

**Barnardo's Scotland consultation response on draft statutory  
guidance to accompany the Social Care (Self-directed  
Support) (Scotland) Act 2013**

Barnardo's Scotland welcomes the publication of the guidelines and believes that the overall document is an important accompaniment to the recently published legislation.

However, we have concerns with some aspects of the guidance, which we have set out below. Where we have issues we have also tried to outline possible solutions for the Scottish Government to consider.

We have only responded to those sections that are of specific interest to Barnardo's Scotland.

**Section 2: The Supported Person's Pathway**

We found The Person's Pathway clear and easy to understand, but we have a number of concerns with certain steps in the pathway.

Within the guidance it is not clear what would happen or what support would be available to those people/families/carers who at step 2 are deemed not to be eligible to proceed to the formal Step 3: Eligibility and Assessment.

The guidelines are also unclear with regards to how the initial screening at step 2 will take place and what criteria will be used. It is not clear if there will be one screening process or several depending on which agency or service carries out the screening.

We are also concerned that people and families presenting themselves for support might be turned away at step 2 and be left without any support or being unclear where to go next. It is also not clear if there will be any right of appeal to this decision or if a family can choose to go to step 3 regardless of the outcome of the screening that is carried out at step 2. We are concerned that some families would simply accept a decision at step 2 and not push for a full assessment.

We are also very concerned that families may present with a genuine need, but are not given the support, no matter how small, and then present much later in a state of crisis. The guidelines need to help imbed a preventative approach/culture and in the case of

children and young people must have GIRFEC principles at their heart.

We would like to see support given to families, if declined support at step 2 or step 3, to help them understand and access community services and programmes that are available in their area which may be able to support their needs. How families can access this support and who is responsible for helping them to do this should be set out clearly in the Person's Pathway in the guidance document.

It is not clear if in the case of children and young people making 'first contact' if the initial screening at step 2 would be carried out by their Named Person (the proposals for the Named Person have been set out in the Children and Young people's Bill) or what role a Named Person would have in this process. Barnardo's Scotland would like the role, if any, of the Named Person in the Person's Pathway to be made clear.

There are no timescales or indication of waiting times for the completion of each step set out in the Person's Pathway. We would suggest that minimum timescales and waiting times should be set out, as this would give people and families a clear understanding of when they are likely to receive their decision and when their support is likely to begin. We are concerned that if there are no timescales then the assessment, support planning and decision-making elements of the pathway may be allowed to drift, which could impact on the wellbeing of families.

We believe that the Person's Pathway should also be presented in a clear flowchart or pictogram for easy use by practitioners and for those service users reading the guidelines.

Barnardo's Scotland also has some concerns regarding the responsibilities listed under the role of the 'provider' set out in Table 2 of the document. It states that "The provider can play an important role in the assessment and support planning process".

We believe that this is too subjective and changes the dynamic of the relationship between the provider and 'the professional', putting the provider very much on the back foot with regards to input into the support planning process, and creating a potential for conflict. We would like to see providers, where appropriate, play an equal role in the support planning process and that this should be reflected in the guidelines. Providers should always be involved in review processes

### **Section 3: Values and Principles**

Barnardo's Scotland agrees with the values and principles as set out in the draft guidelines.

### **Section 4: Eligibility and Assessment**

Barnardo's Scotland has a number of issues regarding the section on eligibility and assessment.

Barnardo's Scotland has concerns in allowing for local eligibility criteria, which we believe may lead to a postcode lottery in terms of support. Although the guidelines make it clear that the local authorities must follow the principles and values of the Act, there is still significant leeway for them to set differing levels of eligibility, which may lead to some vulnerable families being excluded.

The eligibility framework set out in the section on Eligibility Criteria highlights four risk bands, however, it states that these are for access to social work for adults and not children. Barnardo's Scotland believes that this framework should be adapted for children and young people, as well as their families.

Local authorities must ensure that all relevant organisations are actively involved in the development of eligibility criteria and this must be overseen by the Scottish Government. Barnardo's Scotland would suggest that Community Planning Partnerships (CPPs) be involved in the development of eligibility criteria. However, CPP involvement of the third sector in its planning and service design work is patchy at best.

We are concerned that under the local authority's role regarding determining a person's eligibility for support the authority "can take into account its overall resources when determining eligibility criteria." We believe that eligibility should always be driven by need and not resource. We would ask the Scottish Government to reconsider this part of the guidelines.

The section on assessment makes no reference to GIRFEC, the single child's plan or The Named Person. We recognise that reference is made to GIRFEC later in the document in section 9, but we believe that GIRFEC should be mentioned in this section with sign-posting to section 9 to ensure that all those reading the guidance are clear.

We also believe that the eligibility and assessment should also take a rights-based approach and that this should be reflected in the

guidelines. Barnardo's Scotland would like to see reference made to the United Nations Convention on the Rights of the Child (UNCRC).

Barnardo's Scotland supports the approach taken in the guidelines to make the assessment process outcomes focussed.

There is no reference in the guidelines regarding how a person or family can appeal any or all decisions made, particularly those relating to eligibility and assessment. We believe there should be a right to appeal and that details of how a person or family can make that appeal should be set out clearly in the guidance, and that it should be the role of professionals to signpost and support a person or family through that process.

### **Section 5: Support Planning**

Barnardo's Scotland believes that the guidance for support planning should make reference to GIRFEC and the UNCRC.

Under Risk (part 5.2) we believe that specific reference needs to be made to safeguarding children. Barnardo's Scotland and other children's charities have continually made the case for compulsory PVG checks for all those working directly with children or those working with adults with children under 18. We believe that this should be a condition of employing any person via a direct payment and that this should be set out clearly in the guidance. At present it is still the case that those using a direct payment may choose not to ask an employee for a PVG check, regardless of advice and guidance given by social workers/professionals.

Barnardo's Scotland is content with part 5.3 relating to resources and believes the flexibility built into the guidance is important. We are concerned that there could be significant variations in awards to families and a lack of consistency across Scotland, which leads to a postcode lottery of care. However, we also accept that any such variation may be as a result of local differences and may not reflect an inconsistency of quality in service delivery. We would urge the Scottish Government, COSLA and others to monitor how resource is allocated against a achievement of outcomes in each areas to ensure good practice across the country.

### **Section 9: Further Guidance**

Barnardo's Scotland welcomes the inclusion of a specific section in the guidance relating to children and families. We believe that this section is very helpful and will support practitioners and providers

who work with children and families ensure that the best package of care and support is delivered.

We are pleased that this section makes reference to GIRFEC and the upcoming Children and Young People Bill, as it is vital that the new social care regime reflects important legislative developments in children's services. We believe that many of these references should be made earlier in the document, particularly when outlining the values and principles; eligibility and assessment; and support planning.

What the guidelines set out in relation to the Named Person is not abundantly clear, particularly regarding what their role in providing support to a family/child is and where they fit on the Person's Pathway outlined in section 2.

Barnardo's Scotland believes that there is a section missing from the guidelines relating to a specific group, those aged 16-18 who are directing their own care, but living at home with parents. We believe that it is right that those aged 16 or over are given full control of those decisions relating to their care. However, we are also aware that many of those young people will still be at home and living with parents or guardians. It is important that professionals and those working with those young people are aware of the family circumstances and work with all those family members in the household. We are concerned that without due care and attention such circumstances could lead to conflict within the family home.

Barnardo's Scotland also believes that transition planning should take place much earlier than currently happens from our experience. We would hope that the new self-directed support regime will embed a culture of transition planning and we would like to see that reflected in the guidance with a commitment for professionals to begin the process as soon as is feasible and to involve the young person or child at a point where they are capable and willing to take on a different level of responsibility, regardless of age. Barnardo's would encourage the Scottish Government to consider a Transitions Pathway commencing at the age of 14 years – which would serve to prepare parents/guardians and involve young people in a gradual process of increased independence and decision making about their care options.

## The involvement of the child in making and managing choices

Barnardo's Scotland supports the involvement of children in the decisions surrounding their care and campaigned hard for a United Nations Convention on the Rights of the Child (UNCRC) approach to the legislation as it moved through Parliament and secured a number of amendments in the Bill.

We are keen to make sure the guidance reflects the intent and that the views of the children are central to decisions made about their care. For example, in paragraph 100 we believe a child must be entitled to appropriate help to express their views and wishes when needed and not 'should' as currently drafted. We also support the right to independent advocacy. However, the guidelines need to be clearer with regards to exactly who is entitled to advocacy, at present paragraph 100 is vague.

### **Section 9.4 Direct Payments**

As outlined above, Barnardo's Scotland believes that it is imperative that those working directly with children and young people or with adults with young people under the age of 18 in the property where they work (e.g. the person's home) should be required to undergo a PVG check. We believe that it should be a condition of receipt of a direct payment that any used to employ personal assistants or staff in this way should be required to undergo a PVG check. This position should be expressed in the guidelines under the 'the responsibilities that come with a direct payment'.

### **Other**

Barnardo's Scotland supports Aberlour Scotland's call for there to be further clarification regarding the terms under which service users or their carers might chose an alternative SDS option.

The Act suggests that the local authority would have to agree to allow the person receiving support to choose again from the four SDS options unless they had experienced a material change in circumstances.

For instance, a family or individual service user which had taken full control of their care budget might ultimately find that the management of such a responsibility was too much, yet this would not represent a 'material change in circumstances'. The authority might then not agree, for whatever reason, to give them the opportunity to choose again.

Similarly, a family or service user which had initially only taken partial control of their budget but had found that control rewarding, could not then cite their interest in taking further control as a material change in circumstances and would have to rely on the good will of the authority to choose to take full control.

We agree with Aberlour, that this might drive down uptake of greater control as people would feel that without a material change in circumstance they would only be allowed to choose their SDS option once, with restricted opportunity to change if they decided their chosen option was inappropriate.

We support Aberlour's call for clarification in the guidance and ask that service user choice be set out unequivocally to ensure that there are no perceived barriers to uptake.

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