People as Partners Project

MAKING SENSE OF SDS
A SERIES OF GUIDES FOR PROVIDERS

Guide 6:
The role of inspection, regulation and registration in self-directed support services

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http://www.scottishcare.org/people-as-partners/

The challenges of Inspection and Regulation in the context of Self-directed Support

Introduction

The following is a brief exploration of some of the issues relating to the inspection, regulation and registration of services which impact upon older people service providers arising from the Social Care (Self-directed support) (Scotland) 2013 Act which came into effect on 1 April 2014. It has been developed as part of the Scottish Government funded **Making the Journey** process of the People as Partners project.

Making the Journey has accompanied a range of care at home/housing support and care home providers on the journey towards the implementation of self-directed support. A number of workshop sessions identified some of the key issues in this paper was held with interested individuals from a range of services including representatives from the Care Inspectorate.

The issues raised are those considered most pertinent to the providers in the project. We recognise that they are in no way exhaustive.

The workshops followed the publication of research undertaken by CCPS and the Care Inspectorate and published in their report: 'Self-directed Support: Regulation and Inspection Research 2014.'

The role of the Care Inspectorate.

The responsibilities of the Care Inspectorate are very clearly delineated in statute, specifically the Regulation of Care (Scotland) Act 2001. It is important that at the outset we underline that the role of any inspectorate body has to be proportionate and relational to other legislation. The Care Inspectorate does not have competence to review areas of social care which lie out with its regulatory framework. This is maybe stating the obvious but it is important that in a context where we are reflecting on the increased likelihood of individuals using budgets to purchase non-care services and supports that those services and supports are not considered under the same framework of inspection. Equally as services become more diverse and personalised it is important that the practice of inspection is specific to that which has been commissioned and contracted rather than inspection to begin to focus on areas outwith the purview and competence of a provider. Creeping scrutiny beyond regulation especially for non-care provision would do a massive disservice to the principles of the SDS Act.

Having said that the Care Inspectorate has a critical role in inspecting and scrutinising services and supports to ensure that what has been 'bought' and 'commissioned' from a provider is delivered as far as it is possible (but no further), in

order for the supported person to achieve their outcomes through service provision. Equally as well as a duty to inspect service provision the Care Inspectorate has a critical role in strategic inspection and in the scrutiny of local authorities. The effectiveness of local authorities, the degree to which practitioners are abiding by the Statutory principles of the SDS Act, the transparency of information communication and the independence of SDS information and guidance from a local authority, are critical steps in ensuring self-directed support works well. This means that the way services are commissioned and planned has a key strategic contribution to self-directed support provision and in this regard the role of the Care Inspectorate is self-evidentially important.

What does the Statutory Guidance say about inspection and regulation?

The answer is surprisingly little is explicitly said in relation to the inspection and regulation of services. This is in itself not surprising. Self-directed support is about a sea change in the way in which support and care is delivered to individuals. It envisions a context where the individual citizen has more control of and choice in the supports which they receive, part of which (although not solely) is control over the budget which might be allocated to them. It details a move from an emphasis on care assessment which identified needs on a deficit model and was oriented around time and task responses to fulfil these needs, towards a model of assessment where the life outcomes of an individual determine the package of support developed for that person. To a considerable extent it imagines the use of natural networks and community resources in the place of 'services' per se. At an even more basic level it seeks to replace an emphasis on 'care' with a focus upon 'support'.

In such a context where there will be less emphasis upon 'services' to achieve outcomes and a greater stress on 'supports', there is also a potential for the creation of non–registered and thus non-regulated provision of support through informal arrangements, the use of natural networks and the establishment of micro-provision.

Having said the above, the Guidance does indicate that there are key areas and times within the Supported Person's Pathway where inspection and regulation play a critical role even if their traditional focus on the regulation and inspection of 'services' will re-orientate over time to become a sharper focus on how support enables personal outcomes to be achieved. It is not assumed that this is not already a key focus of inspection. Nor are we simplistically saying that inspection is only about support as clearly the meeting of outcomes in large part will still be met through regulated, registered care services.

There are arguably several key areas within the Guidance which impact upon inspection and regulation from the perspective of providers, namely

1. The embedding of the four statutory principles within practice

2. The outcome assessment process
3. The support planning process
4. The nature of independent information and the exercising of individual choice
5. The exploration of risk enablement and the related issue of capacity
6. The importance of reviews and reassessment

Further service provider specific areas could include:

- The development of the skills and abilities of the workforce to meet new contexts and demands
- The human resource practices within organisations which evidence choice and control by the supported person
- The management of finance and budgets
- The handling of disputes and complaints
- The embedding of the national care standards
- The engagement and involvement of supported individuals and their families
- The commissioning and contractual process
- The meeting of individual outcomes and the role of the support provider

Some of these issues have been discussed in recent work undertaken in England and Wales examining the role of inspection and regulation in adult services by the Care Quality Commission. Their final report '*A Fresh Start'* published at the end of 2013 identified five areas for the inspection of services:

- Are they safe?
- Are they effective?
- Are they caring?
- Are they responsive?
- Are they well-led?

Throughout the report they continually make reference to the central role of personalisation and the changes in adult services, e.g.

> *'Personalisation is hugely important in adult social care. This means that people are able to identify their individual needs and are empowered to take control and to make informed choices about the way they live their lives. We need to take this into consideration when assessing how effective services are.' (page 8)*
>
> *'Care is truly person centred and supports personalisation' (page 12)*

They recommend that:

> *'New standards and guidance to underpin the five key questions we ask of services – are they safe, effective, caring, responsive and well-led? – with personalisation and choice at their heart.' (page 10)*

Yet in many senses *A Fresh Start* is a hugely disappointing report which pays lip service to the dramatic changes in the delivery of services and supports evident south of the border over the last five to ten years. It risks simply tinkering about with an inspection and regulatory system rather that completely personalising it to ensure that the individual is at the heart of all inspection processes. It certainly does not evidence an organic, holistic approach to inspection but confirms a model which has little to do with co-production and the collaborative processes at the heart of self-directed support which involve regulator, commissioner, supported person and allies together with support providers in the development of mutual and robust systems of inspection.

In considering what such a new way might look like for the Scottish context let us examine the six areas noted above.

1. **The embedding of the four statutory principles within practice**

The Act and Guidance indicate that there are certain core principles at the centre of self-directed support.

Principles are described as '……. *the means by which we put our values into practice. The 2013 Act (Sections 1 and 2) provides four legal principles*

- *Participation and dignity*
- *Involvement*
- *Informed Choice*
- *Collaboration.'*

(Guidance section 4.3-4.7)

Throughout the text of the Guidance it is explicit that the principles should be used as the barometer for examining whether or not practice is truly person-centred. Both the Act and Guidance make it clear that they carry a particular weight in the implementation of self-directed support:

> *'The statutory principles are important because they carry legal weight. They articulate the underlying aims or "spirit" of the legislation and complement the detailed duties and powers provided elsewhere in the Act.'* (Guidance section 4.3)

In relation to the role of inspection within services there are, arguably, clear ways in which services should be assessed and inspected as to the degree to which in their practice and support of an individual they are evidencing these statutory principles. So for example this might mean:

- **Involvement**

Is the support service through its practice ensuring that the supported person is able to have as much involvement as they wish in the day to day implementation of the support which they have purchased? Are staff evidencing skills which enhance the opportunities for individuals to express opinions, to direct their support, to make choice and to make their feelings known? Are staff skilled in ensuring that their support and care are achieving the outcomes identified in the support plan?

- **Collaboration**
  Providers must collaborate 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. Is this evident in the practice of the support organisation and its representatives? Are other key stakeholders such as families and advocates as fully engaged and involved as they might be? Is the organisation robust in dealing with complaints and concerns?

- **Informed Choice**
  The supported person must be provided with any assistance that is reasonable to assist 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. Is it clear that the individual understands the range of choices available to them and are they supported by appropriate communication supports to make such choice?

- **Participation and Dignity**
  This applies to the whole relationship between a provider and the supported person. It seeks to place person-centred support based on an individual being able to exercise their human rights at the heart of all social care support and delivery. Clearly there is a close relationship between this statutory principle and the National Care Standards, so inspection will seek to highlight the degree to which systemically, and on an individual basis, the supported person worker/organisational relationship is embedded within an emphasis on individual autonomy and dignified care and support. It will be of particular importance when making decisions around risk enablement and personal safety.

In all of the above there may need to be an emphasis on developing creative ways in which providers can evidence these principles in action and practice? Such ability will become increasingly important in the inspection of services. This is especially the case in the way in which human rights are imagined as providing the overarching framework for the new National Care Standards .
http://www.scotland.gov.uk/Publications/2014/06/7325/downloads

2. The outcome assessment process

The SDS Act presents a major shift change in relation to the role of the supported person in the assessment and planning process. Although over the last few years many local authorities have been developing models of outcomes assessment, the Act makes it a statutory requirement to ensure that assessment procedures fully involve the individual being assessed. The model is one of full participation not mere consultation. The new duty in the Act embeds a model of co-production, of involving the supported person in their assessment to the extent and degree that they may wish to be involved.

The Act also describes the purpose of the assessment – not to create a service package but to ensure the individual is able to achieve the sort of life which they need given their changed circumstances and need for support.

An assessment should help to ensure that the individual is supported to obtain the maximum independence/wellbeing and quality of life that is possible. It should also provide consistency and transparency in how decisions are reached with reference to budgetary and statutory constraints, including the duty of care.

It is at the assessment stage that the supported individual works with the professional practitioner to identify the needs which they have and what it is that he/she wishes to achieve by being supported. This is obviously against the backdrop of being assessed as meeting the eligibility criteria of the local authority and in relation to available resources.

For many individuals who are new to social care services the process of assessment is one that can create anxiety and concern. The Guidance makes it clear that an individual must be supported as much as they require during the assessment process and that information should always be communicated to them in a way that they understand.

Practitioners are encouraged to look at a more holistic approach to assessment. The mechanism for achieving this is through a person-centred conversation with the individual. It emphasises the importance of helping an individual discover solutions to their challenges which might not come through traditional service support but from natural, community and social networks.

The ‘Talking Points’ Approach developed by Miller and Cook 2012, suggests it is helpful to explore the following areas during assessment:

http://www.jitscotland.org.uk

- being as well as possible
- improved confidence

- having friendships and relationships
- social contact
- feeling safe
- living independently
- being included.

Providers have a real opportunity in ensuring that individuals are able to achieve and reach their outcomes. Yet sometimes there are also barriers which prevent outcomes focused assessments from being implemented effectively. Some of these barriers relate to service provision. There can be:

- an over-emphasis on performance indicators which do not reflect outcomes in inspection processes
- resource constraints which restrict the ability of providers from embedding personalised delivery of support
- a tendency to foster and nurture dependency as a result of the nature of traditional service delivery rather than encouraging independence amongst older people and
- a limitation of the ability and flexibility of providers working in an outcomes-focused way with service users because of the purchasing arrangements of local authorities.

In addition, there are instances where there is not a sufficiently robust understanding of how in practice outcomes might be achieved in the practicalities of delivering support and care.

Considerable work needs to be undertaken to ensure that all involved in the support relationship have a shared and mutual understanding of how outcomes are being assessed and achieved. At a simplistic level it needs to be properly understood what the outcome is and what might equate to a positive sense of meeting that outcome. This is not always the case and sometimes inappropriate estimations of ‘success’ and ‘failure’ are used in evaluating support and care. Clearly there is a critical role for inspection in this regard.

Any inspection methodology has to interrogate relative responsibilities of stakeholders for the meeting of outcomes especially those of a very individual and personal nature. If an outcome is not achieved during support, is this a failure? Is there sufficient consideration given to inter-personal dynamics, to context and alternating circumstances and motivations?

Outcomes and their achievement are critical to self-directed support but their complexity needs to be acknowledged as does the dynamic nature of their role in any supported person-provider relationship. The last thing anyone wants is an inspection or evaluatory system where value is solely equated to a narrow estimation

of achievement whereas there may be considerable positivity in the support relationship in its own right.

However, many providers complain that inspectors are not sufficiently aware of the parameters of responsibility which a provider has. If a provider is commissioned to deliver particular services then they should only be assessed and inspected on those and those alone. In too many instances our research has uncovered examples where providers were penalised by inspectors for not doing something for which they were never commissioned to undertake in the first place. There needs to be a greater cohesion between the interplay of strategic and service inspections especially in relation to self-directed support.

3. The support planning process

The support planning process represents a real opportunity for an individual to be supported in making decisions in a way which enhances and maximises their participation and does so in a manner which embeds dignity in the support relationship.

The Guidance goes on to suggest a list of 'key ingredients' which it considers should be part of support planning for an individual, namely:

- The people and things that are important to me
- The main risks and how we will manage them
- The people who can help me to achieve my outcomes
- Where I can go for information and support
- My personal outcomes
- The things (knowledge, funding etc.) that will help me to achieve my outcomes
- The things that I can do
- How I will arrange my support

The process of getting answers to these key questions, of creating something from these disparate ingredients is in itself key to the support relationship and again there is opportunity for provider engagement and involvement. The Guidance states of this process:

> "*The support planning process - the act of considering the outcomes and pulling together a plan - can make a significant difference to the person's life. In light of this the support plan should be developed in a collaborative way. A good support plan will demonstrate a link between the individual's eligible needs, their outcomes and the support required to meet those needs and outcomes. It will be written in language that the supported person understands. It will be presented in a way that is engaging and helpful to the supported*

person as they embark on their pathway through support. It may include pictures alongside text." (Guidance Section 9.2)

At the heart of support planning is the importance of ensuring that individual outcomes are achieved. A local authority practitioner can refuse to accept a support plan on various grounds but chiefly where the support plan could lead to a situation where:

- the individual is at risk or might be at risk of harm
- public monies might be used for criminal or inappropriate activities, e.g., gambling
- services which are already free, e.g., personal care, are inappropriately included in the plan
- it is not clear how the outcomes identified during assessment are to be achieved
- there is not sufficient detail on specific elements in the plan
- the plan is unrealistic and unachievable.

The plan must also indicate an appropriate set of contingencies describing what interventions will occur if things go wrong, if needs change and if the relationship between the provider and supported person break down. It should also delineate the model of monitoring the plan and the review and reassessment which is being proposed.

There is a key role for strategic inspection both to ensure that local authority practitioners are acting in a manner which enables individuals to exercise choice, control and engagement in the process and in evidencing that any plan properly meets the desired outcomes of an individual.

For providers there is a potentially critical role to play not solely in the implementation of the support plan but also potentially an involvement in its development. In this latter regard inspection services would need to ensure that there was the exercise of sufficient independence and no risk of a conflict of interest or at least the appropriate management of the same.

4. The nature of independent information and the exercising of individual choice

One of the key set of duties within the Act is that which is placed upon a local authority to give independent information to those seeking support provision. These encompass two broad areas:

a) Under the 2013 Act the authority must provide the supported person with any assistance that is reasonably required in order a) that the person can express

their views about the options available and b) make an informed choice about those options.

This duty is to ensure that the supported person can express what they want from their support and how they wish to arrange their support. It plays a key role in ensuring that the authority can deliver its assessment functions in line with the statutory principles of collaboration and informed choice. The assistance can be provided by the authority itself (i.e. by the social worker); circles of support (i.e. people who can assist the supported person to choose what they want); support and information organisations; advocacy organisations or any other person or organisation including peer support organisations, third sector organisations or others.

b) “Nature and effect”: the duty to explain the implications of the support options available to the person

This duty is to ensure that all four options are described in full to the supported person and in a format appropriate to the person.

The authority must explain to the person the nature and effect of each of the options.

The authority must give the information in writing and, if necessary, in such other form as is appropriate to the needs of the supported person.

Each option should be explained in appropriate detail and each option should be given appropriate weight as a feasible option for all or some of the person‘s support needs. The responsibility for discharging this duty rests on the social work professional as part of the assessment process, though in addition it can also be discharged via independent organisations and further sources of information. The authority should seek to explain the basic characteristics of the options available to the supported person. In particular, it should seek to describe the distinctions between the different options. The authority should use terms that the supported person can engage with and relate to, and it should make the options clear. Again, there is a clear link to the statutory principles provided elsewhere in the 2013 Act, in particular the principles of involvement and informed choice.

The requirement to give the information in writing reflects the importance of written information in the form of pamphlets and other relevant materials. However, the authority should also consider the specific communication needs of the person. It should tailor its communication to suit the requirements of the person. This is to ensure that the person can make informed choices about their support.

It should be clear that there is a critical role for inspection to ensure that these duties are being met and that the range of choice available to an individual is assured and achieved.

5. The exploration of risk enablement and capacity

Risk enablement is at the heart of the new Act. Risk enablement is defined as:

'The supported person should be assisted to feel safe and secure in all aspects of life, to enjoy safety but not to be over-protected and, in so far as possible, to be free from exploitation and abuse.'

It is a key element within personalisation and within self-directed support that we move away from a risk averse and avoidance context to one where individuals are able to exercise the maximum degree of choice in making decisions about risk. Risk is not solely an issue for organisations assessing the risk to individual staff or their organisation, but critically risk enablement is about creating and developing service supports which enable individuals to make mature decisions on risk. It is also inherent within the Act that those who have diminished or fluctuating capacity are enabled to exercise risk and that issues of capacity should not be used as a blanket reason for restricting choice.

As the Guidance states:

> *'The policy and practice underpinned by the 2013 Act is predicated on the principles of informed choice and risk enablement. The provision of support under each and all of the options available via the 2013 Act will carry its own unique risks.' (Guidance 14.14)*

And also:

> *'The Adult Support and Protection (Scotland) Act 2007 (the 2007 Act) provides the legal framework for the protection of adults who are unable to safeguard their own interests. It is based on the fundamental principles that the intervention must provide benefit to the adult and is the least restrictive option to the adult's freedom. These principles should be at the heart of all risk planning and enablement.' (14.*1)

Practitioners often comment about the degree to which there are competing demands and challenges upon their abilities and desire to exercise more risk and enable more risk to be taken. There are pressures from inspectors and regulators and at least the perception that the demands of inspection are too risk averse and act against appropriate flexibility and choice. There are perceived competing interests from family members who might have a very different attitude to the risks that their 'loved one' should be allowed to make and select for themselves. In such a dynamic it can be very challenging for providers and their staff to 'enable risk' as a constructive choice in support.

6. The importance of reviews and reassessment

At the heart of self-directed support is the recognition that individual choice can alter and that individual lives change over time. Needs alter, outcomes become re-focused and sometimes outcomes are achieved. It is critically important therefore that there is a clear opportunity for an individual to change their outcomes assessment and for providers to be supported when individuals have achieved outcomes to re-orientate their support in new directions and for towards new goals.

Inspection and regulation provides a critical role both in confirming the actions of a provider and in ensuring that commissioning of services is suitably flexible to enable such re-orientation.

It is clear that in many instances individuals are not being speedily reassessed and that reviews are at the timing of the commissioning authorities rather than the individual. Such a response is contrary to the spirit of the Act and its Statutory Guidance. It is to be hoped that strategic inspections can work to address this discontinuity between principle and practice. The Guidance is clear about the person-centred and collaborative partnership nature of reviews and thus the role of the provider is self-evidently important:

> *'The authority should take steps to ensure that social care reviews are conducted on a reasonable basis in line with the individual's needs. The approach taken at review should be similar to the approach taken at initial assessment and in line with the principles of collaboration, informed choice and involvement. The review should be conducted on the basis of personal outcomes, with a view to meeting assessed needs. It should involve a period of reflection on whether the choices made and the support provided is helping to meet the outcomes and needs of the supported person. The review should also consider whether the needs and outcomes have changed in the intervening period. This may require some adjustments to be made to the support plan.' (Guidance 12.2)*

Conclusion

This paper is hopefully a contribution to the ongoing dialogue which needs to take place to ensure that those provider offering services and supports under self-directed support are appropriately inspected and regulated. It is written in the context that such processes and methodologies have to be collaborative, mutual and transparent. As stated by the Audit Commission:

> *'The Care Inspectorate should also review the way it regulates individual care services. As SDS gives people more choices about their support and more control over how they use their budget, more people are likely to choose a mixture of different services and support. They may purchase services from more than one provider, choose services not regulated by the Care Inspectorate (e.g. personal assistants or cleaning agencies) and use their budgets more creatively to purchase support other than existing services. The*

National Care Standards are also being reviewed to reflect the new emphasis on the impact that social care services have on people's lives, not just their experience of the service quality.' (Self-directed support, Audit Scotland, June 2014, page 21)

There are likely to be significant changes in the future and it is hoped that providers can play a key role in shaping inspection systems fit for personalised support services.

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