employment opportunities afforded by "Direct Payment" employers and measures put in place to ensure that such employers have an understanding of equality of employment opportunities.

Self-directed support: a draft Bill for consultation

(Dec 2010 – March 2011)



Respondent Information Form

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Dundee City Council

Title Mrs

Surname

Smith Hope

Forename

Avril

2. Postal Address

Social Work Office,

Claverhouse, Jack Martin Way

Dundee

Postcode DD4 9FF

Phone 01382 438308

Email

avril.smithhope@dundeecity.gov.uk

3. Permissions - I am responding as...

Individual

Group/Organisation

Yes

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes