**BUILDING CASTLES IN THE AIR**

**A critique of the Government’s consultation re National Care Service**

The Government’s view that its proposals have ‘*the potential to be the biggest public sector reform in Scotland for decades*’ strongly echoes those of the English Government’s claim that the 2014 Care Act represented the ‘*biggest shake up in 60 years’*. The Care Act would make the *wellbeing principle* social care’s driving vision. But it had no plan to manage the resource consequences. It is now widely accepted the Care Act has failed. The ‘wellbeing principle’ has sunk to being nothing more than a much derided slogan. Scotland’s equivalent of the *wellbeing principle* is ‘*getting it right for everyone’ (GIRFE).* But the decision to retain the failed eligibility process, against the recommendation of the Independent Review, means that the Government has no plan to manage the resource consequences.

The resource consequences of ‘Getting it Right For Everyone’

The Government plans to retain the eligibility system that determines need and allocates resources. The plan is to ‘*remove eligibility criteria in their current form*’ replacing a ‘*focus on risk’* with one ‘*enabling people to access the care and support that they need to lead a full life’.* In other words, the eligibility criteria will be expanded to all needs to ‘*get it right for everyone’.*

Under eligibility policies, needs declared eligible must be met. There are only two ways that expanding the eligibility criteria to meet all needs that call for public resources for a ‘full life’ can be delivered;

1. Project the cost and set budgets accordingly
2. Deliver social care without a budget

The first is undeliverable. The uniqueness of individual needs and the huge variability in the cost of meeting them makes the exercise arithmetically impossible. The consultation document affirms its commitment to a ‘*national distribution formula’* to identify and allocate resource levels. But current formulae get nowhere near to producing allocations either sufficient or equitable. Councils serving affluent communities, given they have far fewer service users per population than councils serving deprived communities, have allocations that allow them to provide **70%** more support to people[[1]](#footnote-1).

There is no known science that will make these formulae fit for the purpose of yielding budgets that are either sufficient or fair. Further evidence of the impossibility of reliably predicting the cost of meeting needs is at the individual level. Several years of intensive effort north and south of the border to find a formula that can relied upon for ‘up-front’ allocations has proven fruitless.

This leaves the second option above as the only realistic way to deliver the commitment to expand the eligibility criteria to all needs for a ‘*full life’*. This would, of course, be an ideal solution for the people who rely on social care.

However, the document makes no such commitment. Indeed, there are specific references that make it clear it will not happen;

1. There is a rather dark warning that ‘…..*public resources are still limited’* clearly indicating that resources will limit ambition, but without any attempt to say by how much or how any shortfall will be managed.

This passage goes on to say ‘*As we consider the feedback from this consultation all proposals will be assessed for value for money, to make sure the maximum impact is achieved from that investment’*. Value for money is in everyone’s interests. Services that do not provide value for money waste money which benefits no-one. However, *value for money* cannot ensure spending is to any given budget. The phrase *value for money* has become much derided as the sector has misappropriated it as a euphemism for cost cutting practices.

1. The document refers to the possibility of unmet need arising. Although it fails to set out any plans for responding to unmet need, it would not, of course, arise in the first place if there was a guarantee to meet all needs.

With the first option undeliverable and no intention to deliver the second, the Government has no plan to address the resource consequences of a ‘full life’ in order to ‘get it right for everyone’.

Funding

The consultation document commits the Government to a one-off 25% increase in funding. The document does not set out where this figure comes from. This appears to come from an SNP manifesto commitment.

It sounds generous. It would amount to about £800M given a current gross spend of £3.8BN of which £600K is income from charges to service users. This, however, is only £140M more than the £660M Feeley identified to address immediate shortfalls - fair pay and recovering pre-austerity spending levels. This would suggest the Government believes that just £140M - a 3.5% increase in current spending - is all that is needed give expand the eligibility criteria so that all older and disabled people in need of care and support have a ‘full life’. It can have no evidence base and is little short of absurd. Any claim it will be enough would be risible.

However, there is an even more fundamental and important point, which is to understand the chicken and egg situation. It cannot be known how much it will cost for all to have a ‘full life’ until and unless professionals are freed up to establish *need* for each case. Only then can the aggregated cost be known. There was no way of knowing what would be the cost of all to have the best possible health the medicine of the day the NHS could make possible in 1948 when the Government made the commitment.

This is the true meaning of the ‘1948 moment’ the First Minister said was required when she launched the Independent Review. Government would need to make the equivalent commitment to social care as was made to the NHS in 1948. All should have the best level of wellbeing their circumstances allows - a ‘full life’ - and the country will address the resource consequences subsequently at a pace it can afford. Political leaders can still choose the extent to which they can afford for people to have a ‘full life’, but they must do so transparently in full knowledge of what is required. The failed *planned centralism* through which social care is funded must be replaced with the more *organic* approach that has applied in the NHS since 1948.

The irony is that giving people a ‘full life’ will cost less than feared. It is not a question of simply adding more need on top of existing ‘eligible’ needs. It is a different concept of need. The resource led eligibility system deals in crises. Personal deficits are the currency of resource allocation decisions and so are incentivised. It’s a system that creates its own demand. A system built on people’s aspirations will maximise their strengths and so minimise demand on public resource. It is a long held promise, supported by research, but yet to be realised. It has been defeated by an assessment and support planning process driven by the eligibility process.

Absence of political transparency

Given social care’s current obscurity in the public mind, the document makes the important and inarguable statement that *‘transparency is paramount*’.

The document goes on to say what this means;

*‘Transparency of expectations and standards. Transparency of care plans between providers and recipient. Transparency between services to promote preventative and proactive care plans’*.

These are, of course, all *professional* responsibilities. Noticeable for its absence is any reference to *political* transparency. There is no reference to the need for transparency in the decisions about making funding available that will be sufficient to enable a ‘*full life’* for all.

A feature of the eligibility culture is the blurring of political and professional responsibilities. In the NHS responsibilities are clear. The *professional* responsibility is to identify individual needs; the *political* responsibility is to provide the resources to meet them to the best degree possible. This delivers on the 1948 promise that *resource* must follow *need*. It was this principle that allowed Nye Bevan to assure the medical profession that the NHS would never mean they would be agents of the State. The principle lives on today (albeit less well in the so-called Cinderella services of community and mental health).

The paper ‘*A paradigm to deliver a National Care Service rooted in human rights’* sets out how in social care the exact opposite applies - *need* follows *resource*. Politicians set whatever budgets and practitioners, through local managerial, convert those budgets available into ‘need’. This resource led definition of ‘need’ means politicians set budgets without knowledge of how much is actually required. But it means spending is always to budget and the political process is protected from information about the level of funding required for all to have the best quality of life possible their circumstances would allow. Social workers, unlike their counterparts in health, are very much agents of the State.

If the National Care Service is to be rooted in human rights, it must establish the same relationship between professional and political responsibilities as the NHS. Unmet need in social care should fulfil the same function as wating times in health - a safety valve at the operational level if need exceeds resource, and a weather vane for funding requirements at the strategic level. This fundamental change would allow Scotland to deliver an authentic vision at a pace the country could afford in exactly the same way as has been the case in the NHS since 1948.

Independent Living

Feeley recommended that *independent living* - *‘people of all ages having the same freedom, choice, dignity and control as other citizens’* - should define the ‘narrative’ and ‘purpose’ of social care. The consultation document rejects this. It restricts the meaning of *independent living* to its more traditional meaning. It describes the service model used by the small number of people (currently about 8% of service users) able to employ their own Personal Assistants.

Whilst GIRFE can conceivably be an authentic alternative to *independent living* if properly implemented as a vision with a plan to fund it, it is curious why Scotland should choose its own idiosyncratic vision when one already exists that has international credibility and is strongly advocated by its own communities.

Self directed support

The document proposes relying on a new ‘*Self-directed Support (SDS) Framework of Standards to drive a more person centred, human rights based approach’* in relation to practice in assessment and support planning. This approach is based on the thesis that failure to work in person centred, human rights based ways is a practitioner responsibility. This flies in the face of the evidence - such as the Inspection in 2019 of SDS[[2]](#footnote-2) - that such practice is the consequence of the systemic pressures created by the eligibility process.

Exhorting practitioners to practice in ways that conflict with the way the system requires them to practice is asking them to swim against an impossible tide. It is doomed to fail as it has for the life of the 10 year SDS strategy

Strategic commissioning

Feeley identifies a need for strategic commissioning to be transformed from one that delivers ‘task and volume’ provision to one that delivers person centred outcomes. The document’s plan to achieve this is with a new suite of practice standards. However competent such guidance might be, it is likely to suffer the same fate as the good practice guidance of the past decade in relation to assessment and support planning. It will be swimming against an overwhelming tide. ‘Task and volume’ contracts deliver the outputs from the resource led support plans the eligibility process generates.

Service led thinking

The document betrays an assumption that the system will perpetuate the prevailing resource led culture that the eligibility paradigm requires in two key areas.

* It commits to expanding a commitment to prevention through expanding preventative *services*. However, needs with a preventive capability are as unique to the individual as any other, requiring their own solutions, not being fitted into particular services. Enabling an individual to carry out a much valued social activity may cost little, say weekly attendance at a place of worship, but prevent emotional deterioration and thus dependency. An effective expansion of prevention will require needs that have a preventive capability being recognised within the mainstream assessment and support planning system in a way resource led eligibility regimes deny.
* It explores support for unpaid carers in terms of a right to short breaks, potentially set as a right at various levels. Important as short breaks are, a commitment to ‘*getting it right’* for carers should make no presumptions about the resources they require. Not least it should include providing the level of care and support to the person cared for to complement the carer’s ability and willingness to care.

Conclusion

Declaring a vision, however beguiling, without a plan to resource it is simply building castles in the air.

While introducing integration with children’s and justice services within the National Care Service might justify the claim of being ‘Feeley-plus’, it will not compensate for being ‘Feeley-minus’ in its plans for adult social care. The eligibility paradigm rendered adult social care a Cinderella service for the decades prior to the break up of social services departments. Whilst professionals will welcome the restoration of genericism, it will not deliver a human rights approach to social care. Feeley expressly warned against structural change being used as an alternative to cultural change.

The Minister for Care has said he is committed to creating a system that is ‘*universal, a springboard not a safety net, with human rights at the heart’*. Further he is committed to ‘*Scottish Ministers being accountable for adult social care support’*. If Government continues to expect the local delivery vehicles - whether local authorities or some other - to use eligibility to match spend to whatever budget they happen to set, these promises will not be honoured.

To be true to his promises, the Minister will need to create a system that allows professionals to identify and cost all needs for a ‘full life’ making best use of the money available, with Government accepting political responsibility to make the required resources available as and when it is able. The Human Rights Commission[[3]](#footnote-3) in England and Wales has recently recommended that Government should publish two yearly plans to address any gap in funding. This derives from the United Nations concept of the *progressive realisation* of the resources for the right to *independent living*.

Scotland’s recent history has shown it using its devolved powers to stand back from various initiatives in England. This has allowed it to learn the lessons of England’s errors, only to replicate them exactly. This includes eligibility based on four bands, use of resource allocation systems to empower services users through ‘choice’ and expecting direct payments to become the option of choice to give people ‘choice and control’. It is to be hoped at this most important juncture the pattern is broken, and Scotland departs from England and truly become a world leader in a human rights based approach to social care.

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1. A paradigm to deliver a National Care Service rooted in human rights - the+paradigm+change.pdf (squarespace.com) [↑](#footnote-ref-1)
2. Thematic review of self directed support, June 2019. Social Care Inspectorate. [↑](#footnote-ref-2)
3. Strengthening the right to independent living Strengthening the right to independent living | Equality and Human Rights Commission (equalityhumanrights.com) [↑](#footnote-ref-3)