



Scope Cymru response to the Health and Social Care Committee's call for evidence on the Social Services and Well-being (Wales) Bill

About Scope Cymru

I am submitting this response on behalf of Scope Cymru.

We all want to live in a world of opportunity – to be able to live our own life, play our part and be valued for the person we are. At Scope Cymru we're passionate about possibility. It inspires us every day and means we never set limits on people's potential.

We work with disabled people and their families at every stage of their lives. From offering day to day support and information, to challenging assumptions about disability and influencing decision makers – everything we do is about creating real and lasting change.

We believe that a world where all disabled people have the same opportunities as everyone else would be a pretty incredible place for all of us. Together we can make it happen.

To find out more about our work visit: <http://www.scopecymru.org.uk/>

We welcome the opportunity to respond to this consultation and have focused on the questions most relevant to Scope Cymru. Scope Cymru is a member of the Social Services and Well-being Bill Advisory Group and supports their response.

We would be happy to discuss any of the points we have made in more detail. If you have any queries or require more information, please contact:

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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.

In general we support a Bill which brings together in a single Act, social care provision for children, adults and their carers. However, in the process of modernising and 'simplifying' the law, it is vital to retain some essential detail of previous legislation to ensure that the duties of local authorities and their partners and the rights of children, adults and their carers, are not unintentionally eroded. There is a danger that in repealing previous legislation and using 'new' definitions, some people may lose valuable care and support.

One example is regarding the definition of disabled children. Relying solely on the definition of disabled contained in the Equality Act 2010, could mean that some disabled children are put at a disadvantage. 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. A local authority then has a duty to assess and provide a range of services to meet assessed needs.¹ We recommend that these requirements should be retained and that the Health Committee examines closely the legislation that is to be repealed to ensure that existing entitlements to assessments and services are not being weakened.

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.

Eligibility

We broadly welcome the intention to develop a national eligibility framework to ensure consistency across the country. As disabled people have told us, the eligibility framework is fundamental to how the Bill is applied in practice. It will set the criteria which local authorities will use to decide whether or not people will receive local authority funded care and support. It will be this framework that will determine the extent to which the Bill meets its objectives. The regulations will define what constitutes an eligible need and are absolutely critical to the working of the Bill.

In the new framework, Scope Cymru strongly believes that setting the threshold at moderate FACS (or its equivalent) is essential to achieving the aspirations of the White Paper.² This would ensure disabled people receive not only the basic care and support they need, but also that they are able to take an active role in their community - as set out by the definition of well-being which contains a number of different elements. We believe that if the national threshold were to be set at a higher level than moderate or its equivalent, the Bill would fail in its intentions to promote well-being as described in Part One, Section 2.

In addition, it is important that the resulting criteria are consistently applied, as our experience suggests that interpretation of the current FACS criteria varies widely.

We would welcome more information about the Welsh Government's vision and intentions around eligibility and future eligibility criteria, so we can best understand how the proposals will meet the needs of people requiring care and support services.

Definition of well-being

Scope Cymru warmly welcomes this definition of well-being, which rightly includes different aspects of a person's life.

We suggest that the definition should be strengthened in two key respects. Firstly, we would like to see the inclusion of a clause about the control of a person over their day-to-day life. This should include control over a person's care and support package and the way in which this is provided.

Secondly, the UK has ratified the UN Convention on the Rights of Persons with Disabilities. Therefore, it is important to ensure that the rights that disabled people have under the Convention shape the understanding of the outcomes which social care should deliver under the Bill.³ Scope Cymru believes it is important to include a general acknowledgement on the face of the Bill that well-being, and particularly its defining components, should be understood as defined under the UN Convention.

Overarching well-being duties

¹ At the moment there is detailed and prescriptive guidance on Children Act assessments contained in the *Framework for the assessment of children in need and their families*. However, the Department for Education has recently concluded its consultation on withdrawing this guidance and replacing it with far less prescriptive guidance, which (for example) removes nationally-set timescales for assessment and abolishes the distinction between 'initial' and 'core' assessments. The change to the guidance should not affect the basic duty to assess under the Act.

² Welsh Assembly Government (2011) *Sustainable Social Services for Wales: a Framework for Action*

³ United Nations (2006) Convention on the Rights of Persons with Disabilities,
<http://www.un.org/disabilities/convention/conventionfull.shtml>

We welcome the overarching well-being duties set out in the Bill, especially the requirement to have regard to the importance of the family in the upbringing of a child. This section could be strengthened by including additional requirements for promoting the well-being of both child and family which would require local authorities to have regard to further outcomes, including:

- Increasing, maintaining and promoting positive family relationships
- Increasing, maintaining and promoting the child and family's participation in local community activities
- Increasing the ease of the child's family in accessing services within their current financial circumstances and preferred working arrangements
- Increasing the accessibility of services in the local proximity to where child and family ordinarily reside

Assessments

We support the principle of establishing a national eligibility framework and strongly recommend that through regulation, the Bill also supports a more standardised framework for conducting assessments and re-assessments.

Although a needs assessment will quite rightly vary from person to person, there is an urgent need for all local authorities to adopt a standard approach and process when assessing, and allocating resources to, people's social care needs. This would help to ensure consistency and equity across the country. A standard approach would be helpful for assessors, the individual, their families and carers and providers and would make the portability of assessments across local authority boundaries much easier. In our experience, assessments sometimes fail to identify a person's entire social (and health if combined) care needs. A framework would prompt assessors to consider a full range of needs.

We would be happy to discuss a standard assessment framework in more detail at a later stage. We suggest that it should include: core elements, information and how this will be shared, how decisions are made and resources allocated and how to appeal.

Voice and Control

Scope Cymru strongly supports the Welsh Government's intention to promote people's independence and to give them a stronger voice and control over services. At present however, we do not believe that the Bill will achieve this intention. For example, parts of the Bill appear to focus on services and resources rather than on outcomes (eg at Part 2, section 6) and the need to have regard to a person's views, wishes and feelings is significantly weakened by the consideration of what is 'reasonably practicable' on the face of the Bill. There is a danger that views of children and adults who have more complex communication needs may not be taken into account. See also Question 9 below on independent advocacy.

Prevention

Setting the threshold at moderate or its equivalent is essential to ensuring that interventions take place when individual's needs are lower rather than their condition deteriorating. This is both beneficial to the individual and is an effective use of resources.

Scope Cymru supports the focus on local authorities providing preventative services, and describing what these should achieve, including "minimising the effect on disabled people of their disabilities," in Part 2, Section 6.

However, we are concerned that Section 6 also states that when exercising this duty, a local authority must "make the best use of the authority's resources and in particular avoid provision which might give rise to disproportionate expenditure". Although it also states that "provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision" it is possible that those with high cost needs could find their care classed as 'disproportionate'. We suggest amending this clause.

Meeting Needs

Part 4 Section 46: Portability of prescribed care and support plans

Scope Cymru warmly welcomes the Bill's intention is to 'provide equivalent rights for carers, putting them on the same legal footing as the people they care for.' However, for this to be fully realised, portability of care and support plans must be extended to carers.

It is extremely positive that there will be no *interruption* of care but, as drafted, a person still has no reassurance that their new care package will enable them to retain the same level of independence when they move, since they are subject to a re-assessment by the receiving local 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.

Scope Cymru strongly supports closer working between local authorities and their partners. A variety of different types of service run by different providers is helpful to ensuring the sustainability of provision and we warmly welcome the duties of local authorities to promote the development of social enterprises, co-operatives and services run by service users and third sector organisations.

As mentioned above in question 2, the eligibility threshold at which people can access local authority funded care is closely linked to the sustainability of provision. Setting the threshold at moderate or equivalent would enable people to get the support they need before reaching crisis point, potentially at a lower cost. Conversely, if the threshold is set too high, a larger proportion of people are likely to need more expensive services for a longer time period.

For example, modelling by Deloitte commissioned by the British Red Cross, recently demonstrated the cost benefit to health and council services in the UK of preventative support. Through the prevention of hospital admission and readmission, reduction of the length of hospital stays and prevention of the use of expensive domiciliary and residential care, it was estimated that in 2012 the British Red Cross, through six community and A&E discharge schemes, realised savings per user from these schemes ranging from £168 to £704. This relates to a rate of return of between 40% to 280%.⁴

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

The first consultation on the Social Services (Wales) Bill included the expectation that 'local authorities will understand the characteristics of the population in need in their area.'⁵ We believe that information about local need, existing provision and gaps in services will help to identify and inform future service development and so is critical to fulfilling this aim. At present, our experience is that information about local need and service provision is patchy. It is important that local authorities make better use of existing sources of information such as Joint Strategic Needs Assessments, but we would welcome stronger provisions in the Bill which require local authorities to hold robust and up-to-date data about their local population which they can then use to inform their commissioning decisions.

We would also like to see provisions to encourage stronger and co-operation and information sharing between local authorities and between local authorities and their partners. Providers from all sectors make a significant contribution to the planning, delivery and improvement in care and support services. They hold valuable information about the individuals in their care and are experienced in developing new models of service delivery, but currently information sharing by the local authority with partners from the voluntary sector is often poor

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.

⁴ Deloitte (2012) The Economic Impact of Care in the Home Services. This includes a case study of Torfaen Intermediate Care Services.

http://www.redcross.org.uk/~media/BritishRedCross/Documents/What%20we%20do/UK%20services/Final%20report%20to%20BRC_with_marque_NO_APDIX%20%281%29.pdf

⁵ Welsh Government (2012) Consultation document on the Social Services (Wales) Bill p14.

As currently drafted, this Bill does not achieve the appropriate balance between what is on the face of the Bill and what is contained in regulations. We feel that too much of the content of the Bill is left to regulation, which may not be subject to sufficient scrutiny.

We refer to the response of the Social Services and Well-being Bill Advisory Group and strongly support the points made in relation to this question.

Other comments

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

Advocacy

We are disappointed that the Bill does not contain any specific provision for independent advocacy. Section 8 states that a local authority must 'secure' the provision of information, advice and assistance in accessing care and support. The Local Health Board must also provide information to feed into this. However, there is no mention of either 'independence' or 'advocacy', both of which are important to making this system work.

Whilst the White Paper highlighted the value of advocacy for children and young people,⁶ advocacy is vital to people of all ages to make their own views heard, including over local authority services. Scope Cymru would like to see in the Bill, a right to independent advocacy for every person who could not otherwise meaningfully participate in needs assessment, care and support planning, appeals, reviews or safeguarding processes.

In particular, there is a lack of non-instructed advocacy in Wales. This is advocacy for individuals who may be unable to communicate what they wish for themselves. The advocate will work with the individual to try and assess what they want through any means of communication that they do have and try to ensure that their best interests are at the centre of any decisions taken. This can be an important service for many disabled people with complex needs who may not be able to communicate for themselves. Scope Cymru works with some individuals at Craig-y-Parc School in Cardiff who require non-instructed advocacy. This has to be purchased from Bristol due to the lack of provision in Wales.

If the Welsh Government intends to develop information and advice, provision of advocacy and non-instructed advocacy will need to develop alongside these services to ensure they are accessible to all.

⁶ Welsh Assembly Government (2011) *Sustainable Social Services for Wales: a Framework for Action*, for example in regard to Citizen Centred Services p17.