A PARADIGM TO DELIVER THE

FEELEY VISION OF

A NATIONAL CARE

SERVICE ROOTED IN HUMAN

RIGHTS

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**SUMMARY**

The Independent Review of adult social care led by Derek Feeley recommended a change in the paradigm that reconciles needs and resources so as to enable human rights to be at ‘very heart’ of the system. Identification of need should no longer be **‘***hampered in the first instance by considerations of eligibility and cost’* with ‘*decisions over people’s heads’* and will become instead ‘*a process of co-production … that does not start from the basis of available funding’*.

The Government’s response, set out in a [consultation document](https://consult.gov.scot/health-and-social-care/a-national-care-service-for-scotland/) envisages retaining the eligibility process but expanding the criteria from the current focus on a ‘safety net’ to include all needs for a ‘full life’. It will be funded by a one-off increase in funding.

This paper sets out why the Government’s plan will not deliver the vision. This is not just because the amount left from a 25% up-lift once the money needed to address the immediate shortfalls Feeley identified will be a paltry amount. A paradigm that ‘*that does not start from the basis of available funding’* will mean the funding required to meet identified need require a continuous process, as is the case for the NHS, not a one-off decision. It will require a re-definition of the roles of professionals and politicians. As for the NHS, professionals should be responsible for identifying need and politicians for providing the resources to meet them.

The paradigm change set out in this paper would mean social care moving into a completely new world. This is illustrated at appendix 4.

The Government proposes a major re-structuring, with a return to genericism. Welcome as this might be, it will do nothing to change the paradigm that controls practice and the experience of service users.

Ambitious and visionary as the change of paradigm set out in this paper is, it is perfectly feasible. It will not require, in itself, any additional resource. What it will require is for political leaders to have the courage and integrity to liberate professionals to work in authentic partnership with older and disabled people in order to establish each person’s lived experience of their needs for the ‘full Iife’ the Government says it wants for them, and then to accept its responsibility to do all in its power to secure the resources thus shown to be required

It can only be hoped that through the consultation process, the Government will demonstrate the authenticity of its commitment to a system with human rights at its heart and make the changes to its plans required to deliver its declared ambitions.

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**INTRODUCTION**

The first and over-riding recommendation of the Feeley review is for a new paradigm;

***‘We need to shift the paradigm of social care support to one underpinned by a human rights based approach’* (page 4).**

Delivery of the paradigm should be the responsibility of a new ***national care service***.

Feeley describes well the practices at both the individual and strategic levels associated with the prevailing and the required paradigms;

* *A co-production and supportive process involving good conversations ….should replace assessment processes that make decisions over people’s heads …..that does not start from the basis of available funding* (Recommendation 7);
* *People should understand better what their rights are to social care and supports, and “duty bearers”, primarily social workers, should be focused on realising those rights rather than being hampered in the first instance by considerations of eligibility and cost* (Recommendation 4);
* *Where not all needs can be met that have been identified as part of a co-production process of developing a support plan, these must be recorded as unmet needs* (Recommendation 5);
* *Local assessment of carers’ needs must, in common with assessment of the needs of people using social care support services and supports, better involve the person themselves in planning support* (Recommendation 13);
* *Commissioners should focus on establishing a system where a range of people…are routinely involved in the co-design and redesign. This system should form the basis of a collaborative, rights based and participative approach* (Recommendation 32); and
* *A shift from competitive to collaborative commissioning must take place* (Recommendation 33).

These are familiar ambitions with which few disagree. They resonate with the original ambitions of the 10 year *Self Directed Support Strategy* of 2010. However, despite massive national effort, both the need for and the content of the Feeley report testifies to the strategy having not succeeded[[1]](#footnote-2).

The Government’s plans in response to Feeley focus on structural change with a return to genericism, combining adult, children and justice services. However, the dysfunctional eligibility paradigm flourished within the generic structure of the past no less than under the current structures. There is no reason to believe a return to genericism will make any difference.

If the edict that ***form follows function*** is to be applied, decisions about structure should be parked until there is clarity about how the functions within the prevailing paradigm work and how they need to change under a new paradigm.

The same is true for workforce development. Strategies to bring about progressive, person centred practices are doomed to fail if it is the prevailing paradigm that is demanding the regressive, resource led practice described by Feeley. Without Feeley’s paradigm shift the SDS standards recently published by Scottish Government[[2]](#footnote-3) are no more likely to succeed than the efforts of the past 10 years

But while Feeley describes the practices associated with both paradigms, he does not identify how the prevailing one actually operates or the new one should. It is a gap that must be filled if the vision of a human rights based system is to be realised.

This paper seeks to fill that gap. It has three sections;

1. the prevailing paradigm
2. a new paradigm rooted in human rights
3. the functions required at national and local levels to deliver the new paradigm

The core principles apply to publicly funded support for unpaid carers of people in need of resources to support them as to the people they care for.

Why a paradigm is needed in social care

Social care poses unique economic demand and supply challenges. *Demand* comes in as many shapes and sizes as there are people who need care and support. *Supply* comes in the form of a set budget. A model is required that matches demand and supply.

But the paradigm has to do more than that. It has to deliver two further political objectives;

* ***Sufficiency*** of resources, meaning that all needs agreed to be important are met
* Fairness through ***equity*** of support between individuals

Delivery of these two objectives will secure the necessary ***political and public buy-in***.

**A THE PREVAILING ELIGIBILITY PARADIGM**

A model is required that matches demand and supply.

The prevailing paradigm is underpinned by the fundamental assumption that ***social care needs can be classified and grouped according to risk and the cost of meeting any given grouping can be predicted with the accuracy required to set a sufficient budget.***

The level of risk chosen can be explicitly defined by transparent ***criteria*** which thus defines the options for politicians and senior managements to set the ***eligibility threshold*** above which all needs are met by social care funding and below which none are. It can be called the *eligibility paradigm*.

**All eligible needs met fairly and meeting public duty of care**

**Needs to be met from public funds defined by eligibility criteria**

**Council budgets set to be sufficient to meet all eligible needs**

**THE THEORETICAL ELIGIBILITY PARADIGM**

Although reviled by many practitioners and service users, the paradigm has buy-in across the political spectrum.

* It calms the fears of those who believe social care demand is a bottomless pit posing a serious fiscal risk. It puts the lid very firmly on demand and with no exposure to a funding gap.
* It offers hope to those who are ambitious for social care and believe the appropriate expansion of the eligibility criteria with funding to follow will create the right level of service

In addition, the guarantee of all needs deemed ‘eligible’ being met empowers service users assertive enough and practitioners skilled enough to secure higher levels of resource for individuals.

However, the model runs into significant trouble. The underpinning assumption – that needs can be grouped and the cost predicted - is simply not correct;

* Social care needs are unique to the individual. They arise from the complex interplay of a host of factors each of which are highly variable. They include the nature and severity of the impairment; how long the person has lived with it; the personal resources the person brings; the personal resources of family and friends; physical living environment; community and neighbourhood resources.
* The cost of meeting individual needs is also hugely variable, from a few hundred pounds to several hundreds of thousands of pounds a year
* There is no relationship between the level of risk and the cost. It could cost very little to provide a meal a day to keep someone alive but a great deal to enable a social life.

The empirical evidence illustrates the failure of theoretical eligibility paradigm to achieve what it claims.

* Appendix one uses *spend per service user* as the best measure of level of support and therefore of equity. Within a national policy that allows each council to decide how many of four bands of risk – *critical, substantial, moderate and low* – it will accept as ‘eligible’ there is a huge **70%** disparity. But there is no relationship with declared eligibility criteria. Of the five highest spending councils four say they meet only *critical* and *substantial* needs. Of the five lowest spending councils, two say the meet *critical, substantial,* and *moderate* and two even say they meet all four levels. This the councils offering the least support claim to have more generous eligibility criteria and vice versa.
* No formula to predict demand within a community and cost it from a zero base has ever been found. Nor is there any prospect one will. Even at the individual level, despite massive investment of time and money in both Scotland and England, no algorithm that predicts the cost of meeting an individual’s needs with any degree of validity to deliver a ‘resource allocation system’ has been found.

Strategic projections of demand are invariably based on anticipated demographic changes. To be valid, they make the assumption that the base point is sound. There can be no confidence that is true. Indeed the opposite is the case. Such projections play an important role in providing a warning about what lies ahead. However, they cannot provide a zero based assessment of needs and costs.

Nonetheless, if the theoretical model is deeply problematic, the binary ‘eligibility’ world where needs are either in or out is very real. But it operates quite differently in actual practice from the theoretical.

**THE ACTUAL ELIGIBILITY PARADIGM**



The *actual* paradigm is highly successful in delivering control of spend to budget. It reduces ‘need’ to resource. It does have the ability to deliver a reasonable level of equity *within* the service user community of each budget holder. However, each council - and each budget holder within each council – necessarily functions in isolation. This accounts for the great scale of disparity despite on paper appearing to have the same eligibility thresholds.

The *theoretical* and *actual* models co-exist. The theoretical model is the public face while the actual model functions *covertly*. The function of the *actual* paradigm is to ensure spend is within budget. The function of the *theoretical* paradigm is to provide the *appearance* of decision-making being equitable, sufficient and fair. The duality is concealed by budget holders describing their decisions using the language of their council’s theoretical eligibility criteria. This sustains public perception that decisions are policy led, transparent and fair. The theoretical model provides the shop front that conceals behind it a grimmer reality..

The dominance of the *actual* paradigm accounts not only for the disparity set out in appendix one, but, crucially, also for the following range of dysfunctional practices, including many that Feeley identifies in his report:

* Depersonalisation. Controlling the flow of need to match a budget requires ‘need’ to be a). *standardised* and b) expressed in *service* terms. Feeley notes how assessments start with ‘*considerations of eligibility and cost*’ when they should start with need (page 100).
* Disempowerment – the council necessarily has to retain control of what is deemed to be ‘need’. Feeley notes how decisions are taken ‘above people’s heads’ (page 100).
* Dysfunctional strategic commissioning. The eligibility paradigm drives councils to seek services that meet as many ‘eligible’ needs at the least cost possible. This is delivered through task and volume contracts best secured through price driven competitive tendering as Feeley observes (page 103).
* Crisis not prevention. The cliff edge nature of the eligibility decision requires needs to be seen in terms of risk, crisis and how bad life can be in order to secure resources. Prevention is consigned to the margins, mostly through specialist services. It fails to recognise that prevention occurs mainly through the appropriate meeting of long term needs. The balance between prevention and crisis is not as most people believe it should be. This is despite Scotland spending **26%** more per head of population than England on adult social care in 2018-19[[3]](#footnote-4). The councils that spend the most per service user do not claim to be able to spend any more on prevention than those that spend the least.
* Poor value for money. The focus on crisis results in poor value for money. The councils that spend the most do not achieve any better outcomes. A large scale study by Ipsos Mori[[4]](#footnote-5) in England using annual public health survey data found that people whose needs were met by services rated their wellbeing no higher than those whose needs were unmet. Whilst there is little dispute that the system is leaving large swathes of needs unmet, it cannot be known the extent to which the system is underfunded until it is known how much of the **£3.3BN** currently spent in Scotland is meeting needs created by the eligibility paradigm itself. It is an irony that when the purpose of the eligibility paradigm is to contain demand it actually creates it.
* Public perception. The public are bemused as to what social care does and what it is for. There is no public understanding of what an ‘eligible’ need is or looks like.

**B A PARADIGM TO DELIVER HUMAN RIGHTS**

Feeley recommends that *Independent Living,* as defined by the United Nations, will provide the human rights element[[5]](#footnote-6). The UN definition is quite different from its original meaning given it by the disability movement in the 1980’s. It had a wider meaning in relation to engagement in society and in terms of social care support described a specific service model whereby the person was provided with money so they could manage their own support system (now enshrined in Scotland as Option One in Self-Directed Support). The UN definition in contrast is not specific to any service model (see appendix two). It is specific to people in need of care and support and includes all people whether living in their own home or communally. *Independent living* can be seen as the standard of *wellbeing* to which all should be supported to secure.

If all needs for *independent living* are to be identified, the resource question must be addressed. The utopian option would be for government to guarantee the resource to meet all needs. Given the unpredictability of the cost, social care would have to be delivered outside of a budget on an ‘open cheque’ basis. No eligibility paradigm would be required. Whilst it would self evidently be the preferred solution for older and disabled people, it is highly improbable any government could make such a guarantee.

Therefore Feeley is correct to say a new paradigm will be required. The paradigm must assume that social care budgets will be set as all public service budgets are set. This is through a highly pragmatic and competitive process. It cannot be expected that other public services will or should stand aside to allow social care to have first claim on public resources.

The key to reconciling demand and supply is to recognise that *independent living* has two elements;

1. the identification and costing of all needs for *independent living*
2. the provision of the resources to meet them.

The first can be guaranteed as of now, as a right and regardless of the size of the budget relative to needs within the community. The UN, however, is clear that the second, the resources required, is *not* a legal right. They should be subject to ‘*progressive realisation’.* The UN Convention requires states to take ‘*concrete steps’* toward progressive realisation.

The first and inescapable *concrete step* would be to know the scale of need and the resources required to meet it.

This would place social care on the same footing as the NHS. We generally expect NHS clinicians including GP’s to identify what is wrong with us and to the best of their knowledge what modern health treatments we might require. If the treatment is not immediately available, we may have to wait. Waiting times provide a safety valve operationally when need exceeds resource and create pressure strategically to increase resources. Unmet need would perform the equivalent functions in social care. Whilst standard treatments – e.g. hip replacement - lend themselves to waiting lists in the NHS, this is not the case in social care. At the individual level, the ability to meet unmet need would be subject to the regular reviewing process. At the strategic level, aggregation of unmet need will inform the system of funding required to meet all needs as Feeley recommends (page 100).

The process works well in the NHS given a public consensus that the base position is broadly sound. Whilst there are boosts and pull backs depending on political will, the process is one of *incrementalism*.

**Level of need met and unmet informs decisions about overall funding level and its equitable distribution**

**Greatest extent of *independent living* for the greatest number of people within available resources**

**Level of funding set in the context of public spending priorities informed by cost for all to have *independent living***

The new paradigm in social care would inherit a chaotic and inequitable base position. It would require an initial period of time to achieve confidence that the ‘zero base’ is sound upon which incremental changes can take place subsequently.

**A HUMAN RIGHTS PARADIGM**

The Feeley report mentions in several places the need for better data, information, and outcome measures. This is seen as one of several key priorities for the proposed National Care Service. It is essential the transition from the current paradigm to the new creates an assessment process that delivers data on people’s needs, support requirements and which can be met and which cannot. This will require recording practice to be reviewed to enable IT systems to be able to capture this information in a form in which it can be aggregated and fed back to influence budget-setting, commissioning and policy development.

**C THE FUNCTIONS REQUIRED AT NATIONAL AND LOCAL LEVELS**

Six functions would be required at the national level.

1. Government will take responsibility for declaring a common standard of wellbeing against which the needs of all people in need of care and support will be identified and costed.

Feeley is clear the standard should be *independent living* as defined by the UN.

1. Government needs to know the overall level of funding required for all to experience the declared standard of wellbeing.

Social care must be able to compete on equal terms with all other public services for public funds. Government must therefore know what the cost is. The circularity of need being defined by resources under the eligibility model means this is never known.

1. Government must commit to eliminate the gap between needs and resources.

It would not be feasible to expect Government to guarantee all needs will be met in the short term, but can be expected to commit to the *progressive realisation* of the resources required. It would be, in reality, a perpetual process as it is for the NHS.

1. Government must ensure the equitable distribution of resources between localities.

Equity should be measured by comparative levels of needs met. The extent to which need is or is not met in a locality results from the level of resource in relation to level of needs. Government must monitor the levels of need met and unmet and adjust allocations between localities accordingly over time.

1. The service should be funded from general taxation only.

Under a dual system of funding from local taxation and national taxation, the commitment to equity would mean national funding would have to compensate for any shortfalls in local funding. This will create an incentive for local funding to minimise their contribution and so would become unworkable.

1. The national inspection regime to focus on delivery of the local commissioning functions.

Central government will depend upon the local commissioning functions operating effectively.

The local functions

1. Strategic commissioning to put in place a network of provision with the flexibility and responsiveness to deliver *independent living* cost effectively

As Feeley describes, this will call for the end of competitive, price based tendering. It must be replaced with collaborative, partnership based work between commissioners and providers. It will not matter to the system where providers are located. The only requirement is to deliver flexible and responsive services that achieve *independent living* for service users making the best use of resources.

1. For individuals, the assessment and costing of all needs for *independent living* through the best use of resources.

Having a common standard of wellbeing against which needs are identified will be the basis of national consistency. It is also important, for fairness and equity, to be confident that people are making the best use of resources. Whilst needs and outcomes must never be compromised in the choice of resources, neither is there any merit in committing more resource than is required to meet need and achieve the related outcomes.

1. A budget management system that ensures the greatest degree of *independent living* for the greatest number of people within the available resource

The assessment process will identify all needs and support requirements for all to experience *independent living.* However, it is unlikely that level of resource will be available. Case by case decisions will continue to be required to deliver affordability. However, those decisions must be made in the context of *outcomes* and *value for money* and no longer *eligibility* of need.

1. Aggregate and report levels of need met and not met

‘Hard’ information about levels of need and unmet need from the individual assessment process will be required for national budget setting purposes, both in terms of overall funding and fair distribution. It will also be required for setting budgets between local budget holders. In addition to the ‘hard’ data, ‘soft’ information from the assessment process will also be very important in two ways. It can inform strategic commissioners about any changes required in the network of provision. It will also provide Directors with more human information about need and funding requirements to influence the democratic process.

Delivering these functions will also have a profound impact on the roles of political leaders, service users and unpaid carers, senior managers, strategic managers, social workers and budget holders. These changes are set out at appendix 3.

If the direction of travel this high level analysis proposes finds favour, a ‘technical annex’ will be prepared that sets out the practical changes required in relation to practice, financial control, strategic commissioning, information technology along with operational and strategic reporting requirements.

**CONCLUSION**

Feeley describes a constellation of practices and behaviours that would be associated with a system rooted in human rights that is so different from those that prevail as could be thought of as two worlds. The key to which one is the dynamic between needs and resources. Appendix four offers a graphic illustration.

The concept of ensuring spend is to budget by the managerial control of the definition of need is intrinsically incompatible with human rights. Eligibility criteria should be abolished as the means to control spending.

Political leaders will have to sacrifice the comfort the eligibility paradigm gives them. They will have to be prepared to know the cost of enabling all to have the ‘full life’ the Government says it wants them to have. They will have to be prepared to take the first measured steps without knowing how much it would cost for all in need of care and support to experience the vision of how life should be. It is neither known nor knowable before implementing the new paradigm.

But they may be pleasantly surprised. A system built on people’s aspirations and strengths is likely to call for a lot less public funding than one that depresses them by building on their fears and deficits.

Parliament in 1948 took the first steps to create the NHS without knowing how much it would cost in future. For social care to have its 1948 moment, the Scottish government will need to do the same.

**APPENDIX ONE**

**THE EFFECT OF THE ELIGIBILITY PARADIGM ON SPEND LEVELS**

Examining the pattern of spend and demand evidences how the eligibility paradigm works in practice.

The spend per service user is the best proxy for the level of support each individual is offered and therefore the degree of equity between councils. It is well known that there are gross level of disparity between council areas.

Diagram one – average spend per service user

The 5 five highest spending councils (excluding Shetland and Eileanan as outliers) spent an average of **£23K** per service user and the 5 lowest just **£13.5K** - **70%** more.

However, the differences are not explained by eligibility criteria. Table one shows what each councils say on their website about their eligibility threshold. There is no discernible pattern to explain the disparities. Councils spending the most have the most restrictive criteria and councils spending the most expansive criteria.

If formal criteria do not explain the differences, what does? This can be explored by examining how much of the disparity is due to differences in budget – the numerator - and how much to the number of service users – the denominator. Both need to be pegged to size of population served to make comparisons meaningful.

Diagram two shows that comparative generosity of budget - measured by *spend per head of population* - accounts for some of the disparity in support to service user. The 5 councils offering the most support as in diagram one spent an average of **£808** per 1,000 population and the five lowest **£748.** Thus relative generosity of budgets account for about **12%** of the disparity.

Diagram two – spend per head of population

However, diagram three shows the much larger difference is in the number of service users per head of population. The 5 councils providing the highest levels of support in diagram one served just **31.2** people per 1,000 population and those serving the five highest **57.6**, which is **84%** more.

Diagram three – number of service users per head of population

Public Health Scotland identify relative deprivation as the reason for the large disparity in numbers of service users;

‘*People living in the more deprived areas have substantially greater provision …….than people living in the more affluent areas’*

PHS make the supposition that, for socio-economic reasons, the number of people in need of care and support increases as deprivation increases. Charging is also a likely factor. There will be a greater number of people in more affluent communities not passing the means test.

However, this is unlikely to be the full explanation. Dundee and Glasgow, for example, are both de-industrialised cities with high levels of deprivation, and both spend well above the average per head of population. Yet Glasgow appears to concentrate that spend on fewer people per head of population, presumably people with very high levels of need, and therefore its spend per person is high. Dundee by contrast spreads the spending more thinly over a larger number of people per head of population. Their eligibility thresholds are similar but appear to be interpreted very differently on the ground, but also *possibly* in relation to preventative strategies, although that would have to be explored further using more local data and also related to outcomes

Conclusions

Budget holders operate in a policy context which requires them to meet all needs they deem to be eligible. They have to reconcile this with the fiduciary duty to spend within budget. They operate at the intersection of demand and supply. Although budget holders within each council have in common the parameters imposed by the level of funding their council has made available relative to the population served, budget holders operate independently. The intersection of demand and supply is unique to each budget holder. They use their Council’s formal eligibility criteria to describe their decisions. However, each budget holder has their own unique eligibility threshold. Even where these appear to be similar on paper, they are interpreted differently on the ground by budget holders and practitioners.

**CORE DATA FOR 2018/19[[6]](#footnote-7) RANKED FROM LOWEST TO HIGHEST SPEND PER SERVICE USER**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Spend per service user** | **Service users per 1000 pop 18+** | **Spend per population 18+** | **Eligibility threshold as stated on website** |
| Dundee City | **£12.9K** | **73.1** | **£943** | **Critical, Substantial, Moderate and Low** |
| Aberdeen City | **£12.9K** | **50.5** | **£652** | **Emergency/urgent or high** |
| Inverclyde | **£13.5K** | **59.5** | **£805** | **Critical, Substantial, Moderate and Low** |
| Angus | **£14.1K** | **50.6** | **£714** | **Critical, Substantial, Moderate** |
| Perth and Kinross` | **£14.1K** | **44.4** | **£628** | **Critical, Substantial, Moderate** |
| E. Dunb’shire | **£14.3K** | **51.1** | **£733** | **Critical and substantial** |
| Renfrewshire | **£14.4K** | **49.3** | **£711** | ***Not yet found*** |
| Highland | **£14.8K** | **35.6** | **£527** | ***Not yet found*** |
| East Ayr | **£15.8K** | **45.7** | **£722** | **Critical, Substantial, Moderate and Low** |
| Moray | **£15.9K** | **41.0** | **£654** | **Critical and substantial** |
| Stirling | **£16.5K** | **39.3** | **£649** | **Critical and substantial** |
| Falkirk | **£16.7K** | **48.9** | **£818** | **High** |
| W. Lothian | **£17.4K** | **35.7** | **£620** | **Critical and substantial** |
| East Lothian | **£17.4K** | **40.1** | **£699** | **Critical and substantial** |
| Aberdeenshire`` | **£17.5K** | **46.3** | **£809** | **Critical, Substantial, Moderate** |
| N. Ayrshire | **£17.7K** | **50.6** | **£899** | **Critical and substantial** |
| Clack | **£17.9K** | **41.3** | **£741** | **Critical, Substantial, Moderate and Low** |
| W. Dunb’nshire | **£18.5K** | **49.9** | **£922** | ***Not yet found*** |
| Dum and G | **£18.9K** | **40.1** | **£758** | ***Not yet found*** |
| South Ayrshire | **£19.5K** | **46.5** | **£910** | **Critical and substantial** |
| South Lanarkshire | **£19.8K** | **36.6** | **£726** | **Not yet found** |
| Midlothian | **£19.9K** | **37.0** | **£736** | **Critical and substantial** |
| East Ren | **£20.4K** | **36.4** | **£742** | **Critical and substantial** |
| Scottish Borders | **£20.6K** | **42.4** | **£875** | **Critical and substantial** |
| Fife | **£20.9K** | **38.7** | **£808** | **Critical and substantial** |
| Argyll and Bute | **£21.2K** | **46.0** | **£975** | **Critical, Substantial, Moderate and Low** |
| Edinburgh | **£22.9K** | **31.4** | **£719** | **Critical and substantial** |
| N. Lanarkshire | **£23.9K** | **30.0** | **£719** | ***Not yet found*** |
| Glasgow | **£26.0** | **31.5** | **£822** | **Critical and substantial** |
| Shetlands | **£31.7** | **53.5** | **£1696** | ***Not yet found*** |
| Eileanan | **£45.5** | **27.4** | **£1244** | **Critical and substantial** |

**APPENDIX TWO**

**UNITED NATIONS DEFINITION OF INDEPENDENT LIVING – ARTICLE 19**

Independent living has taken on several meanings. To some it still refers to the original meaning of support through Personal Assistants employed by the service user using a direct payment. It is also used simply to mean living in the community and not in residential care. However, Article 19 gives a much broader meaning as follows.

‘*States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:*

*(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*

*(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*

*(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs’.*

This is a definition that embraces all people in need of care and support, regardless of age or impairment and whether living in their own home or communally.

The General Comments to the Convention also addresses the status of Article 19 in terms of rights.

*‘The obligations of the States parties must reflect the nature of human rights as either absolute and immediate applicable (civil and political rights) or progressively applicable (economic, social and cultural rights). …… Progressive realisation entails the immediate obligation to design and decide upon concrete strategies, plan of actions. Progressive realization of economic, social and cultural rights, States parties must take steps to the maximum of their available resources*.

*The right to access individualised assessed support services, is an economic, social and cultural right’*

There would be a clear argument that assessing and costing all needs for *Independent Living* with a commitment to setting budgets having regard to the full cost of enabling all to have *Independent Living* would constitute a credible *concrete plan of action*.

**APPENDIX THREE**

**KEY ROLES IN ELIGIBILITY AND HUMAN RIGHTS PARADIGMS**

|  |  |  |
| --- | --- | --- |
|  | **HUMAN RIGHTS PARADIGM** | **ELIGIBILITY PARADIGM** |
| **Political leaders** | **Provide funding armed with knowledge as to the impact various levels of funding will have on wellbeing of older and disabled people** | **Provide funding without knowledge of level of need for wellbeing amongst older and disabled people** |
| **Directors of Social Work** | **1). Secure greatest level of *independent living* possible within resources 2). Sensitise public and political leaders re: wellbeing issues for older and disabled people, the meaning of *independent living* and role of social care in securing it 3). Inform budget setting process of resource requirements to enable *independent living* promoting case to eradicate unmet need.** | **1. Ensures ‘need’ always matches budget whatever its size in relation to needs of the community served. 2. Makes demands on public and political leaders for resources based on negative narrative and threats - risk to life and limb, legal obligations, undermining of NHS objectives and market collapse.** |
| **Strategic Commissioners** | **Develop partnerships with providers that support them to deliver flexible and responsive services for their areas - geographic or specialist - of responsibility.** | **Tendering process based on price competition to contract with providers to deliver the highest volume of service at the least possible cost.** |
| **Service users and unpaid carers** | **Control definition of their needs, outcomes and support requirement subject only to resulting in *independent living* whilst making the best use of resources** | **Source of information to enable social workers to identify eligible needs and support requirements, other than the minority who are able to manage their own support plan via a direct payment (option one).** |
| **Social workers** | **Support service users and carers to articulate their own needs, outcomes and support requirements, test their views for fitness for purpose of enabling independent living making the best use of resources, and support them to develop their view so they are fit for purpose** | **Identify eligible needs and the supports required to meet them.** |
| **Budget managers** | **Make case by case decisions about *affordability* of meeting assessed needs based on securing best *value for money* – i.e weighing importance of outcome and cost** | **Makes case by case decisions to determine *eligibility* in order to ensure spend comes within budget.** |

VISION OF HOW LIFE SHOULD BE

**APPENDIX FOUR**

**CHANGING THE PARADIGM - TWO WORLDS**

Feeley describes a constellation of practices and behaviours that would emanate from a system rooted in human rights so different from that which prevails as to be thought as comprising two different worlds. The key to which one is the dynamic between *needs* and *resources.* The prevailing paradigm puts need before resource making it *resource led*. Its core function is the efficient distribution of the available resource. A world rooted in human rights reverses the dynamic and creates a *person centred* world. Its function is to make lives as they should be. The polarity of the *needs-resources* axis is like a portal that determines which world prevails.

EFFICIENT DISTRIBUTION OF RESOURCES

**Need expressed in terms of tasks and services**

**No unmet need**

**Spending controlled by eligibility**

**Budget set in context of competing pressures only**

**NEED PRECEDES RESOURCE**

**Unmet need identified**

**Services commissioned to deliver outcomes**

**Spending controlled by affordability**

**Need expressed in terms of how life should be**

**Budget set informed of resources required for lives to be as they should**

**PERSON CENTRED**

**RESOURCE LED**

**Resources allocated to deliver best value for money**

**Resource allocated to deliver equity**

**Services commissioned to deliver tasks**

**RESOURCE PRECEDES NEED**

1. *Although the 2019 Social Care Inspectorate report “Thematic review of self-directed support in Scotland” led the Scottish Government to believe that some councils had ‘embedded’ SDS well, the inspections of the 6 councils failed to identify the extent to which the good experiences of service users were due to self managing their support through a direct payment. Whilst described as ‘option one’ under the SDS Act, this is a provision that has been successful for the small minority with the personal resources to self manage since the 1996 Direct Payments Act* [↑](#footnote-ref-2)
2. . [https://www.gov.scot/publications/self-directed-support-framework-standards-including-practice-statements-core-components/](about:blank) [↑](#footnote-ref-3)
3. Social Work Scotland, personal communication, 19.05.21 [↑](#footnote-ref-4)
4. Unmet need and wellbeing in social care, Ipsos Mori, 2017 [↑](#footnote-ref-5)
5. See for example Feeley’s proposed definition of social care on page 4 of his report, and other key statements such as “Social care support is the means to an end, not an end in itself. The end is human rights, wellbeing, independent living and equity, as well as people in communities and society who care for each other” (page 19) [↑](#footnote-ref-6)
6. Data for service users taken from ‘people supported’ on PHS website [dashboard](about:blank) and includes home care, care home, day care, housing support and meals. Orkney data is missing. Data for gross spend taken from Local government finance statistics - gov.scot (www.gov.scot) [↑](#footnote-ref-7)