

Consultation on the Social Services and Well-being (Wales) Bill

March 2013



About Us

The National Deaf Children's Society (NDCS) is the leading charity dedicated to creating a world without barriers for deaf children and young people.

We represent the interests and campaign for the rights of deaf children and their families. NDCS represents children with all levels of hearing loss.

As a result of living in a hearing orientated society, deaf children and young people can face a number of unique barriers. Research indicates that deaf children and young people are at an increased risk of isolation, bullying, abuse and difficulties with emotional wellbeing.

Response

- 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.**

NDCS Cymru does not object to this concept. However, we have a few reservations which we would like to highlight at this stage:

- If the Bill is to be regarded as bringing together all duties and functions in relation to social care, NDCS Cymru urges that it references an important clause under the Chronically Sick and Disabled Persons Act in schedule 2. This act includes clear references to the importance of providing specialist equipment in the person's home and provision or assistance in accessing recreational facilities, such as telecommunications. It also clearly highlights the importance of any additional facilities that are needed in order to secure the child's "greater safety, comfort or convenience". This legislation has become strengthened through case law. Specialist assistive technology provided to deaf children within this Act includes devices to enable access to hearing and watching television; listening to the telephone and alerting devices to wake a child/ young person as part of developing their independence or in an emergency.

While we are pleased that Part 1 (6) of the Draft Bill outlines the duty to minimise the effect on disabled people of their disabilities, we feel that this clause is quite broad. Therefore, in addition to this clause, we would welcome a reference to the duty from the Chronically Sick and Disabled Persons Act, so that it is clear to local authorities that the duty to provide such services and access remains in place.

- As highlighted within our response to the original consultation on the Bill, NDCS Cymru also has concerns that in moving towards “people in need”, there is a danger of losing the emphasis on the particular needs of vulnerable children.
- NDCS Cymru is concerned that, previous legislation clearly identified that a “child in need” was entitled to a social care assessment, and that a deaf child is to be considered a “child in need”. Due to a general lack of deaf awareness across services, we feel that it is important to maintain this level of specificity. NDCS Cymru is aware that Welsh Ministers will be developing regulations on the definition of disabled and we would welcome reassurances that deaf children will be included within this new definition.

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 Explanatory Memorandum states that the Bill will provide a person with “a right to a proportionate assessment of their needs” (page 22). NDCS Cymru is concerned that, ultimately, people’s right to an assessment is weakened under the current draft of the Bill.

The Bill states that a local authority has a duty to assess a child “Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child’s family” (Part 3, 12 (1)). NDCS Cymru is concerned that this places too much emphasis on the local authority’s discretion and, consequently, weakens the rights of a person to request an assessment. It is important that local authorities have a duty to assess a person when it appears to the authority that a person has a need, but **also** when a referral is made or when a person requests an assessment.

As highlighted, we are particularly concerned about the widespread lack of awareness of the vulnerabilities that deaf children and young people face. Therefore, we are concerned that, if left to the local authority’s discretion, deaf children and their families may find it difficult to access an assessment of need.

Current case law has determined that local authorities should undertake an assessment on a disabled child if parents/carers request that this is done (House of Lords R (G) vs. Barnet LBC). NDCS Cymru is keen to ensure that the right of deaf children to have their needs assessed if they or their parents request an assessment is maintained and clearly identified within both the new legislation and accompanying codes/eligibility criteria.

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.

NDCS Cymru welcomes the duty on local authorities and local health boards to jointly assess the needs of people within the local population as a positive step forward. We consider that the register of the deaf and of children with a physical impairment (as outlined in part 2. 9) should assist the development of this strategy. We have outlined more detail on this point in our response to question 9. We also welcome the duty on improved sharing of information.

However, we have reservations about part 2. 6(c), which states that in considering provisions to meet the needs of people in its area, local authorities “must make the best use of the authority’s resources and in particular avoid provision which might give rise to disproportionate expenditure.” While we appreciate the need to use resources wisely, we are concerned about the possible interpretation of the term “disproportionate”. Some of the most vulnerable people within our society have low incidence, but high cost needs. It would be inappropriate for a local authority to neglect to provide provision for such groups on the basis of the small numbers. Rather, the emphasis should be on the benefits that are to be gained for the people accessing such provision.

In relation to the proposed changes to the Local Safeguarding Children Boards (LSCBs), we have some reservations about the merging of LCSBs with the new adult boards. We would wish to ensure that, in making orders/regulations for the merging of adult and children safeguarding boards, the Welsh Government clearly indicates the need to maintain representatives with specialism in both child and adult social care. We would also recommend that the boards have access to experts that can be called upon should a relevant case arise, for example, a practitioner who specialises in working with deaf children.

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

NDCS Cymru has reservations about the potential impact of moving towards “people in need” and whether this will cause a shift in the service structure and budgeting of social services across Wales.

It is important to ensure that, across Wales, deaf children and young people are able to access social workers with an appropriate knowledge of both deafness and child social care. Indeed, research by the University of Manchester highlighted that a lack of specialist knowledge on deafness hampers the ability of a service to recognise the seriousness of a presenting problem with a deaf child. It revealed that a situation tended to have to escalate to a generically recognised crisis before any response was possible.¹

In recent years, a small but growing number of local authorities have invested in specialist social workers for deaf children. However, we are anxious that a move towards the broader “people in need” could potentially dilute specialisms within service structures. We are concerned that, as a relatively low incidence disability, the needs of deaf children and young people could become lost within a service structure that is built to reflect the broader definition of “people in need”. NDCS Cymru would urge that efforts are made to encourage the continued development of specialisms among both child and adult social workers.

In addition, we are concerned, that in shifting towards “people in need”, local authorities may prioritise their social services budget across the age spectrum. Given the ageing profile of our population, we are concerned about how the needs of children would be prioritised within such a budgeting structure. A child’s social support needs may not be regarded as urgent in comparison to the care needs of others within this spectrum, yet failure to address these needs could cause problems later in the child’s life. This is particularly pertinent to deaf children who are often geographically dispersed from their peers and can struggle to access social activities thereby increasing their risk of social isolation.

In order to help avoid this difficulty, NDCS Cymru considers it imperative that the accompanying regulations and eligibility criteria highlight the specific needs of vulnerable groups, including deaf children.

As the Bill acknowledges, social care for children can be different from adult services as there is a distinct emphasis on a child’s social, behavioural, emotional and educational development. For this reason, we believe that regulations on the content and form of a social care plan for children should be different to a plan for adults.

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

NDCS Cymru considers that whether or not the implementation of this Bill will be successful is very dependent on the accompanying regulations and eligibility code. NDCS Cymru would urge that in developing these codes – particularly the eligibility code and the regulations on the form and content of care plans, time

¹ University of Manchester, Alys Young, Ros Hunt, Rosemary Oram, Carole Smith, December 2009: *The Impact of integrated Children’s Services on the scope, delivery and quality of social care services for deaf children and their families.*

limits, as well as on complaints mechanisms – the Welsh Government consults with the voluntary sector to ensure the needs of particularly vulnerable groups, including deaf children are fully considered.

We are also conscious of the ability of Welsh Ministers to reissue and alter codes and would urge that relevant voluntary organisations are consulted when codes are revised.

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

As indicated above, NDCS Cymru considers that much emphasis is placed on the regulations. Whilst we understand the crucial role that regulations play in the implementation of the law, we have reservations about this imbalance should the Welsh Government not publicly consult on the development of/changes to key regulations.

As highlighted in response to question 2, NDCS Cymru is concerned that the Bill places the emphasis on the local authorities to determine whether or not a person should have an assessment. As such, regulations and eligibility criteria will play a crucial role in defining the types of situations in which a person would be eligible for an assessment. If these regulations are not regarded as statutory, we feel that a person's right to request an assessment could be severely compromised. We note that the draft Bill provides for local authorities to depart from the requirements of regulations set out by the Welsh Ministers. It is important to ensure that divergence from the code is not regarded as the "norm", otherwise there is a risk of a continued post-code lottery in accessing support.

We also note that the Bill enables the Welsh Ministers to alter the definition of disabled. We would urge that any alteration to this definition should be subject to public consultation.

NDCS Cymru would feel reassured if certain key points were to be reiterated within both the Bill and the regulations. For example, it is important to ensure that there is clarity around the definition of people in need and that deaf children and young people are clearly identified within this group.

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)?

See answer to question 6.

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

NDCS Cymru has some concerns around the implications of the ability for local authorities to charge for a social service. We would wish to be consulted on the regulations for this point as we would be concerned if charges were to discourage families from using support services. We would highlight that the “means test” for the Disabled facilities Grant is not applied when the application is for a disabled child and would urge that this same principle is applied within the new legislation.

Preventative services, such as supporting parents/grandparents/siblings to attend sign language classes can be crucial to ensure good communication with a family and, consequently to the social, emotional and cognitive development of a deaf child. These types of services are essential to the duty of “minimising the effect on disabled people of their disabilities.” Unfortunately, such services are not often available. We acknowledge the emphasis on cost saving within the proposals for change, and would suggest that there may be opportunities for local authorities to work regionally to deliver services such as these.

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

Register of deaf people

Part 2 of the Bill outlines the duty on local authorities to maintain a deaf register and a register of children with a physical impairment. NDCS Cymru would be interested to discuss this aspect of the Bill in further detail.

At present, local authorities are required to keep a register under section 29 of the National Assistance Act 1948. However, as highlighted in the Welsh Government’s 2008 Benchmarking study, the criterion used for these registers often varies.² Due to the voluntary nature of registration, the accuracy of the registers can be particularly unreliable. Indeed, some people with a hearing loss may not consider themselves to be “Deaf” and would not wish to be listed on a register.

NDCS Cymru considers it important that local authorities hold more accurate information on the deaf population in their local area in order to assist appropriate planning of service provision. We would suggest that, in order to achieve more accurate data and information, the ethos of working collaboratively with health services elsewhere in the Bill (Chapter 2, section 145) could be applied. Indeed, audiology services will be in contact at some point with all deaf people in the region. Such services could potentially provide local authorities with information

² Welsh Government 2008, Benchmarking Study – Services to Deaf and Hard of Hearing People

on the number of deaf people in the area (without necessarily needing to disclose personal details if this is against the family's wishes). Audiology services could also play a greater role in promoting the support that social services can offer and in making referrals.

We would suggest that local authorities could hold information on the age ranges within the deaf population and the preferred forms of communication, as such information would be crucial in planning services.

NDCS Cymru notes that, in addition to the deaf register, there will be a register of children with a physical impairment. We seek clarification on whether deaf children would be included in one or both of these registers. In relation to the register for children and young people with a physical impairment, we would highlight the need for the register to be categorised by impairment type. Indeed, the needs of a child with a hearing impairment are considerably different from that of a child with a visual or mobility impairment. If the register is to be meaningful and useful in service planning, regulations should clearly identify the need to categorise the register.

This section of the Bill also outlines that Welsh Ministers will provide a universal definition of "deaf". NDCS Cymru would urge that we are consulted on the development of this definition. Indeed, it would be important to ensure that the definition includes those who do not culturally identify themselves as deaf.

Miscellaneous

- NDCS Cymru welcomes the duty on local authorities to promote support available from the third sector as a positive step forward. However, we would caution against this becoming a reason for local authorities to not provide a service that should be provided on a statutory basis.
- NDCS Cymru notes that the Welsh Government's statement of outcomes may specify different standards for different categories of people who need care and support. We would urge that specific standards are outlined for people with a sensory impairment. Indeed, we recently responded to the consultation on the national outcomes standards framework in collaboration with other sensory voluntary organisations to highlight this point.

We would also like to take this opportunity to reiterate our concerns raised in the initial consultation on the Bill in relation to prioritising services by levels of need. While we appreciate the need to prioritise urgent cases, we would be concerned if those placed at a low level of need are allowed to fall off the radar. Indeed, without appropriate support, a child's low level needs could develop into high level needs.

- NDCS Cymru welcomes the provisions within the draft Bill for portability of care plans across local authority regions. We also strongly welcome the duty on local health boards to co-operate with local authorities.
- We note that further regulations are to be made in assisting people to make complaints. We would urge that staff assisting children and young people should be trained in working with children, and deafness and disability.
- Transitioning into adulthood and reaching independence can be particularly challenging for disabled young people, including deaf young people. NDCS Cymru would wish to see a greater emphasis on supporting young people through transition within the proposed changes. Indeed, the Welsh Government's 2008 Benchmarking Study on Services for Deaf and Hard of Hearing People recommended that all deaf young people should have a Transition Plan and be fully involved in any decisions concerning them.

We are disappointed that original proposals for local authorities to appoint a personal advisor for disabled young people reaching transition appear to have been dropped. We had hoped that the Welsh Government would consider broadening this proposal as deaf young people could benefit from such a service.