



Law Society
of Scotland

Written Views

Social Care Inquiry

February 2020



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Health and Sport Committee's Social Care Inquiry call for written views.¹ The sub-committee has the following comments to put forward for consideration.

General Comments

We anticipate that the Health and Sport Committee will receive many important and valuable contributions to this Inquiry from individuals and organisations with a significant range of different competences. We have therefore limited this response to one important matter directly within the competence of the Law Society of Scotland, and have restricted our answer to the first question of the call for views only. Our response should be read in this context.

How should the public be involved in planning their own and their community's social care services?

We recommend that as a matter of policy, and not necessarily requiring legislative change, Scottish Government could helpfully take a lead in encouraging people to plan in advance, in an integrated manner, for meeting their own possible future care needs.

Integrated individual planning should include a range of matters, addressed in a coordinated manner, including but not limited to legal measures. This may include one or more of the available techniques such as: granting a power of attorney; issuing an advance directive; appointing a supporter; entering a co-decision-making arrangement; and preparing a record of wishes and feelings. We would be willing to work

¹ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113970.aspx>

with the Health and Sport Committee and others to further develop proposals for such an integrated individual plan.

Such an approach would strongly accord with the importance attached in the human rights sphere, and in particular in the work of Council of Europe, to promoting the principles of autonomy and self-determination: see for example Principle 7 of Council of Europe Recommendation (99)4 on principles concerning the legal protection of incapable adults;² Principle 1 of the Council's Recommendation (2009)11 on principles concerning powers of attorney and advance directives for incapacity;³ and Principle 9 of the Council's Recommendation (2014)2 on the promotion of human rights of older persons.⁴ See also other international human rights work on the rights of older persons, including proposals for a United Nations Convention on the Rights of Older Persons.⁵

Promoting such an approach could build on existing experience such as that of the 'mypowerofattorney' campaign, and related research demonstrating the benefit to the public purse where people have planned adequately in advance for possible future decision-making needs.⁶ The wider planning suggested above would enhance those benefits, including by removing uncertainties about the wishes of individuals. Where individuals remain capable of making their own decisions they are likely to benefit from having thought through their views in advance, without having to 'start from scratch' in the face of immediate pressures in a situation of crisis.

For further information, please contact:

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² https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e303c

³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c0b39

⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c649f

⁵ See for example: <https://www.ohchr.org/EN/NewsEvents/Pages/RightsOfOlderPersons.aspx>

⁶ See for example: <https://academic.oup.com/ageing/article/46/4/659/2926035>; [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)32992-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)32992-6/fulltext); and <https://journals.sagepub.com/doi/full/10.1177/1355819618814055>