



**Social Care (Self Directed  
Support) (Scotland) Bill  
2012:  
Response to the Call for  
Written Evidence from the  
Scottish Parliament Health  
& Sport Committee**

**The UNISON Scotland Submission to the Scottish Parliament's Health & Sport  
Committee**

**April 2012**

## **Introduction**

UNISON is Scotland's largest trade union representing approximately 160,000 members working in the public sector. UNISON Scotland represents over 25,000 workers employed in social work services throughout Scotland, with members employed as social workers, home care workers, residential care workers, welfare rights workers, and others administrating and supporting the social work team, as well as over 60,000 in the NHS.

UNISON Scotland welcomes the opportunity to respond to the Call for Evidence on the Social Care (Self Directed Support) (Scotland) Bill

## **General Comments**

UNISON Scotland acknowledges that certain groups of service users, particularly physically disabled people, view direct payments and personalisation as a way to enjoy more freedom, choice and the greater independence that this can bring.

For a time, our views were misrepresented as we spoke up for the rights of Personal Assistants (PAs) and argued that the level of direct payments had to be sufficient to allow such rights as a decent level of pay, training, holidays, hours, pensions, etc to be met. In 2006 we met with representatives of disabled people and produced a joint statement confirming our support for the principle of independent living and worked with other organisations to ensure that our concerns would be taken up. We welcomed the inclusion of such provision for PAs in the Strategy for Self Directed Support outlined by the Scottish Government in May 2010 and are disappointed that this provision is not contained in this Bill. We are, however, aware that discussions surrounding such issues for PAs are being considered in another forum set up by the Bill Team and we welcome this.

Our main concerns however, are with the implementation of the Bill. Service users will only have a real choice in how their needs are met if there is sufficient funding available to local authorities to allow adequate budgetary amounts to be given to them to enable them to purchase the care they need. We are aware that some authorities are using the concept of personalisation as an attempt to cut their social care budgets and we have anecdotal information that staff are advising service users that they cannot afford to purchase local authority care, but must use another company who will give them cheaper services. UNISON believes that cheaper care is often inferior care, based on paying staff lower wages and allowing less time for the service to be provided, in effect a race to the bottom. This is further privatisation of social care staff, often by the back door.

UNISON Scotland believes strongly that public services should be publicly funded should be delivered by accountable public bodies, such as local authorities. Public services in Scotland developed over many years as a response to market failure. Care services are central to Scotland's economy and the quality of life for our citizens. Scotland has begun to develop its own public service model leading to real improvements on people's lives. Cutting services and jobs risks the achievements and will halt progress in tackling the challenges we face. The current cuts in public spending are driven by ideology not economics.

Scotland has taken a different approach to public services than England; an approach that reflects Scotland's geography, scale and culture. The aim has been to deliver improvement and value for money through collaboration and co-ordination not competition. The ethos of public domain is different from the market domain. This public service ethos underpins our approach to Scotland's public services. Public services run

on ethical lines, based on the principles laid down by Lord Nolan: selflessness, integrity, objectivity openness, accountability, competence and equality.

Private provision of care services goes against these principles and puts profits for private companies above these principles. Profits from care services can only be produced by the provision of poorer services and a worsening of the terms and conditions for the staff providing the services – the creation of a two-tier workforce. Over recent years, private care companies have tried to introduce a variety of contracts to cut the terms and conditions of staff, for example, zero hours contracts, where staff had to be ready to work when asked to, but had no certainty or continuity of work on which they could enjoy employment rights or guaranteed earnings. The time carers can work with their clients has also been continuously cut and staff are often not paid for the time taken to travel to their next client.

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

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

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

#### **Questions:**

#### **Views on the Bill as a whole**

##### **1. Are you generally in favour of the Bill and its provisions?**

In general, UNISON is in favour of the Bill and its provisions, which should help to reduce the current ad hoc situation, in particular where it defines and clarifies the aims of self directed support and its consolidation and modernisation of the legislation governing direct payments.

**2. What are your views on the principles proposed?**

UNISON does not have difficulties with the principles underlying the Bill, but we would include a duty on local authorities to provide sufficient resources for the care the service user needs to be adequately met.

Professionals should be given adequate training to enable them to encourage involvement, informed choice and collaboration, but if there is no duty on local authorities to ensure that a proper choice is given and paid for, but just to have “regard” for the principles, then we fear that service users will be given an inferior service than they have so far been used to and neither we or they would find this acceptable.

We also believe that service users should be given a proper professional assessment and not be subject to self assessment. An individual may not be aware of all the implications of their perceived needs, whereas professionals should know what is available and what would be more suitable for their possibly multi-faceted needs.

**3. What are your views on the four options for self-directed support proposed in the Bill?**

UNISON acknowledges the four choices contained in the Bill which do not make self directed support the default position, as was outlined in the previous draft bill. The confirmation that individuals must be provided with information and advice to help them make their choice and that those who may have difficulties in making informed choices are provided the necessary support to do so will help ensure that service users are not confused about the choices they are making. However we need to ensure that the people giving the advice have the necessary training and expertise to provide the best information to meet the needs of the service user, not merely pointing them towards the cheapest option.

**4. Do you have any comment on the proposal that the self-directed support options should be made available to children and their families, together with the proposal that the degree of control a child may have over the process should vary with age?**

We are not opposed to the principle of offering self directed support to children and their families and the proposal that the child’s control over the process should vary with age. We believe the provisions outlined in the Bill ensure that the rights of the child and their “appropriate person” should be adequately protected.

**5. Are you satisfied with the provisions relating to the provision of information and advice, together with those concerning the support that should be offered to those who may have difficulty in making an informed decision?**

UNISON believes that that professionals explaining choices to *all* service users, whether children and their families or those with impaired physical or mental abilities should be sufficiently trained and knowledgeable to assist the individual to make a proper choice and for those professionals to ensure that sufficient resources are available to allow those choices and needs to be adequately met.

**6. Are you satisfied that the method for modernising direct payments in the Bill will result in the change that the Government seeks?**

UNISON believes that the consolidation of the existing legislation will help to clarify the position with direct payments. We acknowledge that secondary legislation may become necessary in the future

**7. Do you have any views on the provisions relating to adult carers?**

We agree with the principle of offering support to carers, although believe that there can be a degree of tension and conflict between the needs of the carer and the individual being cared for, so welcome the clarification contained in the Bill and supporting documents.

**8. Do you agree with the approach taken by the Scottish Government not to place restrictions on who may be employed by an individual through the proposals in the Bill?**

UNISON has great concerns over the amount of responsibility which is placed upon individuals and their families particularly in employing Personal Assistants, (PAs) who are not subject to the provisions of the Protection of Vulnerable Groups (Scotland) Act (PVG). In addition, we have concerns that individuals and families effectively becoming employers of those PAs will not have enough knowledge or expertise to manage the employment rights of those individuals, such as providing holidays and pensions, as well as allowing them training to carry out their roles satisfactorily. We would also want to be assured that the level of payment given to individuals and families to employ PAs would be sufficient to allow them to provide these rights and facilities. As stated in the General Comments above, we are disappointed that provisions for PAs are not included in this Bill, despite having been part of the Strategy published in 2010 and the previous draft Bill, consulted on in that year. We welcome discussions taking place in the SDS Workforce Group on this issue.

**9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?**

UNISON notes that the Scottish Government intends to provide funding to support the transitional arrangements to drive forward the provisions contained in the Bill, but we are concerned that the amount provided for looks insufficient to deliver what it aims to. If an equivalent amount of the funding provided for in England to deliver similar policies were applied to Scotland, we believe the amounts stated would have to be doubled. In addition, we envisage there could be additional costs if services moved away from in-house or contracted provision, as councils could end up providing both services and direct payments.

In addition, as stated above, further resources are not provided for local authorities to offer sufficient funding to meet the needs identified in the assessments, or if local authority provision has been cut back, due to decreased use, then the choices opted for may not be able to be satisfied by the local authority.

**10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?**

UNISON notes that the Scottish Government has carried out its responsibilities by assessing the proposed Bill in relation to Human Rights and Equal Opportunities, using an Equality Impact Assessment (EQIA).

However as stated previously, if the legislation is used by authorities to cut the provision of support to individuals and families, resulting in a lesser or inferior service, this could result in challenges under the Disability Discrimination Act or European Commission of Human Rights, as has happened in a number of cases in England, when similar cuts were proposed.



**Diane Anderson**

Information Development Officer  
[diane.anderson@unison.co.uk](mailto:diane.anderson@unison.co.uk)

**Mike Kirby, Scottish Secretary**

UNISON Scotland  
UNISON House  
14, West Campbell Street,  
Glasgow G2 6RX  
Fax 0141-331 1203  
[m.kirby@unison.co.uk](mailto:m.kirby@unison.co.uk)