

Proposals for a Self-Directed Support (Scotland) Bill: A Consultation

June 2010

Northgate Public Services Response

Introduction

1. Northgate warmly welcomes the opportunity to respond to the Scottish Government's consultation on a Self-Directed Support Bill. The consultation seeks views on the Scottish Government's proposals to consolidate and extend legislation relating to direct payments and self-directed support.
2. Self-directed support and direct payments increase the autonomy of those who choose how they would like their care to be delivered, and can promote personalisation as packages are able to be tailored more closely to meet people's needs.
3. Our response draws upon our experience and knowledge gained through working in the health and social care sector for over twenty-five years, assisting in the development, transformation and modernisation of social and healthcare services and building services based around the individual and community need.

General Comment

4. The debate around self-directed support needs to be focused on improved outcomes for citizens by providing choice, control and independence. However, this must be weighed against the need to provide individuals with the right advice and guidance on how their needs can best be met. Individuals should be protected from making a bad choice about their care.
5. Universality is also fundamental to how care is delivered. Self-directed support should be available to all but forced on nobody. This corresponds with the UN Convention on the Rights of Persons with Disabilities. The Convention also recognises that disabled people should have the opportunity to be actively involved in the decision making process about policies and processes. We wholeheartedly support a mutual approach which sees users involved as partners and believe that this should be extended further.
6. In our response we welcome a number of measures suggested by the Scottish Government. Consolidating existing statute, providing a clear definition of self directed support, and framing the legislation so that

self-directed support can be extended further are all sensible options which provide clarification for individuals. However, there are a number of areas in the response where we make further suggestions as to how the individual can be protected.

7. We believe that moving to an opt-out default following a care assessment may well increase the uptake of direct payments and self-directed support, however we are concerned that this may not necessarily be focused on achieving the best outcomes for the individual. Regardless of what the default provision of care is, it is essential that every individual is provided with information about what is the best option for them and their rights under each system
8. Conversely, on the issue of those who lack the capacity to consent, we believe current legislation may currently be too prescriptive, preventing individuals from taking up direct payments or other elements of self-directed support. We also argue that there are other areas of legislation where the law is currently not focused on achieving the best outcomes. We consider all of these issues in more detail below.

Specific Comment

Consolidating existing statute

9. Legislation relating to direct payments and self-directed support is currently spread across a number of pieces of UK and Scottish legislation. The Scottish Government intends to consolidate existing law on direct payments into one piece of legislation.
10. Northgate firmly believes that legislation relating to direct payments and self-directed support should be as clear and as easily accessible as possible, consolidating existing legislation will provide clarity for both citizens and agencies.
11. We also recognise that it is important for legislation to have a clear focus on what it is intending to achieve. The consultation suggests five guiding principles which are: better outcomes for individuals; choice; participation; mutuality; and equality. We support all five of these principles.

Setting the framework for self-directed support

12. The term self-directed support is currently not referenced in statute, nor is there a clear framework detailing how direct payments fit alongside other forms of self-directed support. The Scottish Government proposes that the new legislation introduces the term self-directed support into statute with a clear definition and a clarification that self-directed support also includes the choice of direct payments.
13. We welcome this move as it is important that individuals have clarity about what is meant by the term self-directed support and how this relates to direct payments.

Future developments

14. The consultation points out that the role self-directed support plays in delivering personalisation and better outcomes for individuals is being recognised across a range of services. In the future the Scottish Government suggests that it may explore opportunities to extend self directed support to other funding streams through the proposed Bill. In light of this, the Scottish Government proposes to frame the Bill in such a way as to create a legislative basis for future developments in self-directed support. We believe this would be a sensible approach.

Moving from opt-in to opt-out

15. Research suggests that, although there has been a gradual increase in direct payments over the last decade, the uptake is still relatively low. Currently the law places a duty on local authorities to offer direct payment to eligible groups following a formal assessment which in effect means that the individual has to opt in to receive direct payments.
16. The consultation proposes to introduce an opt-out system for self-directed support which we accept may significantly increase the uptake. However, we believe that this approach could be too focused on ushering individuals towards a care package which is perceived to be best for them but in reality may not be what they need or want. The focus, we suggest, should not be on creating a default position, but should be on providing the right information to each and every citizen, empowering them to make the right choice for themselves. Local Councils must also not use this as a means of reducing social care budgets.

People who lack the capacity to consent

17. The law currently requires all eligible adults to give consent to receiving direct payments or, if they lack the capacity to do so, to have the consent of their nominated attorney or guardian appointed under the Adults with Incapacity (Scotland) Act 2000.
18. We believe that this approach may be too prescriptive, and as a result prevent people from accepting direct payments. The consultation suggests that the administrative processes involved with guardianship orders are creating an unnecessary barrier to the uptake of benefits and that there may be instances where an individual may lack the ability to consent to direct payment but where they do not want to hand over responsibility for all of their other affairs.
19. Therefore we support the removal of the requirement that there must be a guardianship order or power of attorney before somebody can receive a direct payment on behalf of an adult with incapacity. This could be overcome by extending the Access to Funds scheme to include direct payments. Under this scheme, persons known as withdrawers can access funds on another adult's behalf. This would remove the administrative burden of guardianship orders, ensure against fraud and misuse under the existing monitoring process, and utilise an already existing framework for delivery.

Extending Eligibility

20. The law currently restricts a number of groups of individuals from receiving direct payments and the consultation seeks views on amending legislation to allow some of these groups to become eligible. We consider these in more detail below

People who are granted a leave of absence while subject to Compulsory Treatment Order

21. The law currently prohibits people who are subject to a compulsory treatment order from receiving a direct payment where the measure authorising detention in a hospital has been temporarily suspended. Recent changes to UK legislation granted local authorities the power to make Direct Payments to individuals on short-term absences from hospital.

22. We believe that local authorities are best placed to make this kind of decision because they are able to deal with each individual on a case by case basis, having regard for the wishes of the individual but also the power to refuse a direct payment where it is not deemed appropriate. Therefore we would support a removal of the restriction on providing direct payments and other forms of self-directed support to those with mental health problems and welcome devolving power to local authorities to deal with this on a case by case basis.

Residential Care

23. At present direct payments cannot be used to purchase residential care for any longer than a period of four weeks. The Scottish Government would like to explore whether this restriction should be removed. The main arguments in favour of such an approach are:
- to provide parity between the provision of residential care and other forms of care provided to individuals in their home
 - to ensure that the law allows for the maximum possible degree of choice and control for individuals who are seeking to or require to enter residential care
 - to provide those who are considering residential care with the full range of social care options that come with a direct payment arrangement.
24. We believe that that if individuals are to be truly empowered they should have full control over how they use direct payments to obtain their care package. We would therefore welcome removing the current restriction on purchasing residential care in principle. However, the key issue, as the consultation points out, is whether individuals would be given sufficient funds under the direct payment to allow them to purchase residential care and how this would fit in with other methods of payment. If the restriction is lifted, it is essential to ensure that the way in which residential care is accessed is equitable and inclusive.

Carers

25. The Scottish Government proposes removing the restriction placed on local authorities to provide direct payments or other forms of self-directed support to unpaid carers where this supports carers to continue to provide care. We support this idea in principle however it is essential that this is well regulated and the circumstance in which these payments may or may not be provided are clearly prescribed so as to avoid confusion.

Conclusion

26. It is clear that improved outcomes cannot be achieved by delivering more of the same. The provision of social care needs to give citizens choice, control and independence if better outcomes are to be achieved. However, individuals must also be provided with information and guidance to ensure that the decision they make is the right one.
27. We welcome the Scottish Government's proposals to consolidate and clarify existing law and to provide a framework for future extensions of self directed support. This will provide clarification for the individual and a firm basis on which future developments can be built.
28. However, we believe that some measures in the consultation must go further to ensure that individuals are truly empowered to make the decisions through a combination of both freedom of choice and accurate information. Specifically there are restrictions on the take up of self-directed support which we believe should be lifted to ensure that measures are focussed on achieving the best outcomes.