



**(Draft) Statutory
Guidance on care and
support:
A Consultation on
guidance to
accompany the Social
Care (Self Directed
Support) (Scotland)
Act 2013**

**UNISON Scotland's Submission to the Scottish Government on their
Consultation on the Draft Statutory Guidance to accompany the above Act**

July 2013

Introduction

UNISON is Scotland's largest trade union representing over 160,000 members working in the public sector. We represent social workers, social care staff and health professionals who are part of the health and social care workforce, many of whom will be affected by the Scottish Government's proposals.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government on their consultation.

General Comments

UNISON Scotland responded to the original consultation on the Bill and gave written evidence to the Scottish Parliament Health & Sport Committee. In both of these responses we gave our support for the aims of the Bill but also expressed concerns that its laudable aims could not be satisfied if adequate resources were not guaranteed for them to be implemented properly.

In particular we referred to the lack of funding that is being experienced in social care across Scotland as a result of the Scottish Government's choices in dispersing funding and insisting on a council tax freeze which is having an adverse effect on money available for all council services, including social care.

We are aware that some councils are using the principles of self directed support to cut budgets to supported people and are reducing the options of directly funded services, such as day centres for elderly people and those with learning disabilities. Without adequate funding, assessments of what people receive will be based on budgetary constraints, rather than actual need. We have information that staff are advising service users that they cannot afford to purchase local authority care, but must use another company who will give them cheaper services. UNISON believes that cheaper care is often inferior care, based on paying staff lower wages and allowing less time for the service to be provided, in effect a race to the bottom. This means increased privatisation of social care staff, often by the back door.

UNISON Scotland believes strongly that public services should be publicly funded and delivered by accountable public bodies, such as local authorities or health boards. Public services in Scotland developed over many years as a response to market failure. Care services are central to Scotland's economy and the quality of life for our citizens. The current cuts in public spending are driven by ideology not economics.

Private provision of care services goes against principles espoused by the Scottish Government in many areas and puts profits for private companies above these principles. Profits from care services can only be produced by the provision of poorer services and a worsening of the terms and conditions for the staff providing the services – the creation of a two-tier

workforce. Over recent years, private care companies have tried to introduce a variety of contracts to cut the terms and conditions of staff, for example, zero hours contracts, where staff had to be ready to work when asked to, but had no certainty of continuity of work on which they could enjoy employment rights or guaranteed earnings. The time carers can work with their clients has also been continuously cut and staff are often not paid for the time taken to travel to their next client.

UNISON's Ethical Care Charter outlines many problems experienced by care staff in attempting to provide an adequate service to their clients, often in only fifteen minutes per visit, many often putting their own safety and that of their clients at risk due to these time constraints.

<https://www.unison.org.uk/upload/sharepoint/Research%20Material/Final%20Ethical%20Care%20Charter%20PDF.pdf>

An Audit Scotland report published in March 2012, emphasised that planning social care is complex and is becoming harder as demands are rising and budget constraints are tightening. They believed that the introduction of self-directed support would require a new approach from councils and health boards who would have to do more to involve both the people receiving services and the service provider organisations. If services are to improve there needs to be better information on the needs of the population and on the costs, quality and impact of services. We believe Audit Scotland must ensure that public money is properly spent and that vulnerable individuals are getting the service they need.

Audit Scotland is also concerned that councils are concentrating resources on people who need intensive support, leading to a risk that people who need a small amount of support may not get the help they need to live independently and that their early problems may worsen more quickly without adequate intervention.

We also have concerns at the long term future of core local authority services which we believe should be maintained at a sustainable level, to provide real choice for people who do not want to use direct payments or individual budgets. The Act includes much on dealing with individuals who are ineligible for self directed support and indeed those who are eligible to receive a personal budget, and opt for local authority provided services. We believe that core services will be essential for those who are deemed ineligible or for those who for whatever reason do not want or are unable to manage their own care. We are concerned that if a large number of individuals opt to select services outwith those provided by the local authority, then local authority provision will by default be reduced, leading the choice to retain local authority provision being threatened

We are also unhappy that scant regard has been paid to the rights of personal assistants employed by supported people which had been promised in the Strategy for Self Directed Support published in May 2010.

UNISON has participated in discussions around workforce issues on Personal Assistants facilitated by the Bill Team but are disappointed that no specific proposals have been included in this draft guidance. UNISON is currently running a project to contact Personal Assistants to make them aware of their rights, such as a decent level of pay, training, holidays, hours worked, pensions, etc., and to support them in any concerns they may have with their work. PAs are an isolated and unregulated workforce, with no data collated on who they are or where they are. UNISON firmly believes that more work needs to be done to ensure that this workforce is recognised, valued and heard.

Consultation Questionnaire

Draft Statutory Guidance on Care and Support

Consultation Questions

On the substance of the Draft Guidance, we believe that in most cases the various provisions are well written and clearly understandable and cover the issues that need to be included so that professionals can understand how they are to implement the Act. However, our concerns over the resources that would be needed for the required outcomes to be brought about by implementation of the Act make it impossible for us to welcome it wholeheartedly.

Our responses to the individual questions will, therefore, be tempered by these concerns.

Section 3: Values and Principles

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

We support the principles that should underpin a good assessment and support plan but do not believe adequate resources will be available in all councils to enable this to take place. Providing such engagement is resource intensive and will require extensive involvement with the supported person.

Section 4: Eligibility and Assessment

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

We note that local authorities can take into account overall resources when determining eligibility criteria. There is a danger, given continuing pressures

on council resources that eligibility criteria will continually be revised to make them tighter and more restrictive. Therefore we would like to see the development of national guidance on the outcomes that eligibility criteria should seek to produce and a corresponding assessment of the necessary resources to meet these outcomes. These guidelines should be subject to as wide a consensus as possible involving government, councils, unions, service users and carers. Similarly the eligibility criteria drawn up locally should involve all local stakeholders in their design, review and monitoring.

We support the emphasis on assessments based on personal outcomes but again believe this to be more resource intensive than the service-led model and we have fears that the resources will not be available to provide the personal outcome model.

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

We believe this section is very clear and support the principles contained within it, however, we reiterate our concerns at the level of staffing resources that will be made available across Scotland.

Section 6: Monitoring and Review

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

We firmly believe that a review process should be part of the assessment process but again question whether adequate resources will be available to implement this.

Section 7 : Facilitating genuine choice for individuals

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

We support the concept that local authorities should be facilitators of choice. However, this should not be interpreted as the council simply commissioning services from a range of providers. Instead it should be an approach where the needs and choices of service users are foremost, where they are able to select a range of options for meaningful activity as well as being supported and cared for. In order to achieve this it will be necessary to have a range of agencies able to offer specialist support but also for mainstream services to be able to meet the needs of a wider range of people with diverse needs. Therefore leisure, education, housing, cultural, commercial and employment services need to be part of the equation and part of the solution to provide the widest possible choice.

Staff working in these environments will need training and support to meet this challenge and the local authority should be responsible for engaging with these wider interests.

Within the range of services directly provided and commissioned by local authorities specifically to meet the needs of people within Self Directed Support, the need for staff to be properly trained, flexible and innovative should be recognised and a workforce strategy to ensure that the best staff are retained through decent pay and terms and conditions needs to be developed.

Section 9.1 : Children and Families

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

There are risks involved in the provision of self directed support to children and families, but we believe that the guidance is sufficient to cover these. We are pleased that the guidance recognises the need for professionals to be trained to provide specialist support targeted at children and families and hope that sufficient resource will be available to provide adequate support.

Section 9.2 : Supported decision-making and circles of support

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

UNISON is very concerned at the extension of self directed support to people who may not have the capacity to “make, understand or communicate decisions” about the choices available and believe that professionals must take extra care to ensure that any decisions made are truly in the best interests of the supported person. Professionals must be encouraged to seek support from other professionals and be given adequate supervision from their managers when engaging with such cases.

Section 9.3: Carers

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

We support the concept of support to carers who need assistance either on a short term or long term basis, and believe adequate resourcing must be provided to enable this to take place. We believe that better information should be made available to carers to let them know their rights and that Social Work staff should be trained to promote the carers' rights to assessments.

Section 9.4: Direct payments

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

As stated in our General Information, we feel the information on employment of Personal Assistants is very limited. We are also concerned that it is for the professional to explain the responsibilities that employing someone directly entails, such as employment rights, adequate payment, hours worked, pensions, etc. In the event of the supported person receiving the direct payment not complying with these provisions, we would wish to ensure that the professional concerned would not be held responsible for the supported person's lack of compliance. We accept that it is suggested that the professional should point the supported person towards further sources of information, but believe that the difficulties the supported person may experience should not be underestimated.

This is also a concern under the "Financial Monitoring" section. If direct payments are terminated or removed, the effects on the Personal Assistant should be taken into account and this is also the case where the supported person may be taken into hospital, for example, for either a short period or longer term.

Section 9.5: Wider legal duties and strategic responsibilities

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

With regard to the wider legal duties and responsibilities in this section, we believe that there are risks and other difficulties that must be taken into account in all aspects outlined and extreme care must be taken by the local authority or health board when considering whether to offer self directed support in any of them if at all.

We believe there are aspects under this section, such as charging, residential care, housing support services, equipment and adaptations, etc. as well as addressing homelessness, domestic abuse, drug or alcohol addiction which go way beyond the original consultation on Self Directed Support which we could not support at this stage, as we believe we would require greater detail and debate on this.

We believe there are situations outlined in this section where self directed support would not be appropriate and should not be offered.

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?

We have stated quite clearly throughout our response our concerns that the resources required to implement this Act will not be sufficiently available to allow it to offer supported people the services that many of them will need and want. We fear that people may end up receiving a worse service than they were entitled to before the introduction of personalisation and self directed support and that greater intervention will eventually be required at greater cost to the authorities involved.

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

We are concerned that the finances available could result in people's needs not being adequately met which will breach their human rights. Cases on these grounds have been successfully prosecuted in England.

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