

## Y Pwyllgor Iechyd a Gofal Cymdeithasol

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Lleoliad:  
Ystafell Bwyllgora 1 – y Senedd

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Dyddiad:  
Dydd Mercher, 8 Mai 2013

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Amser:  
09:00

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

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### Agenda

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#### Sesiwn breifat

#### 1. Blaenraglen Waith (09:00 – 09:15)

#### 2. Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 3 (09:15 – 09:45)

Trafodaeth y Pwyllgor Plant a Phobl Ifanc ar y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru).

#### Sesiwn gyhoeddus

#### 3. Cyflwyniad, ymddiheuriadau a dirprwyon (09:45)

#### 4. Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 3 (09:45 – 10:50) (Tudalennau 1 – 23) Gweithredu dros Blant

Jan Leightley, Cyfarwyddwr Gwasanaethau Plant, Gweithredu dros Blant  
Kate Mulley, Pennaeth Polisi ac Ymchwil

#### Barnardo's Cymru

Yvonne Rodgers – Cyfarwyddwr, Barnardo's Cymru  
Tim Ruscoe – Swyddog Datblygu, Barnardo's Cymru

## **Y Gymdeithas Genedlaethol er Atal Creulondeb i Blant (NSPCC)**

Des Mannion – Pennaeth Gwasanaeth Cenedlaethol NSPCC Cymru  
Vivienne Laing – Rheolwr Polisi a Materion Cyhoeddus NSPCC Cymru

(Egwyl 10:30 – 10:45)

### **5. Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 3 (11:00 – 11:40)**

Grŵp o bobl ifanc sydd â phrofiad o ddefnyddio gwasanaethau cymdeithasol

### **6. Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 3 (11:40 – 12:20)**

Grŵp o bobl ifanc sydd â phrofiad o ddefnyddio gwasanaethau cymdeithasol fel cynhalwyr

## **7. Papurau i'w nodi**

**Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Adroddiad gan y Pwyllgor Plant a Phobl Ifanc (12:20) (Tudalennau 24 – 56)**

## Social Services and Well-being (Wales) Bill

### Consultation Response to the Health and Social Care Committee, National Assembly for Wales

March 2013



#### Action for Children-Gweithredu dros Blant

Action for Children-Gweithredu dros Blant speaks out for the most vulnerable and neglected children and young people, and supports them to break through injustice, deprivation and inequality, so they can achieve their full potential. Action for Children helps nearly 250,000 children, young people and their families through nearly 600 projects across the UK. We also promote social justice by lobbying and campaigning for change.

#### Summary

Action for Children - Gweithredu dros Blant welcomes the intention to introduce the Social Services and Well-being (Wales) Bill, and its overarching ambition to improve the well-being outcomes for people who need care and support and for carers who need support. We are pleased to respond to the Health and Social Care Committee's call for evidence on the general principles of the Bill, and our response is based upon views and experiences from members of Cardiff Parenting Network, practical knowledge from our services and practitioners who work with children and families across Wales, and findings from the body of research we have developed regarding effective early intervention.

#### Getting Early Intervention right

We are extremely supportive of the legal duties which support local authorities to rebalance social services to provide early help for emerging needs and focus on prevention, reduction and mitigation. Action for Children – Gweithredu dros Blant is committed to early intervention and know first-hand from our work with children and families the difference that intervening early and responsively to emerging needs can make to improved personal well-being outcomes. Our *Backing the Future* report (2009) showed that intervening as early as possible when children, young people and families face difficulties is highly effective and can result in significant savings. The research found that for every £1 invested annually in Action for Children's targeted services designed to catch problems early and prevent problems from reoccurring, society benefits by between £7.60 and £9.20 (2009 rates). This social value can be generated, for example, through improved family relationships.

These are significant social and economic outcomes; though achieving them requires the right services in place to respond to the local need spectrum. There must be a balance of targeted and universal services in a locality if we are to effectively deliver an early intervention, preventative response, with clearly defined entry and exit points for people to access support. This can be delivered cost-effectively and coherently if local authorities and partners take this opportunity to consider how best to overcome barriers to accessing the right support, such as joint commissioning, co-location and integrated, multidisciplinary delivery. Universal services that are able to engage with and are accessible to all children and families are essential to tackling early need, and for being able to access targeted interventions earlier, and can only be effectively delivered through fully integrated, multi-agency working. In its current form, we question the Bill's ability to effectively draw in crucial support in achieving its aims from other public bodies, particularly health partners.



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We also feel the Bill, as drafted, does not go far enough to deliver real voice and control to people who need care and support. There are clear opportunities to enhance local authorities', and others who provide services on their behalf, responsibility to enable children and families to work alongside professionals in seeking solutions to problems. For early intervention to have a lasting impact on identified need it is essential individuals recognise their own contribution to solving problems and increased resilience.

### **Improving our response to child neglect**

Neglect is extremely damaging to children. Of all forms of abuse, neglect can have some of the worst and most long-term effects on the brain, physical development, behaviour, educational achievement and emotional wellbeing. In the most severe cases, children die – of starvation, for example, or accidents. Neglect is often unpredictable and cumulative, and calls for careful assessment and analysis, and appropriate service responses such as family and parenting support. There are several barriers preventing neglected children receiving the help they need, and the Bill provides important opportunities to unblock these to improve our response. The legal duty on local authorities to provide preventative services is a valuable and important step, however we know sustainable, early intervention services to address neglect require commitment and support from health partners to successfully address underlying causes of neglect.

Crucially, no one knows how many children are currently experiencing neglect in Wales. Information about local needs is the bedrock of effective commissioning, and without a specific focus on the identification and recording of local data, we cannot hope to know that local services are making a difference. Unless we have proper information about the number of children who are experiencing neglect, both locally and nationally, it will continue to be impossible to plan effective services to meet the needs of neglected children. We welcome the duty shared by local authorities and local health boards to gain an improved understanding of the spectrum of need in their local areas, and consider this an essential component of delivering real change.

### **Consultation questions**

- 1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

Action for Children-Gweithredu dros Blant welcomes the intention to bring forward a single Act for Wales which provides the legal architecture for local authorities and partners to improve the well-being of people who need care and support through shared responsibility. Well-being is a useful driver and we are very supportive of the intention to introduce enhanced duties on local authorities to take steps to reduce and prevent the needs for care and support of people in their areas. If discharged effectively, and in collaboration with key partners such as local health boards, these duties can provide a framework to bring about transformational change in the way we respond to care and support needs in Wales to ensure that we identify and respond to need as early as possible to prevent, reduce or delay escalation.

### **Early intervention**

Action for Children-Gweithredu dros Blant knows through our work to support the most vulnerable children and families in Wales that by identifying and responding to need earlier, and working in partnership with families to build on their strengths, we have the best chance of improved outcomes for people. We deliver over 100 services for children and families in Wales, in partnership with commissioners who include local authorities and local health boards, and succeed in helping children, young people and families to overcome difficulties at an early stage to tackle problems before they become entrenched or habitual.

The Social Services and Well-being (Wales) Bill provides an important and valuable opportunity to rebalance local authorities' and partners' duties and functions and ensure a clear, collaborative focus on early intervention. Crucially, it allows the National Assembly for Wales to consider and unblock the barriers which can presently impede local commissioners from providing for a spectrum of services which respond effectively to emerging need.

### **Sustainable development**

We recognise *Sustainable Social Services* and the Social Services and Well-being (Wales) Bill are key parts of the Welsh Government's commitment to Sustainable Development as a central organising principle. The White Paper for the planned Sustainable Development Bill describes a commitment to "social, economic and environmental well-being of people and communities" and the intention to bring forward a sustainable development duty on selected public bodies, to include local authorities and local health boards. To date, there has been no indication of how these pieces of legislation will interact with each other, or with the existing well-being duty in the Local Government Act 2000. This requires urgent consideration to mitigate the risk of duties being exercised in isolation without due regard for the combined contribution they make to increased capacity and wellbeing to the population of Wales as a whole.

Sustainable development relies upon increased social, as well as institutional, capacity through healthy, productive people and resilient, inclusive communities, and the Social Services and Well-being (Wales) Bill is a key component in achieving this if delivered coherently. We must not lose sight of the importance of drawing on cross-organisational commitment to improving individual well-being and responding holistically to children and families' needs as social care, health, educational and other key partners.

### **2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

The primary policy objectives (point 101) are given as:

- a) Improve the well-being outcomes for people who need care and support and carers who need support; and
- b) To reform social services law.

We fully welcome these positive objectives, in particular the shift towards early intervention and a committed focus on individual well-being and outcomes. However, the Bill as drafted raises some areas of concern with regards to unblocking barriers to improved well-being of people who need care and support that we wish to raise for the Committee's consideration.

### **Collaboration**

Action for Children – Gweithredu dros Blant supports the most vulnerable children and families in Wales via over 100 services, commissioned primarily by local authority partners. Successful early intervention relies upon effective working relationships and links with partners in health to ensure that young people and families have access to a full range of support for specific needs. We query how effectively the preventative duty, as drafted, draws essential partners in to supporting early intervention as part of a spectrum of provision for well-being. The expectation on local health boards in achieving this shift remains unclear. . At present the duty provides for local health boards having "regard to the importance of achieving the purposes in subsection (2)" (i.e. prevention of escalating need), and we do not consider this drafting will bring about the shared commitment to prevention and sustainability required between local authorities and local health boards.

Perhaps the best known early intervention "brand" in Wales is the Welsh Government's Flying Start scheme, which Action for Children – Gweithredu dros Blant is pleased to deliver on behalf of a number of local authority partners in Wales. One of the most valuable elements of this programme is a family's ability to access a range of support via one service – including basic skills development, parenting support and enhanced health access, which includes prompt access to health visitors, community psychiatric nurses, dieticians and speech and language therapists. In a focus group with Cardiff Parenting Network on the provisions of the Social Services and Well-being (Wales) Bill in March 2013

parents reported that Flying Start is a “fantastic service” and “a great reassurance because there is always someone on the end of the phone to help with any problem before it becomes a bigger issue”. Input from front-line health professionals is essential if we are going to be able to deliver a meaningful step-change towards prevention. We cannot treat emerging social needs in isolation of a family’s whole circumstance, particularly health needs, if we are truly focused on achieved increased well-being. The preventative duty as it stands would not require local health boards to collaborate in delivering Flying Start services, and if the duty does not deliver the status quo we cannot reasonably expect it to deliver extensions of this good practice and draw in health partners to achieve a shared step change towards early intervention.

### **Third sector**

We welcome the new duties on local authority to promote the availability of preventative services from the third sector in the arrangements it makes for providing care and support, and are pleased to see recognition of the value of third sector organisations in delivering effective early intervention and prevention alongside other models of service including social enterprises, co-operatives and user-led services. This is an important recognition of the added value third sector organisations can bring to early intervention services, as part of a spectrum of provision.

It is important the Bill and subsequent guidance maintains a clear sense of the value sought by requiring local authorities to involve the third sector and other service models in delivery. Co-production is a core value of Action for Children-Gweithredu dros Blant’ services and our interventions are decided flexibly in partnership with children and families’ according to their particular needs, and through a range of offers. It is our ability to respond flexibly to need, and to work in partnership with children and families that mean we have the greatest chance of achieving desired outcomes and preventing need from escalating. Guidance must not lose sight of this added value.

### **Co-production**

Improving well-being outcomes for people in need of care and support relies upon their meaningful involvement in achieving those outcomes. For early intervention to have a lasting impact on identified need it is essential individuals recognise their own contribution to solving problems and increased resilience. When we asked members of Cardiff Parenting Network for their thoughts on what the biggest barriers to accessing support was, we heard many contributions about the importance of listening to children and parents properly, and being led by what they identify as the issue and potential solutions. At present there are missed opportunities within the Bill to drive local authorities, and those responsible for providing services on its behalf, to actively involve the child, adult or family members involved in designing the support they receive and thereby maximise its effectiveness.

For example, under Part 3, Section 10, subsection 4 local authorities have a duty when carrying out a needs assessment to “(a) seek to identify the outcomes that the adult wishes to achieve in day-to-day life, and (b) assess whether, and to what extent, the provision of care and support could contribute to the achievement of those outcomes”. Whilst we welcome the broad intention of this duty, this should be strengthened to require on local authorities, and those providing services on its behalf, to enable people, according to personal capacity, to contribute to identifying outcomes they wish to achieve and thereby making real the underlying principle of voice and control. Clarification is also required about how this principle will be embedded in non-statutory needs assessments and support to ensure the spectrum of provision is driven by presenting need rather than available services.

- 3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

As explained in our response to question 2, we are concerned about the Bill’s ability as drafted to effectively draw in key partners, particularly local health boards.

## Charging

Sustainable social services rely upon ensuring people are able to access information, care and support to address need from the earliest possible point. Provisions in the Bill under section 54 allow local authorities to charge for preventative services, including information and advice. We are concerned about these provisions and the risk they present to undermining the policy commitment to early intervention and improving well-being outcomes. Charges for early intervention present a clear disincentive to people to address care and support needs early and prevent escalation to crisis, and thereby reducing the capacity of the Bill to deliver social services sustainably. It also presents real issues with regards to the ability of the Bill to draw in health partners effectively whereby different elements of a collaborative service may incur charges.

## Long-term planning and delivery

To facilitate practical reform and achieve long-term sustainability, we need to make sure this progress is not hampered by political and budgetary cycles which can undermine our commitment to long-term outcomes for the population of people who need care and support. The Bill provides a clear opportunity to incentivise local authorities and their partners to take a long-term view of responding to the spectrum of need, and translate this into service responses which are not hampered by short term commissioning and which have time to forge local partnerships and deliver a sustained difference to communities. When we asked members of Cardiff Parenting Network for their ideas on “What Social Services can do to stop issues getting bigger and prevent crisis?” we heard many contributions which recognise the importance of continuity and community presence. One mum explained “give them a chance to embed and make a difference, it means people know they are there and that help is out there”.

### **4. How will the Bill change existing social services provision and what impact will such changes have, if any?**

The Bill has the potential to bring about a fundamental shift in social services that refocuses intervention on maintaining well-being and prevention, if duties are discharged effectively. The impact of the Bill on local provision relies on a number of key factors including:

- local authorities’ ability to draw in key partners to delivering early intervention services;
- accurately assessing emerging need at a population level, and using this to plan effective early intervention services which successfully address need
- local authorities’ ability to shift resources towards a long-term focus on reducing need, and translating this focus when commissioning service responses.

### **5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

As previously stated, we welcome the policy objectives as stated in the Explanatory Memorandum that the Bill aims to deliver. Our response to question 2 of this consultation presents the main barriers to implementing the desired shift towards early intervention effectively.

A very real barrier to implementation at this time is the lack of accurate information on the spectrum of care and support needs locally and nationally. Systems in place to monitor social care needs at this time are inadequate for these purposes and focus largely on high-level need that meets the existing threshold criteria, and does not account for the broad spectrum of care and support needs. This is particularly true in the case of available data on child neglect, where the only national data set available at present is the Children in Need census in which neglect is not presented as a distinct need but merged with other forms of abuse. Without changes to the ways in which individual, area and national data are collected we cannot hope to provide the early responses required, and crucially, to know whether we are collectively making a difference. This requires a significant reform of the way we gather social care and support need data sets in Wales, and relies on a collaborative, coherent approach to measuring need from key partners, including health.

A primary barrier to effective implementation is cost of reform. We are concerned about the usefulness of the Regulatory Impact Assessment as presented. For example, the only cost listed to implementation of the Bill is cost of staff training in social services. This is limited, and does not account for the required buy-in from other budgets, in particular health budgets, to deliver this step-change effectively.

**6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.**

We recognise the importance of future-proofing this Bill and for some issues to be left to regulation. We consider balance is dependent on the particular element or objective of the Bill under discussion.

**7. a) What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)**

**7. b) What are your views on the financial implications of the Bill**

There is a clear, well-accepted economic case for making the transition to early intervention and delivering well-being outcomes. However, this transition requires investment to deliver the desired change and Regulatory Impact Assessment does not recognise this cost beyond delivering training to social services staff. Clearly, the focus on well-being and early intervention requires a far wider shift in practice than staff in Social Services departments. Workforce development and capacity building cannot be limited to local authority social services staff, as it undermines the principles of the Bill regarding collaborating and joint-working to achieve shared outcomes. For example, Health staff clearly requires information on their obligations and expectations set out under the Bill.

**8. Are there any other comments you wish to make about specific sections of the Bill**

**Cumulative impacts of welfare reform**

The Welsh Government recently published research on the cumulative impacts of welfare reform, commissioned from the Institute of Fiscal Studies, which indicates the proposed changes by the UK Government through the welfare reform agenda could result in increased levels of need across the population. This will have a subsequent increased demand on social care and support services and we would welcome debate and information about the risk welfare changes poses to local authorities' and partners ability to deliver Social Services reform, and how the Welsh Government can mitigate. We would also like to see these costs accounted for in the Regulatory Impact Assessment.

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We hope that you find our submission helpful. Please do not hesitate to contact us if you have any questions about any of the comments or suggestions we have made.

We would be very pleased to expand on our evidence via oral evidence to the Committee and share our expertise and learning from working with children and families in Wales.

Rhea Stevens

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**Barnardo's  
Cymru**

**Title      Written contribution to Stage 1  
scrutiny of the Social Services  
and Wellbeing (Wales) Bill by the  
Health and Social Care  
Committee of the NAfW**

**From:**      Tim Ruscoe  
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**Date:**      March 2013

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| <ul style="list-style-type: none"><li>▪ <b>This response may be made public.</b></li><li>▪ <b>This response is on behalf of Barnardo's Cymru.</b></li></ul> |
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1. Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run diverse services across Wales, working in partnership with most of the 22 local authorities, supporting in the region of 8,500 children, young people and families last year.
2. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation.
3. Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.
4. In addition to the delivery of social care services Barnardo's is one of only two Third Sector adoption agencies in Wales.

## **Introduction**

5. Barnardo's Cymru welcomes both the underlying principles and the aims of the Bill as they represent a demonstration of a Government willing to take brave decisions and actions that will promote and protect the rights of the population, require a more strategic approach to addressing individual need and raise levels of wellbeing through appropriate and earlier interventions.
6. Furthermore, Barnardo's Cymru understands the need for the Bill to achieve a balance of prescription and flexibility to deliver many of the changes through future developments in regulation. Our response is offered in the spirit of achieving as much positive change as possible within a single Bill.
7. However, in reading the Bill we have identified a number of significant overall concerns in relation to the principles and aims,

as well as more specific comment contained in our answers to the consultation questions.

### **Principles and Aims**

8. Firstly, we believe that the balance on the face of the measure and the implied delivery of intent through regulation is not what is required to deliver the aims or hold to the principles of the Bill. As the Bill is presented, it requires a considerable leap of faith in regards to implementation. This leap would be more comfortable with a safety net provided by a greater degree of clear explicit requirement on the face of the Bill. It would also be beneficial in this regard if the Regulatory Impact Assessment suggested more frequent application of the affirmative procedure.
9. Secondly, it appears that a particular motivating influence is the need to address issues of services struggling to deliver effectively within a creaking system without additional funding. The difficulties and issues around social care and welfare provision have long been known: consequently, the timing of the Bill, linked to our earlier concern, might appear to be significantly driven by financial considerations rather than improving levels of wellbeing.
10. Thirdly, we could see the logic in building adult safeguarding and advocacy built upon models used in children's provisions if there were no fundamental problems with them. The reality is that LSCBs currently operate without core funding and are reliant on partnership funding without a formula. The uncertainty or inconsistency of funding for both day to day and specific focused work such as Child Practice Reviews presents a significant obstacle.
11. Similarly, all is not as well as it could be with advocacy for children and young people. The Children's Commissioner for Wales report "Missing Voices" highlights that whilst there are examples of good advocacy practice, in reality too many of the experiences of children and young people's advocacy indicate poor awareness, leadership and accountability systems. There are inconsistencies and a predominance of perception that advocacy is a young people's service rather than including younger children.
12. Barnardo's Cymru is very welcoming of the intent to simplify and clarify the legislation, powers and duties, reducing the pressures of navigation through a complex framework. In this respect, we also feel that the Bill, as tabled, does not match the aim. Experiences of the benefits of receiving care and support services must not diminish as a result of new legislation. We also know the

acceptable minimum standards that services are expected to meet currently. Additionally, we know where there are inconsistencies in receiving services, frequently referred to as postcode lottery. As this is the case we would hope that there would be greater clarity of what regulation “must” ensure, complemented by what regulation “may” also achieve.

13. For example, Section 86 **Review of cases and inquiries into representations** subsection (2) (a) to (j) some of which refers to a number of things that we know are critical in ensuring proper provision, safeguarding considerations and individual wellbeing. In our opinion, 86 (2) should read: *The regulations must make provision -* and be followed by the addition of (3) *The regulations may also, among other things, make provision -*.
14. We also have concerns in relation to the published principles and aims in the areas of Voice and Control, service delivery across agencies and the financial impacts.
15. Notwithstanding the work of officials in carrying out a due regard analysis in relation to the UNCRC, it could be argued that rather than applying the duty in a way that evaluates how the Bill will enhance children’s experience of their rights, where it fails to do so, remedial actions or justifications should be noted. It appears that the analysis was delivered to support the Bill rather than measure it against the UNCRC.
16. Possibly as a consequence, the element of voice and control in relation to services for children in their own right or services for their family could be stronger. The face of the Bill could carry more explicit requirements as to the place of children and families in their service design and delivery, evaluation and review, as well as developing their outcomes. Additionally, under the requirement in section 5 to jointly assess needs locally, there appears to be no explicit requirement for the involvement of individuals or communities in the process. Finally, in regards to voice and control the Bill appears to remain as a service led model rather than need led, reinforced by the apparent application of the medical rather than social model of disability.
17. The requirement of delivering services across a broad spectrum of providers and sectors is also welcome; although we know from experience that this has sometimes proved problematic and would benefit from greater clarity on the face of the Bill. Even if clarity is achieved, there could well be some fundamental issues to resolve such as the possible collection of charges for some services. Would the application of a charge preclude Health providers who

are required to ensure services that are free at the point of delivery?

18. Our final overall concern would be the reality of a move towards services that could be seen as universal without universal budgets. The Bill requires cross sectorial working but only considers the financial impact on Social Services budgets.
19. Section 30, **Exception for persons subject to immigration control**, leads to a disappointment rather than concern. We understand that both benefits and immigration are not devolved and realise the difficulty that could arise from not including this exception, however exempting this group does not sit easily with the notion of a Government with aspirations to evidently promote and protect Human Rights. This section removes the duty to support people whether they are individuals, in a family with or without children, from receiving services when they are destitute because of their status. In our opinion people, are frequently forced into this state of destitution for fear of returning to their country of origin or having insufficient means to do so.

## **Consultation Questions**

### **General**

**1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

20. As stated earlier, we welcome the commitment in bringing clarity to the legislative framework. However, we have reservations about the Bill delivering this aim. The short but conditional answer therefore would be yes.
21. Although the current situation is undeniably complicated, it is in place, there is considerable experience of operating within it and there is scope to amend or further regulate the raft of legislation that exists. Maintaining this approach, however, would limit the scope of desired development outlined in Sustainable Social Services and would fail to offer a distinct Welsh approach or provide Welsh Ministers with the powers within the Bill.
22. We, therefore, believe that it is appropriate to provide the legislative framework for social care through a single Welsh act. It is an opportune time to simplify and clarify what is currently

provided, develop further provision, drive change and ensure strategic assessment and provision. As already noted by Government this would also enhance the understanding of entitlement, purpose and process which, in itself, contributes to a positive sense of wellbeing.

23. In considering this, it might have been helpful if, perhaps within the explanatory memorandum, there was clear reference to the effect of the Bill on current legislation in order to build confidence that issues are being addressed and not lost and that development will indeed lead to an obvious improvement for people requiring services.
24. Additionally, it should be apparent in the Bill how other policy and legislative developments in Wales relate or are likely to relate to, and link with the Bill, particularly those which have an evident effect on wellbeing such as the Independent Living Framework, Additional Needs and Domestic Violence. It is understood that it is not possible to fully accommodate future considerations or legislation; however, where likely developments are known or presumed, account should be taken and reflected in the Bill by way of recognising powers to regulate.
25. Similarly, there has been much work on developing outcomes in relation to Mental Health services. Although there may be much collaboration between departments, divisions and drafters, evidence of collaboration and consequently shared learning is hard to identify in the Bill as drafted or the explanatory memorandum.
26. In order for the Bill to address the significant barriers in identifying and meeting community and individual need across sectors it must enable the workforce to "buy into" the required change. As such, there should not only be greater clarity and direction in service delivery, a stronger voice for service users but also a clear recognition of the role of the workforce in planning and delivering change.

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

27. Once again we welcome what appears to represent positive aspiration but again are concerned that the Bill is not drafted in a way that will achieve them.

28. In particular regard to the wellbeing of children, there seems to be insufficient weight given to the importance of education. The place of education in enabling children to develop and achieve their potential is well known, however the Bill seems to give little specific regard to the role of education. This is particularly important given that the statutory changes to SEN legislation stress how assessment for support must be undertaken jointly between education, health and social services.
29. The objectives of chapter 3 represent the laudable policy intent of Sustainable Social Services: A Framework for Action. Achieving them will require the development of a very different environment through legislation. Too frequently the draft Bill appears to represent a rewriting of what is there, rather than what is required to carry forward the required change.
30. We welcome the ambition of population outcomes and services but have difficulty in seeing how the Bill will provide the appropriate starting point to achieve it. However, as an organisation well versed in outcome planning and delivery, we would suggest there is benefit in the creation of more pragmatic rather than high level aspirational outcomes.
31. Contrary to the published policy intent, the Bill appears to outline a service led model similar to that which currently exists. We also have no clear view about how the vision might currently be reached without significant increases in investment and long periods of evolutionary transition building from improved pragmatic specified services for Children, Families, Adults and Older People to unified services for a population.
32. As drafted, the Bill currently has the potential to address some of the gaps in services for adults and older people, introduce some portability of assessments except for carers and introduce a National Eligibility Criteria. As drafted it also has the potential to fall short.
33. Whilst welcoming the benefit that a National Eligibility Criteria might bring, and recognising the central role of the criteria in delivering the intention of the Bill, without knowing what the criteria will be it is difficult to conceive how the objectives might be achieved. As the criteria are as yet unpublished, it is also difficult to comment on this critical aspect which must be produced in a way to enable the proper and appropriate provision of care and support rather than primarily manage resources. We also have concerns regarding how eligibility criteria may affect the balance of preventative services and specialist services and the

extent to which people can access each of these types of interventions.

34. A similar criticism might be made of the proposed 3 stage assessment process. Assessment of Need followed by eligibility and financial assessment points more readily to resource management. If this is the case, the increase in known yet unmet need could well rise uncomfortably particularly in families with children.
35. The Bill makes positive movement towards achieving a broader access to assessment by right, particularly in promoting the status of carers' assessments. It is surprising therefore that paragraph 46, page 12 of the explanatory memorandum and the Minister,s response to William Graham when tabling the Bill, indicate the denial of portability in carers care and support plans. Section 40 of the Bill does not make explicit reference to carers' care and support plans, yet we would not envisage significant transfer of resource issues if carers' care and support plans were to be portable until the point of review by a new authority.

**3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

36. We believe that the Bill as tabled will not meet this aim without significant amendment or undue faith in regulation.
37. It should be made clear how the single act repeals or amends current legislation. Local authorities and their partners frequently deal in complex issues. However, the Bill or Explanatory Memorandum could be clearer in relation to this so local authorities, partners and providers can more easily see how functions will remain, evolve or transition. It will also provide reassurance that those vulnerable people currently receiving appropriate services will not face a situation that leads to diminishing support.
38. The aims of the Bill require improvement within partnerships at all levels to deliver the change. While illustrative of the desire for delivery across a broad spectrum of services and sectors, the Bill appears not to recognise the difficulties experienced in this. It does not address some of the fundamental issues of funding and leadership as well as sectorial budgets and priorities. In this



regard it is our opinion that greater prescription is required whether through regulation or on the face of the Bill. Sufficient prescription will allow social care service partnerships to remain locally made ensuring adequate funding and membership without relying on goodwill. Furthermore, our practitioners have a worry that the "little voice" can be lost when there is too much distance between service user, practitioner and decision makers.

39. Barnardo's Cymru believes that the ability to charge for services is right. There are some services that might lend themselves to this; however, charging should not impose upon or limit access or availability.
40. We do, however, have some concerns as to the possibility of charging for information. As information is critical to service access, an inalienable human right specifically mentioned in the UNCRC and central to the Equalities Objectives, we would welcome some additional explanation.
41. Effective early preventative services will be a fundamental building block of sustainable social services into the future, particularly for children and families. There is a welcome emphasis on this as it represents significant potential for improving wellbeing and reducing the remedial, often expensive crisis interventions when needs have escalated. However, once again, we fear the Bill, as drafted, will not lead to implementation. It is obvious from discussions that the Bill is sufficiently vague as to promote many perspectives of what preventative services might be.
42. We believe that preventative services should be provided in the first instance as a result of local needs assessment. These might be seen as universal services. These might include library, leisure and youth services. In ensuring this level of provision, the necessary infrastructure (e.g. transport) would need to be factored in.
43. A second level of preventative services might be established on a community need such as parenting groups; carers support groups or engagement groups. These, although established on an identified need, would also be open access with voluntary commitment. They would require frequent evaluation to ensure their continued fit.
44. We also believe there is a third level of preventative services that is based on assessment of individual need requiring an individual tailored response rather than an "off the shelf" solution. This

would not be seen as a long term care and support plan but an individual preventative intervention.

45. It is possible that this or something similar is intended; however, there needs to be more clarity on the face of the Bill and a more detailed description and requirement through regulation in order for the aims to be achieved.
46. Notwithstanding the lack of an adequate definition of wellbeing within the Bill, we would again reinforce our support for preventive services as the best means of improving long term wellbeing outcomes.

#### **4. How will the Bill change existing social services provision and what impact will such changes have, if any?**

47. In some parts the Bill represents a rewrite of what currently exists. However, we feel mostly supportive that this is largely the case with Part 6 Looked After and Accommodated Children. In some respects, the Children's Act 1989 represents a landmark shift in children's services. The 1989 Act has largely worked and the addition of sections 67 and 68 (care and support plans) in this Bill are welcome. However, we would welcome explicit reference to the possibility of foster carers having the right to a carers' assessment. Additionally, there could be a case for other foster children or the foster parents' own children to request carers' assessments.
48. The Bill does not, however, address some of the current shortcomings. In delivering looked after services, it rightly continues to emphasise the importance of foster care yet there is insufficient capacity now and the financial assessment makes no reference to the considerable investment required in recruiting and preparing foster carers in the numbers or to the levels required.
49. We were expecting to see the inclusion of the "When I am Ready" scheme in Part 6. This scheme for care leavers would also have had an impact on foster care capacity. We presume by the fact that it is omitted that it will be considered as a pioneer project in the future.
50. In relation to adoption, it is our opinion that the Bill makes appropriate amendment to the Adoption and Children's Act 2002 affording powers to direct local authorities into joint arrangements for adoption services. The explanatory memorandum is clear that this power will also extend to the creation of a national adoption

support service. In principle we are fully in favour of a single national support service. We are pleased that the regulatory impact assessment for the powers through amendment will require consultation with affected authorities. We presume that this requirement will extend to the development of a national adoption support service and that Third Sector adoption agencies will be fully involved in any consultative processes.

51. Realising the aims, principles and policy intent of "Sustainable Social Services; a Framework for Action" requires significant change in social services provision. However, in reality the most significant changes will be seen in Adult Safeguarding, Adult Advocacy and National Eligibility. The changes for children and families will largely depend on subordinate legislation. The adult lobby has rightly advocated for necessary change but achieving equity without diminishing children's provisions will be a significant challenge.
52. Improving access and uptake of Direct Payments is welcome. It is our opinion that they have a valid place in transition developments for disabled children and young people. In particular, Learning Disabled young adults are under represented in the take up. It is well documented that access to direct payments enables disabled people to have increased lifestyle choices and independent living options. We would welcome a strengthening of access to direct payments given that Wales currently has in the region of a 5% uptake of direct payments by disabled people compared to over 50% in the other countries of the UK. We also feel that this section should be cross referenced with the Framework for Action on Independent Living and also be proofed for children's welfare to ensure that it does not focus upon a mainly adult agenda.
53. The development and inclusion of Cooperatives, Third Sector and Social Enterprise models is welcome and should impact in particular on the variety and nature of preventative provision. It must also be recognised here that this developing capacity will require additional inspection and regulatory capacity; this again should be recognised within the financial assessment.

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

54. We have highlighted a number of issues throughout this document that could represent barriers to implementation. In short they are:

- Simplicity and Clarity. The Bill must match the bravery of the aims and principles. The Bill is entirely dependent on local operational commitment and decisions. In order for this to happen consistently, it would be helpful if the Bill was not ambiguous or as dependent on substance through subordinate processes.
- The practical implementation of the Bill should better reflect the person centered rights approach clear in the policy intent.
- Both the UNCRC Duty of Due regard and the Equalities Impact assessments seem to have been less comprehensive than we would expect.
- We do not believe the financial assessments consider all of the costs likely to be incurred against a social services budget or the costs to other budgets.
- The Bill does not seem to address by duty the issues of joint working. As drafted the current issues for joint working are likely to continue.

**6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.**

55. We will not restate all of our arguments that appear throughout: however, Barnardo's Cymru does not believe that the balance is right. As previously stated, we believe too much is left to regulation that may lead to change and there is not enough necessary direction. We would welcome a more balanced use of regulation "must" rather than the predominant regulation "may" and clear duties, particularly in relation to shared and partnership working and funding formulas for Safeguarding Boards.

**Powers to make subordinate legislation**

**7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)? In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.**

56. As in our answer at 6 above, we will not restate our earlier argument entirely. However, whilst recognising the need to afford some flexibility through powers for Ministers to make future regulations, we feel that the proportion of delivering the Bill's

intent is weighted too much towards subordinate legislation with too little suggestion of the affirmative procedure.

57. Additionally, we have concerns that the reliance on regulation without adequate description will impinge on members' ability to take a fully informed position when required to vote.

## **Financial Implications**

### **8. What are your views on the financial implications of the Bill?**

**In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.**

58. We have referred to financial considerations throughout; however, in short, in regard to partnerships, the financial assessment appears insufficient. It refers only to expenditure within Social Services' budgets. It recognises the probability of additional transitional training cost for Social Services only and expects a reduction in both administration and litigation costs. The financial analysis should factor in the need to run some services concurrently during transition and indicate costs more broadly across other sectors. It is difficult to envisage cross sector delivery without consideration of effects across multiple budgets.
59. We would question the assessment predicting no increase to expenditure with the do nothing option, when we are sure that it would continue to provide increased budgetary demand. It would be helpful if the financial assessments were more comprehensive throughout.

## **Other comments**

### **9. Are there any other comments you wish to make about specific sections of the Bill?**

60. As a member of the Committee's Third Sector Advisory group, in addition to having had sight of, or discussions about, other contributions to this consultation including that of Disability Wales, Barnardo's Cymru is in agreement that:
- The Bill does not uphold a social model of disability but rather, reinforces a medical model.

- The Bill has little focus upon re-ablement but instead focuses on passive reciprocity. As such it could be a step back rather than fulfilling the policy aims by taking a brave step forward.
- If social services are to be transformed there is a need for culture change. This should be at the heart of the voice and control section.
- Independent living should be enshrined within the wellbeing aspect of the Bill.
- The Bill needs to allow for different models of direct payments. For example, some disabled people are forming co-ops to pool their payments enabling access to niche support or interests e.g. drama coaching.
- There needs to be a duty to provide access to equipment and adaptations. This is currently provided under the Chronically Sick and Disabled Persons Act 1970 due to be repealed at Westminster. If this is not enshrined in Welsh law, there will be no duty to provide these services.
- By not having any delegated assessments, people in need may be back in the position of having repeated assessments for the same needs because social services are unable to delegate them.
- The benefit brought to children and young people of the Children in Need (Section 17 of the Children's Act) should be maintained within a People in Need process.
- The Bill, in particular Part 6, lacks reference to or fails to make provision for disabled children when in respite or alternative care.
- Greater reference should be made within the explanatory memorandum to the expected impacts of welfare reform. It appears inconceivable that the cumulative impacts will not lead to significant additional burdens on social service budgets.

### **Equal protection for children in relation to common assault**

61. Barnardo's Cymru is a founder member of the Children are Unbeatable (CAU) Alliance Cymru and we would like to confirm our full backing for the Alliance's consultation response on the need for Government to address the issue of equal protection of children from assault at this stage of the Bill. We would refer the Committee to the Alliance's response for a comprehensive critique on why the Government should act now on this issue.
62. Successive Welsh Governments for more than ten years have supported a call to repeal Section 58 of the Children Act 2004 which currently permits the defence of "reasonable punishment" if a parent hits a child. There is no such defence in law regarding

assaults on adults and it is surely incongruous (and some would say perverse) that children, the most vulnerable members of society, have less protection than adults in common assault cases. In our view this is a long standing anomaly that the Government clearly now has the opportunity to correct. The First Minister has confirmed that the Assembly now has sufficient legislative powers to repeal this section of the law and we feel the Government should, therefore, honour its long-standing commitment to this issue by including the reform in the Social Services and Wellbeing Bill.

63. As referred to above, the CAU response provides a detailed outline for the case for reforming the law on this issue in Wales. To emphasise the need for change we would wish due consideration to be given to the following points which are expanded upon in the CAU response:

- The Assembly now has the legislative powers to bring about this reform.
- The Social Services Bill is the most obvious legislative vehicle in the Welsh Government's programme to include the change in the law.
- In changing the law, the Welsh Government would be presenting a consistent approach to children's rights and be complying with its own duty of due regard to the United Nations Convention on the Rights of the Child.
- Reforming the law on this issue is fundamental to children's status in Welsh society as well as to their wellbeing, safety and protection.
- In addition to the human rights imperative to ban physical punishment, research findings increasingly show that all the elements of children and young people's wellbeing defined in Section 2 of the Bill would be improved by legal reform.
- Consultations with children and young people on the issue of smacking consistently tell us that they find the experience humiliating, distressing and painful.
- Within the European Union, 17 states have banned completely and a further 6 are also committed to a ban. This leaves the UK as only one of four member states not to make such a commitment. Legal change in those countries has not led to any significant increase in the numbers of parents being prosecuted for assault (safeguards are in place so that prosecutions cannot be pursued for example unless it would be in the best interests of the child) but it has led to comprehensive changes to the culture of how children are raised and how they are shown to be worthy of greater protection and respect within society. Research shows that

once a ban is enacted, parental support for, and use of, physical punishment rapidly diminishes. In short, a change in the law directly and quickly results in a change in behaviour.

64. In launching its five year action plan "Getting it Right" in 2009, the Welsh Government stated as one of its priorities "Working to make physical punishment of children and young people illegal in all situations." We strongly urge the current Government to be unequivocal in its support for legal reform and to honour that earlier pledge.

**Barnardo's Cymru**  
**March 2013**



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Cymdeithas Genedlaethol er Atal  
Creulondeb i Blant

National Society for the Prevention  
of Cruelty to Children

15<sup>th</sup> March 2013

Dear Chair

The NSPCC Cymru/Wales would like to express its disappointment at not being given the opportunity to present oral evidence to the Health and Social Services Committee to support its scrutiny of the Social Services and Wellbeing Bill.

The NSPCC is the UK's leading children's charity specialising in child protection and has built up a wealth of knowledge and expertise based on research and evidence. NSPCC is the only named third sector organisation in the Children Act 1989, where it has authorised person status, and is named as a board member of LSCBs in Safeguarding Children: Working Together Under the Children Act 2004. (<http://cymru.gov.uk/publications/circular/2007/1637402/?lang=en>)

We will of course be submitting written evidence but this is not the same as allowing committee members to cross examine our experts to draw further upon their knowledge.

We hope there will be an opportunity to reconsider to ensure the committee is able to fully scrutinize the Bill in relation to Child Protection and Safeguarding in order to ensure Wales does not miss the opportunity to get this right for children and young people in Wales. We would also highlight the opportunity to draw on our knowledge to improve safeguarding outcomes for people of all ages.

Please contact [Vivienne.Laing@NSPCC.org.uk](mailto:Vivienne.Laing@NSPCC.org.uk) if you feel we are able to contribute to the scrutiny process.

Kind regards



**Desmond Mannion**  
NSPCC National Head of Service - Wales  
Services for Children & Families

*Nodur: Ei Mawrhydi y Frenhines*

Sylfaenydd 1884. Corfflodedig trwy Statwr Brenhinol. Mae ChildLine yn wasanaeth a ddarperu gan yr NSPCC, rhifau cofrestru'n eiddo 216401 a SC037717. Mae croeso i chi cysylltu gyda ni yn Gymraeg neu'n Saesneg.

*Patron: Her Majesty The Queen*

Founded in 1884. Incorporated by Royal Charter. ChildLine is a service provided by the NSPCC, registered charity numbers 216401 and SC037717. You are welcome to communicate with us in Welsh or English. NS/332



# Eitem 7a

## Y Pwyllgor Plant a Phobl Ifanc Children and Young People Committee

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff CF99 1NA

Vaughan Gething AM  
Chair, Health and Social Care  
Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA

3 May 2013

Dear Vaughan

### **Social Services and Well-being (Wales) Bill**

Further to Christine Chapman's letter of 28 February to Mark Drakeford, the Children and Young People Committee has now completed its scrutiny of the Social Services and Well-being (Wales) Bill in relation to issues affecting children and young people, and I am pleased to enclose a report of our findings.

Given that a significant number of responses referred to the impact of the Bill on children and young people, we hope that these issues will form part of your Committee's consideration and hope that our report will assist you in that respect.

Our report, which I have attached, identifies a range of issues which we feel merit further scrutiny and in particular we would like to draw your attention to the following:

#### **Overarching issues**

*Does the Bill deliver the Welsh Government's stated aims in respect of children and young people?*

The Committee has concluded that some specific changes are needed to ensure the Bill fulfils the Welsh Government's stated intentions.

Bae Caerdydd  
Cardiff Bay  
CF99 1NA

Changes are also needed to ensure that the implementation of the Bill does not dilute the protection that children are offered within existing provision. We draw the attention of the Health and Social Care Committee to our views on these changes as set out in the relevant sections of this report.

#### *Removing the reasonable punishment defence*

Evidence from a wide range of agencies was given to the Committee making the case for removing the 'reasonable punishment' defence to be included in the Bill. Some Members expressed concern that as this was not a section in the Bill as drafted, there had been no specific consultation on its inclusion or otherwise within this particular Bill. Evidence from the Deputy Minister confirmed that the Welsh Government does not intend to introduce legislation in this regard within this Assembly. The Committee draws the attention of the Health and Social Care Committee to the evidence we have received in this regard.

### **Access to Services**

#### *Preventative Services*

More detail is needed about the type of services which could be included in the definition of preventative services before the Bill reaches the latter stage of the legislative process.

#### *Assessment*

The Bill as currently drafted is not sufficiently clear as to how assessments for care and support required under part 3 of the Bill are aligned with other assessment processes such as those for mental health and education.

#### *Eligibility*

Whilst providing the full detail of the national eligibility criteria on the face of the Bill may not be possible or desirable, the issue of eligibility is key as to whether the Bill delivers its stated intentions and the Committee welcomes the opportunity for the Health and Social Care Committee to undertake further detailed scrutiny of this issue following the Deputy Ministers' statement in this regard.

#### *Meeting Needs*

We consider the repeal of section 17 and part 3 of the *Children Act 1989* to be significant and question why this clarity has not been provided at an earlier stage given its significance. We would urge the Health and Social Care Committee to pay particular attention to this issue.

### *Charging for 16 and 17 year olds*

The Committee considers that the rationale which led to the creation of powers to charge young people aged 16 and 17 is no longer relevant. The Deputy Minister stated that she is prepared to consider removing the power. We would welcome this and ask that the Health and Social Care Committee give consideration as to whether this power should be removed from the Bill.

### *Partnership Working*

The Committee asks that the Health and Social Care Committee consider whether the responsibilities of partners other than social services need to be more explicit on the face of the Bill.

## **User Voice and Control**

### *Advocacy*

The Committee asks the Health and Social Care Committee to consider whether the requirement to provide independent advocacy services should be made explicit on the face of the Bill and welcomes the Deputy Minister's evidence that she is considering a Government amendment in this respect.

## **Safeguarding Children**

### *Local Safeguarding Boards*

The Committee notes that the statutory framework for children is different from the framework for safeguarding adults and draws the attention of the Health and Social Care Committee to the concerns we have heard in respect of powers to merge local boards.

## **Services for Looked After and Accommodated Children**

### *Whether Part 6 of the Bill is an appropriate update to existing duties and appropriately consolidates existing legislation*

Part 6 is only a partial consolidation of existing legislation and we are concerned that the Bill does not clarify provision for looked after and accommodated children.

## **Fostering to Adoption**

In light of the extensive scrutiny this Committee has given to such issues during our inquiry into adoption services, we strongly support the need to amend the Bill in this respect and welcome the Deputy Minister's commitment to review the current provisions in the Bill in this regard. We ask the Health and Social Care Committee to note our views in this regard and to also note the evidence in and the conclusions of the Children and Young People

Committee Inquiry into Adoption Services report published in November 2012 in respect of the need to secure earlier permanence for children.

## **Adoption**

### *Joint Working Arrangements*

Section 151 of the Bill needs to go further than currently drafted to provide the necessary safeguards should the proposed service delivery model for the national adoption services not deliver the 'step-change' that our Committee has previously called for. These views are underpinned by our extensive recent scrutiny of adoption services and our recent scrutiny of the *Social Services and Well Being (Wales) Bill* which allowed us to explore more recent developments. Section 151 of the Bill also needs to make explicit reference to the voluntary sector. We ask the Health and Social Care Committee to note our views in this regard and to also note the evidence in and the conclusions of the Children and Young People Committee Inquiry into Adoption Services report published in November 2012.

### *Post-adoption Support*

Based on the extensive evidence we heard during the inquiry into adoption services, the Committee is strongly of the view that the duty to provide post-adoption support should be included in the Bill. The Committee recognises the need to adequately cost any additional duties in this regard. We ask the Health and Social Care Committee to note our views in this regard and the evidence in respect of post-adoption support in the conclusions of the Children and Young People Committee Inquiry into Adoption Services report published in November 2012.

## **Disabled Children**

### *Status of disabled children within section 17 of the Children Act 1989*

We ask the Health and Social Care Committee to note our concerns in respect of how the Bill provides for a definition of disabled children and also the potential impact on disabled children of the repeal of section 17 of the Children Act 1989. We also note that it is open to Welsh Ministers, by secondary legislation, to remove certain people from the definition of "disability" contained in the Equality Act. We would welcome their further scrutiny of these important issues.

## **Finance**

We ask the Health and Social Care Committee to note our concerns as to whether the Bill can be cost-neutral. We welcome their further scrutiny of this issue and specifically as it affects services to children, young people and their families.

## **Subordinate Legislation**

We note that issues relating to subordinate legislation powers will be highlighted in the Constitutional and Legislative Affairs Committee report in respect of the Bill. We ask the Health and Social Care Committee to note concerns raised by some of the children's charities that the majority of the subordinate legislation is subject to the negative procedure and give consideration to whether the increased use of affirmative, or in some cases, the super-affirmative procedure may be more appropriate.

Yours sincerely

A handwritten signature in black ink that reads "Ann Jones". The signature is written in a cursive, flowing style.

**Ann Jones**  
Chair

## Background information

1. On 28 January 2013, the Deputy Minister for Children and Social Services, Gwenda Thomas AM (“the Deputy Minister”), introduced the Social Services and Well-being (Wales) Bill<sup>1</sup> (“the Bill”) and the then Minister for Health and Social Services, Lesley Griffiths AM, made a statement in plenary the following day<sup>2</sup>.
2. At its meeting on 29 January 2013, the Assembly’s Business Committee agreed to refer the Bill to the Health and Social Care Committee for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9, but asked the Chair of that Committee to work with the Chair of the Children and Young People (CYP) Committee to ensure maximum involvement of CYP and its Members during scrutiny of the Bill.
3. The Chair of the Health and Social Care Committee, Mark Drakeford AM, wrote to the CYP Committee on 4 February 2013 inviting it to scrutinise the provisions of the Bill relating to adoption and looked after and accommodated children and report its findings back to the Health and Social Committee.
4. In a private meeting on 21 February, Members of the CYP Committee agreed to scrutinise the Bill as it affects children and young people and provide information by 2 May 2013 to the Stage 1 scrutiny of the Health and Social Care Committee.
5. The Committee held two evidence sessions on Wednesday 17 April and Thursday 25 April, and details of those who gave oral evidence can be found at Annex A.
6. Since the Committee began its scrutiny of the Bill, the Chairs of both the Health and Social Care Committee and Children and Young People Committee have changed. Vaughan Gething AM replaced Mark Drakeford AM as Chair of the Health and Social Care Committee on 16 April and Ann Jones AM replaced Christine Chapman AM as Chair of the Children and Young People Committee on 24 April 2013.

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<sup>1</sup> Social Services and Well-being (Wales) Bill, available at:  
<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?lId=5664>

<sup>2</sup> RoP, 29 January 2013, available at:  
[http://assemblywales.org/docs/RoP\\_XML/130129\\_Plenary\\_Bilingual.xml#58272](http://assemblywales.org/docs/RoP_XML/130129_Plenary_Bilingual.xml#58272)

7. The issues highlighted in this report capture some of the main themes raised by consultees in respect of the Social Services and Well-being (Wales) Bill's impact on children and young people. In addition to the issues identified in this short report, a wide range of additional points were raised for which there has been insufficient time for this Committee to provide the necessary scrutiny. These are listed in Annex B of this report and we anticipate these will be of further interest to colleagues on the Health and Social Care Committee during their scrutiny of the Bill.



## Overarching issues

### **Does the Bill deliver the Welsh Government's stated aims in respect of children and young people?**

8. The Committee heard concerns about both the principle and the practical implications of the Bill's aim to integrate and align arrangements in order to create a common set of processes for people, rather than have separate arrangements for children and adults.

9. Whilst the Committee noted the Children's Commissioner for Wales's view that the stated driver for the change in aligning services is not explicitly the best interest principle as contained in the United Nations Convention on the Rights of the Child (UNCRC), overall it is unclear from the evidence presented what substantive changes the Commissioner wants to be made to the Bill in this respect. Barnardo's Cymru are broadly supportive of the Bill's overall aims to draw together all the relevant duties and functions of those who provide services to people in need. The Welsh Local Government Association (WLGA) told us that whilst they commend the Bill, there is a strong consensus across agencies that represent children, that in some respects, there has been a loss of focus on children.

10. Children in Wales say they would prefer a consolidated Children Act for Wales and say this would be a significantly better way forward even if this had not been possible in this Assembly. Whilst there was evidence of concern as to the implications of aligning arrangements for adults and children, when questioned, neither NSPCC Cymru nor the Children's Commissioner made a clear case for a separate Bill for children. In response to the Commissioner's evidence, the Deputy Minister wrote to the Committee and stated that 'the rights of individuals and particularly children are at the heart of this legislation'. The Committee has concluded that some specific changes are needed to ensure the Bill fulfils the Welsh Government's stated intentions. Changes are also needed to ensure that the implementation of the Bill does not dilute the protection that children are offered within existing provision. We draw the attention of the Health and Social Care Committee to our views on these changes as set out in the relevant sections of this report.

## **Is there 'due regard' to the UNCRC?**

11. The Rights of Children and Young People Measure 2011 requires Welsh Ministers to give due regard to the UNCRC in the development of all legislation and policy, and several consultation responses express concern as to whether such due regard is evidenced in the Bill. Barnardo's Cymru suggest that the due regard analysis appears to have been delivered to support the Bill rather than to assess it against the UNCRC. The Children's Commissioner refers to how the Bill amends existing legislation and states that 'many of these changes appear to have been made in order to align arrangements for children with those introduced for adults through the Bill, rather than on the basis of decisions related to promoting right-based policy for children in Wales [...]'.

12. The Committee questioned whether the information in the Explanatory Memorandum (EM) was sufficient and noted that there are some obvious omissions to the UNCRC articles listed in the EM, for example article 3 (best interest principle) and article 20 (looked after children). Article 21 of the UNCRC obliges States Parties that permit the system of adoption to ensure that the best interests of the child shall be the paramount consideration. The Committee questions why this article is not referenced in the child's rights assessment provided in the EM. The Committee inquiry into adoption services heard that local authorities did not always act in the best interest of children in respect of adoption services, for example in seeking to retain approved adopters for children from their own authority. At the Committee's request, the Deputy Minister provided a copy of the full 'due regard' assessment document. The Committee concluded that access to this document assisted them in their scrutiny function and recommend that when draft Bills are laid in the future, the full 'due regard assessment' should be made available to Committees to assist the scrutiny process. Members questioned whether the Bill as drafted enabled children and young people to sufficiently track whether their rights will be impacted upon.

## **Removing the reasonable punishment defence**

13. In response to the Health and Social Care Committee's call for evidence in respect of the Bill, the most consistent single issue relevant to children and young people has been highlighted by those consultees who have called for the Bill to amend [Section 58](#) of the Children Act 2004 which relates to 'reasonable punishment'. Of the 84 responses received, 43 made some reference to children and 19 of those called for such a provision to be included in the Bill. In their written evidence Children Are Unbeatable! Cymru say that the Bill does not deliver its stated objectives as it does not include such a provision.

14. They also provide detailed analysis which they suggest shows that the failure of the Bill to include provisions relating to physical punishment undermines and contradicts the Bill's overall objectives. Written evidence from a range of organisations also refers to the fact that several UN human rights treaty bodies have specifically recommended that the UK prohibit in law all corporal punishment of children. In oral evidence, CAU! Cymru stated that education and parenting support strategies alone will not deliver the required changes. They told us the law needs to change so that parents and professionals know exactly where the line is drawn and that Governments need to lead public opinion on difficult issues such as this. When questioned, the Deputy Minister for Social Services agreed that working to make the physical punishment of children and young people unacceptable in all situations is a stated Welsh Government priority, and outlined that the current focus is to develop parenting policies and that there will not be legislation introduced in this Assembly.

### **Delaying the Bill?**

15. The Committee has received advice that the legal arguments in favour of legislative competence are slightly stronger than the arguments against, but that any attempt to legislate in this area would lead to a challenge from the Attorney General for England and Wales. The Deputy Minister also outlined advice she has received that an amendment in respect of physical punishment could be subject to challenge and expressed her concerns that this would cause a delay in progressing Bill. Aled Roberts, AM, questioned the Deputy Minister as to whether the disputed provision could be removed so that such a delay could be prevented.

16. In summary, evidence from a wide range of agencies was given to the Committee making the case for removing the 'reasonable punishment' defence to be included in the Bill. Some Members expressed concern that as this was not a section in the Bill as drafted, there had been no specific consultation on its inclusion or otherwise within this particular Bill. Evidence from the Deputy Minister confirmed that the Welsh Government does not intend to introduce legislation in this regard within this Assembly. The Committee draws the attention of the Health and Social Care Committee to the evidence we have received in this regard.

## Access to services

### Preventative services

17. Action for Children are 'extremely supportive of the legal duties which support local authorities to rebalance social services to provide early help for emerging needs and focus on prevention, reduction and mitigation'. NSPCC Cymru say that the universal delivery of preventative services is potentially unrealistic. They also express 'real concern that the skills of social workers and others in social services departments will be spread too thinly as there is a shift towards early intervention and preventative services, whilst continuing to have to address existing acute/complex need'. The British Association of Social Workers (BASW) Cymru told us that Local Authorities will be enabled to arrange for the provision of services and hope that over a period of time, such provision will free up resources from child protection teams to engage more meaningfully with families. Action for Children welcome the focus on prevention and early intervention but question whether the Bill in its current form will be able to draw on support in achieving its aims from other public bodies, particularly health partners. Barnardo's Cymru put forward a suggested three tier model of preventative services. In their written evidence, the WLGA support the need to rebalance the system to provide responsive services, however they say 'there is little evidence to suggest that a focus on early intervention and prevention alone, will achieve the desired rebalance, or the long term savings the Government envisage'. In response to whether a definition of preventative services is required on the face of the Bill, the Deputy Minister stated that such services could differ between local authorities and that it is important that they have the freedom to consider local need. The Deputy Minister and her officials also stated that an implementation code of practice will come before the Assembly under the 'affirmative procedure' but that this will not be available before stages 3 and 4 of the Bill.

18. The Committee draws the attention of the Health and Social Care Committee to our view that it is essential that more detail be provided to Members about the type of services which could be included in the definition of preventative services before the Bill reaches the latter stage of the legislative process.

## **Assessment**

19. Some general points were made about the assessment process, including ADSS Cymru querying how children's developmental needs will be accounted for within an adult and child assessment process. The Deputy Minister was questioned as to why there is no clarity on the face of the Bill regarding how assessments for care and support required under part 3 of the Bill are aligned with other assessment processes, for example assessments required under the Mental Health (Wales) Measure and assessments for children with special educational needs. The Deputy Minister outlined that there would be a Welsh Government amendment in respect of any consequential and that issues relevant to joint-working provision will be made in a code of practice.

20. The Committee draws the attention of the Health and Social Care Committee to our concerns that the Bill as currently drafted is not sufficiently clear as to how assessments for care and support required under part 3 of the Bill are aligned with (or replace) other assessment processes such as those for mental health and education.

### **Refusal of a needs assessment: sections 13 and 14**

21. The Children's Commissioner for Wales expresses grave concerns about sections 13 and 14 of the Bill which allow the 'refusal of a child of a needs assessment' and 'refusal by a parent of a needs assessment for a child', stating that this is the 'clearest breach of the best interest principle' within the Bill. We questioned the Commissioner as to why he was not satisfied with the Bill's provisions for local authorities to over-ride a refusal in certain circumstances, for example when a child under 16 is experiencing or is at risk of abuse or neglect. In response, the Commissioner stated that the refusal of a needs assessment could 'cut-across' a child's best interests. NSPCC Cymru share these concerns and call for very clear conditions built into regulations and guidance where an assessment can be progressed without consent. Barnardo's Cymru say that the duty remains if the child is considered to lack capacity or if the decision is in the best interest of the child and that they are supportive of that. Members queried why the Bill allows for the local authority to over-ride the wishes of a 16 and 17 year old if having an assessment would be in their best interest but that this 'best interest' threshold does not appear to apply to children under the age of 16.

22. The Committee draws the Health and Social Care Committee's attention to our concerns that section 14 of the Bill needs strengthening to ensure more appropriate thresholds as to when a local authority can over-ride a parent's refusal of a needs assessment and that the same threshold should apply to all children up to the age of 18 as to when a local authority can over-ride a child's refusal of a needs assessment.

### **Eligibility**

23. Several witnesses and consultees make the case for the 'national eligibility framework' to be provided on the face of the Bill. In their written evidence, ADSS Cymru state that 'the legislative framework is broad and lacking in detail; detailed changes will be set out later in regulations, guidance and codes of practice. This is even the case with issues such as eligibility criteria [...]. They also express concern that 'there is too much scope for frequent amendments to secondary instruments, thereby undermining the stable direction which is needed'. National Autistic Society Cymru express concern that the details of the national eligibility criteria will be set in regulation and are not currently available to be commented on. The issue of eligibility and current provision within the Children Act 1989 is further commented on below in the section on meeting needs. The Deputy Minister told us that she will be making a statement on the national eligibility criteria before her evidence session with the Health and Social Care Committee on 6 June.

24. The Committee recognises that providing the full detail of the national eligibility criteria on the face of the Bill may not be possible or desirable. However the Committee regards the issue of eligibility is key as to whether the Bill delivers its stated intentions and welcomes the opportunity for the Health and Social Care Committee to undertake further detailed scrutiny of this issue following the Deputy Minister's statement in this regard. Members thought it helpful that when the Deputy Minister makes a statement that this should be done as an oral statement to allow all Members the opportunity for further scrutiny of this key issue at the earliest stage possible during the legislative process.

## **Meeting needs**

25. Several witnesses and consultees, including the WLGA, expressed concern that the Bill weakens and potentially dilutes existing provision for children and young people, and specifically provisions within the Children Act 1989. Significant questions were raised about how the Bill consolidates and aligns with duties under existing legislation. ADSS Cymru told us that the term ‘child in need’ within section 17 of the Children Act 1989 is ‘well understood’ and that on this basis agencies know when to intervene. BASW Cymru told the Committee that they were having difficulty working out which parts of the Children Act 1989 will be in force when the Bill becomes law. Barnardo’s Cymru expressed concern that the Bill might potentially overwrite section 17. Children in Wales point to a ‘radical shift’ to ‘people in need’ as opposed to ‘children in need’ and say that there should be a focus on children and young people themselves as well as family support. In respect of children suffering neglect, NSPCC Cymru said it appears that eligibility criteria might set thresholds for intervention and that there is ‘always this tension between children in need, children in need who require and are eligible for services, and children who could go on to become neglected’.

26. In a letter to the Children and Young People Committee, the Deputy Minister stated that she is ‘satisfied that this Bill will bring no detriment to the position of children’. In oral evidence the Deputy Minister clarified that the Welsh Government are not taking forward the concept of a ‘child in need’ and that section 17 and all of part 3 of the Children Act 1989 will be repealed. The Deputy Minister outlined that this detail will be presented as Government amendments at Stage 2 of the legislative process. The Deputy Minister states that the Bill ‘takes further’ the entitlements that existed under previous legislation and also stated that the right to an assessment and the Bill’s provisions to have needs met is a step forward. The Committee consider the repeal of section 17 and part 3 of the Children Act 1989 to be significant and question why this clarity has not been provided at an earlier stage given its significance. We urge the Health and Social Care Committee to pay particular attention to this issue.

## **Charging for 16 and 17 year olds**

27. No evidence was received in favour of powers in the Bill to charge 16 and 17 year olds. Both the WLGA and ADSS Cymru stated that vulnerable young people aged 16 and 17 should not be charged. They outlined that such powers undermined what the Bill is seeking to achieve in respect of early prevention and the provision of information and advice, a view shared by Action for Children. Barnardo’s Cymru have serious reservations about charging young people.

28. The Deputy Minister stated that this was not a new power<sup>3</sup>. The Deputy Minister went on to say she could not envisage any circumstances where 16 and 17 year olds were charged for services and that she did not want charging to restrict access to services. The Committee consider that the rationale which led to the creation of the original powers to charge young people aged 16 and 17 is no longer relevant. The Deputy Minister stated she is prepared to consider removing the power. The Committee welcomed this and suggests that the Health and Social Care Committee give consideration as to whether this power should be removed from the Bill. The Committee also noted the broader concerns raised in respect of powers to charge adults, for example the potential to charge families for information services.

### **Partnership working**

29. Some evidence, for example from Barnardo's Cymru, has suggested that there is insufficient clarity in the Bill about the need for all agencies to work in partnership to deliver social and well-being services. They stated that there is a potential for social services to be the only agency accountable for delivering services in the absence of any further duties for others being made more explicit on the face of the Bill. Concerns have also been expressed that joint working between agencies such as Local Health Boards and different departments within local authorities will not work in practice if it is not provided for on the face of the Bill. In their written evidence, the WLGA state that to be effective in its aim of improving well-being, the Bill must demarcate the specific role expected of social services. Concerns about a lack of multi-agency responsibility echoes evidence heard by the Committee in respect of services for adopted children. The Committee asks that the Health and Social Care Committee consider whether the responsibilities of partners other than social services need to be more explicit on the face of the Bill to ensure that joint responsibility is taken by all agencies and that the potential for disputes between agencies as to who is responsible for meeting the needs of individual children is significantly reduced.

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<sup>3</sup> Powers currently contained in the *Children Act 1989*



## **Transitions**

30. In their written evidence ADSS Cymru 'want to ensure that the Bill is clear about [...] responsibility for assessing needs and providing services for young people from children's services to adult services, between the ages of 14 to 25 years. They say that the success of such transition planning and programmes are crucially dependent on collaboration between children's and adult services and a multi-agency, integrated approach is required to ensure clinical, educational and social outcomes for young people. They recommend that the Bill takes these issues into consideration more explicitly. Specifically in respect of disabled young people, the Welsh Government's consultation document on the Bill in 2012 referred to an intention to address the issue of the transition of disabled young people from children's social services to adult services, although we note that these issues do not appear to be referenced in the Bill as laid.

## **User voice and control**

31. The consultation responses relevant to children raise several issues in respect of user voice and control, with some questioning for example whether there was sufficient emphasis on children's and young people's right to have a say during the assessment process. The Children's Commissioner also questioned why the Bill does not address the need for information, advice and assistance to meet the needs of children so that they understand the care and support that is available to them and their families and get appropriate assistance in accessing advice on their care and support.

### **Advocacy**

32. Several respondents make the case for the provision of independent advocacy to be included on the face of the Bill. Scope Cymru express disappointment that the Bill does not contain any specific references to 'independent advocacy'. Tros Gynnal Plant also say that the 'absence of a child or young person's rights to be supported by advocacy' is a worrying weakness in the Bill. The Children's Commissioner refers to his 2012 review of independent professional advocacy services (Missing Voices) which highlighted the 'considerable improvements that are needed in supporting access to assistance for children and young people'. He states that the Bill as drafted does not deliver what has already been delivered in policy terms. Within the context of the current review of the Waterhouse Tribunal, NSPCC Cymru say that there is a need to ensure that this generation of children have access to advocacy. NYAS Cymru emphasise the need for advocacy provision by an organisation external to social services. Members were interested in the Commissioner's reference to the Children and Young People (Scotland) Bill, which was introduced on 17 April 2013 which aims for all children and young people up to the age of 18 (and beyond if still at school) to have access to a named person and that all relevant services co-operate with the named person in ensuring the well-being of the child is at the forefront of their actions. The Children and Young People Committee of the third Assembly published three reports into the provision of advocacy services for children and young people in Wales and made 30 recommendations in total in respect of advocacy provision for children and young people in Wales between 2008 and 2011. In April 2012, the current Committee wrote to the Deputy Minister expressing concerns that the Commissioner's 'Missing Voices' report raised further doubts as to whether sufficient progress was being made to provide advocacy support to vulnerable children in Wales.

33. The Committee asks the Health and Social Care Committee to consider whether the requirement to provide independent advocacy services should be made explicit on the face of the Bill and welcomes the Deputy Minister's evidence that she is considering a Government amendment in this respect.

## Safeguarding children

### Local Safeguarding Boards

34. In respect of safeguarding, several witnesses and consultees express concerns and did not support provisions under section 117 which give Welsh Ministers powers to merge adult and children safeguarding boards in operation at a local authority level. The WLGA question the rationale for such an approach and also question why such provision is included in the Bill. Five LSCBs submitted joint evidence that mergers of adult and children's boards would result in a loss of focus on either children and young people or on vulnerable adults. NSPCC Cymru expressed concerns that the 'agenda for adults will prevail'. In evidence to the Health and Social Care Committee, the Deputy Minister stated that there are no current plans to merge adult and children's safeguarding boards. The Deputy Minister further outlined that if it became apparent that merging adult and children's boards would be beneficial, then further consideration would be given at that point. The Committee notes that powers to merge children and adult boards at a local level would require the scrutiny of the Assembly under the affirmative procedure. The Committee notes that the statutory framework for children is different from the framework for safeguarding adults and draws the attention of the Health and Social Care Committee to the concerns we have heard in respect of powers to merge local boards.

35. NSPCC Cymru and others refer to the Inquiry into Local Safeguarding Children Boards in Wales undertaken by the Health, Wellbeing and Local Government Committee in 2010 which recommended that as a matter of urgency, the Welsh Government should consult on a national funding formula for LSCBs based on percentage contributions. NSPCC Cymru say that 'despite the Deputy Minister accepting this recommendation this has not yet been taken forward' and make a case for section 115 to be strengthened so that all Safeguarding Board partners must make payment towards expenditure incurred and that partners' contributions are secured through a funding formula. National Independent Safeguarding Board

36. In respect of the National Board, the Children's Commissioner says he remains convinced that there are strong arguments for the establishment of a separate National Independent Safeguarding Board for children. He is concerned that the proposed joint Board will be consumed with issues related to the new statutory framework for vulnerable adults.

## **Services for looked after and accommodated children**

### **Whether Part 6 of the Bill is an appropriate update to existing duties and appropriately consolidates existing legislation**

37. The Committee notes that Part 6 of the Bill was not included in the Welsh Government White Paper which preceded the Bill. In many instances the sections in part 6 of the Bill reflect current duties, and the Bill will not stand in isolation of other statutes. The Children's Commissioner refers to the First Minister's statement on the legislative programme in July 2012, in which he stated that the Social Services Bill would provide the vehicle to 'strengthen our approach to supporting looked after children'<sup>4</sup>. The Commissioner states that the Bill actually does very little to alter the existing legislation in relation to looked after children in Wales. Barnardo's Cymru say that the Bill does not address some of the current shortcomings within legislation relating to looked after children and care leavers. Dr Julie Doughty, Dr Sally Holland and Dr Heather Ottoway of Cardiff University say that there is potential for 'great confusion amongst legal and social work agencies' and 'whilst we support new legislation in Wales that provides for improvement in services, replicating and re-numbering existing legislation seems to us to introduce unnecessary complication'. The Deputy Minister confirmed that Part 6 of the Bill replicates existing provision but did not refer to the First Minister's stated aim of strengthening the approach.

38. The EM states that provisions in part 6 of the Bill update and clarify obligations and duties towards looked after and accommodated children. The Committee notes that part 6 is only a partial consolidation of existing legislation and draws the attention of the Health and Social Care Committee to our concerns that the Bill does not clarify provision for looked after and accommodated children.

### **Sections 88-94 in respect of re-naming categories of care leavers**

39. BAAF also call for a reframing of sections 89-96 relating to support for care leavers. Dr Doughty, Dr Holland and Dr Ottoway also make the case for change and call for more suitable terminology. They express concerns that the use of categories 1-5 is similar to terminology in the prison service. This view was supported by the WLGA and ADSS Cymru who stated that the provisions did not simplify existing legislation and that it used very pejorative terminology.

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<sup>4</sup> RoP, [Update on the Welsh Government's Legislative Programme 2011-16](#), 17 July 2012

40. The Committee draws the attention of the Health and Social Care Committee to this view and asks that it explores whether sections 88-94 of the Bill should use different language in respect of ‘categorising’ the entitlement of care leavers.

### **Fostering to adoption**

41. In the Inquiry into Adoption Services report, the Committee placed great emphasis on the need for securing earlier permanence for children and recommended that the Welsh Government should take forward the concurrent planning approach. In their written evidence, BAAF Cymru say that current provisions in the Bill ‘do not provide any of the outcomes sought by the Welsh Government in seeking early permanence placements for children’ and that fostering to adopt creates a ‘range of difficulties’ without the benefits that concurrent planning can offer’. They go on to say that ‘any perceived benefit of an earlier adoptive placement for children under this clause is far outweighed by the many factors mitigating against it. BAAF Cymru is an advocate of the concurrent planning model of placement, seeing significant benefits to the children for whom this type of placement is an option. Adoption UK Cymru, St David’s Children Society and Barnardo’s Cymru also expressed concerns about the narrow focus on fostering to adoption within the Bill. BAAF Cymru propose the Bill includes provision which states that the local authority has a duty to consider, as part of a permanency plan for children, placements with carers who could become the child’s permanent carers where this is in the child’s best interest.

42. In light of the extensive scrutiny this Committee has given to such issues during our inquiry into adoption services, we strongly support the need to amend the Bill in this respect and welcome the Deputy Minister’s commitment to review the current provisions in the Bill in this regard. We ask the Health and Social Care Committee to note our views in this regard and to also note the evidence in, and the conclusions of, the Children and Young People Committee Inquiry into Adoption Services report published in November 2012 in respect of the need to secure earlier permanence for children.

## Adoption

### Joint working arrangements

43. The EM states that joint working provisions in section 151 of the Bill would facilitate the reform of adoption services. The Committee notes that provisions in the Children and Families Bill (currently at Committee stage in Westminster) appear to have similar intentions to the Social Services and Well-Being (Wales) Bill in reforming adoption services but appear to provide stronger powers of intervention<sup>5</sup>.

44. The Committee has undertaken a detailed inquiry into the provision of adoption services in Wales, taking evidence from a wide range of witnesses including direct or pre-collated evidence from at least 60 individual adoptive families and also directly from adopted young people. The first recommendation of the Committee's report on adoption was:

“The direct service delivery role of the National Adoption Service should be significantly strengthened from that currently set out in the Social Services (Wales) Bill consultation document. The service should have a central delivery role and employ staff to work on a range of adoption. It should not be ‘owned by local authorities’ as set out in current proposals. The lead role within the Service should be a senior independent role, reporting to a multi-agency board, and ultimately accountable to the relevant Welsh Government Minister.”

45. The Deputy Minister accepted this recommendation in principle but stated her intention to consider the operational model currently being developed by ADSS Cymru and the WLGA. The Deputy Minister provided a copy of this model to the Committee to assist in its scrutiny of the Bill and in oral evidence witnesses were optimistic that the model could deliver change. The Deputy Minister told the Committee that excellent work has been done by ADSS Cymru and the WLGA to develop the model.

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<sup>5</sup> House of Commons, [Children and Families Bill : Explanatory Notes](#), [accessed 15 April 2013]

46. The Committee sought to ascertain whether the powers in the Bill will deliver what is needed to reform adoption services in Wales and whether any progress had been made in improving the consistency of adoption services. The Committee also sought to examine the potential benefits and weaknesses of removing the responsibility for some adoption services (such as recruitment and training) from local authorities to a central independent service. Members also questioned witnesses on whether provisions in the Social Services and Well-Being (Wales) Bill provide sufficient powers for Welsh Ministers to intervene if the delivery model put forward by the WLGA and ADSS does not deliver the required changes to adoption services over time.

47. Voluntary sector representatives made the case for more explicit reference to the voluntary sector in section 151 of the Bill. In respect of the delivery model, evidence also suggested the importance of governance arrangements. Some Members queried the footprint for the 'five regional adoption collaboratives' within the model and how these align with other regional developments such as the education consortia, the improvement collaboratives within social services, and Local Health Boards.

48. Section 151 of the Bill needs to go further than currently drafted to provide the necessary safeguards should the proposed service delivery model for the national adoption services not deliver the 'step-change' that our Committee has previously called for. These views are underpinned by our extensive recent scrutiny of adoption services and our recent scrutiny of the Social Services and Well-being (Wales) Bill which allowed us to explore more recent developments. Section 151 of the Bill also needs to make explicit reference to the voluntary sector. We ask the Health and Social Care Committee to note our views in this regard and to also note the evidence in, and the conclusions of, the Children and Young People Committee Inquiry into Adoption Services report published in November 2012.

### **Post-adoption support**

49. The Bill does not have any sections that relate to post-adoption support in contrast to the Children and Families Bill currently being scrutinised in Parliament. Dr Doughty, Dr Holland and Dr Ottoway of Cardiff University state that the Bill provides the opportunity to strengthen legal rights to receive post-adoption support following an assessment of need. BAAF Cymru say they are very disappointed there is no mention of post-adoption support services. These views were supported by Adoption UK Cymru, Barnardo's Cymru and St David's Children Society.



50. The Committee report following the Inquiry into Adoption Services made two recommendations calling for legislative change to post-adoption support entitlement, both of which were accepted in principle by the Welsh Government. The Committee submitted its report to the House of Lords Select Committee Inquiry on Adoption Legislation. We note that the House of Lords Committee report of 6 March 2013 recommended that post-adoption support should be made a legal requirement. Local authorities currently have duties to assess the support needs of adoptive families but do not have a legal duty to meet those needs. Based on the extensive evidence we heard during the inquiry into adoption services, the Committee is strongly of the view that the duty to provide post-adoption support should be included in the Bill. The Committee recognises the need to adequately cost any additional duties in this regard. We ask the Health and Social Care Committee to note our views in this regard and the evidence in respect of post-adoption support in the conclusions of the Children and Young People Committee Inquiry into Adoption Services report published in November 2012.

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<sup>6</sup> House of Lords Select Committee on Adoption Legislation, [Report](#), 6 March 2013

## **Disabled children**

51. A range of organisations expressed concerns about how the Bill will impact on disabled children, with specific reference to the way disability is defined within the Bill and also the repeal of section 17 of the Children Act 1989 and therefore the perceived removal of the specific status currently afforded to disabled children as 'children in need'. Some evidence also suggested that the Bill upholds the medical model of disability rather than the social model. The Deputy Minister advised that she is currently considering how to proceed in this respect.

### **Definition**

52. The Bill adopts the definition of "disabled" given under section 6 of the Equality Act 2010. Welsh Ministers under section 3(6) can prescribe further what categories of people can or cannot be included under the definition of 'disabled'. Scope Cymru say that 'relying solely on the definition of disabled contained in the Equality Act 2010 could mean that some disabled children are put at a disadvantage'. They go on to say 'although the definition of 'disability' contained in section 17(11) of the Children Act 1989 is out-dated and is focused on a medical model of disability, it nevertheless has a broad reach that requires that any child who meets that definition is deemed to be a child in need. They recommend that these requirements should be retained and that the legislation is closely examined to ensure that existing entitlements to assessments and services are not being weakened. National Deaf Children's Society Cymru state that the Bill needs to reference the Chronically Sick and Disabled Persons Act 1970 as it relates to the provision of specialist equipment in a person's home. They also want reassurance that deaf children will be included in the definition of 'disabled' when regulations are developed. When questioned, the Deputy Minister stated she is 'considering how to proceed' on this issue.

### **Status of disabled children within section 17 of the Children Act 1989**

53. The Bill Advisory Group say that 'the Bill draft will mean that the specific definition of a disabled child provided under the Children's Act 1989 17(11) will in theory be replaced by the more general definition of disability contained in this Bill'. They say 'the Bill as currently worded therefore could potentially be seen to dilute the rights of disabled children to assessment and services'. These views are echoed by the Chartered Society of Physiotherapists. Children in Wales are concerned that the 'people in need' definition may water down the rights of disabled children who are currently entitled to services under section 17.

54. The Children's Commissioner states that the omission of such a fundamental provision (the reference to disabled children in section 17 of the Children Act 1989) that is currently afforded in statute, with insufficient safeguards on the face of the Bill to guard against any retrogression, is of itself grounds to question the validity of the Bill within the context of children's rights. NSPCC Cymru say it is unclear how this definition of 'disabled' and provisions in this Bill will interface with the definition and provisions in Section 17 of the Children Act 1989 which state that any child who is disabled is a child in need, and should then be provided with services appropriate to their needs. The Deputy Minister has confirmed that section 17 is being repealed and therefore the Bill will not have explicit reference to any 'special status' for disabled children, though this may be provided for in regulations.

55. We ask the Health and Social Care Committee to note our concerns in respect of how the Bill provides for a definition of disabled children and also the potential impact on disabled children of the repeal of section 17 of the Children Act 1989. We also note that it is open to Welsh Ministers, by secondary legislation, to remove certain people from the definition of "disability" contained in the Equality Act. We would welcome their further scrutiny of these important issues.

## Finance

56. The WLGA fundamentally questions the assumption within the EM and stated by the Minister for Health and Social Services that the Bill will be 'cost-neutral'. They say colleagues from across the public, third and independent sectors support this view, and share the view of the third sector advisory group that 'the main barrier to delivery will be cost projections'. ADSS Cymru state that there are financial pressures across all service user groups but the position in children's services and services for people with learning disability appear to be especially acute areas in which the Bill may prompt increased expenditure [...]. Children in Wales also 'fundamentally question' that the Bill will be cost neutral. NSPCC Cymru say that the most obvious barrier to implementing the Bill is that of resource and funding. They say that 'significant upfront investment will be required to enable the rebalancing of services which needs to take place'. They express concern about the financial implications of the establishment of a National Safeguarding Board and also the cost of delivering the required preventative services. The Deputy Minister confirmed the expectation that the Bill will be delivered in the main without additional resources and outlined that there is £3M for the implementation of the Bill; and joint funding by the Welsh Government and WLGA of £11M for training; and £50,000 start-up costs for the national adoption service.

57. We ask the Health and Social Care Committee to note our concerns as to whether the Bill can be cost-neutral. We welcome their further scrutiny of financial issues and specifically as it affects services to children, young people and their families.

## **Subordinate legislation**

58. The number of powers to make subordinate legislation is significant. Several stakeholders have noted the difficulty in assessing the merits of the Bill as the detail has yet to be formalised within subsequent subordinate legislation, which could amend some provisions of the Bill significantly.

59. For example, NSPCC Cymru say that ‘there is a significant chance that the practical impact of (the Bill’s) provisions may be significantly altered in the future by subordinate legislation’. They also say that a further concern of NSPCC Cymru is that the majority of the subordinate legislation is subject to the negative procedure and will, therefore, not be subject to further scrutiny. Barnardo’s Cymru say that as the Bill is presented, it requires a considerable leap of faith in regards to implementation. They call for a greater degree of clear explicit requirement on the face of the Bill and more frequent application of the affirmative procedure.

60. We note that issues relating to subordinate legislation powers will be highlighted in the Constitutional and Legislative Affairs Committee report in respect of the Bill. We ask the Health and Social Care Committee to note concerns raised by some of the children’s charities that the majority of the subordinate legislation is subject to the negative procedure and give consideration as to whether the increased use of affirmative, or in some cases, the super-affirmative procedure may be more appropriate.

## **Annex A: List of witnesses who gave oral evidence**

*17 April 2013*

Children are Unbeatable Alliance

NSPCC Cymru

Barnardo's Cymru

*25 April 2013*

Children's Commissioner for Wales

BAAF Cymru

Adoption UK

Barnardo's Cymru

St David's Children Society

Welsh Local Government Association

Association of Directors of Social Services Cymru

Deputy Minister for Social Services

## **Annex B: Additional issues relevant to children and young people as highlighted in written responses to the Health and Social Care Committee's consultation on the Social Services and Well-Being (Wales) Bill**

In addition to those issues that organisations highlighted in the report, additional evidence relevant to children and young people included the following points. This list is not exhaustive and is in no specific order.

- BAAF Cymru state that sections 79 and 80 relating to sibling contact should be amended. They also raise issues including the portability of assessments and also the need for support for young adult siblings aged 18-20 if they care for a sibling who is also a child.
- Dr Julie Doughty, Dr Sally Holland, and Dr Heather Ottoway of Cardiff University recommend strengthening sections 79 and 80 of the Bill in respect of sibling contact. They also reference the need for public consultation on regulations arising from the Bill; the introduction of regulations to remove 'unnecessary bureaucratic demands on practitioners'; refer to sections 12 and 19 of the Bill in respect of new provisions enabling eligibility criteria for assessing children in need.
- Diverse Cymru make a wide range of specific points including recommending 'that the duty to take account of and promote a child's wellbeing in part 6 of the Bill to having regard to a child's "religion, faith or belief, racial origin, cultural heritage, linguistic background, sexual orientation, gender and gender identity, and disability'. In respect of looked after children and care leavers they raise issues including the portability of care plans, the management and review of cases, the suitability of accommodation; and the choice of independent visitors. They also say that LGBT young people should be included within the equality considerations regarding looked after children.
- British Association of Social Workers Cymru state that the wording of section 12 in respect of duty to assess the needs of a child for care and support needs amending.
- Citizens Panel for Social Services make a number of detailed points including that the views of children and young people should be taken into account in respect of section 4 (4) (a) in part 2 of the Bill and in respect of reviews under Part 6. They suggest stronger scrutiny of children and adult care homes through unannounced inspections and checks.

- National Autistic Society Cymru welcome the duty placed on local authorities and health boards to assess and meet the care and support needs of a local population and say that this can only be achieved effectively for people with autism with accurate data on autism. NASC express concern that the details of the national eligibility criteria will be set in regulation and is not currently available for comment. NASC also highlight issues relating to preventative services; direct payments; and care plans.
- Care Forum Wales say that in respect of children's services, 'the requirement to identify the future need and type of services can only be achieved by commissioners talking with providers in order to be able to consider how we can improve outcomes for children and young people by exploring the potential to do things differently'. They also state that they want 'recognition by commissioners that children's homes should not just be viewed as a last resort but also in some cases as an appropriate earlier intervention'.
- Christian Action Research and Education (CARE): highlight a number of issues, primarily relating to trafficked children who may become looked after and say they would like to see a specific reference to children who are trafficked in section 60 either as an addition to 60(1) (b) or as a separate subsection. CARE recommends 'the inclusion of a Guardian or Representative for Trafficked Children' within the Bill. They also make points in respect of supporting families to raise children and the definition of well-being for children.
- NSPCC Cymru makes some specific points about part 6 of the Bill: about sections 59, sections 62. They also raise issues about the impact of reconfiguration and the importance of understanding the impact for regional and local partners.
- Barnardo's Cymru say section 86 should include a more specific requirement for children and young people to be involved in case reviews.
- National Deaf Children Society Cymru make a number of detailed points including the potential dilution of service specialisms; that deaf children are clearly identified in the eligibility criteria; clarification on which groups of children will be included in the register of children with a physical impairment; and express disappointment that proposals for local authorities to appoint a personal advisor for disabled young people reaching transition appear to have been dropped.



- Action for Children/Gweithredu Dros Blant make a range of points including the need to align the Bill's agenda with that in the White Paper for the planned Sustainable Development Bill; collaboration; long term planning and delivery; role of the third-sector; and their views on co-production.
- Hywel Dda Health Board: 'Adopting a common approach to safeguarding (for adults and children) may dilute rather than strengthen the process'.
- Local Safeguarding Children Boards (LSCBs) South East Wales: Concerned about regionalisation of LSCBs despite being in that position themselves. They state there is limited evidence that it improves the effectiveness of boards. Also concerned about the merging of adult and children boards as it will lose focus on either children and young people or on vulnerable adults.
- Flintshire County Council: 'support the Bill's provisions, which assist the creation of a national adoption service for Wales' but 'share the Welsh Local Government Association's concerns that these provisions may require local authorities to collaborate at a national level'.
- Cardiff Council: say 'there is a political commitment to establishing a national adoption support service but there is concern that powers set out in the Bill might be used to require Local Authorities to collaborate at a national level. ADSS Cymru has developed an operational model that takes into account and builds on regional collaborations that already exist across Wales as well as making provision for a national gateway';
- Partner organizations (Disability Wales): Reference the UNCRC and say that the consensus of the partner organisations is that introduction of the Bill will both simplify legislation and enable a number of positive developments, such as the integration of children.
- Children are Unbeatable Alliance: CAU is an alliance of organisations and individuals campaigning for legal reform 'to give children the same protection from assaults as adults'. The CAU steering group includes Action for Children; Barnardo's Cymru; Children in Wales; NSPCC; and Save the Children. CAU have provided detailed evidence on this issue and set out arguments for the inclusion of a provision relating to this issue within the Bill.

- City and County of Swansea: undertook a consultation with frontline staff which included positive views of improvements to safeguarding with new powers for safeguarding adults, and the alignment of the safeguarding adults framework with children's safeguarding. Concerns were expressed about the dilution of children's rights/ child protection in the context of a family perspective
- Powys Teaching Health Board: Say it is important that the role of the Lead Director for Children is retained and reference to amendments to Section 25 of the Children Act appear to maintain this focus and this is welcome. In relation to part 6, they also make the case for alignment with other legal frameworks such as the Mental Health (Wales) Measure.

### **Removal of the reasonable punishment defence**

The 20 consultees who submitted evidence calling for the removal of the reasonable punishment defence are:

Adoption UK

Alliance

Archbishop of Wales

Barnardo's Cymru

Children are Unbeatable

Children in Wales

Children's Commissioner for Wales

Global Initiative to End all Corporal Punishment of Children

National Child-minding Association Cymru

National Youth Advocacy Service Cymru

NSPCC Cymru

Refuge

Respect.

Royal College of Psychiatrists

Churches Network for Non-violence

SNAP Cymru

St John's Ambulance

UNICEF UK

Victim Support

Wales Observatory on Human Rights

Zero Tolerance