

# Policy Response

## Capability Scotland



## Consultation on Draft Statutory Guidance on Care and Support

10<sup>th</sup> July 2013

Capability Scotland campaigns with, and provides education, employment and care services, for disabled people across Scotland.

### Summary

- Capability Scotland believes the Guidance issued by the Scottish Government on Self Directed Support is clear, well written and effectively highlights the need to ensure that individuals rather than professionals, are at the centre of the assessment and care planning process.
- Despite this, the Guidance fails to address certain, vital aspects of the process of assessing and planning care and support. Of particular concern is the fact that the Guidance does not make reference to the individual's right to challenge local authority decisions relating to eligibility. As a member of the Scottish Government's Working Group on Social Work Complaints and Appeals we believe it is vital that clarity is provided on this issue.
- There is also a need for the Guidance to reinforce the duty on local authorities to provide adequate information and support to individuals throughout assessment and care planning. The Guidance, for instance, currently states the local authority *may* arrange for additional support to allow a person to play an adequate part in the process. This is not in-keeping with local authorities' duties under the Act.

## **OUR RESPONSE**

### **The Supported Person's Pathway**

1. Capability Scotland is concerned that there is no reference made in the 'Supported Persons Pathway' to the individual's right to challenge local authority decisions, particularly in relation to eligibility for care and support. While the complaints process will vary from one local authority to the next, all local authorities are required to ensure there is an adequate complaints procedure in place and that individuals have access to a local Complaints Review Committee. The Guidance should make reference to these structures as well as the individual's right to complain to the Scottish Public Services Ombudsman (SPSO) and, in some cases, to bring an action for Judicial Review.
2. The point at which an indicative budget is made available is not currently clear from the Guidance. This is unacceptable given that the budget will be of central importance in selecting an option and subsequently developing a support plan. Capability Scotland believes that an indicative budget should be generated by the local authority following the initial assessment of eligibility, before the individual begins the process of support planning.
3. Furthermore, the language relating to the supported person in Table 2 needs to be strengthened. The Guidance currently states that 'the professional *may* arrange for some additional assistance so that the supported person can play a full part'. This clearly needs to be replaced with a recommendation that the professional '*must*' arrange for any necessary additional assistance.

### **Values and Principles**

4. Under the principle of Collaboration in table three, there is an underlying suggestion that a professional will always work with the supported person to complete their support plan. This fails to reflect the fact that, in many cases, support planning can be completed by the individual alone or with assistance from alternative service supports, without collaboration from a professional.

### **Eligibility and Assessment**

5. Focus groups organised by Capability Scotland to discuss the draft Guidance clearly highlighted that many disabled people feel they do not have enough information about what is involved in the assessment process and how they should prepare for it. This is a source of extreme anxiety for some people who see the assessment as a test which they will pass or fail. We believe the Guidance should highlight the need for local authorities to provide individuals with a clear breakdown of the assessment process in advance to ensure they have time to consider what they feel their needs are and how best to articulate them.
6. Participants also strongly highlighted the need to ensure that individuals have the final say as to who is present during the assessment process, including who attends to provide communications support and/or advocacy. The need to give the individual choice as to how

and by whom they are supported is not currently addressed in this section. Furthermore, the assertion that individuals should be provided with assistance where it is 'reasonably required' is too weak. Support should be provided by any individual who requests it, with the onus on the local authority to justify any refusal.

7. The Guidance also fails to mention of the fact that it is good practice to allow people to see and keep a copy of the local authority's assessment of their support needs. This allows the individual to check the assessment for accuracy and to challenge any assertions they disagree with.

### **Support Planning**

8. Paragraph 76 currently states that the professional, where they consider it appropriate to do so, must provide the supported person with information about independent advocacy services. While there is no legislative duty to do so, we believe the Guidance should state that it is good practice to provide information on advocacy to *all* supported persons. This will help to ensure that individual's with hidden impairments and/or vulnerabilities receive information on relevant services.

9. Our focus groups with people with learning disabilities and/or communication support requirements highlighted the fact that people value an opportunity to consider all the information they have been given by the local authority and to discuss it in detail with their family friends and support networks before making a decision. We therefore believe that the Guidance should recommend that as well as having a duty to supply information on the various options, local authorities should give supported individuals an agreed period of time to digest and consider that information.

10. Participants in the focus group also highlighted the need for a 'cool off' period to allow people to consider the option they had chosen and whether they still felt comfortable with their decisions after the fact.

### **Monitoring and Review**

11. We do not believe the section on monitoring and review is strongly enough worded. In paragraph 45, for instance, reviews are 'recommended', and local authorities are instructed to be 'prepared to respond to the likely demand for reviews', only *aiming* to conduct these annually. There should be a recommended minimum timeframe for review and it should be made clear that reviews are not optional.

### **Children and Families**

12. Capability Scotland believes that the children and families section should be embedded as part of the main guidance, rather than forming a separate section. As it currently stands, it is difficult to get a clear picture of if and how the first five sections are expected to apply to children and young people.

13. Furthermore, the Guidance states that ‘the professional’ should ensure that assessments are coordinated between adult’s and children’s services. Despite this directive, no clarity is provided on who that professional should be. There is a need for the guidance to give more consideration to Getting it Right for Every Child (GIRFEC) principles and make direct reference to the Named Person or Lead Professional as appropriate. This should help to minimise confusion and ease transitions from children’s to adult services.

14. There is also a need for this section of the Guidance to make reference to the need to ensure that children (as well as adults) have access to requisite communication support throughout the assessment and care planning process.

### **About Us**

Capability Scotland campaigns with, and provides education, employment and care services for disabled people across Scotland. The organisation aims to be a major ally in supporting disabled people to achieve full equality and to have choice and control of their lives by 2020. More information about Capability Scotland can be found at [www.capability-scotland.org.uk](http://www.capability-scotland.org.uk).

### **Contact Us**

Thank you for the opportunity to comment on this consultation. If you require more information on this response, please contact:

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