

## Consultation Questionnaire

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 2 : Values and Principles

**Question 1a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 1b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 1c: Do you have any further comments on this section of the guidance?**

*Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

The section is clear and concise.

### Draft Statutory Guidance on Care and Support

#### Consultation Questions

Section 3: Values and Principles

**Question 2a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 2b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 2c: Do you have any further comments on this section of the guidance?**

*Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

CrossReach supports the values and principles outlined in Section 3. They are in line with the personalisation agenda and adhering to them will bring benefits for people who wish to receive support.

While it may be implied throughout Section 3, we feel the principle of 'control' has been underemphasised. Giving greater control to individuals is at the heart of personalisation and is key to the cultural and relational change which is a prerequisite for the success of self-directed support. Principles such as involvement and collaboration will not be fully realised unless the relationship between the professional and the individual is rebalanced by giving the individual greater control. It is therefore our contention that the principle of control should be explicit within Section 3 of the Guidance.

Although the Guidance states that professionals must consider the stated values and principles when conducting assessments, no mechanism is established to hold them to account. Will individuals have any recourse when they feel these values and principles have not been appropriately considered when they have been assessed?

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 4: Eligibility and Assessment

**Question 3a: Was this section of the guidance clear and easy to understand? (please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 3b: How useful did you find this section of the guidance? (please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 3c: Do you have any further comments on this section of the guidance?**

*Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Section 4 part 23 states that individuals “should be able to access information and advice about alternative sources of support out-with formal or ‘funded’ social services”. We would question how the ‘framework agreements’ or ‘approved provider lists’ that some local authorities plan to use to commission self-directed support fit with this requirement.

Local authorities have reported that they intend to recommend to individuals only those services which feature on their framework agreements. Whose responsibility is it to ensure that individuals can access information on sources of support which do not feature on framework agreements/approved providers lists?

(See also: Question 6c, below)

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 5 : Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

**Question 4a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 4b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 4c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Comments

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

Section 6: Monitoring and Review

**Question 5a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 5b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 5c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

While the Guidance on the assessment process makes explicit that an individual's support network should be involved and have input into the assessment, the Guidance on the review process does not do the same. While we presume that professionals conducting a review would seek to include all parties who are supporting an individual, we feel it would be helpful if the Guidance made clear that

this is to be expected.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### **Section 7 : Facilitating genuine choice for individuals**

**Question 6a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 6b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Question 6c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Some local authorities have reported that they intend to recommend to individuals only those support services which feature on their framework agreements or approved providers lists. This does not seem to adhere to the spirit of section 19 of the Self-directed Support Act 2013.

We have learned that some of these catalogues of support agencies will be 'closed' lists, meaning that once the time-limited application period has ended, no new providers can join. The frameworks will run for a period of between one and four years. This system will prevent new sources of support from being promoted to individuals by local authorities, making it very difficult for providers to inform people of the support they are offering.

We would like the Statutory Guidance to contain some information on how local authorities are to fulfil their duty under the Act to promote the variety of support being offered. We would like to know whether or not it is considered reasonably practicable to require local authorities to promote sources of support which do not appear on their framework agreements. It seems that allowing local authorities to promote only those who have applied to the framework will prevent new sources of support from being established, even when there is a need for them, as people going to the local authority for information on the support available will not be made aware of these new sources of support.

We also feel there should be a process through which care and support providers can hold the local authority to account for failing to adequately promote the variety of support which is available to people.

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### **Section 8 : The role of the NHS professional**

**Question 7a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 7b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 7c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

that are more appropriate for statutory guidance rather than Regulations?

Comments

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 9.1 : Children and Families

**Question 8a: Was this section of the guidance clear and easy to understand? (please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 8b: How useful did you find this section of the guidance? (please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 8c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Comments

**Draft Statutory Guidance on Care and Support**

**Consultation Questions**

Section 9.2 : Supported decision-making and circles of support

**Question 9a: Was this section of the guidance clear and easy to understand? (please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 9b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 9c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Comments

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 9.3: Carers

**Question 10a: Was this section of the guidance clear and easy to understand?  
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 10b: How useful did you find this section of the guidance?  
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 10c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Comments

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions**

#### Section 9.4: Direct payments

**Question 11a: Was this section of the guidance clear and easy to understand? (please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 11b: How useful did you find this section of the guidance? (please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 11c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

While the Guidelines mention that people can ask for a review of their ineligibility for direct payments if their circumstances change, we feel people should be able to challenge a local authority's decision to terminate a direct payment based on their current circumstances. Presumably, local authorities will have a complaints procedure individuals can pursue, and those who are not satisfied with this can take their case to the appropriate ombudsman. However, some clarity on this in the Guidance would be helpful.

## **Draft Statutory Guidance on Care and Support**

#### Section 9.5: Wider legal duties and strategic responsibilities

**Question 12a: Was this section of the guidance clear and easy to understand? (please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 12b: How useful did you find this section of the guidance? (please**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 12c: Do you have any further comments on this section of the guidance?**

*Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?*

Comments

## **Draft Statutory Guidance on Care and Support**

### **Consultation Questions – General Questions**

#### The Guidance document as a whole

#### **Question 13: Do you have any further general comments on the guidance?**

*For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?*

Comments

#### The costs and benefits arising from this guidance

#### **Question 14: Do you have any comments on the financial costs or benefits of the requirements set out in the guidance?**

*Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the guidance. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:*

<http://www.scotland.gov.uk/Publications/2012/03/5525>

*We plan to update the BRIA in light of the comments and information from this consultation.*

Comments

#### The equality and human rights impacts of the guidance

#### **Question 15 (a): Do you have any views on the impact of the guidance on any or all of the following equality categories:**

- i) age;**
- ii) disability**
- iii) gender;**
- iv) lesbian, gay, bisexual and transgender;**
- v) race, and;**
- vi) religion and belief**

*Some advice to help you to answer this question - By “equality impacts” we mean whether or not the guidance will affect certain groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:*

<http://www.scotland.gov.uk/Publications/2012/03/9876>

*We plan to update the Equality Impact Assessment in light of the comments and information from this consultation.*

Comments

**Question 15 (b): Do you have any views on the impact of the guidance on human rights?**

For more information about human rights please see the Scottish Human Rights Commission's website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

Comments

## Consultation Questionnaire

### Draft Regulations

#### Consultation Questions

**Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?**

With regard to Regulation 7 (termination of direct payments), we note that no mechanism for appealing against a local authority's decision to terminate direct payments is set out. While the Guidelines mention that people can ask for a review of their ineligibility for direct payments if their circumstances change, we feel people should be able to challenge a local authority's decision to terminate a direct payment based on their current circumstances. Presumably, local authorities will have a complaints procedure individuals can pursue, and those who are not satisfied with this can take their case to the appropriate ombudsman. However, some clarity on this, perhaps in the Statutory Guidance, would be helpful.

We feel that local authorities should be able to terminate direct payments in situations where the direct payment user has failed or refused to pay for support they have received, even if the money has not been used inappropriately as set out in 7(b). All else being equal, CrossReach would be willing to continue a working relationship with someone in such circumstances, but would be unable to do so unfunded. Thus, if the individual still wanted our support, and the local authority could transfer them to Self-directed Support Option 2, continuity of care could be ensured.

**Question 2: What are your views on Part 3 of the draft Regulations (appropriate/inappropriate circumstances for the employment of close relatives)?**

We feel it is positive that individuals are allowed to employ family members using

direct payments, and believe this will bring benefits to many people. The factors set out in 9(3) are generally permissive of employing family members, which is good. However, we feel that all paid carers should be subject to regulation in order to protect service users.

Regulation 10 puts some safeguards in place in order to prevent exploitation of individuals by their family. For the safeguards to be effective, it will be essential that local authorities keep the situation under review; that any professionals supporting the individual communicate well and highlight concerns to the local authority; that an environment is created where individuals feel able to safely report abuse to professionals; and that local authorities respond quickly and appropriately to any reports of abuse.

Ultimately, we do not believe that the safeguards set out in Regulation 10 are a suitable substitute for robust regulation of carers and other employed staff.

**Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?**

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

We consider it appropriate to restrict access to direct payments for the groups of people detailed in Regulation 11. We feel that, in many cases, the restriction will be beneficial to the individuals to which they apply. This is because service providers will have the confidence to offer their support to these individuals, in the knowledge that they will be funded for doing so. The Regulation will thus prevent vulnerable people from being refused support on grounds of financial risk.

Nevertheless, we would question the justification for removing all discretion from the local authority to decide whether or not direct payments are inappropriate in all cases. It may be advantageous to strike a balance between restricting access to direct payments in appropriate situations, while allowing local authorities to offer people this choice where it would be a positive step for the individual.

**Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?**

CrossReach's frontline staff work with people who are homeless, those who are fleeing domestic abuse and those who require support in relation to drug or alcohol addiction on a daily basis. It is our view that, while some people who are at an advanced stage in the recovery process may benefit from the responsibility of managing a direct payment, direct payments would cause problems for the majority of people with the support needs listed above, and would be detrimental to the wellbeing and indeed the safety of some individuals. This is perhaps especially true in relation to those requiring support for substance misuse – some people may find that receiving a potentially large sum of money into their bank account would

cause additional stress and put their recovery at risk.

Much of the academic literature on Self-directed Support argues that direct payments are not suitable for people experiencing periods of crisis, as they generally feel they need to focus on immediate circumstances rather than taking on new responsibilities. The experience of our frontline staff would also bear out this thesis.

In addition, as with Regulation 11, restricting access to direct payments for people in crisis would significantly reduce the financial worries of support providers looking to offer services to people facing these issues. We would expect that unrestricted access to direct payments for people in these situations would result in a loss of income for support providers, and would therefore damage providers' financial sustainability.

We note that the wording of Regulation 12(1) – while allowing local authorities to restrict access – does not necessarily prohibit them from offering direct payments to people who need support with the aforementioned issues (ie “local authority is not required” to offer direct payments). If this is the intention of the language used, we feel this is an appropriate and a fair approach, as it leaves the option of direct payment open to those for whom it may be beneficial. The title of the section, however, suggests that the local authority does not have the discretion which the wording of the regulation seems to allow.

CrossReach strongly supports giving local authorities the power to restrict access to direct payments for people with the support needs discussed above as we believe this will allow local authorities to promote the wellbeing of individuals. We also support giving local authorities the freedom to offer the full range of self-directed support options where appropriate.

Assuming that the Regulation is designed to allow local authority discretion, we would hope that local authorities will not consider the Regulation to be a blanket restriction for all people requiring the kind of support outlined, but instead would assess people individually to decide whether or not the restriction should be imposed. We feel the title of the section should be re-worded to reflect the flexibility the Regulation allows.

We would also hope that local authorities would not make decisions about restricting access to direct payments unilaterally, but would discuss these matters with any others who are involved with supporting an individual, so that the decision which best suits the person can be made. Utilising the Exchange Model at assessment stage will ensure that this discussion occurs. We would also like to see this model applied at review stage.

In the event that the intention of the Regulation is to place a universal restriction on people who fall into the groups in question, we would see this as less than ideal. However, given a choice between universal restriction and universal access, we would err on the side of caution and favour restriction. This would be, primarily, to promote the safety of individuals. We feel that measures to terminate direct payments after mis-spending has occurred would be too late for some people.

**Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?**

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

CrossReach operates residential care services for older people, disabled children, people with learning disabilities, people with mental health issues and people dealing with substance misuse.

While the main benefits of self-directed support can be accessed just as easily through Option 2 as through direct payments, we recognise that direct payments would potentially give people in residential care a greater degree of freedom and control over their support. We also note that allowing direct payments for residential care would create significant issues for providers.

We are concerned that direct payments will increase the risk of people defaulting on paying for their support. This would put us as a provider in a difficult position. Our priority would be to continue to support people who still want to work with us; however defaults on payments would put our sustainability in jeopardy. We would like to see a mechanism put in place to reduce this risk, such as local authorities being able to ensure arrears are paid off. This could be similar to the power to recover misused direct payments, given to local authorities under section 16 of the Self-directed Support Act 2013.

A further budgetary issue would be created for providers if people receiving direct payments in residential care choose to employ their own staff. This situation would reduce the available budget for the provider's staff, and could very well affect the long-term financial viability of the service.

**Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?**

Comments

**Question 7: Do you have any further comments on the draft Regulations?**

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

## **Draft Regulations**

### **Consultation Questions – General Questions**

The costs and benefits arising from these regulations

#### **Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?**

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

As a care and support provider, we anticipate that direct payments will result in a loss of income for us through missed payments for support provided. This expectation is based on current levels of missed payments of for example, service charges, which individuals we work with are responsible for paying.

We are encouraged, however, by Regulations 11 and 12. These Regulations will limit the losses we experience, and will allow us to be more financially sustainable into the future.

The Regulations will require us to expend resources on staff training, so that our staff are prepared to support people who use, or would like to use, direct payments.

We hope that these costs will be offset by the wider benefits of personalisation and self-direct support to the individuals we support.

The equality and human rights impacts of the regulations

**Question 9 (a): Do you have any views on the impact of the Regulations on any or all of the following equality categories:**

- i) age;**
- ii) disability**
- iii) gender;**
- iv) lesbian, gay, bisexual and transgender;**
- v) race, and;**
- vi) religion and belief**

By “equality impacts” we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act 2013, available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of this consultation.

Comments

**Question 9 (b): Do you have any views on the impact of the Regulations on human rights?**

For more information about human rights please see the Scottish Human Rights Commission’s website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

Comments