

[Draft] Statutory Guidance on care and support

A public consultation on draft statutory guidance to accompany the Social Care
(Self-directed Support) (Scotland) Act 2013

Consultation response from the British Red Cross

July 2013

Who we are

1 We help people in crisis, whoever and wherever they are. We are part of a global network that responds to conflicts, natural disasters and individual emergencies. We enable vulnerable people in the UK and abroad to prepare for and withstand emergencies in their own communities, and when the crisis is over we help them to recover and move on with their lives.

2 The British Red Cross is part of the International Red Cross and Red Crescent Movement, which comprises:

- > The International Committee of the Red Cross
- > The International Federation of Red Cross and Red Crescent Societies, and
- > 187 National Red Cross and Red Crescent Societies worldwide.

3 As a member of the Red Cross and Red Crescent Movement, the Red Cross is committed to, and bound by, its fundamental principles. These are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

As an auxiliary to government in the UK, we help the emergency services and statutory authorities in any way we can to meet the needs of people affected by emergencies, big or small.

4 In Scotland, the Red Cross has over 4,000 volunteers supported by 500 staff members who deliver our humanitarian work in communities across the country. Last year in Scotland we responded to more than 400 emergencies, trained more than 30,000 people in first aid, assisted more than 550 asylum seekers and refugees and reached more than 23,000 young people with humanitarian education.

5 In relation to health and social care, we helped 32,000 people live more independently through our health and social care services in Scotland last year. We provide valuable support to people, helping them live independently in their own homes.

Introduction

The British Red Cross welcomes the opportunity to respond to this consultation on the draft statutory guidance on care and support to accompany the Social Care (Self-directed Support) (Scotland) Act 2013. The Red Cross provides valuable short-term support to vulnerable people in Scotland, utilising preventative and re-ablement services to build confidence and enable people to continue to live independently in their own home and community.

Our services include providing to facilitate discharge from hospital including A&E, support in the home to enable people to live as independently as possible, befriending to prevent social isolation, loan of mobility aids including wheelchairs and transport.

The Red Cross also offers regulated services through *Options for Independence*, which operates across the country. This service supports vulnerable adults from all age groups who have health or disability issues. It provides a range of support to meet the individual needs of these people and aims to improve or maintain their independence, thereby enhancing their ability to live as full a life as possible.

This response will be based on our experience of delivering health and social care in Scotland.

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Section 2: Values and Principles

The Red Cross thinks that this section of the guidance is clear and easy to understand and quite useful.

However, we would like to make the following further comments.

The Red Cross welcomes the clarity that is given to the role of the professional in that it clearly identifies that the professional has a continued responsibility in the assessment, planning and monitoring of support.

Furthermore, we support the joint responsibility for health and social work that is outlined in the role of the professional. We welcome that in the description of the role and responsibility of “the professional” it is clear that both social work and health professionals have a responsibility in the assessment, planning and monitoring of support. The Red Cross believes that this will be of particular relevance as the integration of health and social care develops.

We are concerned by the wording contained with the responsibilities of the professional which states that the professional “may arrange for some additional assistance” and “may give voice to a supported person’s wishes”.

We feel that this does not adequately reflect the intentions outlined in the principles of participation, involvement and responsibility as outlined in Section 3 of the Values and Principles.

The Red Cross therefore recommends that this should be strengthened in the roles and responsibilities of the professional by stating “should arrange for some additional assistance” and “should give voice to a supported person’s wishes”. We believe this amendment would strengthen the requirement and reflect the values and principles of a good assessment and support plan.

Section 3: Values and Principles

The Red Cross believes that this section of the guidance is clear and easy to understand and quite useful.

As stated in the previous answer we do not feel the principles of care and support and those underlying a good assessment and support plan are necessarily reflected in the roles and responsibilities of the professional.

We would recommend that language in the role and responsibility of the professional is strengthened to ensure the principles of participation, involvement and responsibility are clearly reflected in the assessment and support planning stage.

Section 4: Eligibility and Assessment

The Red Cross thinks that this section of the guidance is clear and easy to understand and quite useful.

We welcome that expectation that local authorities should now be explicit in how they apply the eligibility criteria and how that influences the allocation of resources. The guidance that local authorities should take a strategic approach to application of the eligibility criteria in partnership with other stakeholders, and consider the application of the criteria within a broader context of prevention and early intervention is beneficial.

The Red Cross strongly supports the principles of prevention and early intervention, however believes that currently resources are not sufficiently directed to those people who would most benefit from preventative support and early intervention. The Red Cross believes that in order to ensure preventative services have the greatest impact, the resources should be directed to those assessed within the low risk and moderate risk criteria.

We would therefore recommend that the Scottish Government strengthens the requirements on local authorities, NHS Boards and local partners to explicitly identify those low risk and moderate risk groups in the mapping for their joint strategic commissioning plans, identifying current and future needs, and outlining their commitment to provide for this group with details of how this will be achieved and resourced.

For organisations such as the Red Cross, who specialise in the development and delivery of volunteer led social support aimed particularly at those individuals assessed as low to moderate risk, focusing on prevention and early intervention, the requirements to be explicit as to the level of resource being made available to support such areas of activity facilitates a strategic rather than reactionary approach as to how we develop our response to assessed need over a planning period.

Finally the guidance sets out that the resource allocation system should follow, and be led by eligibility assessment and support planning. Paragraph 24 states that “once it has been decided that the [individual has] ‘eligible needs’ they [the local authority] cannot then refuse to meet those needs because of budgetary constraints.” This language may reflect that of court decisions which have ruled that local authorities must provide a level and expense of care where they have sought not to.

However, there does seem to be a disconnect between this principle and the realities which face both local authorities and individuals receiving care and support. In practice, there is currently an implicit rationing of care and support.

We particularly welcome the intention to involve partner organisations, service users, carers and other interested parties in the development of policy in relation to eligibility criteria. This acknowledges the expertise and innovation present within these groups as to how the various level of need can be best met.

Section 5: Support Planning

The Red Cross thinks that this section of the guidance is clear and easy to understand a very useful.

We welcome the detailed guidance as to support planning. In particular we endorse the emphasis on support planning being a collaborative process with the resultant plan being the link between the individual's eligible needs, their outcomes and the support required to meet those needs and outcomes.

However, we are disappointed that this emphasis on outcomes is not necessarily repeated in Paragraph 49 which does not commit local authorities to any particular method of allocating resources. Failure to establish a RAS that is based on personal outcomes, for example, the ability to adopt an equivalence model where they determine the cost of a service to be arranged and then provide the equivalent amount as a budget for the supported person to control, could serve to dilute the importance of innovative outcomes based support planning, potentially supporting the ability of the local authority to revert to an assessment led by the service.

Paragraphs 50 and 51 of the guidance do not fully address the issue of whether user and carer groups should be involved in determining the methodology used by local authorities to calculate and allocate resources. However, they may have useful knowledge and expertise which could help best inform this process. For this reason, the Red Cross would suggest strengthening the requirement to involve user and carer groups in developing the methodology.

Paragraph 76 states that the professional, where they consider it appropriate to do so, must provide the supported person with information about independent advocacy services. Access to independent advocacy support is vital in ensuring that the voice of the service user is heard and acted upon at all stages of the process. We would encourage the Scottish Government to reflect in the guidance the need for local authorities to ensure the provision of independent advocacy support is integral to their strategic commissioning plans; that access to such support is viewed as a right; and that the professional will facilitate an actual referral to advocacy support.

Section 6: Monitoring and Review

The Red Cross finds this section of the guidance to be clear and easy to understand and quite useful.

We would however like to comment that the section would benefit from a reiteration of the need to ensure that similar to the initial assessment and support planning, a collaborative approach should be taken with a requirement to provide the service user with the relevant support to enable their full participation in the review.

Section 7: Facilitating genuine choice for individuals

The Red Cross believes this section of the guidance is clear and easy to understand and finds it very useful.

We believe that facilitating genuine choice for individuals must be approached from both a strategic and operational perspective.

The ability to facilitate genuine choice is subject to the maturity of strategic commissioning across Scotland with local authorities making the shift from being providers of social care to one of developing and managing a mixed social care market to meet assessed need. It also relies on the ability of providers of support to be innovative in their approach to developing and delivering support tailored to the needs of the individual service user.

Critical to the success of the above is the need for all activities to be developed in a collaborative manner involving all service users and carers and the wider community. The Red Cross calls for this requirement to be strongly reinforced.

Supporting the above, local authorities must take responsibility to ensure that professionals leading on the assessment and support planning processes are fully aware of the range of support possibilities available. Experience to date would suggest that this is not always the case, and the Red Cross therefore suggests that this capability is added to the continuous professional development agenda as part of strengthening best practice.

Finally, without the necessary support and information service users may find it difficult to make informed choices regarding their support options. This again emphasises the need for appropriate support to be made available to service users to enable them to undertake such decision making.

Section 8: The role of the NHS professional

The Red Cross thinks this section of the guidance is clear and easy to understand and very useful.

We welcome the clarity offered by this section of the guidance. The ability of respective professionals and organisation to work together, in the context of self-directed support should be further enabled by the forthcoming legislation on the integration of health and social care.

That said, self-directed support is a relatively new concept to health professionals and it will be interesting to see how the current self-directed support work within the NHS progresses.

Section 9.2: Supported decision-making and circles of support

The Red Cross thinks this section of the guidance is clear and easy to understand and very useful.

We welcome the guidance around supported decision-making and the role of those in circles of support. It is critical that those in a circle of support understand that their role is to facilitate the supported person to make their own decision, and most importantly they must not make the decision on the supported person's behalf.

The Red Cross suggests that it should be the responsibility of the professional to ensure that those in a circle of support fully understand their role and undertake this in an effective and supportive manner.

Finally, the Red Cross welcomes the clarity on the responsibility of the professional to advise on matters relating to guardianship and power of attorney.

Section 9.3: Carers

The Red Cross thinks that this section of the guidance is clear and easy to understand and very useful.

However, the Red Cross would recommend that the guidance be strengthened to ensure that the views and needs of carers are considered early on in the assessment and planning alongside the consideration of how the supported person will achieve their outcomes.

It is important that it is established early on that the carer is willing to continue in the care role. Once this has been established, it must be identified at this point what support the carer needs to help the supported person to meet their outcomes.

Strengthening this process in the guidance will ensure that the carer receive the support that they need to continue in their caring role. The Red Cross would recommend that this is conducted alongside the assessment and support planning for the supported person.

Section 9.4: Direct payments

The Red Cross believes that this section of the guidance is clear and easy to understand and very useful.

Currently, in some areas, those who opt for Direct Payments, find that the Directs Payments are set at a level lower than the Council pay through their framework agreements with providers.

The Red Cross would like the guidance emphasise that there should be no financial variance in the allocation for those who opt for Direct Payments. This demonstrates the importance of the robust Resource Allocation System.

Section 9.5: Wider legal duties and strategic responsibilities

The Red Cross believes this section is clear and easy to understand and very useful.

We welcome the definition of re-ablement and intermediate care. We fully support the guidance in that both service models should be seen as part of the assessment process.

General Comments

The Red Cross has few additional comments to those already expressed in the Social Care (Self-directed Support) Bill: Final Business and Regulatory Impact Assessment (BRIA) which we feel adequately reflects the financial implications and benefits of the requirements set out in the guidance and regulations.

However, there may be some financial implications to consider in relation to how to ensure local authorities, NHS boards and partners have the capacity and capabilities to make the transition to joint strategic commissioning and their role in ensuring a sustainable mixed social care market which can meet the needs of the population.

We believe that self-directed support and the guidance and regulations issued to support it should impact positively on the human rights of supported people. It should enable them the freedom to determine how and by whom they are supported to meet their outcomes.

Draft regulations

Restricting access to direct payments in relation to the provision of long-term residential care

The Act has been passed in order to provide people with greater choice and control over how their assessed needs are met. The Red Cross therefore does not see any logical reason for excluding those requiring residential care from accessing direct payments.

Giving a supported person who requires residential care access to direct payments may give them more control over how their support is delivered within the care home setting, thereby empowering them to take greater control of how they meet their outcomes.

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