



Response to the Social Services and Well-being (Wales) Bill

Respondent's name: Ele Hicks
Respondent's Role: Social Policy Officer
Organisation: Diverse Cymru

Contact details

Email: Ele@diverseecymru.org.uk

Phone: 029 20 368888

Address: 3rd Floor

Alexandra House

307-315 Cowbridge Road East

Cardiff

CF5 1JD

Organisation Background

Diverse Cymru is an innovative new organisation in the Welsh Third Sector, created in recognition of the realities faced by people experiencing inequality in Wales.

Diverse Cymru promotes equality for all. We believe that we can work together to challenge discrimination in all its forms and create an equitable future for the people of Wales.

Diverse Cymru aims to make a real difference to people's lives through delivering services that reduce inequality and increase independence; supporting people to speak for themselves and to connect with decision makers; creating opportunities for participation and development; raising awareness of equality issues; and inspiring people to take action against inequality.

Our current services include direct payments, self directed and independent living support, befriending and advocacy. We produce information resources, run a service user involvement project and co-ordinate volunteer placements. We facilitate forums and groups that work on various issues, from improving disability access to equality

impact assessments. We provide consultancy services and deliver a range of training courses on equality related topics.

Our response focuses on the equality-related aspects of the Bill and on impacts on disabled people and other people affected by inequality in Wales. We would be delighted to assist with the development of specific work programmes and in particular as regards the development of Regulations, Codes and guidance to meet the needs of people in Wales, and with engaging service users in future. We are happy for our response to this consultation to be published.

We would welcome the opportunity to present evidence orally to the committee.

Introduction

We welcome the introduction of the Social Services and Well-being (Wales) Bill and in particular the focus on outcome, well-being, preventative services, national eligibility criteria, portable assessments and approaches to service delivery involving service users and third sector organisations.

However there are a number of areas where we have concerns that the Bill, as introduced and currently drafted, will fall short of its aims, in particular of enabling choice, voice and control and transforming social services.

We have contributed to a paper from several organisations which has been submitted to the committee and are therefore focusing this response on additional information and recommendations, over and above those submitted in the joint paper.

In summary the topics addressed in the joint paper, which we wish to reiterate are:

- A need to replace the medical model definition of disability in the Bill with a social model definition.
- A need to explicitly reference independent living within the definition of well-being
- A need to define and support co-produced Citizen Directed Support, including direct payments, but going beyond this mechanism, in the Code.
- Direct Payments or other Citizen Direct Support should be the default method for administering care and support services
- All references to advocacy in the Bill should state 'independent advocacy' and all references to information, advice and assistance should include a right to access independent advocacy and peer support.
- The Bill should be amended to prevent local authorities and relevant partners from charging for preventative services, information, advice, assistance and advocacy.

- Confirmation should be sought that the £50 per week cap on charges for domiciliary care and support will be retained under new regulations and that any subsequent changes to the rate or formula should be subject to wide, comprehensive engagement with service users and the public and be unavoidable.
- The Bill should be amended to acknowledge the right of individuals to take risks and to ensure that risk is managed on an individual basis.
- The principles and practice of the Talking Points Personal Outcomes Approach should be incorporated into development of the National Outcomes Framework.
- Genuine Co-production must be at the heart of delivering a truly transformed and citizen-centred social services across Wales. Co-production should be established as the preferred method of delivering social services in the Codes.

Overarching well-being and preventative services duties

We feel that the incorporation of a well-being duty on local authorities, which goes beyond maintenance of well-being and includes promotion of well-being is a vital aspect of improving outcomes and quality of life for people who need care and/or support in Wales.

This duty is also co-dependent on the duty to provide or arrange to provide services and/or support that prevent, delay or reduce needs for care and support. In order to promote well-being and deliver substantive change in social care provision, there is a need for preventative services to be able to contribute towards well-being, rather than simply care and support needs management. **We therefore strongly recommend that an additional purpose be added to section 6 (2) stating “(i)promoting the well-being of people within their area.”**

We feel that the effectiveness of both the well-being and preventative duties may be hampered by the lack of cross-references to these over-arching duties at other points in the Bill and a lack of understand of the wide role and benefits of well-being and preventative services and support by social services and other professionals across Wales.

We recognise and welcome the fact that the duty on Local Authorities to assess the needs of individuals who appear to have needs for care and support are to be carried out regardless of any view as to the level of needs or financial resources. However given the objective to move towards preventing needs arising and reducing existing needs **we recommend that a specific subsection be added to sections 10(4), 12(5) and 15(5) requiring local authorities to “assess whether, and to what extent, the provision of preventative services under section 6 could contribute to the achievement of those outcomes.”** Delivery of preventative services should be met wherever possible by the Local Authority whenever this would achieve any of the

purposes in section 6(2), regardless of whether the need for care and support is defined as an eligible need under section 19. In order to support this aim of providing preventative services, which prevent an existing need for care and support becoming an eligible need it will be important to replicate this provision throughout the Bill. Therefore **we recommend that a clause be added to section 19 requiring local authorities to provide preventative services under section 6 if needs do not meet the eligibility criteria but it is necessary to provide preventative services in order to prevent or delay development of an eligible need.**

Additionally when assessing the overall extent of population of carers and people in need of support, unmet needs, and the range and level of services required to meet needs including preventative services we feel there is a need to ensure that the needs of different communities are assessed and provided for.

Our experience with regard to needs assessments conducted for the purposes of developing and delivering Single Integrated Plans indicates that issues experienced by specific protected characteristic (equality) groups are often overlooked. Whilst there is an expectation that equality-related issues will be built into the Local Area Needs Assessments this is not the case and where issues are considered this usually only extends to demographic profiling, children and older people and sometimes BME populations. Therefore the resulting plan has limited effectiveness in achieving outcomes for some groups within the local population and could potentially lead to further inequalities as some groups benefit more than others from planned actions, strategies, objectives and improvements.

Within social services and related care and support needs there are distinct issues and concerns, and in particular service requirements, for different groups. Examples include culturally appropriate services and community-based services for BME people; counselling and other emotional support services that are relevant to and inclusive of a person's religion, faith or belief which is lacking in many areas of Wales at present beyond Christian services; and concerns regarding safe and welcoming recreational opportunities for LGBT people or concerns regarding hate incidents or rejection by family. These are only a few of the different concerns which need to be taken into account when delivering wellbeing, preventative and care and support services for people.

Therefore **we recommend that a section be added on the face of the Bill within section 5 to emphasise the need to ensure that assessments of both populations and the services required are disaggregated by all protected characteristics and that specific service provision should be incorporated into service planning, including information and advice, where there are different needs or service requirements.**

We further feel that such a needs assessment should truly focus on needs and how these could be provided across all services and sectors, whether public, third or private sectors, in order to address the full range of needs and interventions that would be of assistance to people. Our experience indicates that current needs assessments tend to focus on the effectiveness and levels of demand for existing services, with limited possibilities to identify new developments.

We therefore recommend that any Code of Practice, Regulations and subsequent guidance identifies methods of collating and assessing needs and possible services, suggested by local people, which could meet those needs, rather than starting from a point of identifying existing services and whether there is demand from them.

The role of Regulations in delivering the objectives of the Bill

We feel that much of the substance of the Social Care and Wellbeing (Wales) Bill will be contained in the Regulations and Orders proposed throughout the Bill.

Whilst we recognise and agree with the assertion in section 5 of the Explanatory Memorandum that legislatively speaking the use of the negative procedure is justified as the subject matter is relatively minor detail in the overall legislative scheme, this is not the case as regards either achieving the purposes of the Bill or effects on individuals.

Examples include:

- The form, contents, timing and review of assessments can have a major effect on the level of choice and control an individual can exercise, the delivery of outcome-focused services, and confidence accessing services. Sections 5(2) and 18.
- The level of need at which a person meets eligibility criteria can make the difference between receiving needed care and support and potential deterioration of an individual's physical and mental well-being. Sections 19 (3), (4) and (5)
- Whether payments may be provided to meet a person's care and support needs is critical to ensuring that people receive the care and support that they need and that they do not experience a deterioration of health, well-being, social isolation or other negative effects. Sections 33 (1)(d) and 33 (2)(c)
- Given the recognition of the value of both direct payments and other citizen-directed support on improving well-being, choice, voice and control for service users, we welcome the flexibility provided by Regulations for these sections. However whether Local Authorities can or must make direct payments could change the services which an individual has or would choose to use. Even if a Local Authority must make direct payments the manner, amounts, financial resource determinations, support, conditions attached, matters to have regard to and review, in particular could be crucial to an individual's ability and support to exercise choice and control effectively and to receive the support they require. Sections 34(1), 35(1), 36(1) and 37.

- Care and support plans are an integral part of ensuring that individuals have input into services they receive, that their individual views and outcomes are recorded, tracked and met, and that performance can be measured according to individual, tailored need. Therefore the content, timing, review, who should be consulted, persons authorised to prepare plans and similar issues have a huge impact on the level of engagement of individuals and potential to meet their needs and outcomes. Section 38(4). The same is true of portability of these plans. Section 40(6). This also applies to looked after children and to former looked after children in sections 67(4), 90(3), 91(4)(c), 91(5) and 91(6).
- The level of charges for social care and support and the ability of a financial assessment to accurately account for all outgoings, such as up-keep of disability-related equipment, increased travel costs, increased food expenditure, and increased utilities costs as well as income and capital can make the difference between an individual having to choose between mobility or appropriate diets and having their care and support needs met and being able to achieve their full potential by meeting all 3 needs. Sections 45, 46, 48, 49, 50, 51, 52 and 53.
- The proper management and review of the cases of children looked after by the local authority and the services and support these young people are provided with are vital to ensuring their well-being and future life prospects. Therefore the choice of who can be an independent visitor, how and when visits are conducted, case reviews and the suitability of accommodation is crucial in sections 81(4), 82(9), 86, 92(3), 93(4) and (6), and 100(4).
- In cases where experience or risk of abuse or neglect are suspected it is imperative that the officer assessing whether an individual can make decisions freely is well-trained and can understand an individual's needs and circumstances. Therefore regulations relating to who may be an authorised officer in section 105(9) and membership of the National Independent Safeguarding Board in section 110 as well as for Safeguarding Children and Safeguarding Adults Boards in section 111, as well as the functions and public reporting mechanisms of these boards in sections 112(4) and 113(3) are critical to the effectiveness of these arrangements and their ability to address the needs of individuals.
- The competencies of the director of social services and their subsequent appointment of staff will greatly affect their ability to deliver transformed social services, to put the service user at the heart of services, to improve choice, voice and control and to account for the differing needs and concerns of protected characteristic (equality) groups. Section 120(3)
- When considering making complaints the detail of how complaints can be made, the complexity of having different systems for different types of complaints or bodies, how complaints are considered, action to be taken, accessibility and availability of support and representation, and publicising arrangements can either enable and

encourage everyone, including disabled people, to make complaints where they feel it is necessary, or form an additional barrier and dissuade people from making necessary complaints. Sections 152, 153, 155, 156, 157, 158, and 159

Therefore given the extent of the impact on people, on individual choice, voice and control, and on the effectiveness of this Bill in transforming social care **it is imperative that the super-affirmative procedure is used for all the Regulations above.**

The impact of these Regulations and their pivotal role in achieving or falling short of the purposes of this Bill requires not only a vote by the full National Assembly for Wales, but also enabling the tabling of amendments and requiring full and active involvement of people with care and support needs and representative organisations across Wales.

Assessing the needs of individuals

We welcome the duty to assess the needs of all individuals where it appears to the local authority that they may have needs for care or support. However we are concerned that the Bill contains no provisions relating to ensuring that local authorities proactively identify these individuals or promote the availability of assessments.

Many individuals do not approach the local authority for a needs assessment, as they aren't aware that they are entitled to one, or they feel that their needs will not meet eligibility criteria or they do not define themselves as disabled or a carer. This is particularly true amongst some of the protected characteristic groups, for a range of reasons, especially older people, LGBT people and BME people.

We recommend that a duty to actively and accessibly promote needs assessments and the availability of preventative services be added in part 3.

Regarding execution of needs assessments our experience indicates that many individuals do not have their full needs met, as needs assessments focus on what services that organisation or department can provide. This misses the fundamental links between poverty and disadvantage and various areas of life including finances, housing, health and wellbeing, family and relationships, work or meaningful activity and social care and wellbeing. This limits the effectiveness of any assessment and of any interventions. **We therefore recommend that the mental health approach to assessments be adopted utilising the 8 plus other outcomes and needs assessment approach to identify all needs and outcomes an individual has and making appropriate referrals to other services in the public, private and third sectors.**

To support this, whilst we recognise that the exceptions provided in sections 31 and 32 for providing health and housing services directly are required, we feel there is a need to ensure that any Code of Practice or guidance issued under this Bill includes explicit references to ensuring that all needs and outcomes are assessed, including housing

and health, and that such assessments should be conducted jointly where possible and where not possible that needs and outcomes are still assessed and referrals to other services made as necessary.

Equality considerations regarding children looked after by the local authority

We warmly welcome the recognition that a child's religious persuasion, racial origin and cultural and linguistic background need to be taken into account when deciding where and with whom a child should be placed.

However we would extend this requirement to other protected characteristics, for example many older LGBT young people or young people who are questioning their sexual orientation or gender identity experience pressure in the home as a result. This can extend to bullying, physical or verbal abuse, neglect and rejection.

Similarly the attitude of a foster carer, adopter or other person looking after a child towards their specific impairment and how this affects their day to day life can make the difference between young people being supported to achieve their aspirations or being dissuaded from certain careers or life paths unnecessarily.

We recommend 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."