

## Legal Module – Facilitators Notes

### Setting Up

- Prepare room, suggest cabaret style.
- Have flipchart paper, markers, post it notes available on the tables, parking bay wall
- Evaluation forms if required ( not provided as should be local forms available)
- Case Studies, hand-outs, duty cards printed off
- Slides and projector available and tested

### Slide 1 - Introduce facilitators and go through any local housekeeping arrangements.

- Advise (if appropriate) that these learning modules have been developed by Social Work Scotland with Scottish Government funding to support practice and the implementation of SDS and for local adaptation.
- This series of slides has been designed to encourage engagement and participation, to enhance learning opportunities and to share experiences.

### Slide 2

- Go over the intended learning outcomes for the session.
- Acknowledge that some attendees may be more familiar to the SDS Act than others and advise the session's aims to provide a broad overview into the specific duties within the new Act that impact on frontline practice.
- Emphasis that candidates should have already completed SDS awareness raising sessions and this is more specific for workers who have responsibility for discharging these duties when engaging with users and carrying out assessment functions.
- Advise that you are aware that training on legal duties can often be “dry” and this session hopes to prove to me a bit more engaging despite the topic.
- Highlight right at the start that you are aware that SDS is still in its infancy, acknowledge there are fears and uncertainty over how best to implement it successfully. Address right at the start this session will not provide the answers.
- Offer to have a “Parking Bay on the wall to record “Reflections/thoughts/ideas and questions throughout the session.
- Encourage people to use it at break time and agree that this information can be passed to organisation leads to help inform implementation.

**NB: as facilitator you need to check if any learning/ questions from parking bay can be passed on and if so to who!!**

### **Slide 3 – Paired conversation – connecting up**

Aim of this exercise is firstly as an ice breaker, helps to make connections within the group but also opportunity to start introducing the concept of choice and control in all our lives.

Gets the group thinking on a personal/real level what matters to them, why it's important to have choice and control and what it may feel like to have others decide or control what is important in your life?

Important to highlight that people who use services or require support often feel/experience this loss of control on a daily basis.

#### **Some examples people should come up with may include:**

Money, Where you live, who you live with, who you see and when, what to eat, drink, when to go to bed, daily routines, How to spend your time.

All things that services/supports can often limit or determine for people who require support i.e. when homecare visits take place, what activities are offered at the day centre, who you travel with, shared living arrangements,

### **Slide 4 - read out the information from slide**

#### **Give brief overview of how Act came about**

##### **Key points**

- Concept not new –been around for over 20 years, initially driven by disabled people and the independent living movement,
- Modernising social work 1999 acknowledged (more of the same won't work),
- Changing Lives Report 2001
- Direct Payments been around since 1996.
- Self-Directed Support 10 year strategy 2010
- And now the Act... given Royal assent -2013 - implemented April 2014 provides the legal basis to support the achievement of the vision.

### **Slide 5 - Self-Explanatory**

- Highlight the SDS Act is potentially the biggest change to how social care services are delivered in over 20 years. Acknowledge the significant cultural and organisational changes that will be required to make this shift and that it is a 10 year strategy – which recognises the scale of transformation.

### **Slide 6 – read out core values & principles**

The 1<sup>st</sup> duty requires us to have regard to the general principles during assessment and in the provision of support

- The new Act enshrines these core values and principles that should underpin all our practice.
- Values fundamentally define what we do.
- There are 4 statutory principles described in the Act and practitioners should be guided by these when engaging with individuals and families, when conducting assessments and when supporting choice following assessment.

- Again not new to good practice but now strengthened by being enshrined in legislation.
- Principles should be viewed as the guiding lights of good practice.

Helpful suggestion for facilitator:

Use other examples of principles embedded into other legislation and how this shapes and drives our practice for example:

- AWI Act – no intervention unless it will benefit the adult, least restrictive in relation to freedom, account taken of present, past wishes, encourage adult to exercise whatever skills they have and develop new ones.
- MHC&T ACT - have regard to present, past wishes, gain views of relevant others, provide information and support of person to participate, encourage maximum benefit, respect diversity and ensure equality, consider needs of patients carers
- Children's (Scotland) Act - the child at the centre, what is in their best interests leading all other activity and decision making.
- Adult support and Protection (Scotland Act) intervene only when satisfied the intervention will provide benefit, least restrictive etc.

#### **Slide 7**

- The supported person must have as much involvement as they wish in both the assessment and in the provision of any support associated with that assessment.
- This recognises the importance of involving the adult, carer or child in determining their needs and developing appropriate solutions in order to meet those needs.
- This is more than just being informed it's about taking steps to ensure the person can be truly involved.

#### **Slide 8**

- The professional must collaborate with the supported person in relation to the assessment of the supported person's needs and in the provision of support or services for the supported person.
- A collaborative approach can help to stimulate discussion about new or alternative solutions.
- It supports an equal partnership between the professional (able to bring their expertise, knowledge and statutory and professional responsibilities) and the adult, child or carer (aware of their personal outcomes, supported to articulate and develop those outcomes and how they wish to achieve them).
- Sharing and transferring of power in the relationship,

#### **Slide 9**

- The supported person must be provided with any assistance that is reasonably practicable to enable them to express views about the options available to them and to make an informed choice about their options for support.

- This is a key supporting principle, essential to ensuring that the person can be fully involved in designing and implementing their support.
- The supported persons should receive assistance to help them make an informed choice, this may include the use of written leaflets, visual information to aid understanding, support from others including support agencies, advocacy etc. assistance with communication, talking mats, visual aids, interpreters are just some of the examples
- Information needs to be accessible to the individual
- It's important that practitioners can signpost people to relevant support re making and managing choice

### Slide 10

- Facilitating real participation & dignity apply to both the initial assessment and also to the provision of choice and any support as part of the wider support planning process.
- These are considered core aspects of independent living and citizenship.
- All people who require support should expect to have the same freedom, choice, dignity and control as other citizens at home and work and in their communities.
- The supported person should be provided with help to participate in and be part of the life of their community.
- This does not always mean funded SW support. Help can come in many forms and practitioners should be encouraged to adopt a strengths based approach to engaging with people that helps explore natural supports, personal and community capacity, asset building and access to universal services.
- This should be the basis of any initial engagement and a core role of health and social work practice.

### Slide 11

These further principles are included in the statutory guidance but have not been made statutory principles. They further encourage an approach and a sharing of power and responsibility.

- Responsibility: The supported person should be able to take as much control over their support as they wish. In return, the supported person should exercise that choice and control in a responsible way.
- Risk Enablement: 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.
- Innovation: The professional and the supported person should develop creative solutions to meet the outcomes identified in the support plan.

The provision of social care, and the facilitation of choice as part of this, is a means by which to protect human rights. Effective person-centred support, determined and led by the individual adult, child or carer in partnership with the relevant professional increases the choice for the individual, offering them more control and independence in managing their life.

A human rights based approach is a way of empowering people to know and claim their rights. It increases the ability and accountability of individuals and the relevant professionals who are responsible for respecting, protecting and fulfilling rights. This means giving people greater opportunities to participate in shaping the decisions that impact on their human rights.

### **Slide 12**

- Important to remind ourselves of the importance of assessment and support planning plays in Self- directed support. An individual can only receive a personal budget once they have been assessed as being eligible for support.
- Assessment still remains a core legal duty but the new guidance is promoting a much more collaborative approach to assessment. Where assessments are co-produced with the person and take a strengths based approach to identifying outcomes.
- Again this is not new but systems and processes at times have led a deficit approach to eligibility and funding support at the most critical level. Practitioners need to be clearer as to how they have ensured the supported person has been truly involved in the assessment

### **Slide13**

- The first one is arguably just good practice – hopefully when engaging with people we are achieving this but the Act will encourage practitioners to think about how they are evidencing this throughout the assessment and support provision phases. How do we demonstrate this and what is the experiences of the supported person.
- Once a person has been assessed as eligible for support we have a legal duty to ensure they understand they have 4 choices as to how they wish their support to be delivered.

### **Slide 14**

- Practitioners and organisations need to take time to explain the 4 options in detail.
- The person need to be clear about all possible opportunities, benefits and consequences of each of the option.
- The supported person needs to be given appropriate information, assisting and support when exploring the options, considering outcomes and support planning. This may be in the form of leaflets, assistance with communication, advocacy and referral to independent support services in their area that may be able to assist.
- Duties are legally binding and cannot be ignored

## Slide 15

- Ensuring a range of providers and types of support means local authorities will need to support commissioning and procurement partners to help influence and shape the local market and work in partnership with local providers.
- Part of this is doing an analysis of what is available in your area and what people's preferences/needs are- a familiar part of strategic commissioning.
- Some LA areas are formalising this 'picture' into a market shaping strategy/ statement.
- This is real challenge in some areas, offering choice but there's nothing or limited support to choose from.

## Slide 16

- Where a person is deemed to be eligible for support, the authority will wish to consider a fair and transparent means by which to determine the appropriate level of funding.
- There is no single approach to resource allocation prescribed on the face of the 2013 Act, nor any single method recommended by Scottish Government.
- Authorities may wish to adopt an equivalence model where they determine the cost of the service to be arranged and then provide the equivalent amount as a budget for the supported person to control.
- Alternatively, it may wish to adopt a Resource Allocation System where the authority gathers information about the person's outcomes, allocates points to those outcomes, based in the points, allocates a level of funding.
- In addition, decisions about budgets may be made by professional judgement alone or on a case-by-case basis.
- While systems and tools can be useful aids they are no substitute for the skilled judgement of a social work or health professional in collaboration with the person.
- Regardless of the specific approach to allocating resources, the authority should take steps to inform the person of the amount of support available under each of the options.
- In order to ensure that it can deliver on its obligations under section 9 of the 2013 Act the authority should consider the appropriate mix of information and support options available in their local area

## Slide 17 - Activity 1 - New Duty Cards – Suggested time - 20mins (**will need to provide cards with duties on them**)

Split participants into small groups of 4/5 maximum. Invite the groups to take a "New Duty Card" (New duty cards should be printed off the website or facilitator can improvise and write these on cards). Provide each group with flipchart paper and pens and ask group to nominate a scribe and someone to feedback to the larger group.

Advise there are 2 parts to this exercise:

- Invite the groups to discuss some of the potential challenges to this new duty being discharged?
- Now identify some of the benefits that this will bring for the people who require support.

Invite the groups to feedback to the larger group what the discussion has highlighted and record on flipchart the challenges and opportunities that have emerged.

**Purpose:** The purpose of this exercise is to introduce and reinforce the key duties and the relevance to practice. It encourages participants to discuss and debate both the opportunities and challenges of implementing the duties. If possible try to ensure the makeup of the groups have variety of roles to encourage differing perspectives.

### **Slide 18**

**Read through the slide Self-explanatory.**

- Highlight that protective duties will continue to remain paramount.
- Whilst the act aims to complement existing duties there will be times when there are competing demands, complex circumstances and at times conflict between legislative duties.
- It will take skilled practitioners to navigate through these legislative frameworks to support the best outcomes for people and at times that may include restricted choice or even liberty.
- As the self-directed support approach is embedded in practice there will be emerging best practice and learning to be shared around potential dilemmas and risk.

### **Slide 19**

A simple visual representation of the many (not exhaustive) Acts that shape and inform our policies, procedures and practice. Highlighting the complex legislative framework that workers are required to navigate.

**Slide 20** - Suggest giving available handout the 4 options explained available on the website

The four options provided under the 2013 Act are:

- **Option 1** The making of a direct payment by the local authority to the supported person for the provision of support.
- **Option 2** The selection of support by the supported person, the making of arrangements for the provision of it by the local authority or chosen provider on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.
- **Option 3** The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.
- **Option 4** The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the

authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

- All of the choices must be described to the supported person, helping to explore both the opportunities and challenges or responsibilities they may bring.
- A key challenge for the authority is how to relate the options to the supported person and how to make them “come alive” to the supported person.
- Information and support services and the relevant legal duties on information, support and advocacy play a vital role at this stage.

## Slide 21

- The 2013 Act applies to support which a local authority decides to provide following an assessment under section 12A or 12AA of the 1968 Act and Section 22 of the 1995 Act.
- However there are certain instances where the form of support may be relevant to deciding whether the 2013 Act duties apply.
- The form of support is important in considering whether or not the 2013 Act’s duties apply.
- In relation to adults the 2013 Act duties apply to community care services which a local authority decides are called for as a result of an assessment completed under Section 12A of the 1968 Act. *Community care services* means all services which a local authority provides under Part 2 of the 1968 Act (promotion of social welfare) or sections 25 to 27 of the 2003 Act.
- This covers the majority of services provided by social work departments however the definition specifically excludes services which local authorities provide in connection with criminal justice orders, services connected with visiting people who are receiving assistance and services connected with burials and funerals.
- An example is a drug treatment and resting order (DTTO). Under a DTTO, the offender is required to submit to treatment by or under the direction of a suitably qualified person with a view to the reduction or elimination of the offender’s dependency or propensity to misuse drugs. The order also requires the local authority in whose area the offender must reside to appoint a supervising officer to supervise the offender and report back to the court.
- The local authority in such cases is acting as a result of a requirement in the drug treatment and testing order, but is also exercising functions under section 27 of the 1968 Act (supervision and care of persons put on probation or released from prisons etc.). However, the definition of ‘community care services’ in section 24(1) of the 2013 Act excludes services provided under sections 27-27B, 28 and 29 of the 1968 Act. That means that criminal justice-related social services provided under section 27 of the 1968 Act are not ‘community care services’ within the meaning of section 5 of the 2013 Act to which the duty to offer the four options apply.
- In other words, the authority is not placed under an obligation to offer the four SDS options where the form of service is tied to a specific criminal justice order. This reflects the fact that the form of service will be by its very nature prescriptive and controlled. This is not to say that individuals in such situation cannot be provided with the four options in relation to wider community care needs that they may have.



- Other instances where a local authority may use its discretions is when the nature of the support means that it cannot be delivered through an alternative self-directed option such as a direct payment or individual service fund.
- For example, in relation to support to children and families, if removal of a child to foster care is capable of being 'support' under section 22, then clearly the foster care itself is something which cannot be purchased by means of a direct payment or converted into a single budget for the individual.
- Similarly, if the authority's support to a family in crisis is the social worker's intervention with the child/family to deal with complex safeguarding situation then clearly that is a form of support which cannot be converted into a direct payment or individual service fund and so those options are simply not available.

## **Slide 22**

Reminder that we have responsibilities under the new act to inform people in writing if it is the decision that they are not eligible for any of the 4 options. Circumstances may change that changes future eligibility to access any of the options. As an organisation and practitioners you need to be very clear as to why this decision has been made and all decisions must be reasonable and justifiable.

Facilitator should decide which of the following exercises best suits the participants and chose to use one or the other. If you have a longer session planned you may wish to use both. If using both recommend that you introduce the 4 options debate after **slide 19**

## **Slide 23 - This activity is Optional – depending on session time and energy of the group. Suggested time 30mins**

Split participants into small groups or pairs, provide each group with one of the case studies provided. All case studies can be downloaded from website. There are 5 options to choose from or you may choose to develop your own locally. Each case study provides a scenario based around varies care groups. Choose case studies that are most relevant to participant's experiences if possible. Invite the groups to consider the questions on the slide.

Take 10minutes to take feedback from each of the groups on their learning, emerging themes etc.

Purpose: The purpose of using case studies is to explore how adopting a creative approach to support planning through using self- directed support options could lead to different outcomes for individuals. It encourages participants to consider how an SDS approach may provide more flexible alternative to the more traditional responses we have become accustomed to. The case studies also encourage participants to consider, explore and support potential risks and links to other legislative duties in relation to risk and protection.

**Slide 24 - 4 Options Debate (optional) suggested time - 30mins (will need flipcharts, pens and statement cards describing each of the 4 options.**

This activity is optional and depends on the confidence and skill of the facilitator, the size of the group session time.

Split participants into 4 groups, give each group 1 of the 4 options. The groups will need to nominate a spokesperson who will present the argument.

- Ask each group/team to highlight and discuss benefits of their option and prepare to debate their argument.
- Each team is expected to advocate for their chosen option highlighting the benefits for the supported person.
- Each group should be given a time limit to present their argument – suggest 2mins max.

Purpose: The aim of the exercise is to raise awareness of all the four options through discussion and debate. There is no right, wrong or best option, this highlights and reinforces that there are 4 options for people to choose from each will equal validity. 1 option shouldn't fit all or be deemed more desirable than the rest. Highlight the intent of having 4 options is to allow everyone to select what one best suits their individual circumstances.

Optional – A prize of a bag of sweets or chocolates for the winning debate team could be provided. The winner is decided by the facilitator based on which group was most passionate and able to articulate their argument best. This does not indicate the choice of option is best – rather the debating skills of the group.

**Slide 25** - Self-explanatory slide – recap of the main points that should have been made clear throughout the session

**Slide 26**

- The implementation of the new act will constantly bring about learning, there remain a lot of unanswered questions, encourage participants to familiarise themselves with the statutory guidance and local policy with regards implementation in their own areas.
- May wish to sum up by asking participants what they have found most helpful from today's session. What do they take away with them??

**Slide 27** - Useful links/ further reading

Encourage participants to consider using these links and further reading to help inform practice.