

**Proposals for a Self-directed Support (Scotland) Bill  
Response from Community Care Providers Scotland  
June 2010**

Community Care Providers Scotland is the national association of voluntary organisations providing care and support services across Scotland. In 2008/09, the combined membership of CCPS supported approximately 220,000 people and their families, and employed around 36,700 staff, giving them a considerable stake in social care and support provision in Scotland.

CCPS members very much welcome the Scottish Government's focus on self-directed support (SDS), as evidenced by this consultation and the draft SDS strategy for Scotland, on which we also commented. CCPS' response to both consultations reflects the views of its membership, as gathered during a discussion session at the CCPS membership meeting on 11 June 2010, and as represented by members of the 'CCPS think tank on personalisation', a group of members working to develop CCPS' position on the full range of personalisation issues.

While CCPS members are extremely supportive of the self-directed support agenda, there are mixed views as to whether or not there is a need for legislation in this area. Voluntary organisations already work in a variety of ways to enable and expect individuals to direct their own support, and we are concerned that legislation which focuses on particular methods of implementing SDS, such as direct payments or individual budgets, may not recognise this existing work. We advocated strongly in our response to the draft national strategy the need for a strategy that recognises and promotes the full range of self-directed support options, to ensure that individuals are made aware of all of the support options open to them, and can choose the support that works best for them.

Our comments relate to three aspects of the consultation: consolidating existing statute; setting the framework for self-directed support; and moving from opt-in to opt-out. We also offer comments on the draft partial regulatory impact assessment.

**Consolidating existing statute/guiding principles**

We can see the logic behind consolidating existing direct payments legislation, and support the fact that this would make it easier for organisations and the public to navigate and understand the regulations on direct payments. We are concerned, however, that direct payments, one method of applying self-directed support, should not become confused or conflated with the wider notion of self-directed support. While we believe therefore that there is a need for principles and vision in the self-directed support strategy (as explained in our response to the draft strategy), including them in legislation that relates exclusively or primarily to one aspect of self-directed support (direct payments) may in fact be confusing, as it could give the impression that the principles relate to direct payments but not to other aspects of self-directed support.

If the Scottish Government does press ahead with plans to define the principles on which direct payments are based, we would question why one of the most important principles of direct payments, as identified in the Regulatory Impact Assessment (RIA), should not be legislated for. The RIA states that "an important principle of direct payments is that people who receive social care support via a direct payment should receive a standard of social care provision at the same level as the traditional "provided" service. We do not propose to legislate on this principle.", and we would have to question why this is the case. While we understand that there are financial considerations which may make it difficult at present to

enforce this principle, we would argue that if it is indeed a principle of direct payments, and if the principle of direct payments are to be set out in the Bill, this principle should also appear, regardless of the practical aspects of its implementation. A principle remains a principle regardless of difficulties, and not to include this in the legislative list would give a very clear message that the ability to purchase care of an equal standard is not actually a principle of direct payments.

### **Setting the framework for self-directed support**

As set out in our response to the draft national strategy, CCPS believes that it is extremely important to ensure that self-directed support is promoted in its widest sense, and would caution against too much focus being given to direct payments and the employment of personal assistants alone. Our previous response outlined that we would like to see more emphasis given to other choices open to individuals, including the options to contract directly with a service provider organisation, or to have a local authority commission a service on your behalf from a service providing organisation, as we believe that the more information which is available to individuals about the different options available to them, the more this supports their opportunity to exercise choice and control within the market. We are not sure, however, that this needs to be done through legislation.

It is particularly difficult to comment on the desirability or otherwise of defining self-directed support in legislation when no definition is given in the consultation. If the Scottish Government is to take this suggestion forward, we would welcome the opportunity to comment further on draft legislation, once a definition has been decided upon.

We would have reservations, for example, where self-directed support is defined primarily in relation to direct payments, individual budgets or other forms of resource allocation where a care management process leads to a financial allocation based on an hourly rate; we would prefer instead to see a method of implementing self-directed support that moves away from a focus on cost and volume to a system such as an outcomes-based model that allows greater flexibility for individuals in deciding how their needs might best be met. Our concerns relating to hourly rates are explained in more detail in relation to the RIA below.

### **Moving from opt-in to opt-out**

CCPS is not in favour of a move to an opt-out position. If the intention of self-directed support is to increase individual choice, having any option as a 'default position' seems to be counterproductive; individuals should be presented with the full range of options, and assisted to navigate these options in considering what form of support might be most appropriate for them.

We acknowledge that this range of options could indeed be referred to as self-directed support, but, are not clear what options would be left to an individual who chooses to opt-out of self-directed support; in the absence of a definition of self-directed support in the consultation, we are assuming that, as stated in the draft SDS strategy, self-directed support includes the full range of options from an individual budget or direct payment through to having the local authority arrange or provide a service for you, and therefore do not see what an individual who opts-out of self-directed support would be able to access.

We would therefore not support an opt-put of self-directed support (as we are not sure that this would be possible) or an opt-out of direct payments (as we would not want to see the legislation focussing on one model of self-directed support, and giving the impression that other SDS options were somehow less worthy of consideration).

Regardless of whether a system is opt in or opt out, it is vital that mechanisms are available to support individuals to consider the different options available to them and decide which option might best help them to meet their individual outcomes. The current system is extremely complicated for individuals and families to manage, and both local authorities and service providers should be encouraged and supported to provide information to individuals and families about their options in a clear and simple way.

### **Regulatory Impact Assessment**

In relation to the Regulatory Impact Assessment, we would like to raise points relating to the impact of the proposals on social care service providers; the impact on the market; and the potential impact on services.

#### *Impact on providers*

The Regulatory Impact Assessment acknowledges that the change to a system of self-directed support, if it leads to an increase in the number of people taking a direct payment, will impact on providers' administrative costs in moving from one contract with a local authority to several contracts with individuals. In addition, we would highlight the increased risk to providers in relation to cash flow and default, and the change in the dynamic between providers and individuals, in that providers must act as both supporter and credit controller to some individuals. It is not clear at this time (and depends largely on the scale of the move towards direct payments) whether all providers will be able to absorb these risks.

An additional impact on providers will be in terms of workforce planning and training, as individuals contracting directly with service providers may request different types of support or support at different times to that which they currently receive. While the RIA acknowledges that local authorities will incur training costs in a move to SDS, we would highlight that provider organisations will also face increased costs of this nature, for which bridging finance, as proposed for local authorities in the RIA, would be most useful in ensuring a smooth transition to the new system.

#### *Impact on markets*

The RIA states that "it is not expected that any of the options will limit the number of suppliers or their ability or incentives to compete, either directly or indirectly". As described in our response to the draft strategy, CCPS has concerns that, where the focus remains on hourly rates/number of hours of service provided, only Personal Assistants (PAs) will be able to provide the number of hours of service required for the hourly rate of a direct payment if, as has been the case in several local authority areas, the direct payment rate is considerably less than the level at which provider organisations were previously funded. Organisations with regulated workforces will have higher overheads than individual PAs, so will be unable to compete on a purely cost/number of hours basis, and this could lead to a smaller number of provider organisations being present in the market. We would suggest that a move away from hourly rates to a focus on outcomes, where all potential support providers, including PAs, are equally able to offer a range of supports to an individual to help them to achieve their outcomes with the funds available, would help to mitigate this risk.

#### *Impact on services*

We feel that it is important to link the two points above on the impact on providers and the impact on the market to the potential knock-on impact that they may have on the quality of service provided. While the RIA acknowledges the increased administrative costs that providers may face, for example, there appears to be an assumption that providers will simply absorb these additional costs – in reality, providers, who have worked for many years to make their organisations as efficient as possible, may have no option than to provide services at either a lower volume or lower quality.

The RIA states that the proposals should be cost neutral, as individuals simply purchase the support that would otherwise have been arranged for them; while this may be the case in terms of the financial cost to local authorities, we would argue that there is an increased risk of this resulting in a cost to the individual in terms of either the quality or volume of service they are able to purchase. While it is recognised in the RIA that individuals in receipt of a direct payment for residential care may not be able to purchase the same volume of care as someone having their care arranged for them, since self-funders pay a higher rate, it is worth noting that this may also be the case in relation to other services: while providers would not want to charge individuals more, it may be the case that the loss of volume or increase in risk that faces providers will lead to some providers having to increase their costs. In a recent case where several individuals moved to direct payments at a lower level than previously paid to providers, some providers took the decision to continue supporting these individuals at a lower rate, absorbing the reduction in costs themselves, but providers will not be in a position to do this if the numbers of people receiving direct payments or individual budgets increases dramatically.