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Health, Social Care and Sport Committee

Post-legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013: Phase 1



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for NHS Recovery, Health and Social Care and matters relating to drugs and alcohol policy.

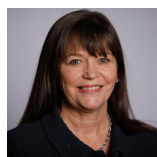


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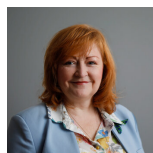
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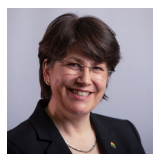
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Membership Changes

1. The following changes to Committee membership occurred during the Committee's scrutiny:
 - On 7 November 2023, Ivan McKee MSP replaced Stephanie Callaghan MSP.
 - On 14 November 2023, Ruth Maguire MSP replaced Evelyn Tweed MSP.

Introduction

2. Legislation that introduced the concept of self-directed support came into force a decade ago. Over the last ten years, many stakeholders have reported issues with its implementation and argued that, as a result, the intent of the legislation has not been fully realised. During that time there have been policy developments in the area of social care in Scotland, including the Scottish Government's programme of adult social care reform and the introduction of the National Care Service (Scotland) Bill. The Committee has therefore decided to review how self-directed support (SDS), as the delivery mechanism for all social care in Scotland, is working.
3. This report covers phase 1 of the Committee's inquiry where the Committee gathered information from the public, professionals and the Scottish Government about how SDS is currently working in Scotland.

What is self-directed support (SDS)?

4. In October 2010, the Scottish Government published a ten-year strategy that set the agenda for self-directed support in Scotlandⁱ. The Social Care (Self-directed Support) (Scotland) Bill was introduced to the Scottish Parliament on 29 February 2012. It was passed by the Parliament on 28th November 2012 and received Royal Assent on 10 January 2013. The main provisions of the resulting [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) came into effect in April 2014. Both the strategy and legislation were intended to introduce significant changes to how social care services were arranged and provided by local authorities.
5. The policy memorandum accompanying the Bill cited the definition of self-directed care used in the original strategy:
 - ” Self-directed Support allows people, carers and families to make informed choices about what their social care support is and how it is delivered. It aims to empower people to be equal partners in their care and support decisions and to participate in education, work and social life¹.
6. The intent of the legislation was to ensure people have choice and control about how the social care they are entitled to is arranged, managed and delivered. In consulting on the then draft Bill², the Scottish Government set out its vision for the objectives of the Bill:
 - ” *To provide a positive, empowering legal framework on care and support*
 11. The Bill should enable things to happen in the right way. It should empower people and practitioners alike to get good quality care and support in place and it should empower people to take as much control as they want.

To reformulate the "balance" in the legislation between the citizen and the state
 12. The Bill should raise the profile within adult social care law of the rights and responsibilities of the citizen in relation to the state. It should ensure that the law plays its part to underpin genuine co-production, to move away from gift and service-based models towards person-centred support and better outcomes for people.

To be clear to people, practitioners, and providers
 13. The Bill should be clear and relatively simple to understand because it is citizens, practitioners and providers who will implement both the letter and the spirit of the law. People must know where they stand and what they are entitled to expect.
7. Four fundamental principles of SDS are built into the legislation – participation and dignity, involvement, informed choice, and collaboration. The legislation stipulates that all social care in Scotland should be provided in line with the principles set out

ⁱ The original Scottish Government strategy, Self-directed support: A National Strategy for Scotland, published in November 2010, is no longer accessible online.

in the Act.

8. In addition to the principles, and along with some other requirements, the Act contains a duty on local authorities to offer four options to people who have been assessed as needing a community care service:
 - Option 1: The individual or carer chooses and arranges the support and manages the budget as a direct payment.
 - Option 2: The individual chooses the support, and the authority or other organisation arranges the chosen support and manages the budget.
 - Option 3: The authority chooses and arranges the support.
 - Option 4: A mixture of options 1, 2 and 3.
9. The Scottish Government published [statutory guidance](#) to support the implementation of the Act, published in 2014 and updated in 2022. This guidance "explains what authorities should do to make sure that people are able to get the support that is right for them". It further explains:
 - ” This is the law that tells local authorities what they must do to give access to SDS in a way that supports people's rights to choice, dignity and being able to take part in the life of their communities.
10. Public Health Scotland published a [Social Care Insights Dashboard for SDS](#) in February 2023, which sets out a range of information on implementation of SDS by Health and Social Care Partnerships.

Why undertake Post-legislative scrutiny (PLS) of the Act?

11. 'Post-legislative scrutiny' (PLS) is a term for an inquiry which looks at an Act of, in this case, the Scottish Parliament to see if, once enacted, it is working as intended. This type of inquiry can include re-examining provisions in an Act, the subordinate legislation resulting from it, and the way in which it has been implemented. PLS can be seen as part of a continuous process of scrutiny and follow-up, whereby it can begin when an Act comes fully into force and can also be undertaken at different subsequent stages involving different forms of scrutiny.
12. There is extensive evidence to suggest that an implementation gap exists between the policy intent behind SDS legislation and what happens in reality. The table below sets out the various activities related to the implementation of the Act and delivery of social care in Scotland more generally which led the Committee to decide to undertake PLS of the Act at its meeting on 27 June 2023.

Date	Related activity
2018	Public Audit and Post-legislative Scrutiny Committee PLS
2019	The Scottish Government launched a national programme to reform adult social care
2020-2021	Third sector analysis of experiences of SDS
2021	Health and Sport Committee's inquiry into the Future of Social Care and Support in Scotland
2021	The Independent Review of Adult Social Care in Scotland
2022-23	Health, Social Care and Sport Committee's Stage 1 scrutiny of the National Care Service (Scotland) Bill
2023	The Scottish Government published its Self-directed support: improvement plan 2023 to 2027

Public Audit and Post-legislative Scrutiny Committee PLS

13. In 2018, the Scottish Parliament's then Public Audit and Post-legislative Scrutiny (PAPLS) Committee undertook combined scrutiny of the [Auditor General for Scotland's \(AGS\) report on SDS](#) and [post-legislative scrutiny of the Act](#). The Committee wrote to the then Cabinet Secretary for Health and Sport raising concerns over:
 - slow progress implementing SDS
 - a lack of available information on each of the four SDS options
 - a lack of baseline data to accurately measure progress of SDS
 - a lack of confidence and empowerment of frontline staff to drive forward changes at a local level
 - robust commissioning plans for services
 - local level funding for implementation
14. A joint reply from the Scottish Government and the Convention of Scottish Local Authorities (COSLA) acknowledged that SDS was not fully embedded and set out actions to address issues highlighted during the Committee's scrutiny:

” We accept the findings of the Audit Scotland review and know there are still cultural and system changes required to fully embed this as our approach to social care. We also need to ensure sustainability of social care support into the future. That is why we are working together, and with stakeholders, to develop a programme of reform for adult social care.

Contained in the annexes to this letter are the actions we are taking forward with partners to address the specific points you raise. However we know that these plans need to be constantly evaluated and reviewed to ensure they are having the intended impact. While there is still a distance to go, we are determined to continue supporting integration authorities as they create the environment necessary for self-directed approaches to flourish.

Adult social care reform programme

- The [Scottish Government website](#) notes that a national programme to reform adult social care was launched in 2019 but that the programme was paused in early 2020 as a result of the COVID-19 pandemic. The website lists the following published outputs from the programme before it was paused:

Published outputs	Relevance to SDS
A summary of discussions held around the reform of adult social care	As part of discussions, stakeholders were also asked to give their views on how a shared vision/outcomes would be realised. One of the themes highlighted as part of the discussions was "Consistent and full implementation of the Social Care (Self-directed Support) (Scotland) Act 2013"
A partnership programme framework	The principal workstream in the framework was entitled "The purpose and value of social care support and self-directed approaches"
Vision for adult social care support	This document describes what adult social care support will look like in the future in Scotland. It sets out that the "aim of the reform programme is to support the changes needed to achieve the vision and overcome challenges that are preventing it."

- The [website](#) notes that work on the programme has not resumed and that "Following the Independent Review of Adult Social Care in 2021, our focus is now on the creation of a National Care Service."

Experiences of SDS

- In 2020, the Health and Social Care ALLIANCE Scotland (the ALLIANCE) and Self-Directed Support Scotland (SDSS) published the following report reflecting experiences of SDS and social care before the COVID-19 pandemic: [My Support My Choice: People’s Experiences of Self-directed Support and Social Care in Scotland](#), which resulted in 66 recommendations to improve SDS.
- This IRISS insights paper, [Self-directed support: ten years on](#), published in 2021, suggested mixed experiences of choice and control under the legislation, attributing this to a variety of factors including, but not limited to:
 - Poor communication
 - Lack of clear and concise information for individuals and staff
 - Lack of understanding of what SDS is for individuals and staff
 - Limited capacity, resource, and staffing in social care

- Lack of meaningful choice for individuals
- High eligibility criteria and limited resource allocation systems
- Bureaucratic and unwieldy processes for delivery
- Lack of resource available for social care and support

The insights paper also assesses the effect of the pandemic, particularly referencing the rapid removal of care packages witnessed during that time. It concludes that: "the pandemic has exasperated many of the underlying problems and limitations of personalisation policies. ³ "

Health and Sport Committee's inquiry

19. In February 2021, this Committee's predecessor, the Health and Sport Committee, published findings from its inquiry into the [Future of Social Care and Support in Scotland](#). That report set out evidence highlighting some of the problems around the implementation of SDS. The Committee concluded that, in relation to SDS:

” Evidence has also told us that problems exist with implementation and inertia within local systems, which results in unnecessary delays, bureaucracy and confusion. There is an over-focus on the system itself, rather than well-being outcomes and care planning for individuals. This is at direct odds with the person-centred approach intended to be at the heart of SDS. Put simply, evidence suggests care and support organisations place responsibility for the lack of full involvement of individuals in SDS options with commissioners and procurers, local authorities and health and social care partnerships. We do not understand why this is not being addressed ⁴ .

20. The Committee report went on to highlight issues with commissioning and procurement practices in social care and how these were contradictory to the principles set out in SDS legislation:

” On the issue of commissioning and procurement, we have learned that price is the main driver. We have heard loud and clear that the current system is leading to risk aversion and the stifling of innovation. Local authorities are in fact the key decisionmakers about provision of care, rather than individuals themselves. This is also in direct contrast to the principles of SDS and further contributes to its ineffective implementation ⁴ .

The Independent Review of Adult Social Care in Scotland

21. Also published in February 2021, the [Independent Review of Adult Social Care in Scotland](#), led by Derek Feeley (also known as the Feeley Review) set out stakeholder views and experiences that point to the existence of an implementation gap related to self-directed support. Within that report, one participant was reported as saying:

” Self-directed support is absolutely the right policy but there has been a failure of implementation ⁵ .

Based on its evidence, the review recommended that “the experience and implementation of self-directed support must be improved, placing people using services' needs, rights and preferences at the heart of the decision-making process. 5 ”

Stage 1 scrutiny of the National Care Service (Scotland) Bill

22. As SDS is the statutory vehicle for delivering social care, the Committee also explored the implementation gap related to SDS during its Stage 1 scrutiny of the [National Care Service \(Scotland\) Bill](#). During that scrutiny, a number of witnesses highlighted that the Bill as introduced made no reference to SDS. Frank McKillop from Enable Scotland argued that SDS should be a key part of the National Care Service:

” [...] self-directed support must be at the heart of the care model that is developed and delivered through a national care system to a consistent standard across Scotland. As we see it, the sign above the door says the right thing, but when people go through the door, they do not get what they expect. That has been the experience of a lot of people. The SDS legislation that is in place is excellent; it is fantastic. However, that is not being realised. ... Perhaps the national care service legislation can fill out the foundations to make that a reality for everyone who wants to access SDS, with that becoming the core model for social care in Scotland ⁶ .

23. Echoing the findings of our predecessor Committee's 2021 report, this Committee also heard arguments during Stage 1 scrutiny of the National Care Service (Scotland) Bill that the principles of SDS should form the basis of ethical commissioning, with SDS itself described as an ethical commissioning model. Rachel Cackett from the Coalition of Care and Support Providers in Scotland (CCPS) argued:

” the far more radical approach is to say that social care is an issue of relationships, and those relationships happen at the front line between the people who require care and support, their carers and the people who deliver that care and support. As much as possible should happen at the front line, which is why the self-directed support legislation, which we have still not implemented fully, is really important. There is an important point to consider about the link between SDS and ethical commissioning ⁷ .

24. In response to the Committee's Stage 1 report on the National Care Service (Scotland) Bill, the Minister for Social Care, Mental Wellbeing and Sport addressed the omission of SDS from the National Care Service (Scotland) Bill:

” [...] because of poor understanding and low awareness of SDS, inconsistent availability across the country and other reasons, SDS has not yet achieved its potential. It is the Scottish Government’s view that the NCS Bill provides the legislative underpinning for the systemic change required to provide consistent quality support across Scotland, including the improved implementation of SDS.

Ahead of the creation of the NCS, the Scottish Government is working in partnership with local authorities, third sector organisations and COSLA to improve the implementation of SDS through our SDS Improvement Plan, published last year. The improvement plan aims to ensure that the SDS principles of participation, dignity, involvement, informed choice and collaboration are fully embedded in social care support in Scotland. We are investing over £7m in the first year of the plan to support its delivery. In addition, we are relaunching our Support in the Right Direction Programme in April 2024 which provides local independent support, advice and advocacy to people who need social care.

The NCS principles will apply across NCS services and support and therefore do not include reference to specific services or approaches. It is therefore considered that it would not be appropriate to explicitly reference SDS here while not recognising the breadth of other services and approaches that will be key to the success of the NCS.

25. SDSS, one of the Scottish Government's national delivery partners for SDS, notes on its [website](#):

” It is hoped that the SDS Improvement Plan 2023 – 2027 will support the transition from the current situation to the point of delivery of the National Care Service, in turn influencing that development.

Self-directed support: improvement plan 2023 to 2027

26. Since the Act was passed in 2013, there have been several multi-year plans to drive forward implementation of SDS. Following the expiry of the [last implementation plan](#) in 2021, a number of organisations called for a new plan to be brought forward to improve implementation of SDS over the coming years.

27. The Scottish Government published its [Self-directed support: improvement plan 2023 to 2027](#) in June 2023. Co-developed by a working group, this plan explicitly acknowledges the existence of an implementation gap within SDS and states that the new plan is intended to "support the delivery of the national SDS Strategy by ensuring cohesive implementation of Self-Directed Support."

28. The plan states that the Scottish Government has identified four outcome areas reflecting where improvements in how SDS is delivered are most needed. Alongside these four main outcome areas, several themes have been developed, with activities identified under each theme ⁸ :

Four outcome areas

Outcome

1. **supported person and carer's choice over their support**, where success means access to information, advice and advocacy, access to quality support, and control and involvement for supported people over how it is delivered.
2. **enhanced worker skills, practice and autonomy**, where success means workers across all aspects of social care support are better able to practice in line with SDS values and with statutory duties (where applicable), standards, skills, and knowledge.
3. **systems and culture**, where success means national and local SDS system and planning design is more person-centred and person-led, including through involving supported people and carers.
4. **leaders understand and help staff realise SDS principles and values**, where success means duty-bearers and senior staff supporting their workforce and creating the culture and conditions for supported people to have choice and control over their social care support.

29. The improvement plan notes that an open consultation process ran January-February 2023 and more than a hundred individuals and organisations responded to the consultation. SDSS also conducted a number of [consultation sessions](#) for its members in January and February 2023. The SDS [Improvement Plan Consultation Document](#) is available but there are no published results.

Health, Social Care and Sport Committee

Scrutiny

30. During the Committee's work programme discussion on 27 June 2023, Members agreed to undertake post-legislative scrutiny of the Act. The agreed purpose of its scrutiny was to understand reported issues around implementation of SDS, examine whether practice is in line with the principles and values of the legislation, and explore what future action may be required.
31. At its meeting on 5 September 2023, the Committee agreed its scrutiny would focus on three main areas:
 - The current picture of SDS - The Committee would seek to better understand what SDS looks like to individuals in receipt of care and other key stakeholders, exploring the implementation gap that exists between the policy intent behind SDS legislation and what happens in practice.
 - Improvement plan 2023 to 2027 - The Committee would scrutinise the [Self-directed support: improvement plan 2023 to 2027](#) and look at how or whether this will help deliver the original aims of the Act and if further action is needed.
 - Monitoring and evaluation - The Committee would explore how SDS is currently monitored and evaluated, given the findings of the Scottish Government commissioned research in 2018 into the [implementation of self-directed support](#).
32. At that meeting, the Committee also agreed a two-phase approach to its scrutiny:
 - Phase 1 would be an informal information gathering stage, taking place November 2023 – February 2024.
 - Phase 2 would follow later in 2024, following analysis of the information gathered during phase 1.

Phase 1

33. The Committee worked with several stakeholder organisations, forming an informal stakeholder reference group, to help determine the focus of Phase 1 of the inquiry. This reference group included representatives from the following organisations:
 - Carers Scotland
 - Coalition of Care and Support Providers in Scotland (CCPS)
 - Scottish Care
 - Social Work Scotland (SWS)
 - Scottish Social Services Council (SSSC)
 - Inclusion Scotland

- PA Network Scotland
34. The PA Network Scotland was unable to attend the reference group meeting, but provided feedback afterwards in writing on what had been discussed.
35. Based on the conclusions reached at the reference group meeting, the Committee agreed that its information gathering at Phase 1 should centre on four key stakeholder groups:
- Individuals with experiences of self-directed support
 - Carers
 - Frontline social care and social work staff
 - Social care providers
36. At an early stage of follow-up discussions with stakeholders, it was subsequently agreed that social care staff and social work staff should be separated out into two key groups and two resulting workstreams.
37. The Committee worked with representatives from this reference group to undertake the following activities as part of Phase 1:
1. Informal briefing to the Committee
 2. Call for views
 3. Informal engagement workstreams
38. The Committee also agreed to write to the Scottish Government to request additional information, as [set out later in this report](#).

Informal briefing

39. On 14 November 2023, the Committee undertook a short informal roundtable with key stakeholder organisations to explore experiences of SDS and issues with implementation of the Act. Representatives from the following organisations, identified through the reference group, were invited to this session:

Stakeholder group	Representative organisation
Individuals with experiences of SDS	Inclusion Scotland
Carers	Carers Scotland
Frontline social care and social work staff	Social Work Scotland
Social care providers	Coalition of Care and Support Providers in Scotland

What the Committee heard

40. All participants agreed that, while there is evidence of good practice in relation to SDS where people have been appropriately supported and had their outcomes met, this is not everyone's experience. On this basis, participants characterised the implementation of SDS as 'patchy'.
41. Participants told the Committee that the COVID-19 pandemic had 'shone a light' on issues with social care delivery. However, while the pandemic had created

challenges, they also reported that it had opened up opportunities for greater flexibility, such as allowing changes to breaks for carers and enabling people to use their budgets to employ relatives.

42. Participants described a strong collaborative community around SDS improvement alongside a shared understanding among stakeholders of what good support looks like. Committee Members asked participants to outline what they thought SDS should look like when delivered properly. Participants responded by outlining what they considered to be the key conditions for success, namely:
- **Relationships** – good strong relationships at, and between, all levels; between individuals, carers, social work staff, social care providers and local authorities. Participants spoke about how the SDS system needs to be relationship-based, with time for staff to explore what matters to individuals and the autonomy from employers to be able to deliver on those outcomes. One noted that, in their view, the current care management system does not allow for that.
 - **Trust** - participants thought this was fundamental to delivering SDS, but that this trust needed to be reciprocal and at all levels:
 - trust between person, family, informal carers and support (where support can mean social worker, social care provider and paid carers)
 - trust between social work staff, staff from other local authority departments and leadership
 - trust between social care providers and local authorities
 - **Longer term budgeting** – some participants spoke of the difference that having longer-term funding can make and being able to use those flexibly to achieve outcomes.
43. A number of issues were raised during the session, which have been grouped under the following headings:
- Commissioning and tendering
 - Fair work and staffing
 - Local authority processes
 - National consistency

Commissioning and tendering

44. There was general agreement during the session that to be able to deliver on and realise the spirit of SDS, there needs to be a shift away from transactional commissioning, time and task approaches to care delivery, as well as a shift away from competitive tendering. Participants argued that the delivery of social care needs to be more focused towards achieving outcomes for people, rooted in giving people choice and control, as was the original intention behind the SDS legislation.
45. Participants further argued that SDS should not be about giving people set hours of social care and should not be constrained by a commissioning or procurement process. Instead, they argued that individuals should be allowed to decide what

they need based on outcomes and should be provided with a support structure to achieve those outcomes. For participants in this session, this all came down to relationships. One participant gave an example from North Lanarkshire, where a support plan had been put in place based on an individual's agreed budget. They told the Committee that, in this case, the support plan was focused on outcomes rather than delivering a set 10 hours of support per week. They expressed a view that this was an example of what SDS legislation was supposed to do by empowering Local Authorities to look at systems and providers and to help the individual navigate the best way forward for them.

Fair work and staffing

46. Participants highlighted challenges around staffing within social care services as a key barrier to effective implementation of SDS, citing the current staffing crisis and ongoing issues around recruitment and retention. Participants described the effect of this crisis as being that organisations were no longer able to respond quickly and flexibly to deliver support in changing situations.
47. Alongside this, participants spoke of fair work and pay issues. They spoke about staff leaving the social care sector to take up other employment with better pay and fewer demands. They also spoke of staff leaving the third and independent sectors to take up local authority positions which can pay higher rates but often follow a more transactional model of care. They highlighted issues around differential rates, where rates for providing care differ according to which of the four options under SDS are chosen, and who fulfils the contract (i.e. local authority or other provider) and the negative impact this variance has both on providers and staff.
48. Participants also raised concerns that currently available rates for social care delivery are not sustainable, do not allow fair work principles to be put into action and are insufficient to give frontline staff the autonomy to take an outcomes-focused approach to deciding an individual's care, instead forcing them to adhere to system constraints. In their view, this meant that the principles of SDS could not be achieved.

Local authority processes

49. All participants were clear that there were issues around management of SDS processes and systems at the local authority level, with one participant suggesting that care is not always delivered in a way that embodies or embeds the intention behind SDS legislation.
50. Participants argued that, to improve the effective implementation of SDS, there needs to be a fundamental shift in power, choice and control at the procedural and structural level. They further argued, that processes and business systems did not always support an approach based on delivering personal outcomes. One participant raised concerns that financial and budgetary decisions in local authorities are taken entirely separately from those responsible for establishing social care and support needs. One participant described an experience of having collaborative outcomes-focused care plans agreed between social work staff and individuals before these were subsequently declined during financial and legal processing. Another participant described the existence of what they termed a 'circular complaints system' within local authorities, whereby individuals were effectively denied the means to complain about decisions affecting them because

the same department receiving the complaint was also responsible for investigating that complaint.

51. Participants also raised concerns about budgeting and funding for SDS. They perceived growing difficulties as a result of SDS budgets failing to keep pace with increasing demand and demographic changes. Many thought that eligibility criteria for SDS were being progressively tightened due to budgetary constraints, and that this could compromise the delivery of preventative support, preventing people from effectively managing their own conditions and in contradiction with the principles of self-directed support. Participants also described fears that some local authorities may be re-directing relevant budgets away from supporting the implementation of SDS, pointing to areas of the country where it was clear there had been investment in implementing SDS and other areas where such investment was lacking.
52. Participants raised concerns that the four SDS options were not consistently made available to individuals and suggested that this could sometimes be caused by workforce challenges and the availability of applicable social care provision in an area. One participant described experiences of individuals being directed towards choosing Option 1 (they choose and arrange their support and manage their budget themselves), only to find that there were no suitable services available. Another described an experience of individuals being directed towards Option 3 (the local authority chooses and arranges the support), without any opportunity to discuss or consider the potential availability of the other three options.

Consistency

53. Participants raised issues around consistency in that SDS was seen to be more available or more frequently accessed by individuals in certain care groups, or individuals in certain parts of the country. One participant suggested that variable access by different care groups often arose because individuals were grouped according to care needs and expressed concern that, as a result, there were individuals outside those groups who receive no support. One participant described variable access according to geography as being the result of 'variation for no reason'. They argued that, in their experience, each local authority took a different approach to the implementation of SDS, for example differences in interpretation, tools and leadership, which makes it increasingly difficult for individuals to transfer care packages across different parts of Scotland if they move, with a requirement to be re-assessed by the local authority they have moved to.


National Care Service

54. Participants were also concerned about the lack of consideration of the principles of SDS in national conversations around the proposed National Care Service. They expressed concerns that legislation to create a National Care Service would impact negatively on the implementation of SDS, namely that it would:
 1. continue the status quo and the structures, pathways, processes and cultures that have developed and resulted in SDS being implemented according to availability (or lack of availability) of resources, rather than being based on need and outcomes;
 2. continue to focus on the structure of accountability for delivery of social care rather than ensuring individuals are at the heart of social care, having choice

and control on what they want and need - and for that to be equitable regardless of where people live;

3. divert resources away from social care delivery; and
4. oversimplify implementation of SDS to the point that it is no longer able to deliver its intended purpose.

Call for views

55. The first aim for this phase of the inquiry was to hear directly from stakeholders about what SDS currently looks like for individuals in receipt of care and other key stakeholders. The Committee was aware that a level of 'consultation fatigue' exists in this area, with a number of organisations having repeatedly asked stakeholders for their views on implementation of SDS but a perception that very little has changed or improved as a consequence. However, despite this, there was general consensus within the reference group that individuals and organisations were still very much interested in engaging to share their views with the Committee.
56. The Committee [launched a call for views](#), which was open for submissions between 3 November 2023 and 12 January 2024. Alongside general demographic questions to allow for ease of analysis, the call for views asked one main question:
 Please tell us what you, or the person you represent, think about the implementation of self-directed support to date.
57. The Committee agreed that the call for views should be aimed at everyone, including those with lived experience of SDS, experts, staff and organisations supporting individuals in receipt of care, as well as the general public.
58. It was intended that focusing on only one question would maximise the opportunity for individuals and organisations to give their views, both positive and negative, while not restricting comments to individual areas of practice or experience. The Committee further agreed that responses to the call for views should be anonymous to allow individuals and staff to give their full views without compromising existing support or employer-employee relations.
59. The call for views was promoted through web and social media channels, and was sent to a number of key organisations, including the stakeholder reference group, for wider dissemination through their networks. To further promote accessibility, Easy Read and BSL versions were also made available on the [call for views webpage](#).

What the Committee heard

60. Instead of publishing individual responses, a summary of key issues based on the responses received was published on the [Scottish Parliament website](#). This report does not seek to replicate the summary, but to highlight the key themes that emerged.
61. The Committee received 140 responses to its call for views: 83 from individuals and

57 from organisations. Responses were received from regions across Scotland, primarily North-East Scotland, Glasgow and Lothian. 110 respondents indicated that they, or the person they were representing, had direct experience of SDS.

Areas of good practice

62. Respondents were complimentary of the legislation itself and the intent behind it, and some described SDS as transformational and highlighted areas of good practice in its implementation. When implemented well, respondents saw it as:
1. Increasing choice, flexibility, and control for individuals. One social care provider highlighted the positive impact of a personalised approach to social care through SDS, and several respondents reported that SDS provides them with more choice around the support they receive. Respondents suggested SDS gives increased control for the user as it allows them to schedule their care around their existing schedule. Individuals who responded to the call for views noted that SDS has meant they can engage with services and receive opportunities that may not otherwise be available to them such as crafting, church and sport activities, and short holidays.
 2. Allowing unpaid carers to receive respite from their caring duties, with with an individual describing how the legislation has allowed family members to support them when caring for other relatives.
63. A national organisation that supports the use of SDS also commented on the role of local independent support organisations in SDS implementation and described how this has been effective at supporting individuals.

Areas for improvement

64. Many of the responses highlighted an implementation gap between the legislation and what is happening in reality. Several reflected that implementation had initially started well but felt that it had deteriorated over time.
65. The following themes arose from the responses:
- A lack of clarity and knowledge around SDS and lack of available support and guidance to help navigate the process.
 - Inconsistency of SDS implementation between local authorities.
 - Staff shortages impacting on local authorities' capacity to carry out assessments in the way the Act requires, and the number of social care staff available to deliver services.
 - A need for SDS-specific training and education for social work staff and personal assistants, on the basis that a lack of staff knowledge impacts on staff's understanding of the intentions of the Act and how to deliver social care in practice in a way that reflects these intentions.
 - Changing eligibility criteria and funding since the Act was introduced leading to reduced flexibility and increased restrictions on eligibility.
 - Increased stress for individuals who have had to take on employer

responsibilities when they employ staff under Option 1 and the need for additional help with these legal and administrative duties.

- Difficulties accessing services (as a result of staff shortages, lack of service providers and lack of specialist support for some care groups) has hampered the effective implementation of SDS.
- Processes involved in undertaking assessments, waiting times for approvals, and administrative procedures, including financial returns, processing payments and complaints procedures can be tiresome, time-consuming and a barrier to accessing care services.
- A need for greater investment from the Scottish Government to support better SDS implementation, to recognise its value and deliver on its initial vision.
- A need for a regulatory body to ensure accountability of local authorities in relation to delivering SDS.
- A need for funding provided to local authorities to be ring-fenced so it can only be spent on SDS delivery.

Workstreams

66. The Committee worked with organisations from the reference group to develop and deliver five informal engagement workstreams, based on the following previously identified key stakeholder groups, to explore views on the implementation of self-directed support to date from stakeholders recruited by those same organisations:
- Individuals with experiences of self-directed support
 - Carers
 - Frontline social care staff
 - Frontline social work staff
 - Social care providers
67. Using a deliberative democracy approachⁱⁱ to enable the views of the public to inform the Committee's scrutiny, Scottish Parliament staff including the Scottish Parliament's Participation and Communities team and the Scottish Parliament Information Centre (SPICe), met with each of these five groups twice during December 2023 and January 2024 to:
- Develop parliamentary awareness and understanding, including in relation to the role of the Committee;
 - Introduce the concept of post-legislative scrutiny, alongside examples of inquiries undertaken by other parliamentary committees;
 - Provide background to the Social Care (Self Directed Support) (Scotland) Act 2013 and the Scottish Government's latest improvement plan;

- Work with participants to develop recommendations for the Committee on areas of focus during phase 2 of its scrutiny; and
- Prepare participants to present collective recommendations to the Committee.

68. The Committee was impressed by the quality and depth of discussion, and representative members from each workstream were subsequently invited to give oral feedback on their recommendations to the Committee at its meeting on [20 February 2024](#).

What the Committee heard

69. A list of recommendations from each of the five workstreams has been published on the [Committee's webpage](#). This report does not seek to replicate the recommendations, but is instead focused on highlighting the common themes that emerged across all workstreams.

70. One overarching concern among the recommendations was the perception that the implementation of SDS legislation had been impeded by other subsequent legislation, namely the Public Bodies (Joint working) (Scotland) Act 2014. One overarching plea was that any future legislation, such as the National Care Service (Scotland) Bill, incorporates a commitment to delivering and embedding SDS and its principles.

71. Recommendations from the five workstreams have been grouped under the following headings:

- Commissioning and tendering
- Fair work and staffing
- Local authority processes
- Monitoring and transparency
- National consistency

Commissioning and tendering

72. Recommendations highlighted a need to focus on fostering ethical commissioning, the importance of facilitating collaborative commissioning conversations and developing marketplaces of providers, while also ending competitive tendering and restrictive procurement processes which it is argued are not suited to the intent of SDS.

73. Concerns were also raised about a disparity in the relative availability of funding under different SDS options and the negative implications this has for accessibility of services. ; with those choosing option 3 receiving care free of charge and those choosing options 1 or 2 often having to pay top-up fees. Participants argued these differences can have an impact on what care can be commissioned, particularly

ii Deliberative democracy approaches involve convening groups of people to learn, deliberate, and develop collective recommendations that consider the complexities and compromises required for solving multifaceted public issues.

where there may be a shortfall. One recommendation was that implementation of SDS should be "person led" rather than "person centred", meaning that, regardless of the option an individual chooses, they should always be given control of their allocated budget.

Fair work and staffing

74. Recommendations around fair work and staffing focused on two main areas. The first of these was to ensure the relevant staff groups have the appropriate knowledge, skills and training. It was clear from the recommendations they made that workstream participants thought that appropriate skills-based and outcomes-focused training (rather than process-driven training) should be prioritised for staff. Their view was that most training currently focuses on navigating operational systems, rather than how SDS should be implemented in practice. In particular, the following groups were mentioned that it was felt would benefit from improved training:

- HSCP staff who may have limited knowledge of legislation and requirements
- Social workers (including students which would require work to revise the university prospectus)
- Social care managers

75. Recommendations in this area secondly focused on improving sustainability of the sector in terms of its workforce and social care providers. This was felt to be fundamental to making SDS a reality for more people. Improving sustainability includes focusing on recruitment and retention of social care and social work staff, and workstreams also highlighted the need for standardised pay and terms and conditions, as well as increased financial support for social care providers, investment in leadership across sectors to deliver relationship-based support, and for workforce planning to be re-orientated according to demand rather than supply, and that regulation of the whole workforce is required.

Local authority processes

76. There were a number of recommendations around scrutiny of processes and systems at the local authority level:

- How local authorities use care budgets;
- How effective local authorities are at providing timely and relevant information on SDS;
- How local authorities manage eligibility criteria and the balance between preventative and crisis management care;
- The processes around decision-making for individual budgets, where responsibility ultimately lies, and how consultation between individuals and staff in different departments is managed;
- To what extent complaints systems are accessible and can provide meaningful redress if local authorities and HSCPs fail to meet their statutory SDS obligations; furthermore, how resulting complaints decisions then inform the

SDS process.

Monitoring and transparency

77. These recommendations were closely related to those concerning local authority processes as outlined above, but there was a general consensus that existing collected data were not sufficient to be able to monitor or evaluate the implementation of SDS effectively. There were calls for further scrutiny of how and what data is currently captured. Suggestions for additional categories of data to be collected to support monitoring and evaluation included:
- Levels of uptake of SDS under each of the four options;
 - Levels of unmet need;
 - Levels of staff knowledge and skills in interpreting how SDS legislation, and related guidance, should be implemented;
 - Identification of outcomes and the extent to which these are achieved, including situations where outcomes may change; and
 - Funding and spending decisions related to SDS.
78. One workstream also argued that the Committee should focus on ensuring that a process of constructive, overt and explicit test and challenge is built into the implementation of SDS with a view to delivering active and transparent continuous improvement. This workstream argued that there is nothing in the current system of implementation currently that provides an impetus for improvement, with mistakes continually repeated and no avenues to address system failure.

National consistency

79. The need for consistency was raised as a top priority across all workstreams and there were multiple recommendations in favour of an overarching framework and standards to both support the legislation and demonstrate good practice. Workstream participants argued that different local authorities, and sometimes different areas within local authorities, seem to interpret the legislation in different ways and that this leads to disparities in what people are able to access and the support they receive, resulting in a lack of fairness. This was highlighted as a particular problem in rural locations and in relation to the categorisation of different care groups although it was also acknowledged that a lack of consistency was an issue everywhere and not confined to these groups.
80. One workstream recommended improved transparency for individuals in receipt of social care. Participants of that workstream argued that any individual, at any given time, should be able to track their journey through the process and be able to understand what has been agreed to and if their preferences have not been agreed to, why this is.
81. Workstreams made the following recommendations in favour of improved consistency in implementation while still allowing scope for necessary local variation according to individual circumstances:

- A consistent approach to national, local and individual funding and budgeting.
- A consistent and transparent approach across all local authorities in relation to referrals, the application process, assessments, allocation of resources, eligibility criteria processes and decision making.
- Constant and consistent information across all local authorities about available support for individuals and what they can expect from SDS, rather than information that is purely focused on the legislation. It was emphasised that this should not take the form of a one-off information campaign but rather the development of an ongoing, up-to-date one-stop shop for individuals seeking support.
- Consistent access to independent advocacy across all local authorities.
- Leadership and management structures in all local authorities that understand the nature of social work, social care and SDS – one participant expressed concern that integration has led to instances where social work can be managed by NHS colleagues applying a medical model.
- Consistent monitoring and scrutiny of SDS.

Information from the Scottish Government

82. The Committee [wrote to the Scottish Government](#), in November 2023, seeking further information on the following to inform its consideration as part of Phase 1:
- Updates on the actions set out as part of the Scottish Government's response to the Public Audit and Post-legislative Scrutiny Committee's 2018 inquiry (included at Annexe A);
 - The consultation that informed the current improvement plan and actions detailed within the plan;
 - Any actions taken or planned to address the recommendations from the Scottish Government commissioned research on monitoring and evaluation, published in 2018.
83. The Committee [received a response](#) from the Minister for Social Care, Mental Wellbeing and Sport on 13 December 2023.

What the Committee heard

84. The Minister's response set out how the Scottish Government intends upcoming legislation will facilitate implementation of SDS. The Minister argues that one of the key aims of the proposed National Care Service (Scotland) Bill is to:
- ” enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland. The NCS also aims to take a person centred approach to ensure that integrated services recognise individual circumstances⁹.

85. The Minister goes on to set out how the proposed National Care Service (Scotland) Bill is intended to strike a balance between national consistency and services that reflect local circumstances:

” By establishing a National Care Service, we aim to end the inconsistency of care provision across Scotland, ensuring quality, fairness and consistency of provision that meets individuals’ needs. One of the ways the NCS Bill will help to achieve this, is through the new national shared accountability framework agreed with COSLA⁹.

Update on actions resulting from the PAPLS Committee 2018 inquiry

86. The Minister's response provides an extensive update on the Government's response to the inquiry and sets out progress on the delivery of those recommendations and actions. This report does not replicate that response but will refer to these as part of phase 2 of its scrutiny.

Current improvement plan

87. The Minister's response to the Committee included details on the consultation process that informed the current improvement plan. The Minister noted that "more than a hundred responses were received from individuals and organisations". The letter stipulates that "the plan incorporates the most commonly expressed views about what needs to happen to improve SDS, and what needs to be prioritised" and explains that the following objectives have underpinned the development of the four key themes identified in the Improvement Plan:

- ”
- ensuring people with lived experience are involved in planning services;
 - ensuring people who need social care support are informed about SDS and understand their rights;
 - ensuring access to support, including independent support and advice throughout the SDS process;
 - making sure SDS is included in social workers' education and ongoing training; and
 - ensuring leaders are informed about SDS and subscribe to the values and principles of SDS⁹.

88. The Minister also provides details of work underway to address actions detailed in the improvement plan and how these are intended to improve outcomes, including:

- Support in the Right Direction Programme, delivered by inspiring Scotland, providing Advocacy and Brokerage services in each of the 32 Scottish local authority areas
- Core Grant Funding to Social Work Scotland, Self Directed Support Scotland, In Control and the ALLIANCE to deliver outcomes through activities as identified in the current improvement plan.

89. The response also notes that the Scottish Government policy team is working to ensure SDS is embedded in other policy areas:

- ” The Team continue to work closely with other Scottish Government teams to ensure that SDS is embedded into key national priorities including the National Care Service, the Promise, Dementia Strategy, Ethical Commissioning and Getting It Right For Everyone (GIRFE) as they develop, drawing on stakeholder evidence and expertise ⁹ .

90. In relation to local authority budgets, the response from the Minister notes that:

- ” The delivery and improvement of Self-Directed Support across Scotland is funded primarily through local authority budgets who have statutory responsibility for the delivery of SDS. However, additional Scottish Government funding for SDS improvement is in place for this and the coming years to support the implementation of the Improvement Plan.

As part of the Local Government Finance settlement, £3.696 million has been allocated for transformational funding in support of Self-Directed Support (SDS). This is intended to support the ongoing reform and improvement of social care support to a self-directed model and to achieve self-directed support more consistently across Scotland. Individual annual reporting is provided to outline how funding has been used to support the realisation of the outcomes detailed in the plan.

Recommendations from the Scottish Government commissioned research on monitoring and evaluation

91. The Minister's response sets out actions the Scottish Government is taking to capture additional data on SDS and to address the recommendations of the 2018 research. However, the response does not address how the Scottish Government intends to achieve a consistent approach to data collection or how data has informed the current improvement plan. Instead, the response states:

- ” The SDS [Framework of Standards](#) (March, 2021) was written specifically for local authorities and “includes standards around transparency and recording systems. It sets out clear expectations on data systems, namely that they are capable of being used for improvement and planning... There is no specific requirement in the 2013 Act concerning the collection or publication of data, and therefore the issue of what social care data to collect or publish is for individual local authorities to consider as part of their statutory duties to publish information about their policies and services.”

With that being said, the Framework does suggest that “authorities should take steps to ensure systems are capable of generating sufficient data to monitor and evaluate its own work to deliver the full range of options as set out in the 2013 Act” ⁹ .

92. The Minister's response further gives a commitment that the Scottish Government plans to:

- Produce a monitoring and evaluation plan for the current SDS Improvement Plan by the end of 2013.
- Conduct a survey, in early 2024, of local authority SDS Leads in order to

understand how the updated SDS Statutory Guidance is being used locally.

Conclusion

93. From the information gathered as part of Phase 1 of the Committee's post-legislative scrutiny, it is clear that there is support for the Committee undertaking further scrutiny into the way SDS is accessed and delivered. All stakeholders have indicated that solutions are required to address the current issues around implementation of SDS and do not regard the status quo as an option going forward. They have also expressed concerns that forthcoming legislation may not adequately address these concerns.
94. In the second phase of the inquiry, the Committee will look to further examine areas highlighted as part of Phase 1 and to make recommendations for future action to improve the implementation of SDS.

Thank you

95. Our thanks and gratitude are due to those who took the time to provide us with their views on the implementation of SDS to date, and for those who engaged as part of the Committee's intensive workstreams to develop recommendations for the Committee to consider as part of its scrutiny at phase 2. We are also particularly grateful to the organisations that formed the informal stakeholder reference group for their assistance and support, which is reflected in the quality of the information received by the Committee.

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