Why has the policy of self-directed support not secured transformative change in social care in Scotland? Establishing a dialogue for policy reform at a time of change.

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Overview

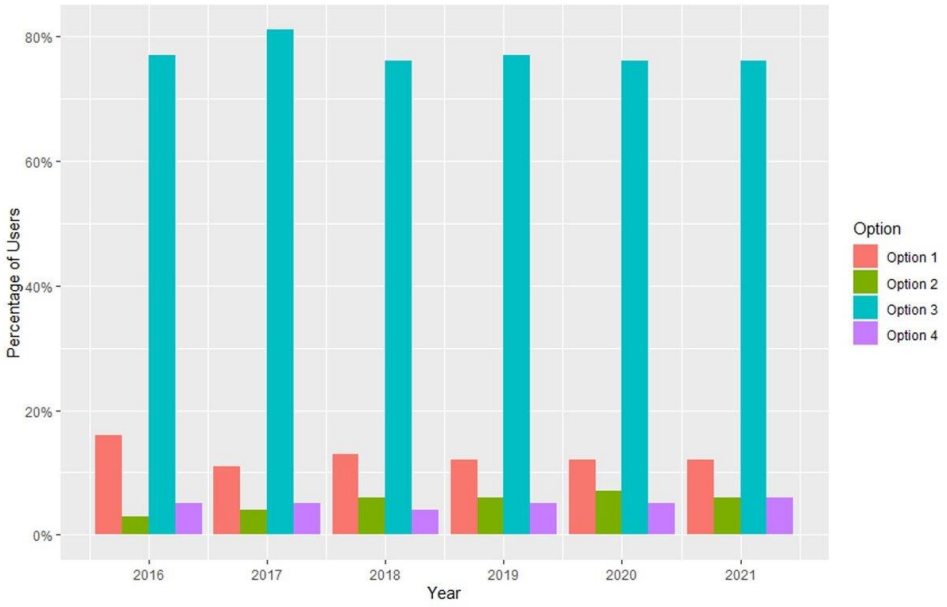
This project was devised and undertaken by Charlotte Pearson, Nick Watson and Sally Witcher in January-June 2022 and was funded through the University of Glasgow's Impact Acceleration Account. Each of the researchers have a long-term interest in this policy area and were keen to explore the role of self-directed support (SDS) as Scotland moves to a new national care service (NCS). A total of 30 participants from across disabled people's organisations (DPOs), the third sector (TSOs) (including service commissioners, inspectors and organisations representing young people, older people and persons with learning disabilities), independent sector providers, statutory sectors (including frontline social workers (SW), senior administrators/policy personnel in health and social care partnerships (HSP)) and a representative from the social care regulator, participated in the study – either through a focus group or online interview. We are pleased to present our initial findings in this paper.

Key themes from interviews and focus groups

SDS and the implementation gap

SDS is the foundation for the delivery of social care across Scotland. However, as the Feeley Review and others have recognised, there have been problems with its implementation, and it has not produced the transformative change that was originally envisaged. The absence of transformative change in social care through the SDS legislation was addressed directly with respondents, by showing them data from a Freedom of Information request on uptake that we had collected from local authorities over a 6-year period (2015-2021) (see figure 1).

Figure 1: Proportion of SDS users by option for councils 2016-2021



These data showed that there has been very little change in the way social care is delivered since the introduction of SDS and highlighted the dominance of option 3 – care organised and provided by local authorities – and the marginal use of the other options. Many of those we spoke to across the sectors shared the view of the Feeley Review - that the underlying policy framework for SDS is good, one respondent stating that it was 'probably the most progressive piece of social care legislation in Europe" (TSO 5). The problem with SDS was located in its implementation:

> We've got a massive implementation gap between what's in the really good policy and the SDS legislation...[It]has got pretty much the definition of independent living, it's got dignity, respect, choice and control – and none of these things are happening in reality, and these are the things that need to be actually delivered.
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> DPO 5

> The problem is all the stuff around implementation, lack of resource, lack of awareness, lack of capacity amongst the sector and amongst assessment in social work.
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> TSO 5

These issues were also acknowledged by some of the social workers we spoke to, with one respondent commenting that, 'the legislation and policy guidance is basically good social work practice. [But] how people have got away without implementing it, is beyond me' (SW 2). Another stated that many people working in frontline practice, 'were not wanting to give up power'. (SW 1).

All those taking part questioned the entire SDS process, stating that policy was not being implemented, because users were not being routinely offered the full range of options and would therefore be unaware of them. This resulted in option 3 being the default choice:

> Most of the people in the [option 3] column will have no idea that they're SDS users, because that's not what they've chosen...They've not chosen that, they won't

> necessarily know that there are any other options, because it would never have been put to them that there are other options. They've just been referred into a contract... [an] allocation made within an existing contract, without any further discussion.
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> TSO 1a

> I am troubled by the fact that, what, seven, eight years down the line, however long it's been by this point... we still have areas where staff and people accessing service, just don't know where SDS is, they don't know the four options, they don't know what that means in practice and that's really…it's a bit depressing and it's troubling.
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> TSO 3

Resources were over-stretched, and Option 3 was seen by many as the default option for the delivery of care, or as one respondent called it, 'the only game in town' (TSO 8). It was perceived as the easiest approach to securing services, particularly as most users only engaged with social care at a time of crisis. We were told that there is almost an assumption that Option 3 was what people wanted and as a result they were not offered any alternatives. Option 2 was often seen as being too complicated to administer:

> [In Option 2], there were issues around contracts and commissioning type issues with partnerships, even debating with their legal teams how they could be legally supported ….So that really seemed to be even more complex than Option 1 or Option 3
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> TS0 5

Once allocated an Option 3 package, it was very unlikely that a user would change to any of the alternatives. For DPOs, the exclusion of Option 1 as a mainstream choice was particularly frustrating:

> I think the simple fact is people are just not being told about Option 1 and they're not being offered Option 1. To even call it an option any more seems a bit false because it's not an option. Our experience is that people get an assessment of their needs, they're told what they can get and they basically are sort of shuffled into option 3 because that's...what they're going to get.
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> DPO 1

> In [local authority] they're only supporting people with critical needs, so how can that be conducive to SDS, if people who actually need any other support, if their needs are not deemed to be critical they're not even going through the process? So of course, that's going to skew it because anybody whose needs are critical is maybe more likely to need a more intensive service.
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> DPO 2

The absence of Option 1 packages is some areas was directly linked to resource shortages. Eligibility and entitlement was "built around gatekeeping, and not in terms of choice and control." (TSO5). This appeared to contradict the ethos of the SDS legislation:

> It's like, well, we don't have a budget for that, so therefore you can't consider Option 1. Or you can go on a waiting list for Option 1 till money became available. Whereas my understanding, way back at the beginning, was actually what you would be doing

> with releasing funds from embedded services so that money was available if somebody were to choose Option 1.
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> SW 2

> We know people who have applied for Option 1 and there are just no staff available and in fact I know somebody who was offered a care home as an alternative to option one. Not even the other options were considered because of the lack of availability of staff, support staff, PA staff
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> DPO 1

In some areas we were told that Option 1 was simply not available, "whilst we were discussing I mentioned Option 1. She says, "oh, that's not available here. We don't use that. We do Option 3 and sometimes Option 2"" (SW2). Social workers talked about the bureaucracy that surrounded option 1:

> The document I had to send out to them to say, okay, this is the way, this is the process, these are the processes, it's a hundred-page document, or 104, one hundred and four pages of document that they have to read. That alone would put anybody off. As a practitioner, it puts me off to even consider it. (SW3)

Option 3 also remained dominant because of the lack of Option 2 alternatives. This was particularly the case in communities outside the main Scottish cities. The failure to secure Option 2 as a mainstream alternative was seen as a missed opportunity for many working in the third sector (including both DPOs and organisations working on behalf of disabled people):

> It's been really disappointing, because it [Option 2] was going to be the mainstream where a lot of people would get [SDS} and it would have given people a lot more choice about their day to day support, they would have had an outcomes based support plan, they would have chosen their provider. They wouldn't have had to manage their budget, but they would have had more say about how the budget was spent, by negotiating about their Option 2 fund. So it has been really disappointing that the uptake has been so poor, and it's not complicated, Option 2 is actually quite easy to do.
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> TSO 1a

For some of the social workers we spoke to, there had been an expectation that the third sector would 'step up and offer more services. But that had not happened'. (SW 5). This absence of service choice was therefore viewed as a 'huge issue' (SW 4) across the sectors, with different interpretations as to where responsibility remained:

> Option 2 is astonishing really. If SDS had been fully delivered I would have expected to see Option 2 as the highest number. People who wanted more choice and control but did not want the responsibility of being an employer, that is the option...It has gone up a little but that is entirely dependant...on the culture of the local authority and their resources available to be able to support people on an ongoing basis.
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> TSO 6

It was felt by some that there was a reluctance to introduce new systems and fully embrace the opportunities for diversity set out in the legislation.

> One of the failures of SDS is the failure of local authorities to adhere to the section nine and section 12 duties in the Act to promote diversity of choice by creating a market to enable that to happen.
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> TSO 4

The failure to utilise the SDS options more widely across the social care system reflected a more profound disconnect between the sectors. The next section explores this issue in more detail.

Disconnect between sectors

We found that each of the 3 main interest groups (DPOs, TSOs and frontline social workers) are profoundly disconnected from each other and are pulling in different directions in terms of SDS and its implementation.

At the current time, there is no common voice for social care in Scotland. Legislation for SDS and the Feeley review both draw strongly on the notion of co-production in policy development. However, our findings revealed minimal engagement with co-production *between* service providers and agencies. This has led to limited policy ownership and shared understandings.

As discussed earlier in this paper, the DPO's frustration at the absence of routine use of Option 1 in SDS packages was highlighted as a major problem. There was a clear understanding of the difficulties faced by front line social workers, but real concern over the direction of SDS particularly as available resources continue to diminish This was seen as a further push back from the promotion of human rights and independent living. As one of the DPO support workers explained:

> After lockdown, everybody got a review, in my area, and you know, it wasn't a review for the good to see how you're doing, it's a financial review, to see how much money you'd saved over lockdown, and that was clawed back...Of course, I understand that local authorities are skint, and they need to bring back some of the funding that's lying in people's bank accounts but without having that conversation with that client, you know, who was unable to use it over lockdown.
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> DPO 7

There also remained a disconnect between DPOs and many of the TSOs. DPOs had limited enthusiasm for Option 2 - mainly because of dominance of larger TSOs as service providers. Despite the possibility to develop Option 2 services through the SDS legislation, this was seen as a barrier for expansion of DPO services and reform of the sector:

> Service providers…you know...like...the ones that actually provide the day services and day centres and community care type services, they have so much influence in all of [the] processes, which is absolutely ridiculous. They get so much funding, they compete with us for funding on small projects, big projects, but they also tender for huge services so they've got so much influence within local authorities. So of course it's no wonder that social workers automatically steer someone to attending a [large disability charity run] day centre or [another of the large disability charities] or whatever regardless of what their needs are, because they've got so much influence.
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> DPO 3

This reflected broader tensions over power, who has control over SDS and where money is allocated.

Across the range of TSOs we spoke to, there was less focus on Option 1 and instead a general disappointment at the failure to secure growth in Option 2 services and reduce reliance on Option 3. As detailed earlier, this was seen as a missed opportunity.

By contrast, there was less concern about the different options available amongst the social workers we spoke to, although policy implementation varied greatly according to local authority (SW3). Instead, key issues centred on the need for increased resources targeted at service users, more training and less interference from senior management:

> I think that the structure does play a huge impact, and the budget holders, whatever their way of thinking about SDS, if they are for it or if they're not. It's unfortunate, but that's the reality on the ground.
>
> SW 1

To help improve the delivery and the outcomes of social care in Scotland and tackle the problem of implementation of SDS, the Feeley Report made a number of proposals. These included the incorporation of human rights and the establishment of an NCS. To improve social care, it argues we need to shift the paradigm to one underpinned by human rights and change the structures through the development of a National Care Service to provide a framework for the provision of care. It is to a discussion of these two ideas that this paper now turns.

Incorporating a human rights approach in social care

For the most part, respondents spoke positively about the Feeley Review and process of consultation, with one of the TSOs calling it 'a good start' and another welcoming the level of engagement across sectors (TSO 2). The exception to this was from an organisation working with people with learning disabilities, whose members felt that their views were not taken into account (TSO 7). The call for the incorporation of human rights and the proposals for a NCS were generally viewed favourably by all participants. In these next two sections, we unpack these in more detail.

The Feeley Review's suggestion that one way of strengthening the provision of care in Scotland and improving implementation of SDS was to frame access to care through a human rights-based approach. We asked those we spoke to comment on whether they agreed with this proposition. Most welcomed and supported the idea and felt that the delivery of SDS and the provision of care would be improved if a human rights-based approach was adopted:

> If you accept a rights-based approach as embedding key human rights, I'm thinking the UN Convention on the Rights of the Child, the rights of disabled persons, et cetera, I would hope that has the potential to more concretely prioritise the perspectives and preferences of the individuals accessing services. I'm not sure it will but I would hope that it should
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> TSO 3

There was broad consensus amongst respondents over the philosophy but there was concern as to how this would be actualised:

> I think it's absolutely right that that's how a social care system is based, it should be rights- based. And of course, I didn't mean to be too cynical there because it has to

be. There's nothing better than setting in law and basing it on human rights but you then have to find a way to work from that almost theoretical approach down into some very usable, practical ways of implementing those rights. And...that's the trick.

TSO 6

When we asked respondents to explain exactly what a human rights approach would look like in practice and how it would affect the delivery of SDS, there was very mixed understanding and many struggled to define it:

I don't know what [Feeley] thinks a rights-based system is. I think at the moment we're at the stage where it is all things to all people. So you can understand from a policy formation point of view why that is an attractive route to go down because it is something that everybody can sign up to. 'Cause none of us really know what it is that we're signing up to. And nobody's going to argue…

TSO 2

One participant framed it specifically in relation to the UN Convention of the Rights of Persons with a Disability:

I think what it means is, you know, you have a human right to a family life, we know what the articles are of the Convention, don't we? So, what it means to me is that social care support is provided to people so that they can then enjoy their human rights, the same as everybody else can. That's what it means to me.

TSO 1a

It was noted by some that human rights have now become an overarching policy aim in Scotland:

So, I have noticed that Scottish Government, whatever policy they're issuing, has human rights-based approach in it. So there was a procurement notice from Scottish Government about competitive tendering and it says it's all going to be human rights based.

TSO 2

I don't think Scottish Government has a clue what that means, or how that happens in practice

TSO 1b

When we asked people to articulate what a human rights-based approach would look like, it was often hard to distinguish their definition from the values that underpin SDS, and the ethos of informed choice, coproduction, autonomy and control:

[Human rights-based approaches] try to ensure that people who required or needed support were aware of what they were entitled to, were aware of what that good support, good care should look like. They were designed to try to empower people to then make those demands and assert those entitlements and to equip and enable people to do so. They were designed in order to try to hold service providers and

commissioners to account for their contribution towards the delivery of those standards and they were designed to enable scrutiny bodies to measure against their delivery.

HSP 1

People drew on the language of self-directed support to explain what a human rights-based approach would look like:

I think that's the challenge of the National Care Service. That's the challenge of social work over the years in terms of [pause]… For me, it's looking at the person as a whole person when in discussion with them, and actually it's back to the individual importance of what's…an assumption that people are entitled to more than just the basics of care in terms of washing, dressing, feeding, being kept safe. When we're looking at how the world supports… It's really complicated...in my head, because it's not just services, it's like a wider, whole system community that says, our approach needs to be that everybody has rights to be supported. So that's at a community level, at an organisational level, and then at an individual level with people. But I'm not answering your question.

TSO 5

There appears to be a real problem with articulating what a human rights-based approach would achieve over and above current provision. This is perhaps hardly surprising given that SDS is framed around a rights-based approach and that the language of co-production is central to the policy. Another key concern was the issue of redress if rights are not met. The major policy shift suggested by Feeley is not in the philosophy or funding stream, rather it is through the establishment of a National Care Service to oversee care in Scotland. It is to a discussion of this that this paper now turns.

Proposal for a National Care Service

The idea of a NCS was generally welcomed by all. It was seen as ambitious, well-intentioned and was popular. People talked about how it would bring uniformity across the sector and country, removing the current post code lottery, many talked about what they saw as the failure of the current model and were highly critical of local authorities, particularly for the DPOs,

I suppose one of things we were strongly in favour of a National Care Service was actually to take that element away, that power and control away from local authorities.

DPO 4

While not disagreeing with the idea of an NCS some concern was expressed about the direction the policy was taking and some felt that it was losing its potential to implement change:

They're not ambitious, they're not about transformational change, they're not about choice for individuals, you know, not about, really, the radical changes needed for social care.

TSO 1

Some of the participants suggested that the principles of SDS provide a good, solid framework around which to design the NCS, but there were concerns from across the sectors that these principles may be watered down when applied in practice:

> If you were genuinely talking about empowerment, control, choice, people first, services working around them and services responding, then actually building from the values, principles, the basics of self-directed support would be a really powerful starting place for the National Care Service. But it's how that translates. I think there is a tension there in terms of bringing the two together, and I think there is a potential risk that social work and social care will become led by health...
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> TSO 5

In contrast others questioned how an NCS would operate in conjunction with SDS - a centrally run service with what is meant to be a locally provided service. This was generally perceived as difficult to achieve. As one of the TSOs remarked:

> I don't see how they fit together, I don't see how you can have a National Care Service, and then locally provided, locally controlled services...To me, it's two diverse worlds.
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> TSO 3

Whilst acknowledging that an NCS would still need to operate within local social care markets, it was unclear how the different SDS options – and particularly Option 1 - could work effectively:

> There's a difference between a National Care Service, and a nationalised care service. So, we're not talking about a nationalised care service, where everything is delivered directly by the state, we still have a marketplace of providers that people can choose from. But you know, they will operate within a national framework of accountability and standards. So your national framework around PA employers, for example, would be, you know, they have to be employed under certain conditions.
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> TSO 1

Some also questioned whether the establishment of an NCS would in and of itself help to tackle the implementation gap:

> The whole thing has become a fixation on process rather than outcome. And it's all about, okay well local authorities haven't been delivering – which is true and I wouldn't disagree with that – so let's take it away from local authorities and put different structures in place. Without necessarily talking about why and what would be different by doing that and how those same mistakes aren't just going to be replicated within just different institutions, called different things and slightly further away from where people are.
>
> TSO 2

Another tension raised was the long-standing issue of the relationship between health and social care and the feeling that health always dominates: The proposal to include Community Health within the NCS was cited as evidence for this:

> Now they've [NCS] brought in primary care, it's the end of social work
>
> SW 2

Participants drew on their experience of health and social care integration and the way that health has come to dominate the service:

> There are different values [that] come into play there. I think the fact that health and social care integration came in at the same time as self-directed support as a whole other aspect of it, because then you stop getting social workers in basically management positions in a lot of places. So it actually shifted the focus and there was a whole different value base was brought in.
>
> SW 3

> ...the stripping away of the distinctiveness of social care is its replacement with an understanding of care which is health dominated which has to do with a clinical, medicalised, transactional and functional approach to care.
>
> TSO 4

The issue of voice and power was also raised by the DPOs and the tensions that were emerging between them and public sector bodies who currently support and deliver services provided through local authorities:

> We're...seeing that COSLA is, you know, muscling in there as well with their thoughts. And again...with service providers sometimes those huge conglomerate voices are heard more than DPOs. There's few and far between DPOs in Scotland as it is, and we're not able to sort of speak up against those much larger voices.
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> DPO 3

The current focus on the development of an NCS has been seen as a shift away from a focus on outcomes:

> they're focusing on system change, which is what they did with health and social care integration, and it's going to be system change that takes precedence over outcomes.
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> TSO 5

There were also concerns around what will be yet another major reorganisation in the delivery of social care, particularly coming on top of the stresses and strains imposed by the pandemic. One social worker commented that it 'it filled her with dread' (SW 1).

Concluding comments

In concluding this paper, we know that – despite its intentions - SDS has led to very little change in the delivery of social care in Scotland. As many of our research participants stated, the legislation was seen as progressive, but this has not been matched with transformative delivery. Feeley has quite rightly identified the implementation gap from the legislation and our findings explored this further. We observed a clear disconnect between social work, DPOs and TSOs, with a tendency for each sector to promote a particular SDS option. Furthermore, given the nature of crisis management that underpins current social care delivery, Option 3 remains the easiest means to deliver urgent support. It therefore remains the default option and excludes wider adoption of Options 1 and 2.

As Scotland moves into a new era of social care, it's important to reflect on Feeley's recommendations on improving the delivery of SDS. The Review suggests that this can be achieved by placing the rights, needs and preferences of service uses at the centre of the process. However, these represent good social work practice and are central to SDS and should be established into the mainstream. To achieve this requires more than a change in discourse or a shift to a new centralised structure. We would suggest that is primarily a resource issue and until social care financing is improved it is unlikely to change.

Our respondents largely welcomed the recommendations, but it was felt that they do not fully recognise the need for major investment in the sector. Instead, the focus on discourse change – through the shift to a human rights approach – and structural change – through the introduction of a National Care Service – represent only a partial solution.