

# RIGHTS AT HOME: THE SCOTTISH CARE HOME SECTOR AND SELF- DIRECTED SUPPORT



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# INTRODUCTION

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The Social Care (Self-directed Support) Act 2013[1] commenced on April 1st, 2014 and introduced into Scottish practice one of the most progressive pieces of social care legislation across Europe. It was the culmination of a long period of development and was part of the then Scottish Government's Ten-Year strategy on the personalisation of social care services and support launched in 2010.[2]

The Scottish Government have stated that:

*'The Act came into force on April 1, 2014 and places a duty on local authority social work departments to offer people who are eligible for social care a range of choices over how they receive their support.'*

Self-directed Support allows people, their carers and their families to make informed choices on what their support looks like and how it is delivered, making it possible to meet agreed personal outcomes. The Scottish Government has invested almost £70M in transition to this new approach between 2011 and 2018.

Self-directed Support (SDS) is aimed at giving people greater informed choice and control over the services and supports which they choose. It stresses the importance of individuals being supported to achieve the life that they want for themselves. It is not just limited to the delivery of social care and support but includes a much wider range of services.' [3]

Self-directed Support (SDS) is therefore the continuation of a sustained process of policy and practice innovation which has sought to put the individual person at the centre of public service delivery.

Crucially it is underpinned by a set of statutory principles which are at the core of SDS and which are based within human rights principles and protections. At their heart is the belief that people are more likely to achieve the life they want for themselves where they have the greatest degree of choice, control and involvement.

Sections 1 and 2 of the Act specify five general principles that are meant to guide practice. They are:



**Involvement** - requiring that the supported person must have as much involvement as they wish in both the assessment and in the provision of any support agreed on completion of their assessment.

**Collaboration** - there must be collaboration with the supported person in the provision of any support identified and agreed on completion of their assessment in order for them to be supported to achieve the outcomes they have identified.

**Informed Choice** - the supported person must be provided with any assistance that is reasonable to enable them to express their own view about the support that is being provided or to make any changes to that support including the specific involvement of individual staff in their lives.

**Participation and Dignity** - this applies to the whole relationship between commissioner, provider and the supported person. It seeks to place person-led support based on an individual being able to exercise their human rights at the heart of all social care support and delivery.

The Act and its associated Statutory Guidance[4] introduced a process which envisaged what the experience of individuals requiring support might look like. At the start of this process a person is informally assessed and identified as being eligible for support, they then undertake an outcomes-focussed assessment which leads to them being informed of their 'indicative budget' which they will be allocated in order to achieve these outcomes. They are then informed of the four options available to them to enable this choice to be exercised; guided to develop a personal support plan with the necessary supports and safeguards that exist in order to achieve these identified outcomes and it continues all the way to the successful achievement of the outcomes a person wants for their life. This is called the Supported Person's Pathway.

Since its inception there have already been a number of research and audit reports on SDS which have examined the implementation of this significant change in the delivery of social care supports in Scotland. The most significant of these has been the Audit Scotland report in 2017.[5] At best the implementation can be described as patchy occurring as it did in the face of fiscal austerity and a not insignificant increase in demand resulting in an increase in eligibility criteria. Nevertheless, most research also highlights the huge culture change required and the operational resistance experienced by the new policy as well as the lack of adequate resources to enable the change. The Audit Scotland report and all major studies have made no

direct reference to the experience of SDS for the residential and nursing home population.

In recognition of changing circumstances, the Scottish Government and COSLA published a new Implementation plan for 2019-2021 in June 2019. They stated:

*'We engaged extensively with stakeholders to gather evidence for the development of a refreshed Implementation Plan for Self-directed Support (2019-2021). This replaces the existing Implementation Plan which covered the period 2016-2018. It forms a central part of the wider reform programme for adult social care support that is being developed with people who use and work in social care support, unpaid carers, COSLA, and organisations from across the sector.'* [6]



# SELF-DIRECTED SUPPORT AND CARE HOMES

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This paper will consider the experience of individuals in receipt of residential and nursing care home services. It will focus on research on the Independent sector care home provision which currently sits at 89% of total provision.

The latest Scottish Government Care Home Census[7] states that:

- 'On 31 March 2017, there were 35,989 adults in care homes, this is 5% lower than in 2007 (37,702).
- On 31 March 2017, 91% (32,691 out of 35,989) of all care home residents (i.e. long stay, short stay and respite residents) were in older people's care homes.

Older people care homes:

- At 31 March 2017, there were 31,223 long stay residents in care homes for older people, a decrease of 4% compared to 31 March 2007 (32,482). In the same time period, the number of short stay/respite residents in care homes for older people increased by 96% (1,468 compared to 750).
- The percentage of long stay residents living with dementia (both medically and non-medically diagnosed) in a care home for older people increased from 54% at 31 March 2007 to 62% at 31 March 2017'.

Given the sizeable proportion of the Scottish population who access care and support are living in our care homes it is important when considering the success or otherwise of self-directed support to reflect on the care home experience, especially that of older persons care homes.

At the time of the commencement of the Act the older persons who were being considered for, or who were considering moving to residential or nursing care underwent a needs-based assessment which was typically carried out by a social worker with input from clinical colleagues. This primarily focussed upon clinical care and acuity and utilised the Indicator of Relative Need scoring system (IORN). The individual and their family were then able to select the care home of their choice

dependent upon availability. This was underpinned by the Choice Directive. An individual was then placed in the care home and either considered as someone supported by the State or treated as a self-funder. In both instances an individual was able to access monies through the Free Personal Care legislation to offset against the care home costs.

From the outset of the debate around Self-directed Support there has been a degree of uncertainty around the role the new provisions should have within residential and nursing care home provision. The earliest consultation on future proposals suggested that SDS should not be considered for a residential or nursing home setting. This was strongly challenged during the pre-Bill consultation period on the grounds of equality and on the basis that the new Bill and subsequent Act was about treating individuals by equal measure regardless of the loci or nature of the social care services and supports they received.

When the Act was eventually passed and its associated Guidance drawn up, there was a clear articulation that the practices and rights envisaged under SDS were relevant to individuals in care homes, although it was decided that a direct payment (Option One) would not be offered.



# WHAT HAS HAPPENED IN CARE HOMES SINCE THE ACT?

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Since the Act was implemented there was an early focus on exploring the potential operationalisation of extending the full Act to those in residential care, i.e., allowing Direct Payments.

Early in 2015, the Scottish Government established two pilot projects to explore the benefits and risks of changing the Self-directed Support legislation to enable all people living in residential care to access Options 1, 2 and 4. Local Authorities were invited to submit bids and East Renfrewshire Health and Social Care Partnership, and Health and Social Care Moray were selected to use the available funding and associated legislative flexibility to establish two pilot sites.

The aim of the Residential Pilots in Scotland was to explore whether access to the full suite of options encompassed in Self-directed Support legislation could lead to better outcomes for individuals in residential care. Specifically, whether access to Option 1 was viable in this setting. The projects set out to:

- Pilot the use of different SDS options 1, 2 and 4 with people already living in residential care and those potentially moving into residential care.
- Pilot approaches to improving choice and control for people living in residential care or potentially moving to residential care.

From October 2015, through the pilots Direct Payments were made available for the first time to people living in permanent care in East Renfrewshire and Moray on a temporary basis. The findings of these two pilot sites were monitored and evaluated to establish the operation and impact of being able to use any SDS Option to fund care home services for the people using them, their families and the providers.

A specific Scottish Government requirement from the projects was to understand the implications of such a change in legislation and inform Ministerial decisions on whether direct payments could be used to purchase residential care services.

An advisory and reference group with stakeholders was established, appropriate support given to the test sites and a robust evaluative and assessment process was undertaken. These pilots concluded in 2018 but no agreement was reached and there has been no publication of the findings of the pilots nor indeed any alteration to legislation to enable the full extension of the rights under the Self-directed Support legislation to all individuals.

Concurrently there has been ongoing work between a range of partners in particular COSLA, representatives of the new Health and Social Care Partnerships, Scotland Excel and Scottish Care to develop a disaggregated cost model for care homes. This activity would better enable the identification of distinctive elements of the Indicative Budget that individuals could choose to access if they are eligible under the SDS Act and who may want to utilise their budget to purchase residential or nursing home services and supports. This work is currently ongoing.

At the present time the costs of residential and nursing care home provision are determined by the means of an annually negotiated National Care Home Contract. This determines what an annual fee is and is dependent upon the nature of the care and provision which is being delivered. At present the two main typologies are described as nursing and residential care. However, it should be stated that there is no legislative or practice reason why the Self-directed Support Act could not be operationalised within the current National Care Home Contract arrangements. The issue is the degree to which it has or has not been.





# 2019/20 SCOTTISH CARE RESEARCH

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At the end of 2019 Scottish Care decided to undertake research amongst its members to seek to determine the extent to which individuals being supported in nursing and residential care homes were being given access to their rights under the Self-directed Support legislation.

## Methodology

This report was compiled from responses to a Scottish Care online survey, held over a three-week period in November to December 2019. It was sent to and promoted online amongst all Scottish Care Home member organisations who provide care home services. Scottish Care members constitute about 95% of all organisations delivering the 89% of older persons care home services in Scotland.

## Results

The responses collected over this time are representative of:

- Independent sector care home services across 23 out of a potential 29 Local Authority areas of Scotland were included. There are two areas with no Independent care sector provision namely Orkney and Shetland.
- 70 responses were received, ranging in size from single to multiple care home provision
- 86% of those responding were private providers with the remaining described as charitable, voluntary or not for profit.
- 77% of responding services were nursing and 23% were residential care homes.
- A total of approximately 4,100 residents were supported by responding services on an average week. This constitutes to about 12.5% of the total care home for older persons population.

Those surveyed were asked a series of questions in relation to their knowledge and awareness of the use of SDS by/for their residents from the initial assessment process, the use of personal budgets, through to the development of an outcomes support plan.

The questions asked were:

- To the best of your knowledge how many of your residents are in receipt of a Self-directed Support package?
- To the best of your knowledge how many of your residents were given an assessment which identified personal outcomes under the SDS Act?
- To the best of your knowledge how many of your residents were offered an individual budget under the SDS Act?
- To the best of your knowledge how many of your residents were given the choice of the SDS Options, namely a budget which was managed by a provider or third party, a budget managed by the local authority or a mixture of these options?

Overall the responses to the survey suggested that there were remarkably few individuals who participants considered were in receipt of any element of care and support under the Self-directed Support Act. This included an SDS outcomes assessment, personal budget allocation, or rights in relation to review and re-assessment. The total number of residents described as being in receipt of an SDS package was recorded at 37 (**0.9%** of all residents represented in the survey). 98% of responses indicated that none of their residents receive SDS packages

When asked about whether or not their residents had been given an outcomes assessment only three respondents indicated that 51 (**1.25%**) of their residents they believed had been given an assessment which identified personal outcomes under the SDS Act.

Respondents indicated that only 4 of their residents were in receipt of an SDS personal budget to the best of their knowledge. This equates to **0.09%** of the potential total.

Lastly when asked how many residents, to the best of their knowledge how many of your residents were given the choice of all SDS Options only 8 residents were considered to have such a budget equating to **0.1%** of the residents covered by the survey.

# THE FUTURE OF SDS IN THE CARE HOME SECTOR

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By any reading the survey results are immensely disappointing. They clearly show that in the vast majority of cases that individuals accessing care and support in care homes in Scotland are not being given access to their full rights under the Social Care (Self-directed Support) Act. This absolutely chimes with the anecdotal evidence which Scottish Care staff have received since the commencement of the Act. Individuals are not being assessed by means of an outcomes basis but rather continue to be assessed on the grounds of their clinical and care needs. There is growing concern and evidence that the needs assessment process itself is not taking into account the sharp rise in levels of acuity and dependency over the last five years amongst those entering care homes much later in their life-journey, and that as a consequence there are a growing number of instances where individuals with significant clinical needs are being placed within residential care home facilities.

The research also substantiates the belief that those entering care homes are not being allocated a personal budget to utilise as they consider appropriate in order to achieve their identified personal outcomes.

The most recent Implementation Plan of the Scottish Government and its partner COSLA states:

*'Self-directed support will be fully embedded in the Scottish Government's approach to older people. Through A Fairer Scotland for Older People: framework for action and Age, Home and Community – The Next Phase, the Scottish Government will raise awareness of self-directed social care amongst older people. This will help tackle barriers people may face to independent living.'*

*Scottish Government and COSLA are progressing a substantial review into the future role and support of care homes, in view of a growing care home population with increasingly complex needs and ongoing challenges around stability and sustainability. Delivered as part of adult social care reform, this will also include an emphasis on person-centred and outcomes-focused planning.'*[8]

It is therefore clearly the intention of the Scottish Government to ensure that individuals are not treated in a discriminatory manner on the grounds of their age or indeed any other personal characteristic. It is equally clear that reform of the care home sector is a key issue not least as it is stated in the most recent Programme For Government.

Given these commitments it would appear to be a matter of some considerable urgency that the current failure to implement Self-directed Support within the residential and nursing care home sector is addressed.





# CONCLUSION & RECOMMENDATIONS

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The Self-directed Support Act was framed within the context of the realisation of human rights for some of the most vulnerable individuals in Scotland. As we have already indicated it has a set of values and principles at its core which are about enabling informed choice, fostering participation, embedding dignity and encouraging collaboration. Arguably these have not been evident in the care and support arrangements of those entering residential and nursing care since the inception of the Act. The systemic failure of all engaged in the provision of care home nursing and residential care can only be seen as a failure to embed and enable the human rights of residents.

The Scottish Care research necessitates a response from all stakeholders. It is therefore recommended that:

1. The Scottish Government publish as a matter of urgency the evaluation and findings of the SDS Residential Pilots.
2. The Cabinet Secretary for Health and Sport should explore the potential of making a recommendation and bring necessary legislation before the Scottish Parliament to remove the restrictions within the Self-directed Support Act which prevent individual residents from accessing direct payments (Option One).[9]
3. There is established as a matter of urgency an independent implementation group to urgently identify and develop practical measures to ensure the implementation of the Self-directed Support Act within the residential and nursing care home sector, including the identification of any additional resource to enable the same to occur should it be required.
4. There is established a system of robust scrutiny and inspection to ensure that all individuals in care homes are adequately assessed in terms of the SDS Act, are informed of their indicative budget and supported to develop and implement a personal outcomes-based support plan.
5. Audit Scotland undertakes an urgent examination of Self-directed Support as it relates to the assessment, support and care of those accessing residential and nursing care home support, including the extent to which local authorities and other stakeholders are fulfilling their various duties under the 2013 Act. In particular it should review the access to Options 2,3 and 4 within the Act.

# REFERENCES

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[1] The Act can be accessed at

<http://www.legislation.gov.uk/asp/2013/1/contents/enacted>

[2] Self-directed Support: A National Strategy for Scotland, 2010-2220. See

<https://www2.gov.scot/resource/doc/329971/0106962.pdf>

[3] Extracted from <https://www2.gov.scot/Topics/Health/Support-Social-Care/Support/Self-Directed-Support> on 26th January 2020.

[4] The Statutory Guidance can be accessed at

<https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/1/>

[5] Self-directed support: 2017 progress report, Audit Scotland. See

[https://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr\\_170824\\_self\\_directed\\_support.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr_170824_self_directed_support.pdf)

[6] Extracted from <https://www2.gov.scot/Topics/Health/Support-Social-Care/Support/Self-Directed-Support> on 26th January 2020.

[7] See <https://beta.isdscotland.org/find-publications-and-data/health-and-social-care/social-and-community-care/care-home-census-for-adults-in-scotland/>

[8] 'Social Care Support: An investment in Scotland's people, society, and economy : Self-directed Support Implementation Plan 2019 – 2021', Scottish Government, 2019, page 20. See <https://www.gov.scot/publications/self-directed-support-strategy-2010-2020-implementation-plan-2019-21/>

[9] There is other evidence relating to the use of direct payments in a residential setting. In 2012 the Department of Health in England established twenty test sites to explore this. See:

<http://www.piru.ac.uk/assets/files/Direct%20Payments%20Trailblazer%20Second%20Interim%20Report.pdf>

The UK government has since delayed the implementation of direct payments for long term residential care in England until this year though this may be further delayed until the Social Care Act appears. The Local Authorities involved were given the option to continue offering direct payments, 16 of the 20 have continued to do this.

If you have any questions relating to this guidance document,  
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