



The Scottish Independent Advocacy Alliance

# **Advocacy and Self-directed Support: Guidelines for advocates**

A companion to the Code of Practice for Independent Advocacy



Scottish  
**Independent  
Advocacy**  
Alliance



**The Scottish  
Government**

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## Foreword

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Self-directed Support (SDS) aims to give individuals more flexibility choice and control over their health and social care support and is based on five key principles: respect, fairness, freedom, safety and independence.

The *Social Care (Self-directed Support) (Scotland) Act 2013* came into force on 1<sup>st</sup> April 2014. It places the duty on local authorities to offer people a range of choices over how they receive their social care support and to 'signpost' to other sources of information including independent advocacy services. The Scottish Government's vision for SDS and independent living is to offer high quality, accessible advice and support which enables people to make individual choices.

The Scottish Government has provided funding to some 40 independent support organisations, including Scottish Independent Advocacy Alliance, to build the capacity of support, information and advice over the last three years. If people have access to good quality information and support it is likely they will have a better understanding of their choices and to make better decisions.

As Minister for Sport, Health Improvement and Mental Health, I recognise that independent advocacy services have a vital role to play in the successful implementation of Self-directed Support. Independent advocates will help people to express their views and wishes at various stages on their 'SDS Journey' and will provide a helping hand to those who need assistance.

I would like to thank Scottish Independent Advocacy Alliance for their support in providing this guidance. It aims to raise awareness and understanding, for professionals and for those seeking social care, of the role of independent advocacy throughout a person's care and support journey. As a result of this guidance, I hope people will be informed about independent advocacy as early as possible in the process. That those who need such support can be helped to be actively involved in their assessment and support. I want people to have control and genuine choice about the support they receive.

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We will continue to link this guide and other capacity building projects to *'Self-directed Support — A National Strategy for Scotland'*. Advocacy and advocacy services have a vital part to play to improve individuals' experience of health and social care.

**Mr Jamie Hepburn MSP**

*Minister for Sport, Health Improvement and Mental Health*

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## Introduction

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*The Social Care (Self-directed Support) (Scotland) Act 2013* (the Act) allows for those individuals assessed as eligible for social care services to have choice and control over the support they receive, the process used is called Self-directed Support. The Act sets out general principles which Local Authorities (LAs) must have regard to when assessing and providing social care services. The Act goes on to outline the changes to Local Authorities' duties and powers with regard to social care. The legislation is intended to uphold the basic human rights of individuals whilst enhancing the rights and freedoms of individuals using social care.

Under the *Social Care (Self-directed Support) (Scotland) Act 2013* the Local Authority must now provide eligible individuals with four options around the way their support is delivered. LAs must also provide or signpost individuals to sources of information, advice and support so that individuals can make informed choices. Independent advocacy has an important role to play in enabling individuals to obtain information, make informed decisions and have their voice heard in the Self-directed Support journey.

The Act is supplemented with *Statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013*, detailing guidance on social care assessment and associated processes. It was issued to Local Authorities to help inform them of their duties and powers under the Act. A good working knowledge of both the Act and the statutory guidance will help advocates ensure that they provide effective advocacy around social care support.

This guidance aims to give independent advocates an overview of the legislation, the rights of the individual and the duties of Local Authorities in relation to Self-directed Support. It concentrates on how the Scottish Government intends the SDS legislation to be translated into practice.

### What is the SIAA?

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation responsible for promoting, supporting and defending independent advocacy in Scotland. The SIAA is working towards ensuring that the best quality independent advocacy will become available to anyone who needs it in Scotland. The SIAA provides information and support, gathers and distributes information, represents advocacy

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organisations at various levels and raises awareness and understanding of independent advocacy across Scotland. The SIAA works to influence legislation, policy and practice in relation to independent advocacy.

## What is Independent Advocacy?

Independent advocacy is about ensuring that people are as fully involved as possible in decisions made about them and their lives. It is about making sure their voice is heard, it is about standing up to injustice.

Many of us find it difficult, at times, to get our voice heard about decisions or actions that affect our lives. Some people have family, friends or carers to help them to speak up. Some don't have anyone in their lives to help them. Sometimes a family member may have their own ideas about what would be best for the person, which might not be the same as what the person wants. Carers and professionals have a 'duty of care' for the person, which may conflict with their wishes.

Independent advocacy aims to help people by supporting them to express their own wishes and needs and make their own informed decisions. Independent advocates support people to gain access to information and explore and understand options. They speak on behalf of people who are unable to speak for themselves, or who choose not to do so. They safeguard people who are vulnerable or discriminated against or whom services find difficult to support.

### **Advocacy:**

- safeguards people who are vulnerable and discriminated against or whom services find difficult to serve
- empowers people who need a stronger voice by enabling them to express their own needs and make their own decisions
- enables people to gain access to information, explore and understand their options, and to make their views and wishes known
- speaks up on behalf of people who are unable to do so for themselves.

# Background to the Act

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## Self-directed Support: Statement of Intent

*Independent living means people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. It does not mean living by yourself, or fending for yourself. It means having rights to practical assistance and support to participate in society and live an ordinary life.*

*This is the definition of independent living adopted in the strategic approach to independent living, by the Scottish Government, COSLA, the NHS and the Disabled People's Independent Living Movement.*

*Without care and support and the opportunity to direct their support, many people would not be able to participate in society and live an ordinary life. They would not be able to live free from discrimination and harassment as promoted by the Equality Act 2010, to enjoy their human rights nor contribute to a wealthier and fairer, healthier, safer and stronger, smarter and greener Scotland.*

*Self-directed Support, alongside many other policies, is intended to support, promote and protect the human rights and independent living of care and support users in Scotland. It aims to ensure that care and support is delivered in a way that supports choice and control over one's own life and which respects the person's right to participate in society.\**

This statement of intent clearly sets the scene with regard to what Self-directed Support aims to achieve. Along with the principles underpinning the Act it provides a helpful benchmark against which decisions about someone's individual budget and support plan can be measured. This will be of particular benefit in situations where an individual is challenging the decisions made about their care and support needs.

The Act provides four statutory Principles which guide Local Authorities in implementation of relevant legal duties on care and support:

- Participation and Dignity
- Involvement
- Informed Choice
- Collaboration.

\* The Scottish Government 'Statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013', Section 1.2.



## The Legislation

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*The Social Care (Self-directed Support) (Scotland) Act 2013* came into force in April 2014. The Act allows people who have been assessed as eligible to receive social care services to have choice and control over the kind of support they receive and the way that support is delivered. The Act does this by imposing new duties and powers upon Local Authorities regarding the delivery of social care.

### New Legal Duty

*Duty to have regard to the general principles of collaboration, informed choice and involvement as a part of the assessment and the provision of support.*

General principles of the Act include collaboration, informed choice and involvement. Whilst carrying out functions of the Act Local Authorities must consider these principles. This means that throughout an individual's assessment and support the Local Authority should:

- **Involve** the individual in a genuine and active way in deciding their outcomes and in planning and delivering their support
- **Collaborate** with the individual to complete the assessment, plan their support and during the provision of support
- Assist the individual with the help they need to make **informed choice**.

### New Legal Duty

*Duty to take reasonable steps to facilitate the person's dignity and participation in the life of the community.*

In relation to independent living, in the practice of assessment and providing support Local Authorities must:

- Respect and facilitate the individual's right to **dignity**
- Provide the individual with the help they need to **participate** in and be a part of the life of the community and wider society.

The statutory guidance also requires Local Authorities to embrace the following principles in discharging their duties under the Act:

- **Responsibility** — encouraging the individual to take as much choice and control over their support as they wish. In return, the individual should exercise that choice and control in a responsible way.

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- **Risk Enablement** — The individual 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.

In wider planning and commissioning of services the guidance also requires that Local Authorities **involve** and assist communities to play an active role in the commissioning of services. The statutory guidance suggests that Local Authorities source evidence from collective advocacy groups of their experience of what is needed or what is good and what is not so good about current provision.

### **New Legal Power**

*Power to provide support to carers (of adults) following a carer's assessment.*

Local Authorities now have the power to provide support to address carer's needs to enable them to continue with their caring roles.

If the Local Authority agrees that it will offer support to a carer, it must let the carer choose one of the four options under the Act. Even if the carer does not meet the threshold for an assessment or does not wish to undertake a full carer's assessment they can still benefit from low level preventative support and it is important that the Local Authority provides information on local support such as local carers' centres.

### **New Legal Duty**

*Duty to explain the nature and effect of the four options and to "signpost" to other sources of information and additional support*

The Local Authority must explain what each of the four options being offered will mean in both a general and specific way for that individual. So there should be discussion that involves explanation of what the four different options are in general and then elaboration on what each option might mean for the individual in their personal circumstances.

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This discussion should include:

- What the four options are
- What level of flexibility and control are related to each Option
- What it means for an individual to direct their own support
- What it means to have support arranged on behalf of the individual
- What the impact of the different choices might be for the individual taking into account their own situation and circumstances.

It is also expected that the Local Authority will provide information on organisations that might provide assistance and information about the options and how to manage them.

For some, access to independent advocacy will be important at this point to ensure that they are supported to make fully informed decisions.

This duty includes the requirements for Local Authorities to provide information about independent advocacy services where it considers it *'appropriate to do so'*. The statutory guidance recommends that signposting to advocacy be used to maximum positive effect in all instances where considered appropriate.

*"[I]n any case where the authority considers it appropriate to do so, information about persons who provide independent advocacy services (within the meaning of Section 259(1) of the Mental Health (Care & Treatment) (Scotland) Act 2003)".*

## The Four Options

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A Local Authority must now provide four options to all individuals eligible for or receiving support. The options are intended to support flexibility and creativity. The four options are:

- A Direct Payment
- Directing the available support (Individual Service Fund)
- Services arranged for the person by the Local Authority
- A mix of the first three options for different aspects of the person's support.

Access to the four options provided under the *Social Care (Self-directed Support) (Scotland) Act 2013* is of very little value if there is a lack of variety in the range of providers available or a lack of variety in the type of support on offer. It is a key responsibility of the Local Authority to ensure that there is a sufficient range of choices available to all social care users regardless of whether the supported person selects Option 1, Option 2, Option 3 or Option 4 under the 2013 Act.

## Option 1: A Direct Payment

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The definition of the Direct Payment remains unchanged from its previous incarnation under Section 12b of the Social Work (Scotland) Act 1968. An individual gets a Direct Payment from their Local Authority and then uses that money to arrange their own support.

A Direct Payment offers an individual the most choice, control and responsibility over their care. A Direct Payment is a cash payment paid directly to the individual (or to a third party such as a relative, guardian or organisation such as a brokerage). The supported person can use their Direct Payment in any way provided that it is in line with their assessment and support plan, meets their eligible need and is legal. Direct Payments lead to increased responsibility; however the person should be given support to manage the payment if they wish. A Direct Payment can be used to purchase a very wide variety of support, including but not limited to:

- employing one or more Personal Assistants
- buying a service from a provider; this could be from the supported person's Local Authority, another Local Authority or a voluntary or private organisation
- buying short breaks or respite care
- buying equipment
- buying adaptations for the home
- help to attend activities, education or employment
- anything else which will help to meet the supported person's needs and the outcomes in the support plan.

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### **Case Study**

*Bob has a mental illness and a physical condition which causes his mobility to fluctuate and can also impact negatively on his mental health. He is a generally confident person who communicates very well; however he can struggle when he is ill and can find it hard to hold on to information at these times. He had been attending a mental health resource centre and had a few hours of home support each week.*

*Bob saw SDS as a way to change his life. He wanted more flexible supports that could adapt in line with his fluctuating needs. He contacted his local advocacy organisation for information about his rights under SDS.*

*The advocate helped him gather all relevant information; they talked through the SDS process and identified areas an assessment might cover. The advocate also gave him details of organisations he could contact for some specific pieces of information. Once he had been supported in considering the information he decided that he wanted to go for Option 1, a Direct Payment, which he planned to use to employ a PA. Bob got the Direct Payment; he now employs a PA on a flexible basis to provide the support formerly provided by the support provider and also to support him to access community based resources.*

## Option 2: Directing the available support (Individual Service Fund)

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This option allows individuals to choose their own support whilst the Local Authority, or a third party such as a brokerage service, holds the money and arranges the support on the supported person's behalf.

It will provide greater transparency and control for the individual without the requirement to take this support as a Direct Payment. Option 2 can provide a pathway for an individual to have greater choice and control without taking on the level of responsibility required for Option 1.

This option should differ from Options 1 and 3; it should allow creativity, flexibility and not exclude particular types of services or providers. The only limitation on Option 2 is that it cannot be used to employ Personal Assistants.

### **Case Study**

*Jennifer has a condition which means she needs support for aspects of her personal care, for general housework and cooking and to get out and about in her wheelchair. She heard about the introduction of Self-directed Support and would like to know more about her options. She has asked for a review of her care provision. Her support had been provided by her Local Authority but she now wishes to change the support to a different support provider.*

*She contacted her local advocacy organisation as she felt she needed some help to work through the review and support to help her look at options that would be available to her. Her advocate helped her to gather all relevant information and, having considered the information, she decided to go for Option 2.*

*She had spoken to two of her friends who both told her how happy they were with their support provider. Jennifer decided that she wanted to have her support from the same provider but did not want to worry about the responsibility of the financial and employment arrangements. Her advocate helped her discuss this with her Local Authority Care Manager who arranged for Jennifer's support to be delivered by her preferred provider.*

## Option 3: Services arranged for the person by the Local Authority

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The individual chooses to have the Local Authority select the appropriate support and arrange it for them. This option offers the least level of control to the person. The person should however be involved to the level that they wish in choosing and planning their support in accordance with the SDS principles.

### Case Study

*Diana has several physical conditions that have significant impact on her life. She gets tired easily and the simplest of tasks take all of her effort to accomplish. Her husband, Gregory, is her main carer, he has a heart condition and Diana worries that the physical tasks involved in looking after her every day are too much for him. They have done what they can to modify their home and have a great deal of family support.*

*Diana contacted her local independent advocacy organisation and met with Lisa, an advocate. Lisa supported her to contact the social work department to request a care assessment. Following the assessment Lisa helped Diana and Gregory to consider the options that had been explained by the Social Worker.*

*Neither Diana nor Gregory were keen to have responsibility for employing anyone or for managing budgets or arrangements. They want very little support to be provided, preferring not to rely on others if at all possible. Diana said that she just wanted help in the morning to get out of bed, showered and dressed and down the stairs ready for the day. She didn't want to take up any options that were presented to her by the Social Worker; support at night with her bedtime routine, help with meal preparation, or getting out of the house more. She certainly didn't want to be an employer.*

*Lisa supported Diana to explain exactly what she wanted which was for help in the morning to be arranged by the Council. In the end things worked out well for Diana, her personal care was delivered and arranged by the Council with every effort to keep within a small team of three care staff as per Diana's wishes.*

*Lisa is still involved on an as needed basis and expects to support Diana through her first review.*



## Option 4: Mix of the first three options for different aspects of the person's support

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This allows the person to choose a combination of Options 1, 2 and 3 to provide their support. This option may be attractive to people who would like to experiment with the Direct Payment or Individual Service Fund for a small aspect of their support or for some of their outcomes. The person could for example employ a personal assistant using a Direct Payment for evening support, ask the authority to arrange and provide daytime support through Option 3 and use Option 2 to access weekend support from their preferred private or voluntary sector provider.

### Case Study

*Michael is 66; he has a learning disability and reduced mobility as a result of arthritis. His Social Worker was concerned about his social isolation and feared that his mental health could deteriorate. He had tried to encourage Michael to attend a day service; however Michael is very resistant to joining any form of club or day service.*

*The Social Worker referred Michael to his local independent advocacy organisation as he felt that Michael needed support during the assessment process for a review of his care package. Michael was receiving services provided by the local social work department, mainly around his personal care needs and grocery shopping.*

*On the first visit the advocate, Andy explained an advocate's role and went through the information about advocacy and about SDS with Michael. Michael decided that he would like Andy's support as he wanted to make some changes. He thought that he would like to keep the carers he already had and didn't want the "hassle" of a Direct Payment despite knowing he could have support to deal with all aspects of Option 1. They also discussed what Michael was hoping to achieve and what he wanted to change.*

*Michael was bored, he wanted more social opportunities but he just didn't feel well enough to go out and that he found it hard to be in a crowd. Andy supported Michael to consider different options; clubs, accompanied days out, having a holiday, none of which really fitted the bill for him. However it became apparent that Michael was keen to be*

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*computer literate. They talked about being online and the opportunities this might open up for him. Michael decided that he would like to have some individual training in computer use, if possible in his own home. Andy found out that the local Adult Basic Education Service held computing for beginners classes in small groups with a maximum of six learners and the local college did "silver surfers" day time sessions. Both venues were accessible for Michael's wheelchair and the tutors were well experienced in supporting older learners.*

*Andy helped Michael tell his Social Worker that, to help him achieve his desired outcomes, Michael wanted someone with computer skills to work with him at home and then accompany him to the silver surfer classes as his confidence increased. He also wanted a laptop so that he could use it in different locations in his home; his bedroom in the late evening after his "tuck in" service and when his condition flared up and he found it hard to move around.*

*High risk of social isolation was one of Michael's assessed needs. A laptop, with the confidence to use it could open up Michael's social contacts through online chatting and also give him control over his own shopping, including groceries and other items. Michael wanted to stick with the Local Authority for his personal care.*

*Michael could use Option 4 to allow for a combination of; Option 1 to purchase his laptop, Option 3 to continue with the council providing his personal care and Option 2 to organise his chosen agency to deliver his computer support.*

*Having Andy to discuss things with has helped Michael and his Social Worker to look at this more innovative use of a mixed budget through Option 4.*

# Independent Advocacy and Self-directed Support

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## Section 7.24 of the statutory guidance states

*“It is important that the person who is providing any assistance is able to provide that assistance. While there is no requirement for the person to have professional qualifications in supported decision-making they should have an understanding of the type of assistance required and the limits and boundaries of what is meant by assistance. In other words, they should be aware:*

- of their role and the limits of their role;*
- and the fact that their role is to help the supported person to make decisions and not to make decisions on the supported person’s behalf.”*

The role of the independent advocate, in any circumstance, involves supporting information gathering, considering options and making informed choice. The key is that the individual is supported to make their own choices. Therefore the independent advocate is well equipped to provide this advocacy support in relation to SDS.

The advocate’s role in the context of SDS is the same as it is in supporting people through other challenges. Good advocacy practice follows the same principles and standards regardless of the type or model of advocacy. Independent advocacy in Scotland is supported by key policy and practice standards (see Appendix 1). All independent advocates and independent advocacy organisations are expected to undertake their role in line with the following guidance:

- *SIAA Principles and Standards for Independent Advocacy*
- *SIAA Code of Practice for Independent Advocacy*
- *The Scottish Government Independent Advocacy, a Guide for Commissioners*
- *SIAA Independent Advocacy: An Evaluation Framework*
- *SIAA Non-Instructed Advocacy Guidelines.*

Advocates and their organisations support positive changes for individuals. They also have an important role in supporting people who use services to share their experiences and skills to inform and improve practice locally and nationally.

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Advocates are there to stand alongside and be on the side of the people they are supporting. When supporting an individual working alongside other agencies, advocates need to be aware of any potential for conflicts of interest and be clear that they have a different perspective from service providers and other agencies.

Some people accessing SDS will have the right to independent advocacy support through the *Mental Health (Care and Treatment) (Scotland) Act 2003*. For others who do not have a statutory right to advocacy it is nevertheless important that they are aware of advocacy and how it can support them through the SDS process. Independent advocacy organisations engage with their Local Authorities to promote access to independent advocacy in a broad range of circumstances and not only to those with a legal right of access, although it is of course important for people to have this right upheld.

Independent advocacy organisations should encourage referral to independent advocacy at an early stage of the process rather than waiting until a point of disagreement or crisis has been reached. This may require a review of the Service Level Agreement or Contract.

It will be useful to highlight the benefits that independent advocates can bring to the process for the person and also for the Local Authority. Experienced advocates will have a level of local knowledge about supports, services and resources which can be utilised when supporting an individual to identify opportunities of interest to them.

Independent advocacy organisations should consider ways in which they can provide appropriate training and information for Local Authority and other relevant staff about the role and value of independent advocacy. Training should focus in particular on the role that independent advocacy can play in supporting the person to make informed choices about the option and services that will be right for them.

The advocate's role encompasses a potential range of advocacy support from information and signposting through supporting informed choice, challenging decisions and putting forward their advocacy partner's views and wishes. They may be required to act in a non-instructed role, accompanying someone on their whole SDS journey informing decisions from an independent understanding of the person and their circumstances and safeguarding their human rights.

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The statutory guidance states that;

*“The supported person may find it difficult to make a decision on their own however with some additional support they may be able to make the necessary decisions associated with the assessment, support planning process or the provision of support.”*

Advocates have a clear and essential role here. Supporting people who require additional help in understanding information and making decisions is the essence of the support they provide. A need for additional support of this nature should be one of the triggers for an assessor to inform the person about advocacy support and the potential benefits.

The Local Authority must take all reasonable steps to identify people who can help the supported person to communicate their decisions. The supported person may require some additional support to communicate decisions from, for example:

- Interpreter
- Speech and language therapist
- Family member or friend
- Independent advocate.

Again advocates will be familiar with this area of work and many have had training in different approaches to communication to support their role. However advocacy organisations should be aware that, as with other potential advocacy partners, those considering SDS may have specific communication support needs which will need to be met using specialist support. There should be arrangements in place for the Local Authority to cover the cost of such support.

## Capacity and Non-Instructed Advocacy

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Please note the previous part of the document is covering people who require assistance to make informed decisions and not those who lack capacity in decision making. This is an important distinction. Only Named Persons, Welfare Guardians or those with Power of Attorney appointed under the relevant legislation have the power to make decisions or request assessments on another person's behalf.

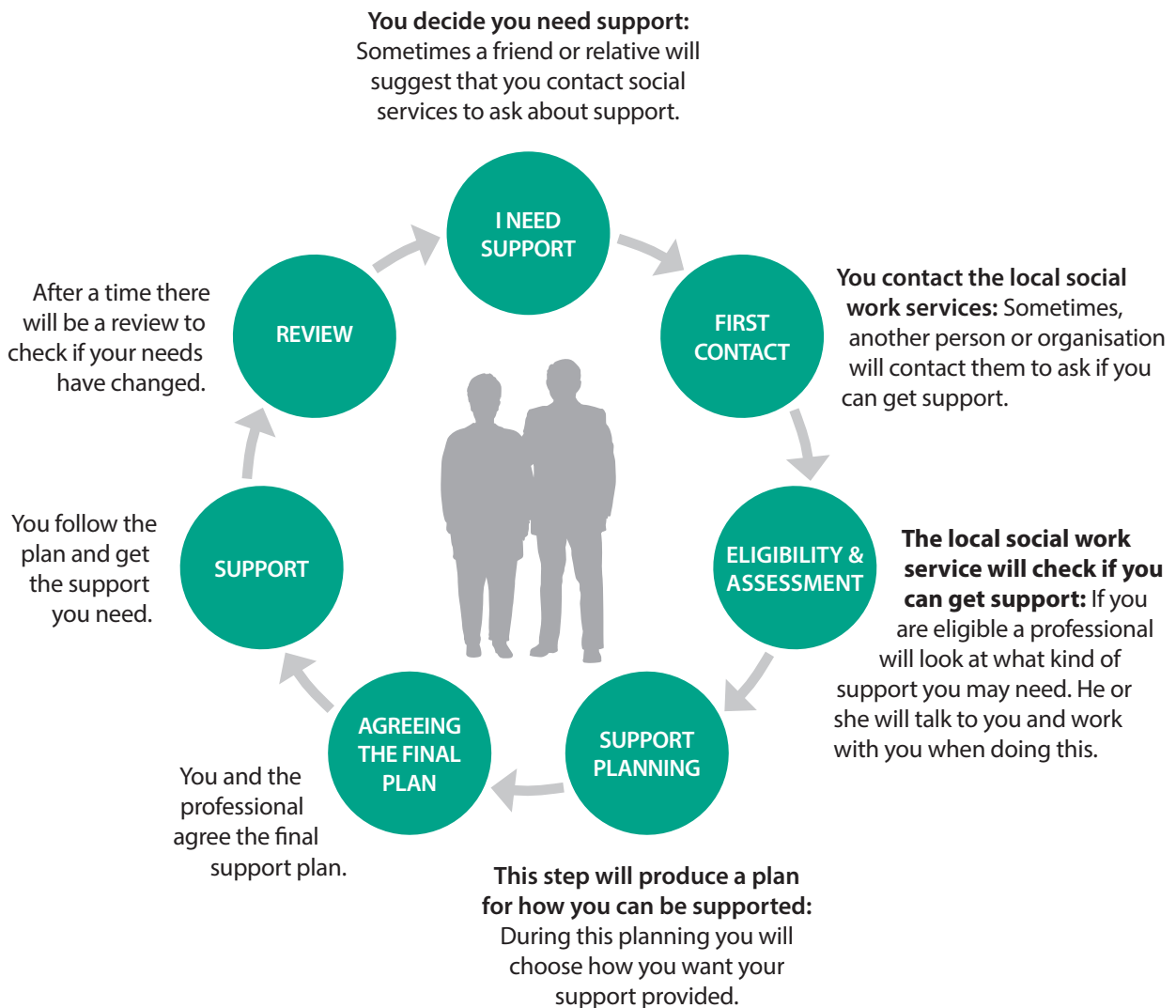
The Local Authority must seek assistance from a Mental Health Officer where it has any doubts or questions about a supported person's capacity in relation to making informed decisions. Where an individual is assessed as lacking capacity, the advocate would consider providing non-instructed advocacy.

This would not be a new role for many advocates. As with other areas of work, those most in need of advocacy support are often those who are unable to say so. Advocacy organisations should take this into consideration when discussing protocols with Local Authorities, service users and other SDS stakeholders. The SIAA have well established guidelines for the practice of non-instructed advocacy, these can be found at [www.siaa.org.uk](http://www.siaa.org.uk).

If the supported person has a Welfare or Financial Guardian/Attorney, with the necessary powers, then the Local Authority should ensure the Guardian or Attorney is fully involved and enabled to make informed choices about the supported person's care and support.

# Step-by-step guide to support

## The supported person's pathway



The above diagram is adapted from the one included in the statutory guidance. There is an important step missing from the diagram however; the approval of the plan and accompanying budget by the Local Authority. Advocates need to be aware that support plans can be declined or changes requested at the approval stage. Local Authorities differ in how they make these final decisions on the budget allocated to individual's support plans, whatever the SDS option/s chosen.

## The Steps

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### **Step 1: Need?**

The supported person decides that they need additional support. Alternatively, a relative, friend or professional suggests additional support.

*It would be useful for the person to know about independent advocacy from this very first step. Access to advocacy will depend on general awareness of the advocacy organisations in the area and their access criterion. It will be worthwhile for advocacy organisations to consider where their publicity material and any awareness raising activities are focussed.*

### **Step 2: First Contact**

The supported person makes contact with social care services or community health services directly, or they can be referred on by a variety of contacts, including their advocate (with permission), family or friends.

At this stage, there is an initial screening to determine if the person should progress to a formal decision on their eligibility for support. The supported person should be provided with the relevant information and advice in relation to eligibility, assessment and support options.

If the person has not yet accessed independent advocacy, they should be informed about independent advocacy at this step. This will be, as the Act states, if the professional assesses that the person would benefit from this kind of support. If the person chooses to have an advocate that support may be for all or only a part of their SDS journey. Alternatively, at this stage, where a person lacks capacity, they may be referred for non-instructed advocacy.

*An advocate should be able to support their advocacy partner to understand the information supplied at this step.*



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### **Step 3: Assessment for Eligibility**

The Local Authority will make initial decisions on a person's eligibility based on the obligations under the following Scottish Government legislations:

- *Social Work (Scotland) Act 1968*
  - Section 12A — Relating to Adults
  - Section 12AA — Relating to Carers of Adults
- *Children (Scotland) Act 1995*
  - Section 22 — Relating to Children in need
  - Section 23 — Relating to Children affected by disability
  - Section 24 — Relating to Carers of Children
- *Mental Health (Care and Treatment) (Scotland) Act 2003*
  - Sections 25 to 27

An advocate should be ensuring that *“If a person does not meet a particular eligibility threshold the authority should take steps to ensure that the appropriate arrangements are in place, providing an environment where the professional can direct that person to suitable alternative sources of support.”\**

### **Step 4: Detailed assessment of the person's needs**

Once the Local Authority has assessed the individual as being eligible to receive support there should be a detailed exploration of the person's needs. Both the supported person and the professionals involved should be involved in determining the supported person's needs and personal outcomes.

*An advocate could help this process by supporting the individual to think about their needs and personal outcomes and to help them express these to the professionals.*

\* The Scottish Government 'Statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013', Section 7.5.

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## Step 5: Plan

Whilst support planning will cover many issues it will tend to include discussion of:

- The choices available to the person, including which option would be best to meet the person's plan and the budget attached to each option.
- the main risks and how the supported person and others can manage those risks; and
- the resources that will help to deliver the person's support plan.

If the supported person is a child then the process should be part of a single plan for the child.

*An advocate should be able to help the individual to understand each of their options to enable them to make an informed choice at the next step.*

## Step 6: Choose

This is the stage where the supported person and the professional agree the support plan.

*Advocates need to be aware that although plans are produced on assessed needs there is no guarantee that the full budget allocated to the plan will be approved by the Local Authority. Advocates have made successful challenges and had decisions reversed and have also been unsuccessful in arguing on their advocacy partner's behalf. There is no appeal process on Local Authority SDS decisions written into the Act. Existing complaints procedures are being used.*

Local Authorities and their staff have a 'duty of care' which means that they have to be sure that any support they give or pay for, is meeting the person's needs. If they don't think the support the person wants will meet their needs then they can refuse to arrange it.

For children, the Local Authority must be sure that the support purchased will keep the child safe and improve his or her welfare before they will agree to it.

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Support choices should only be refused by the professional if it is clear it will not meet the supported person's needs and outcomes. If this happens they should:

- explain why the kind of support chosen will not meet the person's needs;
- help the person to look at other kinds of support that might meet their needs, and;
- tell them about their right to complain through the complaints procedure.

### **Step 7: Support**

The person receives their agreed support. The plan should describe the provision of support to the person and the day-to-day decisions that will be made. The plan should include contingency arrangements for changes in circumstance, emergencies etc. There should be a key contact for the person to call on with any questions, issues etc.

*An advocate should ensure the supported person has a key contact and knowledge of how to make contact with the advocacy organisation in the future if the supported person feels it is necessary.*

### **Step 8: Review**

During the agreement of the support plan an initial review date should be set for a maximum of 12 months away, however the supported person should also be told that they or the authority can request a review sooner if any of the following change for the supported person:

- their circumstances
- their needs
- their choice of SDS option
- their choice of arranged support.

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Annual reviews and those requested around a person's needs should include an update of the original assessment, review of the person's needs and consideration of any adjustments to reflect the changing needs or any changes in circumstances etc. However a supported person can request a narrower review primarily focussed on just their SDS options and/or arranged support without having a full detailed review of needs.

*Advocates will be aware that some people have fluctuating needs and reviews should be planned to suit the person, on a regular and/or short notice basis.*

## Eligibility

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Section 12A of the *Social Work (Scotland) Act 1968* gives a person the right to an assessment of need. Local Authorities however have a degree of discretion over how they assess and supply services and as a result access to social work services has been prioritised in different ways in different parts of Scotland. The *Social Care (Self-directed Support) (Scotland) Act 2013*, does not take away this discretion. In order to find out what eligibility criteria apply in specific areas advocates should be able to gather this information from their local social work centre. In the event that the advocacy partner disagrees with an eligibility assessment the advocate can help them identify grounds to challenge the assessment.

Where the adult is over 65 and eligible for personal care or where the person is eligible for nursing care, the Local Authority must take account of the relevant joint Scottish Government and COSLA Guidance on eligibility criteria.\*

A national review in 2009 of the eligibility criteria system, supported by the Scottish Government and COSLA, led to proposals for National “Eligibility Criteria” standards which drew upon the model that had been developed in England. Most Scottish Local Authorities have now adopted the resulting criteria which categorise the risk to the individual in a number of areas such as independence, mental health, personal care and community participation.

Section 7.5 of the statutory guidance details a number of key points that the Local Authority should have regard to in developing its approach to eligibility, wider assessment processes and in developing the relevant training and guidance to practitioners:

*“The authority should take full account of how the person’s needs and risks might change over time. It should support the relevant professionals to consider the impact of failure to intervene and whether this would lead to escalation of need in future. It should take a well-rounded approach, recognising that risks to participation in society (living an ordinary life, engaging with others) are valid alongside risks to dignity (personal care, “life and limb” support). It should recognise the potential hidden needs which may not be obvious or highlighted in generic guidance documents.”†*

\* Scottish Government and the Convention of Scottish Local Authorities ‘National standard eligibility criteria and waiting times for the personal and nursing care of older people guidance’ 2009.

† The Scottish Government ‘Statutory guidance to accompany the *Social Care (Self-directed Support) (Scotland) Act 2013*’, Section 7.5.

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This is a useful statement for advocates who may need to argue that social isolation is as important to tackle as physical risks to the person. A statement on promoting access for all stakeholders to information and advice about alternative sources of support out with formal or funded social services is also included this section.

Should an advocate identify the need, or be asked to challenge a decision on eligibility they should consider the following

*“The authority can take into account its overall resources when determining eligibility criteria. However once it has decided that the person’s needs are such that they require provision of services (i.e. are ‘eligible needs’) the authority cannot then refuse to meet those needs because of budgetary constraints”.\**

The Local Authority should take a strategic approach to the application of eligibility criteria; this should be in partnership with NHS boards, providers, user groups and carer groups. The Local Authority should take steps to involve people who use support, carers and partner organisations in the development of its policies and it should do so from the outset. It should publish the eligibility criteria/framework and it should do so in a clear and transparent way.

Advocates can support people in a variety of ways around eligibility and SDS, including:

- Supporting individuals and/or groups to challenge decisions that affect them
- Supporting SDS policy and practice development in their local area and nationally if appropriate, within the limits of their advocacy role
- Delivering awareness raising sessions on SDS and the role of advocacy, there is a training pack available through SIAA
- Supporting service user participation in local SDS planning and commissioning. Collective advocacy groups will be well placed to support participation in local planning and commissioning.

\* The Scottish Government ‘Statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013’, Section 7.5.

## Assessment

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Assessment is a legal duty already placed on Local Authorities. SDS legislation however places an additional duty on Local Authorities to enable people to co-produce their assessment. This also extends to NHS partners involved in the assessment or who are contributors to the assessment and plan.

The main focus in assessment had been on individual needs. SDS turns this around, placing the person and their strengths, resources and aspirations as the focal point. Needs are still linked to eligibility criteria however, which are used to determine whether the person is eligible for provision of services. Moving from needs to outcomes based thinking whilst at the same time applying the eligibility criteria has proved challenging for all stakeholders.

Outcomes are described as clarifying direction and purpose, whilst needs can be interpreted as barriers to achieving those outcomes with risks attached for short and longer term consequences.

*“An individual wants to feel more confident about spending time with their peers (outcome) but they have lost confidence due to difficulty with walking following a car accident (barrier or need). It may be that the individual is beginning to experience symptoms of depression due to isolation and that failure to support the outcome of spending time with peers may exacerbate deteriorating mental health (risk).”\**

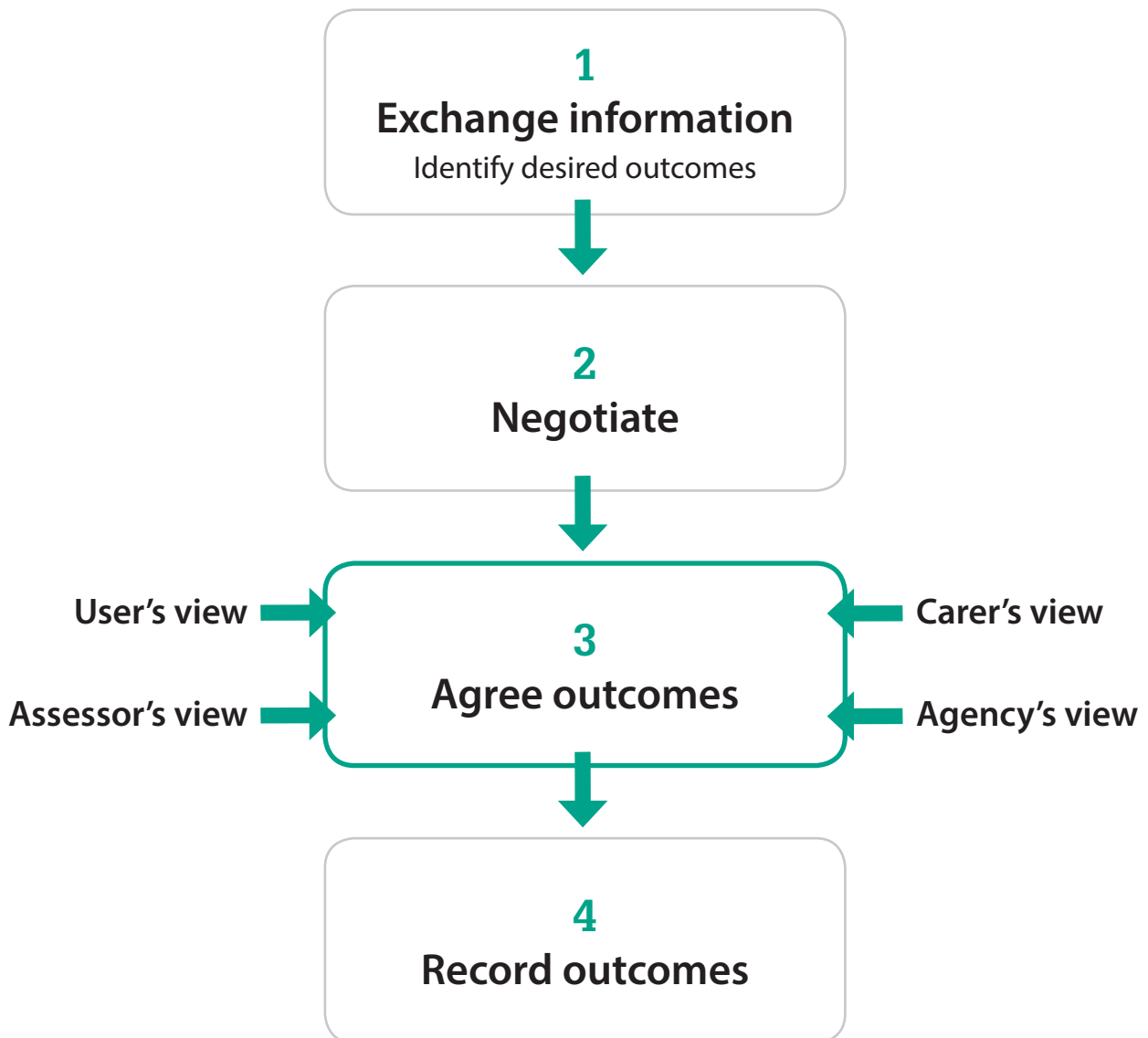
New models of assessment have been developed and/or adopted that are person centred in approach. That is, they take their direction from the person’s own aspirations and goals; viewing their strengths, abilities and strategies as equal contributions in the assessment of need and co-production of the support plan.

The exchange model of assessment has been adopted by most Local Authorities.

\* The Scottish Government ‘Self-directed Support: Practitioner guidance’, Page 9.

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## Exchange Model of Assessment





## Appendix 1 — Principles and Standards for Independent Advocacy

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### **Principle 1 Independent Advocacy puts the people who use it first**

- Standard 1.1** Independent advocacy is directed by the needs, interests, views and wishes of the people who use it
- Standard 1.2** Independent advocacy helps people to have control over their lives and to be fully involved in decisions which affect them
- Standard 1.3** Independent advocacy tries to make sure that people's rights are protected
- Standard 1.4** Independent advocacy values the people who use it and always treats people with dignity and respect

### **Principle 2 Independent Advocacy is accountable**

- Standard 2.1** Independent advocacy is accountable to the people who use it
- Standard 2.2** Independent advocacy is accountable under the law
- Standard 2.3** Independent advocacy is effectively managed

### **Principle 3 Independent Advocacy is as free as it can be from conflicts of interest**

- Standard 3.1** Independent advocacy cannot be controlled by a service provider
- Standard 3.2** Independent advocacy and promoting independent advocacy are the only things that independent advocacy organisations do
- Standard 3.3** Independent advocacy looks out for and minimises conflicts of interest

### **Principle 4 Independent Advocacy is accessible**

- Standard 4.1** Independent advocacy reaches out to the widest possible range of people, regardless of ability or life circumstances

## Appendix 2 — Advocacy is, advocacy is not

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### **Advocacy is...**

- about standing alongside people who are in danger of being pushed to the margins of society.
- about standing up for and sticking with a person or group and taking their side.
- a process of working towards natural justice.
- listening to someone and trying to understand their point of view.
- finding out what makes them feel good and valued.
- understanding their situation and what may be stopping them from getting what they want.
- offering the person support to tell other people what they want or introducing them to others who may be able to help.
- helping someone to know what choices they have and what the consequences of these choices might be.
- enabling a person to have control over their life but taking up issues on their behalf if they want you to.

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**Advocacy is not...**

- making decisions for someone.
- mediation.
- counselling.
- befriending.
- care and support work.
- consultation.
- telling or advising someone what you think they should do.
- solving all someone's problems for them.
- speaking for people when they are able to express a view.
- filling all the gaps in someone's life.
- acting in a way which benefits other people more than the person you are advocating for.
- agreeing with everything a person says and doing anything a person asks you to do.

## Appendix 3 — Glossary

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### **Action Plan**

A record of agreed objectives and actions that are set against timescales with indications of who is responsible for what.

### **Advocate**

An advocate helps people express their views and make informed decisions. An advocate helps people to find out information, explore options and decide for themselves what they want. Advocates can be a voice for the person and encourage them to speak out for themselves.

### **Advocacy**

The process of standing alongside another, speaking on behalf of another and encouraging the person to speak up for themselves. Advocacy can help address the imbalance of power in society and stand up to injustice.

### **Assessment**

The ongoing process of working out what the supported person's needs are and how they would like them to be met. It should involve the person, a professional (such as a social worker) and other people that the supported person chooses to help them, such as a family member or an independent advocate.

### **Brokerage**

Specialist support for a supported person to plan, procure and manage their own support arrangements under the Direct Payment option.

### **Budget**

A defined amount of money set aside for a particular purpose.

### **Care Programme Approach**

The Care Programme Approach (CPA) was developed originally for use at local level in Scotland for people with severe and enduring mental illness as a means of coordinating support.

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## **Changing Lives Report**

The 21<sup>st</sup> Century Social Work Review that involved extensive consultation across Scotland with those who use social work services and those who plan, deliver and commission services. Three over-riding conclusions were:

- Doing more of the same won't work.
- Social work services don't have all of the answers and need to engage with people as active participants.
- Social workers' skills are highly valued and increasingly relevant to the changing needs of society but need to be adapted.

## **'Child in need' (Section 22)**

Section 93 (4) *Children (Scotland) Act 1995* defines a child in need as: being in need of care and attention because;

- s/he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him/her services by a Local Authority
- her/his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided
- s/he is disabled
- s/he is affected adversely by the disability of any other person in her/his family.

## **Christie Commission Report**

The Christie Commission was established by the Scottish Government in November 2010 to develop recommendations for the future delivery of public services. The Commission, which was chaired by Dr Campbell Christie CBE, operated independently of government. A key theme is that the workforce must be able to provide effective services and support that are designed with and for people and communities and not delivered top down for administrative convenience.

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## **Commissioning**

The process by which authorities contract with providers of services, both internally and externally.

## **COSLA**

Convention of Scottish Local Authorities — the representative voice of Local Authorities.

## **Co-ordinated Support Plan (Child or Young Person)**

The co-ordinated support plan is a statutory document for children and young people with additional support needs. (There is specific criterion to establish who is eligible for a CSP).

## **Co-production**

*“Co-production involves the public sector and citizens working together in an equal and reciprocal fashion. It is more than asset based community development and service user design; more than consulting; goes beyond partnership, co-operation and collaboration. It can be all these things but it is more than the sum of its parts. Efficiently delivered and useful services rely upon both professional expertise and the assets and efforts of citizens. Co-production requires us to engage with the ‘core economy’ — i.e. all the resources and assets that are available to citizens in their everyday lives — wisdom, knowledge and skills from learning in its widest sense; relationships and capacity and emotion — to name a few. Effective services must be underpinned by co-production with individuals, family, community and civil society.” — ADSW*

## **Cultural Change**

Change that transforms individual and organisational attitude, value base and belief system to support the purpose of that change.

## **Direct Payment**

The council pay money directly to the supported person or a third party and they arrange their own support by employing care staff or buying services from one or more organisations, allowing for increased choice control and responsibility.

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## **Duty of Care**

Fundamental duty to promote welfare and protect from harm within Section 12 1968 Social Work Scotland Act.

## **Early Intervention**

Preventative engagement and involvement in relation to children, a collaborative approach to improving a child's life chances.

## **The Education (Additional Support for Learning) (Scotland) Act 2004**

The *Education (Additional Support for Learning) (Scotland) Act 2004* came into force in 2005 and was amended in 2009. The law sets out how pupils should be helped to get the right support to become successful learners and explains how parents can make sure this happens. Additional support for learning means giving any child in need of help or support so they can get the most out of their education and reach their fullest potential.

## **Eligibility Criteria**

The Local Authority's rules on who can get support. The rules are based on the level of risk to a person if they do not get support.

## **Equivalency Model**

A model being developed for determining budget allocation.

## **Empowerment**

Enabling, feeling permitted and self-determined.

## **Funded Support**

Support that can be costed and purchased, usually in social care and does not include the use of professional skill and time, for example, physiotherapist, social worker, occupational therapist nurse.

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## **‘Getting It Right For Every Child’ (GIRFEC)**

The GIRFEC approach is a Scotland-wide programme of action to improve the wellbeing of all children and young people. Its primary components include: a common approach to gaining consent and sharing information where appropriate; an integral role for children, young people and families in assessment, planning and intervention; a co-ordinated and unified approach to identifying concerns, assessing needs, agreeing actions and outcomes, based on the Well-being Indicators; a Named Person in universal services; a Lead Professional to co-ordinate and monitor multi-agency activity where necessary; and a skilled workforce within universal services that can address needs and risks at the earliest possible point.

## **Human Rights and Equalities legislation**

Self-directed Support and all public services are subject to Human Rights and Equalities legislation.

## **Independent Living**

*“Independent Living means all disabled people having the same freedom, dignity, choice and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life”* — Independent Living in Scotland (ILiS) This applies to all people.

## **Independent Service Fund**

Where someone wants to use their individual budget to buy supports from a provider:

- The money is held by the provider on the individual’s behalf
- The provider is accountable to the person
- The person decides how to spend the money
- The provider commits to only spend the money on the individual’s service and the management and support necessary to provide that service.



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## **Individual Budget**

Individual budget is the actual allocation of money for Self-directed Support given to people after an assessment. The way the budget has been decided should be clearly explained by the professional and the supported person should be given the chance to agree the budget before the support plan is put into action. The money can be combined from several funding sources that can be used to design and purchase support to meet eligible needs, from the public, private and voluntary sector.

## **Integrated services**

The term used to describe jointly resourced and managed services between organisations (such as health and social work) in order to achieve better outcomes for service user and best value.

## **IRISS**

IRISS — Institute of Research & Innovation for Social Services The Institute for Research and Innovation in Social Services (IRISS) is a charitable company who support social services by providing research, information and resources.

## **Joint Improvement Team**

The Joint Improvement Team (JIT) was established in late 2004 to work directly with local health and social care partnerships across Scotland.

## **Local Authority**

Local Authorities who have duties relating to arranging care and support in community care and children's services. Also known as a council.

## **My World Triangle**

As part of the GIRFEC "practice model" for assessing risk and need, the My World Triangle provides a starting point for considering what risks might be present in a child's life. It focuses attention on the three dimensions of a child's world: the child themselves; their family; and their wider environment.

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## **Outcomes**

Personal outcomes — Defined by the person as what is important to them e.g. It is the difference or positive impact any support plans or intervention have on a person.

## **Outcomes Focused Assessments**

Assessments that engage with people through skilled conversation in what matters most and why, and highlights what needs to change and why.

## **Person**

Adult, Child, Young person or Carer.

## **Personal Assets**

What a person brings through life experience, skills, knowledge, motivation, ideas and their own networks of support and capital.

## **Personalisation**

A way of thinking about support which puts the supported person at the centre of the process of working out what their needs are, choosing their support and having control over their life. Self-directed Support is an example of personalisation.

*“Personalisation enables the individual alone, or in groups, to find the right solutions for them and to participate in the delivery of a service. From being a recipient of services, citizens can become actively involved in selecting and shaping the services they receive.” — Scottish Government (2009) ‘Personalisation: A Shared Understanding’.*

## **Personal Assistant**

A person who is employed by the supported person, through a Direct Payment (Option 1), to provide support.

## **Person Centred**

Keeping an individual at the heart of any process that involves or impacts on them.

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### **Power of Attorney**

A power of attorney is a document appointing someone to act on and make decisions on the individual's behalf, for someone anticipating permanent incapacity or to deal with periods of temporary incapacity. This could be relevant to someone with a fluctuating condition. Powers of attorney can deal with financial and/or welfare matters.

### **Practitioner**

A worker, (usually but not always a professional) who will undertake *Self-directed Support Act 2013* responsibilities, which could include staff from partner agencies who are delegated by Local Authorities.

### **Re-ablement**

One way of describing rehabilitation, improving mobility or self-care skills.

### **Resource Allocation System (RAS)**

A Resource Allocation System is a means of deciding how much money people are entitled to, to be able to purchase the support they need.

### **Risk assessment**

An assessment of the risk to health, safety, wellbeing in a particular situation.

### **Risk Enablement**

Promoting positive risk taking

### **Screening Assessment**

The process of deciding how to action a referral and what priority is afforded to it.

### **Self-directed Support**

The 2013 Act; to ensure people are involved in their assessment and supported to make informed choices and collaborate in the design of their support.

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## **Statutory Principles of the *Social Care (Self-directed Support) (Scotland) Act 2013***

**Choice** — Fundamental principle of Self-directed Support. Choice means having options, alternatives, and opportunity to express preferences.

**Collaboration** — Statutory principle of the SDS Act — to work together, join forces, partnership and coproduction.

**Control** — A principle of new act, people having influence and having a say in, for example, how support is shaped.

**Informed Choice** — Statutory Principle of SDS Act — ensuring individuals have access to or are given enough information in an understandable format to enable them to make decisions and express choice.

**Involvement** — Principle of the Act; participation and taking part in assessment and support design.

### **Support Planning**

The complex process whereby information gathered through assessment, and involving the supported person, using their personal outcomes and choices to help define what is going to be most helpful. It will define how goals will be agreed and how people and agencies can work together to achieve them.

### **Statutory guidance**

The national guidance and rules which guide the Self-directed Support Act 2013 implementation in authorities.

### **Support Organisation**

This is an organisation that helps the supported person to access, plan and maintain the support they need. This could include assistance with assessment, information on SDS, advice, support in using individual budgets or other forms of SDS and support in recruiting and employing personal assistants and payroll.

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### **Support provider**

The person or organisation that gives the supported person the support they need. It could be:

- An organisation that provides staff and other support (also known as care providers or care agencies).
- A personal assistant/s
- The council or the NHS
- Or any organisation that provides a service

### **Transition**

In public service — defines the move from children to adult services.