



SCLD Supported Decision Making Event Summaries

In August and September 2024, SCLD held two online workshops to discuss how Supported Decision Making (SDM) can be embedded in Scotland. The first event focused on current practice in Scotland, controversies and issues and heard the views of people with learning disabilities and family carers. The second event focused on current proposals for reform of the Adults with Incapacity (Scotland) Act and Mental Health law reform more generally.

The events were attended by policy professionals, people with learning disabilities, family carers and other interested parties.

We have provided short summaries of the key themes from the events below.



Supported Decision Making Event 1 August 2024

Key Themes

Respect and Understanding of People with Learning Disabilities:

Participants with learning disabilities expressed frustration about repeatedly having to describe their disabilities to professionals who lacked understanding.

There is a widespread lack of understanding of what a learning disability is.

The term "incapacity" was seen as offensive by some, highlighting the need for more respectful language in both legal and medical contexts.

Guardianship and Current Legal Frameworks:

Guardianship was recognised as potentially beneficial if the guardian knows and empowers the supported person. However, at the moment it is often misused, with local authorities requiring guardianship for services like Self-Directed Support (SDS) packages.

Current Adults with Incapacity (AWI) legislation has provisions for promoting choice but is rarely applied effectively. There is a consensus that the current legislation is based on the medical model of disability, focused on deficits, and needs to be replaced with a human rights-based approach.

Barriers to Supported Decision Making:

Systemic Barriers: Bureaucratic systems within local authorities often create obstacles to SDM. There's a tendency for public bodies not to properly implement existing legislation or guidelines, such as those from the Mental Welfare Commission (MWC).

Undue Influence: The risk of decisions being made by those without the supported person's best interests in mind was a concern. The need for accountability and clear guidelines to prevent this was emphasised.

Resources and Investment: Effective SDM requires time, investment, and accessible processes. The current health and social care system, with its time constraints (e.g., 15-minute appointments), doesn't support meaningful decision-making.

Moving forward:

National Framework: A national framework for SDM should be flexible to accommodate individual needs and circumstances, ensuring that decision-making is person-centred and rights-based.

Enforceable legal rights, clear processes, and accountability are needed to ensure SDM is applied in practice.

Training for professionals, including social workers and solicitors, is crucial to foster an understanding of learning disabilities, as well as the principles of SDM.

Empowerment and Inclusion: Participants stressed the importance of assuming capacity rather than focusing on limitations. Individuals should have the right to choose their guardians and change their minds.

Advocacy and support networks were suggested as alternatives to formal legal processes, potentially reducing the need for court interventions.

Cultural and Systemic Change: There is a need for a cultural shift within social care and public bodies to prioritise the voices and rights of people with learning disabilities.

The idea of SDM needs to move from theory to practice, with an emphasis on collaboration, respect for lived experiences, and the inclusion of diverse support needs.

Supported Decision-Making Event 2 – Adults with Incapacity Act Reforms 5 September 2024

Key Themes

General Reflections on the Proposed Changes:

Many groups felt the current principles of the Adults with Incapacity Act (AWI), such as least restrictive interventions and taking account of wishes and feelings, are good in theory. However, these principles are not consistently followed in practice.

There was concern that introducing new principles focused on will and preference might not lead to meaningful change without robust enforcement, accountability mechanisms, and a supported decision-making (SDM) framework.

A recurring theme was the need for more significant systemic change, with some stakeholders arguing that minor amendments to the law would not adequately address the deeper cultural and procedural issues.

Challenges in Current Practice:

Accountability Gap: Many stakeholders emphasised a gap between policy and practice, where good principles exist but are not applied in real-world situations. This lack of accountability led to scepticism about whether new principles would result in different outcomes.

Guardianship Overuse: Guardianship orders are being used as a default option, particularly during transitions from childhood to adulthood, often at the suggestion of legal professionals, so some people end up on guardianship unnecessarily.

Guardianship as a Control Mechanism: Several participants noted that guardianship often functions as a means of control rather than support, limiting people's rights to make decisions. They called for more flexible, informal options outside of guardianship, such as mediation or remedy panels.

Resource Constraints: Without adequate resources to support SDM, there are concerns that the current system will remain bureaucratic and inflexible, and individuals will continue to face significant barriers to making decisions, even if new laws are introduced.

Key Suggestions and Ideas:

Training and Cultural Change: Legal changes must be accompanied by comprehensive training for professionals to shift the culture toward more person-centred decision-making. Stakeholders pointed to the need for broader inter-professional education to ensure all professionals understand supported decision-making and are equipped to implement it.

Centralised Oversight: Many suggested that a regulatory body, such as the Mental Welfare Commission or an ombudsman, could help ensure adherence to the principles of the Act. This would be essential for monitoring compliance, addressing breaches, and providing oversight.

SDM Framework: A legally recognised SDM framework was considered crucial for ensuring that supported decisions are recognised and respected. Supporters should know the person well and understand their needs, with alternative supporters available if the primary supporter cannot act.

Irish Model as a Reference Point: Participants pointed to Irish legislation, which includes an ombudsman to appoint supporters and deal with complaints, as a potential model for Scotland. The

inclusion of an SDM framework and central regulation in Ireland was viewed as a positive example.

Specific Issues Highlighted:

Decision-Making Support: Participants emphasised that decision-making support should be ongoing, flexible, and individualised, recognising that it is a process rather than a one-off event. SDM also needs to account for the capability of supporters, ensuring that they are qualified and appropriately resourced.

Impact on Families: Families often feel pressured into guardianship to maintain access to services and benefits, even when it creates tension with the person they care for. This highlights the need for less restrictive alternatives and more accessible options.

Transitions and Planning: Key life transitions, such as the move from school to adulthood, require early planning and support. The lack of such forward-thinking was seen as a major weakness in the current system.

Concerns About the Pace and Scale of Change:

Many participants expressed frustration with the slow pace of reform, with some questioning the effectiveness of minor amendments. Radical change was seen as necessary to tackle the broader issues in the system, and there were concerns about whether significant progress could be made within a reasonable time frame.