Y Iechyd a Gofal Cymdeithasol

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)

Ymatebion i'r Ymgynghoriad
Mawrth 2013

……………………………………

Health and Social Care Committee

Social Services and Well-being (Wales) Bill

Consultation Responses
March 2013

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)

Social Services and Well-being (Wales) Bill

Ymatebion i'r Ymgynghoriad

Consultation Responses

*Ar gael yn Gymraeg / Available in Welsh

Number	Cyfluniant	Organisation	Tudalen / Page
SSW 1	Y Cyngor Aciwbigo Prydeinig	British Acupuncture Council	1
SSW 2	WRVS Cymru	WRVS Wales	3
SSW 3	Zero Tolerance	Zero Tolerance	9
SSW 4	Adoption UK	Adoption UK	11
SSW 5	Respect	Respect	15
SSW 6	Heddlu Gwent	Gwent Police	17
SSW 7	Bwrdd Iechyd Lleol Cwm Taf	Cwm Taf Local Health Board	19
SSW 8	Global Initiative	Global Initiative	23
SSW 9	UNICEF y DU	UNICEF UK	27
SSW 10	Cynghrair Ailalluogi Cymru	Welsh Reablement Alliance	29
SSW 11	Arsyllfa Cymru ar Hawliau Dynol Plant a Phobl Ifanc	Wales Observatory on Human Rights of Children and Young People	33
SSW 12	Ombwdsmon Gwasanaethau Cyhoeddus Cymru	Public Services Ombudsman for Wales	35
SSW 13	Coleg Brenhinol y Ffisigwyr	Royal Colleges of Physicians	39
SSW 14	NYAS Cymru	NYAS Cymru	43
SSW 15	Sefydliad Partner a gydlynir gan Anabledd Cymru	Partner Organisation Co-ordinated by Disability Wales	45
SSW 16	NCMA Cymru	NCMA Cymru	69
SSW 17	My Care My Home	My Care My Home	71
*SSW 18	Cyngor Sir Ynys Môn	Isle of Anglesey County Council	75
SSW 19	Cymdeithas Siartredig Ffisiotherapi	Chartered Society of Physiotherapy	81
SSW 20	Cymdeithas Gweithwyr Cymdeithasol Prydain Cymru	BASW Cymru	89
SSW 21	Ambiwlans Sant Ioan	St John Ambulance	97
SSW 22	'Sdim Curo Plant!	Children are Unbeatable	99

	Cymru	Alliance	
SSW 23	Cynhalwyr Cymru	Carers Wales	113
SSW 24	Y Gymdeithas Strôc	Stroke Association	119
SSW 25	Y Grŵp Cynghori	Advisory Group	123
SSW 26	Joint response: Sense Cymru, RNIB Cymru, Action on Hearing Loss Cymru, Vision in Wales a Guide Dogs Cymru	Ymateb cyd: Sense Cymru, RNIB Cymru, Action on Hearing Loss Cymru, Vision in Wales and Guide Dogs Cymru	137
SSW 27	Dinas a Sir Abertawe	City And County of Swansea	151
SSW 28	Coleg y Therapyddion Galwedigaethol	College of Occupational Therapists	157
SSW 29	Coalition on Charging Cymru	Coalition on Charging Cymru	165
SSW 30	Cynghorau Gofal	Care Councils	171
SSW 31	Comisiynydd Pobl Hŷn Cymru	Older People's Commissioner for Wales	179
SSW 32	Diverse Cymru	Diverse Cymru	191
SSW 33	NSPCC Cymru	NSPCC Cymru	199
SSW 34	Canolfan Byw'n Annibynnol Dewis	Dewis Centre for Independent Living	201
SSW 35	Canolfan Cydweithredol Cymru	Wales Co-operative Centre	209
SSW 36	5 Bwrdd Lleol Diogelu Plant yn Ne-ddwyrain Cymru	5 Local Safeguarding Children Boards in South East Wales	219
SSW 37	Refuge	Refuge	223
SSW 38	Paneli Dinasyddion ar gyfer Gwasanaethau Cymdeithasol Cymru	Citizens Panel for Social Services	227
SSW 39	Snap Cymru	Snap Cymru	233
SSW 40	Cyngor Gweithredu Gwirfoddol Cymru	WCVA	235
SSW 41	Cymdeithas Mabwysiadu a Maethu Prydain (Rhanbarth Cymru)	BAAF Cymru	243
SSW 42	Dr Meurig Williams	Dr Meurig Williams	255
SSW 43	Grŵp Mynediad Arfon	Arfon Access Group	257
SSW 44	Coleg Nyrsio Brenhinol Cymru	Royal College of Nursing Cymru	261
SSW 45	Ymateb ar y cyd gan Dr Doughty, Dr Holland a Dr Ottaway	Joint response Dr Doughty, Dr Holland, Dr Ottaway	269
SSW 46	Cynghrair Gofalwyr Cymru	Wales Carers Alliance	273

SSW 47	Grŵp Cartrefi Cymunedol Cymru	Community Housing Cymru Group	277
SSW 48	Macmillan	Macmillan	287
SSW 49	Bwrdd Iechyd Hywel Dda	Hywel Dda Health Board	297
*SSW 50	Cymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru	ADSS Cymru	303
*SSW 51	Cymdeithas Llywodraeth Leol Cymru	WLGA	331
SSW 52	Cymorth i Ddioddefwyr	Victim Support	347
SSW 53	Cyngor Bro Morgannwg	The Vale of Glamorgan Council	353
SSW 54	Gofal Linc	Linc Care	355
SSW 55	Y Gymdeithas Genedlaethol i Blant Byddar	NDCS	361
SSW 56	Cyngor Sir y Fflint	Flintshire County Council	369
SSW 57	Mind Cymru	Mind Cymru	379
SSW 58	Comisiynydd Plant Cymru	Children's Commissioner for Wales	391
SSW 59	Anabledd Dysgu Cymru	Learning Disability Wales	403
SSW 60	Barnardo’s Cymru	Barnardo's Cymru	411
SSW 61	Cymdeithas Genedlaethol Awtistiaeth Cymru	National Autistic Society Cymru (NAS Cymru)	427
SSW 62	Coleg Brenhinol y Seiciatryddion yng Nghymru	Royal College of Psychiatrists in Wales	435
SSW 63	Scope Cymru	Scope Cymru	441
SSW 64	Gweithredu dros Blant	Action for Children	447
SSW 65	Fforwm Gofal Cymru	Care Forum Wales	453
SSW 66	Age Cymru	Age Cymru	461
SSW 67	CARE	CARE	473
SSW 68	Cymorth Cymru	Cymorth Cymru	479
SSW 69	Cyngor Caerdydd	Cardiff Council	485
SSW 70	Y Comisiwn Cydraddoldeb a Hawliau Dynol	Equality and Human Rights Commission	495
SSW 71	Prosiect Cyngor ar Anabledd	Disability Advice Project	497
SSW 72	Rhwydwaith Di-drais Eglwysi (CNNV)	Churches' Network for Non-Violence (CNNV)	503
SSW 73	Bwrdd Iechyd	Powys Teaching Health	507

	Addysgu Powys	Board	
SSW 74	NSPCC Cymru	NSPCC Cymru	511
SSW 75	Ymateb ar y cyd gan Cydweithredwyr Blaengar Cymru ac Age Connects Wales	A Joint Response By Welsh Progressive Co-operators and Age Connect Wales	529
SSW 76	Cyngor Bwrdeistref Sirol Caerffili	Caerphilly County Borough Council	533
SSW 77	Plant yng Nghymru	Children in Wales	537
SSW 78	Y Gymdeithas Alzheimer	Alzheimer's Society	547
SSW 79	Y Parchedicaf Dr Barry Morgan, Archesgob Cymru	Most Revd Dr Barry Morgan Archbishop of Wales	553
SSW 80	Tros Gynnal Plant	Tros Gynnal Plant	555
SSW 81	Grŵp Achub Canolfan Ddydd Coedlan y Parc	Save Park Avenue Day Centre (SPADC) Group	557
SSW 82	Pamela Hughes	Pamela Hughes	559
SSW 83	Cyngor Bwrdeistref Sirol Conwy	Conwy County Borough Council	561
SSW 84	Conffederasiwn GIG Cymru	The Welsh NHS Confederation	565

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 1 – British Acupuncture Council

The British Acupuncture Council (BAcC) is the national organisation that regulates and represents the 3,000-plus traditional acupuncturists in the UK. Entry to the BAcC is gained after at least three years of formal degree-level training. BAcC members support the health and wellbeing of people across the UK, giving over 2.3 million treatments a year. This year we are planning for the BAcC to gain accreditation from the Professional Standards Authority (formerly the Council for Healthcare Regulatory Excellence) as part of our continued efforts to strengthen the regulation of acupuncture. We hope that PSA accreditation will lead to our members being statutory regulated in future Governments.

Acupuncture is in a unique position to be championed in Wales considering new research demonstrating its efficacy. It recently received another recommendation by the National Institute of Clinical Excellence, for headache (as well as for NICE recommendation for lower back pain). A recent "meta analysis" of over 18,000 patients also demonstrated that acupuncture is beneficial for chronic pain.

In the social services and well-being bill, we would like patients in Wales to be able to exercise choice and receive world-class treatment. We believe that acupuncture has the potential to offer cost-effective and personalised healthcare that demonstrably improves health and wellbeing outcomes for patients. Indeed there are many examples from around the country where our members have successfully worked both inside and alongside the NHS to meet patient needs.

BAcC would like to make the following suggestions for consideration in the bill:

1. Include greater choice - the BAcC wishes that people and families are able to choose what they want from a 21st century service. It's clear from the millions treatments a year for acupuncture, that the public wish to choose services such as acupuncture to improve their wellbeing

2. Evidence based cost effective services. It is important to note that BAcC believes in an evidence based approach. Acupuncture can provide cost-effective results for people in social care and carers. There is NICE guidance recommending acupuncture as a cost-effective option for lower back pain (also for headache).

3. Quality care - meeting physical and mental needs. Acupuncture provides the holistic, quality care that people want – and demonstrate they need.

Thanks
Nick Pahl
Chief Executive
British Acupuncture Council
63 Jeddo Road, London W12 9HQ

T: +44(0)20 8735 1219
F: +44(0)20 8735 0404
www.acupuncture.org.uk

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 2 – WRVS Wales

golwg gadarnhaol ar oed
agwedd ymarferol at fywyd
positive about age, practical about life

Claire Griffiths,
Deputy Clerk,
Legislation Office,
National Assembly for Wales,
Cardiff Bay, CF99 1NA
HSCCommittee@wales.gov.uk

4th March 2013

Dear Ms. Griffiths,

Consultation on the Social Services and Wellbeing (Wales) Bill

Please find below the response of the older people's charity WRVS to the Health & Social Care Committee's call for evidence regarding the Social Services & Wellbeing (Wales) Bill.

WRVS is one of the largest voluntary sector organisations in Wales. We are committed to making Wales a great place to grow old through providing low-level preventative services targeted at older people. In over 100 schemes across Wales, we help older people to remain active and independent in their own homes, without having to rely on formal social services. We do this through the effort and dedication of over 3,500 volunteers, who give up their time throughout the year in all weathers to help their community.

Overview

WRVS welcomes the Bill, which we believe is much-needed to simplify legislation and ensure that Wales has a social services system which is fit for purpose and prioritises the need to help people as early as possible in order to prevent their care needs from escalating.

In particular, we strongly welcome the renewed focus on wellbeing and the revises definition which highlights the importance of social connectedness to a person's quality of life – although we do also not that the progress in this regard needs to be replicated across all areas of Welsh Government policy, and for definitions in other legislation to be consistent with that being proposed in the Social Services & Wellbeing (Wales) Bill. We would also highlight the need for the concept of 'wellbeing' to be turned into something meaningful and tangible through outcomes measures which reflect people's subjective feelings of wellbeing; this is an area which will need to be closely watched as the National Outcomes Framework is developed over the coming months.

We also welcome the proposed duties around preventative services, which we believe are critical in helping older people to live independent and satisfying lives. We would urge the Committee to look closely at the proposed legislation and consider whether the ambitions around preventative care are matched by the reality of the legislation.

We do have some outstanding concerns, explained in greater detail below, around ensuring that information and advice services remain free of charge (which we see as an essential component of preventative care). We are also firmly of the view that greater detail needs to be given regarding plans for national eligibility criteria if consultees and the Committee are to take an informed view of the Bill's proposals.

Response to specific 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 wellbeing of people who need care and support and carers who need support?**

Yes. We welcome this area of the proposals, which we believe is much-needed.

In particular, we welcome the renewed focus on wellbeing within the Bill, and the proposed definition which now specifically includes a mention of "*domestic, family and personal relationships*" (p4, line 31) and "*control over day-to-day life*" (p5, line 3); the former reflects the fact that social contact are seen [1] as being integral to people's social and emotional wellbeing, whilst the latter reflects the centrality of personal independence to one's sense of wellbeing [2] and quality of life. WRVS is, however, less enamoured by "*participation in work*" (p5, line 4) forming part of the definition of wellbeing; for older people (particularly those who are retired) work is not a helpful or meaningful determinant of wellbeing. We would rather the definition be expanded to include reference to volunteering which allows the Bill to reflect the social benefits of participation outside of paid work. The Welsh Government's own figures [3] estimate the value of volunteering overall at £469 million a year, but volunteering is also associated [4] with increased life satisfaction, with some evidence that older people derive greater mental health benefits from volunteering than younger age groups; volunteering also reduces the likelihood of older people experiencing depression and increases their life satisfaction.

We would also add that issues around wellbeing need to be reflected consistently across Welsh Government policy. Just within the last year, different conceptualisations of the

---

[1] WRVS (2011) *Shaping Our Age: voices on wellbeing; a report of research with older people*, WRVS / Big Lottery / Brunel University / De Montfort University.

[2] Bazalgette, L., Holden, J., Tew, P., Hubble, N. & Morrison, J. (2011) *Coming of Age*, London: Demos.

[3] Welsh Assembly Government (2008) *The Strategy for Older People in Wales 2008-13: living longer, living better*, Wales: WAG.

[4] Allen, J. (2008) *Older People and Wellbeing*, London: Institute for Public Policy Research.

term have appeared within the Strategy for Older People [5], the Social Services & Wellbeing Bill [6] and the Housing Bill [7] - this cannot be helpful to creating a common consensus around what wellbeing is and how it might be improved. Our own position is that any definition needs to explicitly include issues around social inclusion and social connectedness, given the accepted challenges Wales faces over social isolation (particularly, but not exclusively, amongst older people). Any definition also needs to set out how wellbeing will be measured so that improvements can be seen in a tangible way.

2) **Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum?**

Yes. In general, the objectives set out in Chapter 3 of the Explanatory Memorandum are reflected by the areas covered within the Bill.

One exception could be in relation to charges for preventative services. The over-arching objective of the Bill in this regard is to expand access to prevention and to ensure that local authorities are providing services which can prevent an individual's need from escalating. However, the Bill also states: "*Regulations may make provision about charges for... information, advice or assistance*"(p39, lines 32 and 34). Whilst WRVS accepts that charging for preventative services may be necessary, it seems impossible to reconcile the ambition of expanding access to prevention with making provision for authorities to charge for information and advice which might signpost individuals towards those services. We would be concerned that this measure would actually reduce the likelihood of older and vulnerable people seeking support rather than widening access.

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 wellbeing of people. Do you feel that the Bill will enable the delivery of social services that are sustainable?**

Yes, in part.

WRVS sees the expansion of preventative services as being the key challenge for social care in Wales. Research [8] has suggested that prevention is the only way to meet the demographic challenges we face, and there is an ever-growing consensus [9], [10], [11], [12], [13] that

---

[5] Welsh Government (2012) *Strategy for Older People in Wales 2013-23*, Wales: Welsh Government.

[6] Welsh Government (2012) *Social Services (Wales) Bill*, Wales: Welsh Government.

[7] Welsh Government (2012) *Homes for Wales: a white paper for better lives and communities*, Wales: Welsh Government.

[8] Allen, K. & Glasby, J. (2010) "The billion dollar question: embedding prevention in older people's services – ten 'high impact' changes", Health Services Management Centre policy paper 8, Birmingham: University of Birmingham.

[9] SSIA (2011) *Better Support at Lower Cost: improving efficiency and effectiveness in services for older people in Wales*, Wales: Social Services Improvement Agency: p4.

[10] Public Health Wales (2011) Submission to Health & Social Care Committee Inquiry into Residential Care of Older People; Welsh Assembly website.

[11] National Association Of Old Age Pensioners of Wales (2011) Submission to Health & Social Care Committee Inquiry into Residential Care of Older People; Welsh Assembly website.

properly-funded and effective preventative care services are in the best interests of older people and the public purse. Indeed, recent research [14] from the British Red Cross (2012) found that low-level support services delivered savings of between £700 and £10,430 per person.

The Social Services & Wellbeing Bill contains some excellent proposals in relation to prevention, in particular the proposed duty on local authorities to provide (or arrange the provision of) a range of services to meet the public's need in relation to prevention (page 7, lines 7-8). This is a significant step forward, and one which we strongly welcome as enhancing older people's wellbeing and quality of life.

However, for this ambition to be successful, we believe two things are needed. Firstly (as set out in response to the previous question), there should not be any question of authorities being allowed to charge for information and advice services, which are critical in directing individuals towards preventative services. Secondly, we would like to see the Bill make explicitly clear the role of preventative services in relation to social wellbeing. The Welsh Local Government Association recently noted [15] that an increasing number of people in Wales are reporting high levels of social isolation; we also know from our own research [16] that older men in Wales are the loneliest cohort of people in the UK. Loneliness is closely associated [17] with depression, and has been linked [18] to increased risk of functional decline and even death. Because of this, we believe that the Bill (or its supporting legislation and guidance) ought to highlight the issue of loneliness and social isolation and ensure that the duty on local authorities in relation to prevention explicitly covers these areas.

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

As stated above, we welcome the Bill's ambitions to shift the balance of social care more firmly towards prevention. This will – if properly executed – increase older people's independence and reduce the cost to the state over time.

Nevertheless, in the shorter term there are existing challenges with social services departments in Wales increasingly raising eligibility their thresholds and as a result removing preventative services. Despite the work of the Social Services & Wellbeing Bill, this trend will continue unless the issue of eligibility is dealt with more explicitly. WRVS welcome the proposals for common eligibility criteria, and we believe the principle will

---

[12] Care and Social Services Inspectorate Wales & Healthcare Inspectorate Wales (2012) *Growing old my way: review of the impact of the National Service Framework (NSF) for Older People in Wales*, Wales: CSSIW/HIW.

[13] Age Cymru (2012) *Prevention Into Practice*, Cardiff: Age Cymru.

[14] British Red Cross (2012) *Taking Stock: assessing the value of preventative support*, London: British Red Cross.

[15] Welsh Local Government Association (2012) *House of Lords Committee: the impact of demographic change on the public sector*, Cardiff: WLGA.

[16] WRVS (2012) Loneliness rife amongst older men (web story), Cardiff: WRVS.

[17] Campaign to End Loneliness (2011) *The Health Impacts of Loneliness*, Campaign to End Loneliness: p1.

[18] Perissinotto, C., Cenzer, I. & Covinsky, K. (2012) "Loneliness in Older Persons: a predictor of functional decline and death", in *Archives of Internal Medicine*, vol. 1-7.

reduce inconsistencies across local authority areas. However, without seeing the detail of those proposals, it is impossible to comment on them in any meaningful way. We could end up in a bizarre situation where despite the proposed duty on prevention, more and more local authorities set their eligibility threshold at Critical; this would be a backwards step.

WRVS would strongly urge AMs to demand more details on the proposed eligibility criteria from the Welsh Government. Without this information, there can be no meaningful discussion on the potential impact. The Welsh Government needs to outline openly its proposals on eligibility (or at the very least give an indication of the desired direction of travel) and explain how this links to the proposed duty on preventative services. Para 29 of the Explanatory Memorandum refers to a national eligibility framework being developed through regulations on what constitutes 'eligible need'; WRVS would argue that early sight of these regulations is necessary in order that consultees and the Committee can be satisfied that service users with lower level preventative needs will have their needs addressed.

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

See above – further detail on eligibility criteria is required if we are to take an informed view on whether the Bill can meet its ambitions. Furthermore, the Bill needs to be clear that local authorities cannot charge for information and advice services (see answer to Consultation Question 2).

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?

No. As set out in answer to Consultation Question 4, more detail is required within the Bill on the issue of eligibility criteria (as set out in Section 19). WRVS strongly believe that the Bill should explicitly tackle the issue of eligibility thresholds and take a view of what is a reasonable threshold for local authorities to set for access to services, given the Bill's duties around prevention. As stated above, the Bill's ambition to widen access to prevention is irreconcilable with local authorities being allowed to raise their eligibility threshold to Critical, and the resultant loss of services to those with lower-level needs.

This is a point which has acknowledged by the Welsh Local Government Association, who have said: "*Due to the intense financial pressures that councils are now facing, most local authorities have raised the eligibility threshold to 'substantial' and 'critical'. People with moderate or low needs are sign-posted elsewhere (usually to voluntary sector organisations); however, the risk is that moderate need may escalate to substantial* *without appropriate or adequate community support.*”[19]

In other respects, the balance is reasonable.

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)?**

We welcome the provisions of the Bill which provide the power to impose new duties on both LHBs local authorities to co-operate in promoting the integration of care and support with health services.

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

Until the Government has consulted on the supporting regulations, it will not be clear what the full financial implications will be. In particular, we would refer the Committee to the regulatory impact assessment on pages 73 and 74 of the Explanatory Memorandum.

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

We would simply add that WRVS also welcomes and supports the arrangements within the Bill to promote co-operation, and the duty to co-operate and provide information in the exercise of social services functions. Any moves to promote integration of care and support within health services are to be welcomed.

I trust this response is of assistance. I can confirm that WRVS have no objection to our consultation response being made public, and that we would be more than happy to give oral evidence to the Committee if that was felt to be useful.

If you require any further information, please do not hesitate to contact me.

Yours faithfully,

EdBridges

Dr. Ed Bridges
Public Affairs Manager, WRVS Wales

tel: 07714 898531
e-mail: ed.bridges@wrvs.org.uk

---

[19] Welsh Local Government Association / Association of Directors of Social Services Cymru (2011) Submission to Health & Social Care Committee Inquiry into Residential Care of Older People; Welsh Assembly website.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 3 – Zero Tolerance

Dear Claire,

I am writing regarding the Social Services and Well-being Bill. I am writing to ask the Health and Social Care Committee and the Children and Young People Committee of the NAW to recommend in the Stage 1 Report that the Bill should include a provision to remove the "reasonable punishment" defence, which allows the 'smacking' (physical assault) of children.

Zero Tolerance is a charity working to end violence against women and children. We are based in Scotland but work across the UK, and take a keen interest in policy developments across the UK, particularly in other devolved nations, as these can often lead to new developments in our own area. We are following developments with this Bill with interest and welcome its focus on safeguarding children, on promoting well-being, on a rights based approach and on prevention and early intervention, as these are key areas of interest for us – we have always been a preventative agency, which works to stop violence from happening rather than reacting to its aftermath. We provide a range of preventative programmes, training schemes and resources all of which aim to change people's understanding of violence and raise awareness of the fact that it is a tool that is used in a function way to control people, not a 'heart of the moment' response to circumstances. Violence is a breach of power relations and a mechanism for keeping women and children in a subordinate position in society.

We strongly disagree with 'smacking' of children, believing that the physical chastisement of children breaches their human rights and teaches them that violence is a useful and acceptable solution to situations of conflict or tension, or where there is a power imbalance between people who disagree. There are many ways to discipline a child and teach them how to behave which do not involve using physical violence, and which instil positive values. We believe that the fact that 'smacking' is still allowed is a hangover from a more violent and less informed time when we had less understanding of children's rights and of the importance of a child's early years in its future success, happiness and well-being. Continuing to allow the 'smacking' of children is at odds with other work to state that domestic or partner violence is never acceptable and work to promote child health and wellbeing.

Providing children with protection from violent punishment is particularly relevant to their physical and mental health and emotional well-being; their protection from abuse and neglect; well-being in their domestic, family and personal relationships; and their rights and entitlements. Ultimately, we can see no reason that children should not have the same protection under the law on assault as adults. If anything, children should have MORE protection than adults, due to their vulnerabilities.

The Welsh Government has an excellent opportunity now to end this anomaly and to lead the rest of the UK in this issue. The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to remove the defence. We urge the H&S Committee and the CYP Committee to recommend in the stage 1 report that the "reasonable punishment" defence should be removed.
The children of Wales (and hopefully, in turn, the rest of the UK) deserve better – please act to end violence against children.

Please feel free to publish this response in full, if that is standard procedure.

Yours sincerely,

Jenny Kemp
Coordinator

Zero Tolerance
Conference House
152 Morrison Street
Edinburgh
EH3 8EB
Direct line: 0131 248 2408
E: jenny.kemp@zerotolerance.org.uk

Zero Tolerance is a Scottish Charity, no. SCO 023 484
Working to end men's violence against women and children

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 4 - Adoption UK

Cefnogi Teuluoedd sy'n Mabwysiadu
adoption uk
supporting adoptive families

Response to Social Services and Well-being (Wales) Bill. – Stage 1 consideration.

What is Adoption UK Wales?

Adoption UK is the only UK wide charity run by and for adoptive parents. The charity's aim is to help to make adoptions successful and to promote loving and supportive relationships between children and their adoptive parents.

Adoption UK is primarily a membership organisation for prospective adopters, adoptive parents and long-term foster carers (current membership of over 5,000 families). However, many of our services are available to practitioners, as well as other groups of carers/guardians, most notably our general information, training programmes and workshops and *Children Who Wait* magazine. Our services are unique in that they are informed by a wealth of adoptive parenting experience and are delivered by experienced adoptive parents; they include the following:

- Four National Telephone Helplines (one in each of the countries of the UK and taking around 5,000 calls per year from prospective adopters, adoptive parents and professional working with adopted families)

- Four offices with locally-based staff in each country of the UK who have knowledge of the devolved structures of education, health and different legal systems. The Wales office is in Cardiff and there are two part-time staff and currently eight especially trained volunteers coordinating support groups around Wales.

- A UK-wide network of local support groups (run by adoptive parent volunteer coordinators). Eight groups currently running in Wales with two more starting up this year.

- Buddy support schemes (linking experienced parents with new parents or parents in difficulty), and other peer support networks.

- A Parent Mentoring Project which was developed in Scotland and which will be rolled out across the UK over the next two years offering intensive support to families who are struggling.

- Lending libraries in each of the four countries with inter-country loans available.

- *Adoption Today* - a magazine for adoptive families and professionals in adoption (6 issues a year).

- *Children who Wait* – a family finding service using a magazine and an online service that features profiles of children waiting to be adopted.

- Online Community (c12,000 registered prospective adopters and adoptive parents).

- Publications and other information resources.

- Training programmes and workshops, including *It's A Piece of Cake?* which is a six day training course for adoptive parents independently evaluated by the Hadley Centre in Bristol which has been shown to increase the confidence of adoptive parents and increase their range of parenting strategies.

The Wales office was established in Cardiff in 2008 with support from a Children and Families Organisational Grant from the Welsh Government. No one knows how many adoptive families there are in Wales in total. However, based on an average of 234 adoptions per year over the past 10 years (some of which will be sibling groups) there will be at the very lowest estimate 4,000 adoptive families with children between 0 and 25 living in Wales currently.

Our members have access to all of our services, but they are also part of a community of adopters who have made the commitment to help and support each other, with understanding and without judgement. This unique community of adopters is our most important resource.

A member of the Strategic Voluntary Adoption Partnership in Wales, Adoption UK, along with BAAF, After Adoption, Barnardos and St.David's Children's Society is exploring how the voluntary sector can work alongside the statutory sector in Wales to deliver the positive outcomes for children that Welsh Government aspires to.

Response to Consultation Questions

General

1. We believe that there is the need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions particularly in relation to adoption services. The situation at present means that the law is often used as a reason why adoption agencies in adjacent local authorities cannot join together effectively to deliver a single service to adopted children and their families. For example, adoption panels and inspection regulations for each adoption agency make it harder for joint action. We commented in some detail on the benefits that greater collaboration between local authorities and voluntary sector partners would bring to adopted children in our response to the initial consultation on the Social Services (Wales) Bill and we continue to feel that this is the case.

2. **We also believe that the Bill should include a provision to remove the "reasonable punishment" defence in relation to assaults on children in Wales**

We understand that the purpose of the Stage 1 scrutiny is to consider the aims and policy objectives of the Bill and whether the Bill, as drafted, is capable of achieving its aims/objectives. The Report following Stage 1 may contain a recommendation that the Assembly either agrees or does not agree the general principles, and can include recommendations for amendments to the Bill.

We believe that given the overall context and the overall aims of the Bill, the Stage 1 Report should recommend that a clause should be added to remove the "reasonable punishment" justification for common assault on children in Wales. The overall context includes the very clear human rights obligation to remove the defence and the long-term public commitment of successive Welsh Governments to do so (a commitment it also made to the UN Committee on the Rights of the Child). The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to remove the defence and we understand that there is strong cross party support for this action.

Should you require any further information from Adoption UK please contact:

Ann Bell – Development Manager Wales, ann@adoptionuk.org.uk 029 2023 0319

Erika Pennington-Murigi - Press, PR & Public Affairs Manager, Erika@adoptionuk.org.uk

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 5 - Respect

Dear all,

We, Respect, are writing to encourage the Health and Social Care Committee to support an amendment to the Social Services and Well-being (Wales) Bill to ensure that assaults on children that may currently be defended as “reasonable punishment” are made unlawful.

Respect involves men and women working together to end domestic violence; we develop services for male and female perpetrators of domestic violence, young people who use violence and abuse at home and in relationships and for men who are victims of domestic violence. For further information about Respect please visit our website www.respect.uk.net

Respect believes parenting should not involve the use of physical violence. An individual’s childhood experience of violence is a form of harm which teaches them that those who are physically stronger can use their strength to get what they want at the expense of others.

The purpose of changing the law is to send a message that, in Wales at least, no form of inter-personal violence is ever permissible or appropriate. It should not lead to more prosecutions or social work interventions since the thresholds for both would remain the same, but it should lead to a reduction in the social acceptability of violence as well as protect children from painful, humiliating and damaging treatment. Given this, we can see no reason why the Welsh Government should hesitate in enacting this measure.

If you would like to follow up, or discuss our response to this consultation further, then please do not hesitate to contact me. I’d be happy to assist.

Many thanks for giving our response your consideration.

Best wishes,

Joanne

Joanne Creighton, Membership Manager, Respect
Tel: 020 7549 0578 www.respect.uk.net Please follow us on twitter @RespectUK

Gwent Police Response to the Health and Social Care Committee re Social Services and Wellbeing (Wales) Act

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 wellbeing of people who need care and support and carers who need support?

The intention to bring together local authorities' and partners' duties and functions in relation to improving wellbeing is generally welcomed. Whilst there is a need for legislation and guidance to guide the way that services are delivered to people by public services, simplifying this would be beneficial to services and citizens who sometimes have to negotiate complex systems to get what they need. There is potential reduce bureaucracy and release wider system capacity and energy to focus on delivering services that improve outcomes for people.

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

Yes, however, much of the detail will need to be included in regulations.

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 wellbeing of people. Do you feel that the Bill will enable the delivery of social services that are sustainable?

A consistent focus on need and demand across the principality will lead to better service. It will enable more effective joint working and has potential for greater collaboration.

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

The move to focusing on outcomes is welcomed. Streamlining the large number of policies, laws, regulations will potentially reduce bureaucracy and speed up processes.

Using the definition of wellbeing will potentially mean that large numbers of the community who would not previously have involvement with Social Services will request assessments of their needs. The impact on Local Authorities is as yet unknown and requires further exploration.

Regionalising Safeguarding Children Boards is welcomed. . The main concern of members is the loss of local links that has been the focus of much of the work of the Local Boards in South East Wales. The

challenge will be establishing a Board that has an overview of local practice in five Local Authority areas.

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

- **The absence of funding formulas for boards could be an issue when public finances are under such pressures.**
- **The ability of Regional Boards to hold member agencies to account needs to be strengthened as does the role of the Chair of the Board. It is important that Boards are able to demonstrate effectiveness in terms of holding partner agencies to account for safeguarding services.**

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?

It is better that only those issues that require legislative change be included in the legislation and that all other guidance be included in regulation.

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)?

This may be required and provides for a level of flexibility to create supportive elements for the legislation which may only become apparent as the changes brought about by the law evolve.

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

Please see previous comments in relation to resources.

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

No.

GIG CYMRU NHS WALES
Bwrdd Iechyd
Cwm Taf
Health Board

Your ref/eich cyf:
Our ref/ein cyf: C_127
Date/Dyddiad: 12 March 2013
Tel/ffôn: 01443 744835
Fax/ffacs:
Email/ebost: Claire.northwell2@wales.nhs.uk
Dept/adran: Corporate Services

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

Response from Cwm Taf Health Board

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.

Whilst the importance of improving wellbeing is increasingly being recognised by both Local Authorities and partners, it is still a relatively new concept in terms of service priority and delivery. Bringing together partner duties and functions into a single Act is therefore helpful to clarify what is required and fully exploit the potential.

The inclusion of the term in the title for the Bill (which originally only referred to Social Services) is helpful but the title still gives the impression that it relates only to Social Services. It will not be possible for any one agency alone, either in the statutory or third sector, to maintain and enhance the wellbeing of people in need. This will need contributions from many organisations as well as communities themselves and therefore the duty does need to relate to all parts of the LA and other statutory partners including the NHS.

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 Bill does address the objectives of addressing wellbeing, prevention and early intervention, promoting a stronger voice and control for people in need and simplifying and clarifying duties alongside the development of nationally consistent systems. However whether it will deliver the objectives is difficult to assess given that there is still much detailed work to be done including the development of the national eligibility framework, the outcomes framework , Codes of Practice etc. Even then, whilst legislation can provide the statutory framework, the success of implementation will depend on local leadership and drive to deliver, as well as the scale of the changes required and the complexities of addressing barriers, including financial risks.

Given the challenges currently facing all public services in Wales, it is felt that the Bill misses a key opportunity to give a strong enough direction ensuring that all public services work effectively together, particularly, but not exclusively, health and social care. The delivery of effective integrated services and collaborative arrangements will be key to ensuring health, social care and other Local Authority services such as housing and education are fit for purpose. Wider partners will also have a key role to play.

It could be argued that the opportunity has been missed to develop a joint Health and Social Services Bill, as the majority of areas for change interface with health services and would add further weight to Setting the Direction and Together for Health. Given we have a Minister for Health and Social Services; there should be more integrated policy and legislation.

Whilst it is recognised that sections 147 -150 do give Minister powers to make regulations specifying partnership and integration arrangements etc, it is still unclear under what circumstances this might be done and which service areas they might relate to – would this lead to a nationally prescribed approach or would there still be local flexibility to meet local needs that will differ across Wales?

Whilst there remains strong commitment locally to working together to drive forward change in Cwm Taf with our partners, the view is that although the Bill does not hinder this approach, neither does it necessarily provide a sufficient level of active or dynamic assistance.

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

In response to questions 3 and 4, whilst recognising that all public sector bodies need to change to meet needs more effectively and ensure the delivery of high quality, sustainable services, the Bill on its own will not ensure this is achieved.
Given the scope of the Bill and the number of proposed changes, there will be a range of implications for social services, for example the number of people who potentially will need to be supported to improve their wellbeing compared with the much smaller number of people with higher levels of assessed need. Local Authority colleagues will be able to provide a more detailed response of how the Bill will change their existing provision, the impact and how far changes will assist in sustainability. Resource implications in terms of workforce and finance will remain key factors and the Explanatory Memorandum makes it clear that it is not yet possible to fully assess all of these issues.

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

Despite existing legislation and policy drivers, progress with many aspects included in the Bill, including a focus on wellbeing and prevention, more effective collaboration and integration, pooled budgets etc, has been variable and there needs to be a better understanding of the reasons for this including financial, legal, governance and employment regulations that can be barriers. The Bill does not address these in any detail.

The additional clarity and action of simplifying and streamlining arrangements including a single set of powers will be helpful to ensure consistency and a national standard. However national guidance and parameters must not stifle local initiatives and flexibility where appropriate but provide a constructive framework. The overall objective of strengthening partnership working and keeping the citizen at the centre of service delivery must guide the arrangements, keeping them less onerous and bureaucratic.

There is reference in the Explanatory Memorandum to financial implications and training requirements for social services but these will be considerable challenges. No account seems to have been made of the requirements of partners in this regard.

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.

No comments

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)?

No comments

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

Concern remains about the financial implications of the Bill on all partners and the need to consider how all public service resources are used. Different organisational arrangements and different approaches to commissioning, purchasing and providing services can make working together and the flexible use of resources more difficult.

Given the proposed requirements (eg to undertake a local need assessment, encourage integrated provision of services and provide information and advice etc) there will be a need for a clear lead partner and recognition that it could take some time before additional costs are mitigated. Costs saved for some agencies (e.g. if preventative measures mean fewer intensive services are needed) can lead to additional cost pressures on another. We recognise the importance of investment in the preventative agenda to reduce costs in targeted services, however it is unlikely that the Bill will be cost neutral. Resources may need to be invested differently within and between agencies to avoid additional pressures being felt disproportionately.

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

No comments.
There is reference on page 8 of the Explanatory Memorandum to Health Social Care and Wellbeing Strategies – these will be replaced from April 2013 by Single Integrated Plans.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 8 – Global Initiative

Global Initiative to
End All Corporal Punishment
of Children

Response to Stage 1 Consultation on the Social Services and Well-being (Wales) Bill

from Peter Newell, Coordinator, Global Initiative to End All Corporal Punishment of Children
peter@endcorporalpunishment.org

March 12 2013

The Global Initiative was launched in 2001, aiming to map the legality and prevalence of corporal punishment in every state and to act as a catalyst for its prohibition and elimination across the world. Its aims are supported by UNICEF, UNESCO and many other international, regional and national organisations (see www.endcorporalpunishment.org).

This submission urges the Health and Social Care Committee and the Children and Young People's Committee to recommend in the Stage 1 Report that the Bill should include a provision to remove the "reasonable punishment" defence in relation to common assault on children in Wales (amending section 58 of the Children Act 2004).

The UK Government is increasingly isolated in Europe in defending the legality of violent punishment of children. Among the 27 EU member states, the UK is now one of only five states which have neither prohibited all physical punishment of children nor committed themselves to achieve this soon.

Successive Welsh Governments for more than 10 years have, unlike the UK Government, been committed to achieving a complete ban on physical punishment. In October 2011 the First Minister confirmed that the National Assembly can now legislate on this, given its devolved powers over social welfare, including the protection and well-being of children.

The Social Services and Well-being (Wales) Bill arises from these devolved powers and is the obvious vehicle for this reform. Surely, given the enactment of the Rights of Children and

Young Persons (Wales) Measure in 2011, there cannot be any further hesitation or delay in quickly enacting this long-overdue reform for children in Wales?

The Government of Wales is committed to "Inclusive Policy-Making", placing "a citizen focus based on the principles of human rights; fairness, respect, equality and dignity at the centre of all our policy actions." The Explanatory Memorandum to the Bill asserts that the principle of promoting well-being for people including children is central to this legislation.

Physical punishment of children is the only form of inter-personal violence which remains legalised. This is an archaic anomaly which undermines the well-being of children and their safety and protection. For the Assembly to consider a Bill focussed on social services and care including safeguarding and well-being, without addressing this anomaly, would conflict with and undermine the implementation of the Bill's general principles. It would also directly conflict with successive Welsh governments' and the Assembly's long-standing commitments to respect children's rights.

The persisting legality of violent punishment of children is a fundamental equality and human rights issue. Enabling parents and some others to justify common assault as "reasonable punishment" reflects a view of children as possessions rather than individual people and rights-holders.

The Explanatory Memorandum rightly highlights the obligations of the Welsh Government under the Rights of Children and Young Persons Measure. It suggests (para. 191) that "the Bill takes forward Wales distinctive and internationally regarded rights based approach to children's social care". But the absence of a simple amendment to remove the "reasonable punishment" defence in relation to assaults on children in Wales is not mentioned, let alone explained in the assessment.

The Welsh Government's long-standing commitment to ban all physical punishment has been reported to United Nations and European human rights monitoring bodies. The Committee on the Rights of the Child was told of the Welsh Government's strong commitment to remove the "reasonable punishment" defence, and thus accept the Committee's repeated recommendations to the UK Government, in the Government's report to the Committee in 2007. In its 2008 concluding observations, the Committee noted that it *"welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation"*. The Committee went on to express its concern at the failure of the UK to explicitly prohibit all corporal punishment in the home, *"and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable."*

This was the Committee's third recommendation to the UK to remove any defences and thus prohibit all physical punishment (included in the Committee's concluding observations issued following examination of the UK's reports in 1995, 2002 and 2008).

There can be no possible doubt about the Committee's interpretation of the requirements of the Convention in relation to the prohibition and elimination of violent punishment: these are reiterated with detailed guidance to states in two General Comments from the Committee, on the right of the child to protection from corporal punishment (No. 8 2006) and on the right of the child to freedom from all forms of violence (No. 13 2011).

There have been similar recommendations to the UK from two other UN human rights monitoring bodies:

- from the Committee on Economic, Social and Cultural Rights twice, in 2002 and 2009;
- from the Committee on the Elimination of Discrimination against Women, in 2008.

The UK has also received repeated recommendations to prohibit during its examinations in the first and second cycles of the Universal Periodic Review in the Human Rights Council.

The international human rights pressure on the UK to prohibit all physical punishment is thus long-standing and intense. It is also reinforced by European human rights monitoring mechanisms: in 2005, the European Committee of Social Rights, reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family and the Committee repeated this finding in 2012.

In 2008, the Commissioner for Human Rights of the Council of Europe, following formal visits to the UK, stated in a Memorandum to the UK Government: “The Commissioner is very concerned about section 58 of the Children Act 2004 in England and Wales, which reflects the availability of the ‘reasonable punishment’ defence for parents charged with common assault, removing use of the defence from those charged with more serious assaults (actual and grievous bodily harm, wounding, etc).... The Commissioner emphasises that laws allowing ... ‘reasonable punishments’ on children are not compliant with international human rights standards. That children, uniquely, should have *less* protection under the criminal law from assault is additionally discriminatory and unimaginable, given children’s obvious special vulnerability.” The Commissioner, like the Committee on the Rights of the Child, had been informed of the distinctive policy of Wales, in favour of banning smacking. He noted in his Memorandum that at the time of his visit the National Assembly did not have devolved power to legislate, but that he understood that “the Welsh Assembly Government has expressed strong support for full removal of the reasonable punishment defence to give equal protection”.

It is the UK Government which ratifies international and European human rights instruments and thus takes on legal obligations under them. But the National Assembly, by enacting the Rights of Children and Young Persons Measure, is the first part of the UK to incorporate into its legislation direct obligations to give “due regard” to the Convention on the Rights of the Child in developing legislation and policy.

In setting out the arrangements they have adopted for complying with their duty under the Rights Measure, Welsh Ministers are required to have regard to reports of the Committee on the Rights of the Child (eg the concluding observations and general comments as referred to above), and also (section 3(1)(a) of the Measure) to reports of studies undertaken under article 45 (c) of the CRC. The UN Secretary General’s Study on violence against children, requested by the Committee under article 45(c), reported to the General Assembly in 2006; a key recommendation was prohibition of all forms of violence against children, explicitly including all corporal punishment.

Wales now has the legislative power and opportunity to maintain its leadership within the UK in fulfilling children's rights. As Paulo Pinheiro, the UN Secretary-General's Independent Expert who led the UN Study on violence against children stated when he delivered a follow-up report to the General Assembly in 2007: "Children are sick of being called 'the future'; they want to enjoy their childhood, free of violence, now".

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 9 - UNICEF UK

unicef
UNITED KINGDOM

UNICEF House
30a Great Sutton Street
London EC1V 0DU
Telephone 020 7490 2388
Email helpdesk@unicef.org.uk
www.unicef.org.uk

Claire Griffiths
Deputy Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay, CF99 1NA

12 March 2013

Dear Ms Griffiths

Consultation: Social Services and Well-being (Wales) Bill

I am writing on behalf of UNICEF UK to recommend that the Health and Social Care Committee agree to include in the Bill the banning of the physical punishment of children in Wales by removing the defence of 'reasonable punishment'. We believe this would help secure Wales' children's rights ambitions that are evident in the Children and Young Persons (Wales) Measure 2011.

For more than ten years, successive Welsh Governments have argued for a ban on smacking. This legislation provides the Assembly with an opportunity to fulfil this long-standing commitment.

The UN Committee on the Rights of the Child – the monitoring body that oversees implementation of the Convention on the Rights of the Child – has paid special attention to asserting a child's right to protection from all forms of violence. In its examination of States parties' reports, it has noted with great concern the widespread legality and persisting social approval of corporal punishment and other kinds of cruel or degrading punishment of children. In 2008 when it last examined the UK Government on its implementation of the UNCRC, the Committee expressed concern that, although restricted in application, the defence of 'reasonable chastisement' had not been removed from the relevant legislation that applies to the UK and the devolved jurisdictions. The Committee issued a recommendation to "Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies."[1]

However, legal prohibition is not sufficient in itself. UNICEF analysis suggests that promoting broad changes in attitudes and norms regarding the need for physical punishment in child rearing can help reduce levels of violent discipline. A comprehensive strategy is needed to prevent and address violence against children which, in addition to the legal prohibition of physical punishment in any setting, would include key actions to:

.

- Develop culturally appropriate and gender sensitive good-parenting programmes, and promote positive, non-violent disciplinary practices and participatory forms of child rearing.

- Strengthen the capacity of professionals who work for and with children and their families so that they can better prevent, detect and respond to violence against children.

- Promote awareness raising and public education on children's rights to break down the cloak of invisibility surrounding violence against children and protect them from its harmful effects.

- Engage children in all aspects of prevention, response and monitoring of violence against children in order to ensure that interventions take their views into account and are guided by the best interest of the child.

We would welcome the opportunity to provide further information and assistance as you debate this fundamental children's rights issue.

Yours sincerely,

Anita Tiessen
Deputy Executive Director
UNICEF UK

cc Christine Chapman AM, National Assembly for Wales, Cardiff Bay, Cardiff CF99 1NA.

---

[1] Committee on the Rights of the Child (2008) Consideration of reports submitted by States Parties under Article 44 of the Convention. Concluding Observations: United Kingdom of Great Britain and Northern Ireland
http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 10 – Welsh Reablement Alliance

Welsh Reablement Alliance

Welsh Reablement Alliance,
PO BOX 4156,
Cardiff,
CF14 0ZA

Claire Griffiths,
Deputy Clerk,
Legislation Office,
National Assembly for Wales,
Cardiff Bay, CF99 1NA
HSCCommittee@wales.gov.uk

13th March 2013

Dear Ms. Griffiths,

Consultation on the Social Services and Wellbeing (Wales) Bill

Please find below a submission from the Welsh Reablement Alliance to the Health & Social Care Committee's call for evidence on the Social Services & Wellbeing (Wales) Bill.

The Welsh Reablement Alliance is an umbrella organisation for professional associations, voluntary sector partners and care providers who provide reablement services in Wales. We believe that by speaking with a united voice on reablement, we can give a clear indication of what is needed to improve reablement provision. The Alliance is comprised of:

- The College of Occupational Therapists
- Care & Repair Cymru
- WRVS
- Sense
- Leonard Cheshire Disability
- Age Cymru
- The Stroke Association In Wales
- The Chartered Society of Physiotherapy
- Carers Trust
- United Kingdom Home Care Association
- Alzheimer's Society
- Mind Cymru

- British Association of Social Workers Cymru
- Age Connects Wales
- British Dietetic Association

Individual member organisations will be making their own detailed responses to the questions set out by the Committee. In this response, we will simply be setting out our over-arching view as an alliance on the main areas of consensus, and giving a narrative response to the central areas of the Bill where we believe further work is required. We would, of course, be happy to provide further information if required or to give oral evidence to the Committee on any of the issues raised below.

Response

The Welsh Reablement Alliance welcomes a great deal of the Bill's content, and in particular the direction of travel it signifies over a more preventative approach to social care, and the renewed focus on wellbeing. We warmly welcome the definition of wellbeing as a tool for ensuring services focus on delivering outcomes for people, and particularly the recognition that enabling people to participate in meaningful activities, such as work, play and leisure activities as well as social and family roles, has great impact on health and wellbeing. The intention of the Bill to ensure that wellbeing is enhanced and that services respond flexibly to the developing needs of individuals, their family and carers is also excellent.

We do, however, recommend that a more explicit emphasis is given to reablement within the Bill. Whilst much of the Bill engages with a reabling ethos, this could be made much more explicit and prominent within the text of the Bill. The Bill might, for example, set a duty on local authorities and health boards to provide reablement services (with a clear definition of what these should entail) as part of their preventative services. Furthermore, the Bill could identify more clearly the steps envisaged to provide proportionate support to people – this links to national eligibility criteria and assessment, and to the intention to promote self responsibility and voice and control.

In addition, we would like to make three main observations on the Bill's contents:

1) We strongly believe that universal access to preventative initiatives (including equipment, aids, falls prevention and reablement for those in need) must continue to be provided **free of charge** before eligibility criteria are applied. We believe that charging for preventative initiatives (clause 7[3]) and for advocacy, information and advice may be counter-productive, costly to implement and may not deliver the intended outcomes.
2) We would like to see much greater clarity over the exact duties being proposed for local authorities, and what these will mean for people needing to access services. The definition of what constitutes preventative services is unclear; does it include reablement? does it include social and emotional wellbeing services? what is the distinction between care and support services and preventative services? These are the sorts of questions which need to be unambiguously answered within the text of the Bill in order to prevent problems of interpretation further down the line.

3) We have some concerns over the balance of “voice and control / person centredness” versus “eligibility and list of how to meet needs” (section 20 of the Bill). There is a fundamental tension between determining eligibility (whether someone is ‘entitled’ to an identified service) and working with someone to agree the best way to meet their needs and achieve their outcomes.

Further comments

In addition to these three priority areas, the Welsh Reablement Alliance would like to raise the following additional points for discussion/consideration:

- We welcome duty to promote wellbeing, and support the definition outlined in the Bill. We would, however, suggest including “participation in appropriate work and meaningful activities” within the definition instead of the current focus purely on paid employment.
- We do have concerns over the impact of the Bill on people with low or moderate needs, but who might not be not eligible for support (for example, a person with fluctuating mental health needs who might fall outside of the eligibility definition) or who don’t pass the financial assessment (and choose not to self fund). We would like some clarification on the points at which the local authority is still responsible for that individual.
- We would like the Bill to be clearer about the role of local health boards in providing preventative services.
- We welcome the principles of ministerial powers to prescribe partnership arrangements between local authority social services department and between social services and health boards; (part 9, chapter 2), but we would suggest that such partnerships also incorporate housing departments given the clear link between built environment and personal health. We also believe that greater clarity should be provided in the Bill over the specific geographical areas for such partnerships – presumably the Bill envisages these partnerships being co-terminus with local heath board footprints, but this is not explicitly stated.

We trust this response is of use to the Committee. We would be more than willing to expand on any of these points when the Committee holds its oral evidence sessions. If you would like any further information, please do not hesitate to contact us.

Yours sincerely,

Ruth Crowder

Ruth Crowder
Chair, Welsh Reablement Alliance

Wales Observatory on Human Rights of Children and Young People
Arsyllfa Cymru ar Hawliau Dynol Plant a Phobl Ifanc

Claire Griffiths
Deputy Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

12th March 2013

Dear Ms Griffiths

Consultation: Social Services and Well-being (Wales) Bill

I am writing on behalf of the Wales Observatory on Human Rights of Children and Young People to ask the Health and Social Care Committee to promote greater recognition of children's rights in Wales, by supporting legislation to put a stop to the physical punishment of children.

For more than ten years successive Welsh Governments have argued for a ban on physical punishment of children; a position consistent with the United Nations Convention on the Rights of the Child, and with the view of the United Nations Committee on the Rights of the Child. The UN Committee has noted that corporal punishment represents cruel or degrading punishment of children. In 2008 it expressed concern that the defence of 'reasonable chastisement' had not been removed from the relevant legislation that applies in the UK. The Committee issued a recommendation to prohibit all corporal punishment in the family, including through the repeal of all legal defences. This recommendation applies to Wales as it does to the other nations of the UK.

Having regard to the rights of the child as set out in the UNCRC, the Observatory considers that it is imperative that where the opportunity arises to remove the defence of reasonable chastisement in Wales, this is what should take place. The current Bill represents just such an opportunity, and we urge the Health and Social Care Committee to support relevant legislation.

Whilst reasonable chastisement remains a lawful defence children's rights are being violated in Wales, as in the rest of the UK. Legislation to remove the defence in Wales would represent fulfilment of the Welsh Government's express intent.

We would welcome the opportunity to provide further information and assistance on this issue.

Yours sincerely,

Simon Hoffman
Co-director
Wales Observatory on Human Rights of Children and Young People
Arsyllfa Cymru ar Hawliau Dynol Plant a Phobl Ifanc

To discuss any aspect of this letter please contact:

Wales.Observatory@swansea.ac.uk
01792 513004

Evidence of the Public Services Ombudsman for Wales to the National Assembly for Wales's Health and Social Care Committee on the Social Services and Well-being (Wales) Bill

1. Introduction

1.1 I am pleased to have the opportunity to provide evidence in respect of the Health and Social Services Committee's scrutiny of the Social Services and Well-being (Wales) Bill.

1.2 As Public Services Ombudsman for Wales, I have a role to investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. This includes complaints about the delivery of social care and it is in this context that I present my comments on the Bill.

2. Complaints Handling Arrangements in Wales

2.1 Over the past couple of years, arrangements for complaint handling in respect of health and other public services devolved to Wales have been modernised and streamlined. The former through the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011, and the latter through the Model Complaints Policy and Guidance issued by the Welsh Government. Both these complaint handling processes now contain only two stages (informal resolution by frontline staff and one formal investigation). Those then remaining dissatisfied after the formal investigation stage can put their complaint to me as the Public Services Ombudsman for Wales for independent consideration.

2.2 Discussions that I have recently had with complaint handling staff of those public service providers who have adopted the two stage approach tell me that this is proving to be working well, is more effective and that no disadvantages have as yet been identified.

2.3 The complaint handling procedure in respect of Social Care is now therefore out of step with the rest of the public service in Wales and I have made a case that the existing statutory procedure should also be modernised to bring it in line with the other complaint processes.

2.4 I have engaged in discussions with the Welsh Government on this matter and I understand that it is intended to introduce a streamlined two stage approach for social care by regulation rather than through the Social Services and Well-being (Wales) Bill.

2.5 I believe that it is essential that the social care complaints procedure should mirror that for the health service, particularly since many of the complaints that I see involve both social care and health aspects to the complaint. For example:

> A public interest report that I issued concerned a gentleman with MS, who was bed-ridden and was being cared for at home by his wife and carers, with District Nurses managing his pressure sores. The sores were allowed to develop to the most severe grade of pressure sore. In upholding the complaint I made recommendations to both the Council and to the Local Health Board.

The procedures for handling health complaints and those of the other public services devolved to Wales make provision for a single lead arrangement for dealing with multiple agency involvement. However, with the current Social Services procedure being out of kilter with the other procedures, doing so in practice currently presents difficulties. The Welsh Government's policy of a joined up approach to service delivery also needs to extend to the consideration of complaints.

2.6 I welcome the Welsh Government's intention to introduce a two stage process for the social care complaints procedure but stress that there is now an urgent need for this to be delivered.

3. The Social Services and Well-being (Wales) Bill – Ombudsman's Jurisdiction

3.1 As Public Services Ombudsman for Wales I can consider complaints relating to palliative care services that are commissioned by the health service. However, I welcome the provision in the Bill to bring hospices and those charitable bodies undertaking palliative care which is not commissioned but often in receipt of public funding within my jurisdiction. The work that these organisations carry out is greatly valued by those who are terminally ill and their families. However, in circumstances where the relationship between those people receiving the service and the service provider break down there needs to be an independent person that the service users can turn to in seeking redress.

3.2 I similarly welcome the provision in the Bill that will allow those people paying for their own care within social care homes and domiciliary care organisations to complain to the Public Services Ombudsman for Wales. Currently, a resident in a care home who has his or her care paid for by the State can complain to me about poor care, whilst a resident who pays for their own stay at the care home cannot. It seems to me unjust that residents in the same care home receiving the same services do not have the same rights in relation to seeking redress when things have gone wrong. In addition to enhancing the rights of those people paying for their own care, there is also evidence from elsewhere that people who always did have the right to complain (i.e. in circumstances where their care was paid for by the State but provided by a private care provider) did not do so because they did not realise they could complain as residents in a private care home. Arrangements where people can complain regardless of whether the State pays for their care or whether they pay for their own care means that there will be clarity about the right to complain to the Ombudsman.

3.3 However, it is my view that where private sector organisations are within the Ombudsman's jurisdiction, then the Ombudsman should have the power to make recommendations enforceable. The reason for this is that the democratic accountability that sits behind public sector organisations does not apply in relation to those in the private sector.

3.4 It is also my view that where Government determines that certain services need to be regulated people using those services should also have access to independent redress. Currently, there is a lack of consistency in this regard.

3.5 I would also add that in relation to child protection and vulnerable adults, I wish to engage in discussions with the Welsh Assembly with a view to amending the Public Services Ombudsman (Wales) Act 2005 to provide me with powers to make my reports confidential and 'not public'. Whilst I would use these powers sparingly so that issues of public interest are not unnecessarily 'buried' I have been concerned that I do not have the necessary powers available to me to protect certain vulnerable people, particularly those such as children and people with mental health problems, from intrusive and inappropriate media interest.

4. The Social Services and Well-being (Wales) Bill – Other Provisions

4.1 I welcome the provision in the Bill which places a duty on local authorities, in co-operation with LHBs, to provide information, advice and assistance to help people understand how the care and support system works. The cases that I see in my office show that this is indeed lacking and is an area of growing concern. The reduction in funding for legal advice and advice helplines generally is having a damaging effect in this area.

4.2 I welcome too the proposals in relation to carrying out a needs assessment . These will provide clarity on a person's eligibility and the local authority's duty. I will look forward to the Welsh Government's consultation on this.

4.3 The proposals in respect of a right to a care and support plan are also to be welcomed. I have seen cases where plans have been poorly prepared and not monitored. The proposals will also, from my perspective, provide a better basis against which I can take a view as to whether complaints about care received are valid or not. I also support the provisions in relation to integrated, portable arrangements in relation to assessment and care and support plans. I would suggest that the work currently being undertaken by the Welsh Government on Special Educational Needs also needs to be included in the assessment of eligibility for services and not conducted as a separate exercise.

4.4 I also support the proposed duty for local authorities to undertake a carer's assessment. From my experience this is also an area needing to be addressed.

4.5 With regard to 'Safeguarding', the current Protection of Vulnerable Adults (POVA) arrangements are a consistent source of concern to me. The complaint cases that I see have led me firmly to the view that this system needs to be improved.

4.6 I also support the provisions in relation to ‘Co-operation’. All too often I see examples of non-collaboration. Complex care packages are not joined up and far from seamless. There is a particular issue in relation to ‘gaps’ where a young person makes the transition from child to adult care. As mentioned above, I am aware of Welsh Government discussions on future arrangements for Special Educational Needs which have lacked the collaborative approach; these developments should be taken in a proper context and there is a need for joined up policy making.

Public Services Ombudsman for Wales
March 2013

****

Royal College of Physicians (Wales) -
Coleg Brenhinol y Meddygon (Cymru)
Regus House - Tŷ Regus, Falcon Drive
Cardiff - Caerdydd CF10 4RU
Tel - Ffôn: +44 (0)29 2050 4540

www.rcplondon.ac.uk/wales

Royal College of Physicians
11 St Andrews Place
Regent's Park
London NW1 4LE
Tel: +44 (0)20 3075 1560

www.rcplondon.ac.uk

Legislation Office
National Assembly for Wales
Cardiff Bay CF99 1NA

HSCCommittee@wales.gov.uk

From The Registrar - O'r Cofrestrydd

Patrick Cadigan MD FRCP
patrick.cadigan@rcplondon.ac.uk

15 March 2013

Dear Sir or Madam,

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

The Royal College of Physicians (Wales) plays a leading role in the delivery of high quality patient care by setting standards of medical practice and promoting clinical excellence. We provide physicians in Wales and across the world with education, training and support throughout their careers. As an independent body representing more than 28,000 fellows and members worldwide, including 1,000 in Wales, we advise and work with government, the public, patients and other professions to improve health and healthcare.

Mae Coleg Brenhinol y Meddygon (Cymru) yn arwain y ffordd o ran darparu gofal o ansawdd uchel i gleifion drwy osod safonau ar gyfer arferion meddygol a hybu rhagoriaeth glinigol. Rydym yn darparu addysg, hyfforddiant a chefnogaeth i feddygon yng Nghymru a ledled y byd drwy gydol eu gyrfa. Fel corff annibynnol sy'n cynrychioli mwy na 28,000 o gymrodorion ac aelodau ym mhedwar ban byd, gan gynnwys 1,000 yng Nghymu, rydym yn cynghori ac yn gweithio gyda'r llywodraeth, y cyhoedd, cleifion, a gweithwyr proffesiynol eraill i wella iechyd a gofal iechyd.

Overview

Our response is informed by our fellows and members in Wales. Because our fellows and members work primarily in the health service providing acute care, we have focused our response on part 9 of the Social Services and Well-being (Wales) Bill which outlines new arrangements for cooperation and partnership between local authorities and local health boards in Wales.

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

The RCP welcomes the core commitment of this legislation to improve the wellbeing of people who need care and support, especially the clear promise to better integrate health and social care services and to support people of all ages as part of their families and communities. We are also pleased to see a commitment to improving the quality of services, promoting patient centred care and better provision of information. Finally, we welcome a renewed focus on prevention and early intervention.

In particular, we are pleased to see that the Bill will:

- Put a duty on local authorities and local health boards to promote the wellbeing of people who need care and support and to provide information, advice and assistance to help people better understand the health and care system and how they can access services now and in the future

- Put a duty on local authorities to promote cooperation with partner bodies, including their local health board, to improve the wellbeing of people who need care and support. The RCP welcomes the suggestion that, as part of these arrangements, local authorities and health boards should establish and maintain pooled funds and that they should share resources and information

- Put a duty on local authorities to ensure the integration of health provision with care and support provision where it will promote wellbeing of children, carers with needs for support, or adults with care and support needs. We believe that this is an important step forward for improvements in health and social care in Wales

- Allow for future regulations which could specify individual partnership arrangements to be made by one or more local authorities and one or more health boards.

Integrated, patient-centred care

The RCP strongly urges the Welsh Government to create an NHS which puts the patient at the centre of our health and social care services. Patients should be involved, empowered and enabled to achieve the very best outcomes for their health. We welcome the right to a single needs assessment which focuses on outcomes and wellbeing as well as person centred care and support plans.

Within two decades, almost one in three people in Wales will be aged 60 or over,[i] and a growing percentage of our elderly patients are being admitted to hospital with multiple conditions, including dementia. One third of adults in Wales have at least one chronic condition, and with life expectancy increasing, the numbers of people living with chronic conditions will increase.[ii] The RCP articulated the impact of this on acute hospitals in its 2012 report *Hospitals on the edge?*[iii] However, these demographic changes will be evident across health and social care, and it has been estimated that Wales will need an extra 5,000 care homes by 2020.[iv] It is increasingly clear that we need to develop collaborative solutions across traditional boundaries of care.

The RCP advocates a collaborative model of care in which traditional professional boundaries are broken down to ensure seamless pathways of care for patients, designed by local clinicians. As a royal college which represents around 1,000 specialist doctors in Wales, we know that continuity of care is vital for patients with long term, chronic and complex conditions. The RCP, RCGP and RCPCH publication, *Teams without walls (2008),* emphasises the importance of shared working as the most effective way of managing patients with long term conditions.[v] The RCP is also looking at this issue as part of its ground-breaking Future Hospital Commission, which is due to report later in 2013.[vi]

An increasing number of patients have complex medical needs which require ongoing management from physicians and specialist teams working collaboratively across hospital and community settings. This will mean greater coordination, including the merging of hospital and community teams to ensure that patients see the right person, at the right time, in the right setting. In-hospital and community settings must be underpinned by common standards, and it is crucial that increase in the capacity of community services before this transfer can be done safely and effectively, without destabilising already stretched inpatient and emergency services.

To guarantee safe and quality health and social care services, the Welsh Government must ensure adequate investment, resourcing and planning for these changes. Furthermore, there must be adequate monitoring and mechanisms put in place to ensure local authorities and local health boards are held to account in respect of their new responsibilities under this Bill. Policy and legislation must be matched by excellent delivery at the front line.

Better communication between GPs, specialist clinicians and social care professionals will be also essential to ensure that a truly integrated health and social care system delivers excellent care for the patient. Integrated working allows patients and their carers to benefit not only from specialist knowledge, but also from general primary care and the help and support of social care services. Good integrated care should support people as long as possible in their own homes, helping them to live productive, independent lives. This is why the Welsh Government should ensure, through the criteria in this Bill, that as many people as possible are made eligible for this care and support once this legislation is enacted.

We would like to see the NHS in Wales adopt a preventative approach to illness: currently, as little as 4 per cent of our health budget is being spent on prevention.[vii] Real investment in preventative care services will mean less pressure on our frontline healthcare services. This, in turn, will mean that people in Wales have a better quality of life for longer.

Yours faithfully,

Dr Patrick Cadigan
Registrar / Cofrestrydd

For more information, please contact:

Lowri Jackson, senior policy adviser for Wales
☎ 029 2050 4540 / 075 5787 5119
✉ Lowri.Jackson@rcplondon.ac.uk

Further reading:

- ‘Teams without walls’, a joint working part report of the Royal College of Physicians, the Royal College of General Practitioners and the Royal College of Paediatrics and Child Health, 2008
- ‘Making the best use of doctors’ skills, a balanced partnership’, a joint statement by the Royal College of Physicians and the Royal College of General Practitioners
- ‘A guide to understanding pathways and implementing networks’, a paper by the Royal College of Paediatrics and Child Health
- ‘Delivering high-quality surgical services for the future’, a paper by the Royal College of Surgeons
- ‘A clinical vision of a reformed NHS’, a joint paper between the NHS Confederation and the Joint Medical Consultative Council

---

[i] NHS Wales Chief Executive's Annual Report 2011/12, p5, available at http://wales.gov.uk/docs/dhss/publications/120731chiefexecannualreporten.pdf
[ii] NHS Wales Chief Executive's Annual Report 2011/12, p5, available at http://wales.gov.uk/docs/dhss/publications/120731chiefexecannualreporten.pdf
[iii] For more information, please visit http://www.rcplondon.ac.uk/projects/hospitals-edge-time-action
[iv] WRVS response to Social Services (Wales) Bill, March 2012, available at http://www.wrvs.org.uk/news-and-events/news/wrvs-response-to-social-services-wales-bill
[v] Please see suggested further reading at the end of this document
[vi] For more information, please visit http://www.rcplondon.ac.uk/projects/future-hospital-commission
[vii] Hale et al., 'Making the economic case for prevention – a view from Wales', *BMC Public Health 2012*, 12:460

nyas cymru

giving a voice to
children, young people
and vulnerable adults

rhoi llais i blant,
pobl ifanc ac oedolion
agored i niwed

CONSULTATON RESPONSE: Social Services and Well-being Bill – Stage one.

NYAS Cymru is part of NYAS, a rights based charity representing and advocating on behalf of children, young people and vulnerable adults across both Wales and England. We provide commissioned services across Wales to looked after children/young people, children in need, young care leavers and vulnerable families.

NYAS Cymru welcomes the opportunity to respond to the Bill and have the following recommendations:

- The Bill will need guidance and a code of practice that clearly outlines agencies roles, duties, functions, governance and accountability.

- NYAS are concerned that creating one single law for adults and children classed as in need will become complex and that the issues affecting children and young people will become lost in an adults world.

- Advocacy services are mentioned within the provision of social work which will come under the proposed definition of social care services. Advocacy services for children, young people and vulnerable people need to be independent and therefore placing this service under social work is not appropriate without clearly stating it is an independent service provided by organisations external to social services.

- **We urge the Health and Social Care Committee and the Children and Young people's Committee to include in the Bill legislation to ban physical punishment of children in Wales. We believe the time has come to end "reasonable punishment" and that the Welsh Government should make a commitment to legislate the rights of children/young people not to be subjected to any form of violent punishments.**

End

A Response to the Health and Social Care Committee Consultation on the Social Services and Well-being (Wales) Bill

Introduction

We are a partnership of 37 third sector and citizen organisations, representing the interests of thousands of people with diverse backgrounds across Wales (see Annex).

We ask the Health and Social Care Committee to consider this paper, which identifies some key concerns with the Social Services and Well-being (Wales) Bill.

Although circulation of the paper has been limited mainly to the Wales Alliance for Citizen Directed Support, the Direct Payment Support Schemes Network and Wales Disability Reference Group, and not (because of time constraints) via wider networks such as WCVA, the position that it represents has received considerable support.

The partner organisations, whilst not necessarily supporting all aspects of this paper, do endorse the general principles and proposed direction that it outlines and recommend it to the Health and Social Care Committee for consideration. Some of the partner organisations will submit additional evidence to the Committee.

The paper has been co-ordinated by Disability Wales, in discussion with the partner organisations, and was drafted mainly from the perspective of disabled people. We recognise that there are specific issues for older people, for children and young people, and for carers, although the proposals that are outlined in the paper should be broadly applicable to all groups.

The consensus of the partner organisations is that introduction of the Social Services and Well-being (Wales) Bill (the SSW Bill) is welcome and will both simplify legislation and enable a number of positive developments, such as a focus on well-being and outcomes, national eligibility criteria, portable assessments, integration of children, adults and carers services, social enterprise and co-operative approaches to service delivery, and promotion of the role of third sector.

However, there is also a consensus that in its present form the legislative framework which the SSW Bill would establish falls short of achieving the radical transformation of Social Services aspired to in *Sustainable Social Services: A Framework for Action*.

The partner organisations ask the Committee to consider the following key points, which we believe to be fundamental if the SSW Bill is to be strengthened sufficiently to achieve a real transformation of Social Services.

Executive Summary

The partner organisations call upon the Committee to:

1. recommend an amendment to the SSW Bill to replace the current Medical Model definition of disability with a Social Model definition.

2. recommend an amendment to the SSW Bill to incorporate enjoyment of the right to Independent Living into the meaning of well-being.

3. obtain assurance from WG that the Code of Practice will clarify its commitment to transforming Social Services by supporting development of a co-produced model of Citizen Directed Support.

4a. consider how the Social Care (Self-directed Support) (Scotland) Act 2013 may be drawn upon to inform further development of the SSW Bill, e.g. by making Direct Payments the default method of administering care and support services.

4b. recommend to Welsh Government that new models of support should be actively developed which place control with citizens, including within collective approaches to support provision.

5. recommend an amendment to the SSW Bill to require local authorities to ensure access to Independent Advocacy and peer support, as well as information, advice and assistance.

6. clarify whether an Equality Impact Assessment has been carried out on Section 54 of the SSW Bill, and to seek an amendment to the SSW Bill to prevent local authorities “charging for preventative services and information, advice and assistance.”

7. obtain confirmation that the £50 per week cap on charges for domiciliary care and support will be retained under new regulations.

8. recommend an amendment to the SSW Bill to acknowledge the right of individuals to take risks, to take full account of the positive use of the Mental Capacity Act requirements, and to ensure that risk is managed on an individual basis.

9. bring the Talking Points Personal Outcomes Approach, as developed by the I Matter, We Matter campaign, to the attention of WG, with a view to incorporating its principles and practice into development of the National Outcomes Framework.

10. obtain an assurance from WG that the Code of Practice will establish Co-production as the preferred method of delivering a genuinely transformed Social Services across Wales.

OVERARCHING PRINCIPLES

1. Definition of Disability

The Bill adopts the same definition of disability that was incorporated into the Equality Act 2010, i.e.

> A person (P) has a disability if—
> (a) P has a physical or mental impairment, and
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

This Medical Model definition assumes that impairments and health conditions are the cause of disability.

In contrast, the WG's consultation document on its Framework for Action on Independent Living [1] states that the Framework:

> gives practical effect to the Social Model of Disability which the

> National Assembly for Wales adopted in 2002. This recognises that people are disabled by the barriers created by society, and that **the guiding principles of policy** should be:
>
> - to remove these barriers and create an enabling society;
>
> - to promote the rights and full inclusion of disabled and older people (emphasis added).

Within the Social Model disability is defined as:

> The loss or limitation of opportunities to take part in society on equal basis with others due to institutional, environmental and attitudinal barriers.

The Social Model asserts that it is these social barriers which people experience *on top of* their impairments and health conditions which are the real cause of disability. Whilst the Social Model does not negate other models of disability, which appropriately address the various consequences of individual impairments and health conditions, it seeks instead to achieve social change by eliminating disabling barriers, for which we have a collective responsibility.

If the SSW Bill is to achieve the goal of transforming Social Services, the Social Model must be the “golden thread” which runs through the policy that the Bill sets out.

A SSW Bill based on the Social Model of Disability would catalyse a fundamental shift in thinking about how Social Services are delivered. Instead of focusing on mitigating the impact of impairments and health conditions on individuals’ lives – thus perpetuating the existing 'deficit model' of Social Services – a Social Model approach would focus on supporting disabled citizens to identify and remove the institutional, environmental and attitudinal barriers which cause "the loss or limitation of opportunities to take part in society on equal basis with others".

> **The partner organisations ask the Committee to consider seeking an amendment to the SSW Bill to replace the current Medical Model definition of disability with a Social Model definition.**

2. Independent Living

The partner organisations welcome the WG's proposals for introducing a Framework for Action on Independent Living in the summer of 2013. The Framework has been very effectively co-produced by WG together with citizens and representatives of third sector organisations, local government and service providers.

The Framework adopts the following definition of Independent Living:

> Independent Living enables us as disabled people to achieve our own goals and live our own lives in the way that we choose for ourselves.

The Framework identifies disabled people's highest priorities for change, and thus provides a systematic approach to removing the institutional, environmental and attitudinal barriers which cause "the loss or limitation of opportunities to take part in society on equal basis with others".

The Framework is based on several human rights and equalities frameworks, including the Equality Act 2010, the UN Convention on the Rights of Persons with Disabilities (UNCRPD) [2] and the UN Convention on the Rights of the Child (UNCRC) [3].

The Right to Independent Living is set out in Article 19 of the UNCRPD, which recognises the right of all disabled people to live in the community with choices equal to others, and to enjoy full inclusion and participation in the community.

In 2011 a report was published by the UK Parliamentary Joint Committee on Human Rights, chaired by Dr. Hywel Francis MP, following an inquiry into implementation of the right to Independent Living under Article 19 of the UNCRPD [4]. The Committee recommended that:

> ***The right to independent living should be added as an outcome in any forthcoming Bill on adult social care.***

Whilst the SSW Bill, as introduced, includes a welcome focus on achieving well-being outcomes, it fails to include Independent Living in the definition of well-being.

This lack of a rights based focus is particularly surprising given the long established rights based commitment to people with a learning disability by successive Welsh administrations since the pioneering All Wales Learning Disability Strategy in 1984. This established simple principles that have been reconfirmed and re-endorsed ever since, most recently in 2007 when WG issued a *Statement on Policy and Practice for Adults with a Learning Disability* [5]. This confirmed a vision for the future based on a set of principles which stated:

> All people with a learning disability are full citizens, equal in status and value to other citizens of the same age. They have the same rights to:
>
> - live healthy, productive and independent lives with appropriate and responsive treatment and support to develop their maximum potential;
> - be individuals and decide everyday issues and life-defining matters for themselves joining in all decision-making which affects their lives, with appropriate and responsive advice and support where necessary;
> - live their lives within their community, maintaining the social and family ties and connections which are important to them;
> - have the support of the communities of which they are a part and access to general and specialist services that are responsive to their individual needs, circumstances and preferences.

We propose that there should be a strong and explicit "read across" between the SSW Bill and the Framework for Action on Independent Living, which covers all disabled people.

The partner organisations ask the Committee to consider seeking an amendment to the SSW Bill to incorporate enjoyment of the right to Independent Living into the meaning of well-being.

ACCESS TO SERVICES

3. Citizen Directed Support

One of the highest priorities identified in the WG's consultation paper on its Framework for Action on Independent Living is:

> A comprehensive range of options and genuine choice and control in how personalised care and support is delivered.

The Wales Alliance for Citizen Directed Support (WACDS) is a group of citizens and service recipients, local authorities and service providers which has worked co-productively since 2008 to develop a new model of Social Services that is appropriate to the Welsh context.

Drawing upon, and learning from, the experience of implementing Self Directed Support elsewhere, and incorporating a citizenship model based on rights and responsibilities, the Welsh model of Citizen Directed Support is envisaged as a set of nationally agreed values, principles and practices which support innovation, enhance wellbeing, enable Independent Living and support citizens to achieve their chosen goals and lifestyles:

- by putting citizens in control of all aspects of their support arrangements, to the extent that they are comfortable with, by providing a range of options for administering support packages, including Direct Payments and co-operative models

- by focusing on identifying and removing the barriers that prevent disabled and older citizens from actively participating in their communities, and

- by supporting citizens to establish fulfilling relationships with everyone in their lives, and in particular ensuring that relationships with support workers are empathic and appropriate.

Within this model of CDS, the role of local authorities and social workers will shift from controlling and allocating available resources to community building and facilitating Independent Living, with the aim of enabling citizens to achieve the outcomes they choose for themselves.

Although WG has stated its intention to put citizens in control of the support services they receive, we are concerned that the SSW Bill, as introduced, does not make this explicit, thus opening it up to mis-interpretation.

> **The partner organisations call upon the Committee to seek an assurance from WG that the Code of Practice will clarify its commitment to transforming Social Services by supporting development of a co-produced model of Citizen Directed Support.**

4. Direct Payments

The partner organisations welcome WG's commitment to extending the availability of Direct Payments, which has proved to be an effective method of providing choice, control and independence to recipients. However, we believe there is scope for amendment of the current draft of the SSW Bill to ensure that local authorities take the actions necessary to increase the take up of Direct Payments.

In particular, we believe there is considerable merit in the proposal put forward in the Community Care (Direct Payments) (Wales) Bill to change the Direct Payments system from the current opt-in to an opt-out, thus making Direct Payments the default method of administering care and support packages.

If this is explained well to people in accessible language and in a timely fashion, and if individuals retain a clear right to opt for directly provided services and support should they prefer, it will ensure that local authorities adopt a uniform and positive approach to promoting Direct Payments.

The Direct Payment Support Schemes Network, which consists of organisations that provide third party support to recipients of Direct Payments across Wales, has produced a draft statement on “The Case for Extending Direct Payments within a Welsh Model of Citizen Directed Support”.

This argues that in contrast with the Scottish Executive’s Social Care

(Self-Directed Support) Bill [6], which received Royal Assent in January 2013, the SSW Bill falls short in terms of advancing Direct Payments in Wales, where less than 5% of adult recipients of Social Services currently have a Direct Payment.

The Scottish Act introduces the language and terminology of self-directed support into statute and places a duty on local authorities to offer four options to individuals who are assessed as eligible for care and support:

> *Option 1* The making of a direct payment by the local authority to the supported person for the provision of support.
>
> *Option 2* The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.
>
> *Option 3* The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.
>
> *Option 4* The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

The Act requires local authorities to “give the supported person the opportunity to choose one of the options for self-directed support, unless the authority considers that the supported person is ineligible to receive direct payments”.

The legislation requires that local authorities must also:

- take steps to promote the availability of the options for self-directed support

- give effect to the option for self-directed support chosen by the person.

The Act also requires local authorities to inform supported individuals of the amount of each of the self-directed support options that are available for them to choose from, and the period to which the amount relates.

Local authorities are also required:

- to explain what each option means in practice.
- to provide information about how they might manage their support after they have chosen their preferred option
- to provide information about organisations and persons who can provide help or further advice to help them choose an option
- to provide information about providers of independent advocacy services when appropriate
- to provide relevant information both in writing and in alternative formats appropriate to individual communication needs.

The Act is underpinned by the principles of involvement, informed choice and collaboration. These principles require local authorities to collaborate with individuals in both the assessment of their needs and the provision of support or services following the assessment. The principles also require that individuals must have as much involvement in the assessment of their social care needs, and the provision of support or services, as they wish. Individuals must also be provided with reasonable assistance in order that they can express their own views about the choices available to them and make an informed decision about their preferred choice.

The Act places a duty on local authorities to take reasonable steps to facilitate further principles when carrying out their functions. The Explanatory Notes [7] state:

> These principles – for persons to have their right to dignity and their right to participate in community life respected – reflect core principles of Independent Living. A further element of independent

> living – control – is reflected in the provisions of the Act enshrining choice...(and in individuals having as much involvement as they wish in relation to the assessment and provision of support or services).

We believe that similar legislation in Wales would maximise citizens' choice and control over the support they receive and would establish a basis for the transformation of Social Services that WG envisage.

The DPSSN's paper concludes that:

> Direct Payments should be actively promoted as the default option for all local authorities because they are cost effective and represent positive alternatives for all stakeholders, including:
>
> - increased choice and control
> - increased satisfaction
> - opportunities for innovative and creative citizen led solutions
> - facilitative of the "outcomes" focus of Citizen Directed Support
> - purposeful use of resources to overcome the barriers to social inclusion
> - increased community involvement and active participation for all citizens
> - cost effective solutions which are more sustainable long term.
>
> Direct Payments support the Social Model of Disability by viewing older and disabled people as active participants in their communities who have control of their lives, rather than passive long-term recipients of social care.

We recognise that whilst the lives of many individuals have been transformed through Direct Payments, due in part to the invaluable support provided by third party Direct Payment support schemes, some people will not wish to have the responsibility of directly employing their own Personal Assistant.

Wales Cooperative Centre and Disability Wales have undertaken research into the role of cooperatives in supporting a wider number of people to take up Direct Payments. Some helpful case studies were identified in the UK, Norway and Sweden which include user-owned and multi-stakeholder cooperatives. These retain the benefit for Direct Payment recipients of recruiting, training and managing their Personal

Assistants and thereby maintaining control, whilst the responsibility for employment is undertaken by the cooperative.

Other examples include the pooling of Direct Payments to maximise their effectiveness and to provide an alternative to traditional day services. For example, a group of people with learning difficulties pool their payments to employ a tutor to run drama classes, or someone to accompany them to football matches. In another case, Direct Payments are utilised by people with learning difficulties to develop a card making business with the support of parents and the local authority.

In conjunction with the Framework for Action on Independent Living, which strongly supports the development of Disabled People's Organisations such as Centres for Independent Living, we believe that there is a real opportunity to develop a new, made-in-Wales model of support which combines Citizen Directed Support with collective approaches to support provision.

> **The partner organisations call upon the Committee to consider how the Social Care (Self-directed Support) (Scotland) Act 2013 may be drawn upon to inform further development of the SSW Bill, e.g. by making Direct Payments the default method of administering care and support services.**
>
> **We also call upon the Committee to recommend to Welsh Government that new models of support should be actively developed which place control with citizens, including within collective approaches to support provision.**

5. Independent Advocacy

The Manifesto for Independent Living identified disabled people's top priority for change as:

> Access to information, advice, independent advocacy and peer support services for all.

These four services have different but equally important roles in strengthening the citizen's voice. Whilst provision of information and advice is addressed in the SSW Bill (together with "assistance in accessing care and support"), and has been subject to a recent WG review, Independent Advocacy and peer support services have not been included.

Independent Advocacy is:

> A service provided by independent organisations set up for the specific purpose of enabling people who are unable to make their voice heard, or who may communicate through alternative methods, to clarify their options, make choices and express their wishes and feelings.
>
> Advocates support their partner and, when necessary, speak on their behalf so that they feel they've been fully heard, understood and included in decision making processes.
>
> Advocacy also helps to ensure that an individuals' human rights are fully respected, that they obtain the services they need and receive their full entitlements.
>
> Independent advocacy may support individuals to self-advocate or assist the development of self advocacy groups.

In supporting individuals to express their wishes and feelings, the advocate's role differs to other professionals, such as social workers, who are solely concerned with making decisions in individuals' best interests.

The partner organisations consider the omission of Independent Advocacy and peer support to be a serious weakness of the SSW Bill.

From Vision to Action, the report of the Independent Commission on Social Services in Wales, stated:

> The Welsh Assembly Government, local government and independent partners should work together to ensure that people have access to better information, advocacy and support to make informed choices about their own care and support.

Sustainable Social Services: A Framework for Action stated:

> There has been some progress in developing general advocacy services for older people, but coverage of such services is patchy.

> We will therefore develop a business case to introduce a comprehensive advocacy service for older people, identifying what infrastructure is needed and setting initial priorities.

Whilst this development will be welcomed, the partner organisations consider the focus on older people to be too narrow and perverse in excluding younger disabled people, given the track record in Wales. The All Wales Learning Disability Strategy has explicitly encouraged the provision of advocacy for people with a learning disability since its introduction and in each subsequent ‘refresh’. For some eight years Welsh Government has provided a centralised grant to local advocacy and self advocacy groups.

We therefore propose that the Bill should include Independent Advocacy and Peer Advocacy for disabled people of working age.

Furthermore, WG’s own Strategic Equality Objectives include:

> Strengthen advice, information and ***advocacy*** services to help people with protected characteristics understand and exercise their rights and make informed choices (emphasis added).

Clearly the terminology used in the SSW Bill should be consistent with this Equality Objective. Whereas Independent Advocacy has a professional qualification and career pathway, “assistance in accessing care and support” is a central function of the Social Worker’s role and therefore cannot be independent.

> **The partner organisations call upon the Committee to consider seeking an amendment to the SSW Bill to require local authorities to ensure access to Independent Advocacy and peer support, as well as information, advice and assistance.**

6. Charging for preventive services

Section 54 of the SSW Bill allows regulations to make provision for “charging for preventative services and information, advice and assistance.”

We believe in the principle that charging for services which aim to support disabled people is a secondary and discriminatory tax and that all such services should be free at the point of delivery. We have actively campaigned through the Coalition on Charging Cymru to bring about an end to community care charges. Whilst this has yet to be achieved, the Welsh policy of an increased buffer on assessed income and a 10% disregard on disability related expenditure has taken thousands of disabled people out of charging. We also welcome the £50 maximum weekly charge which has ended the wide variation in charges for similar services across Wales.

In this context, whilst individual contributions to the cost of some services may be appropriate, e.g. for luncheon clubs, the introduction of charges for *preventative* services such as provision of information, advice and assistance is a retrogressive step and would fundamentally change the nature of the relationship between local authorities and citizens. It would also be counterproductive to the Welsh Government's ambitions for the Bill to transform Social Services and ensure greater equality, voice and control, as it may deter many from seeking assistance - particularly in view of reduced income as a result of benefit cuts.

Disabled and older people who require information to be provided in accessible formats such as Braille, Easy Read or Audio could be required to pay for information and advice which is currently provided free of charge. This would appear to be discriminatory.

> **The partner organisations call upon the Committee to seek clarification on whether an Equality Impact Assessment has been carried out on Section 54 of the SSW Bill, and to seek an amendment to the SSW Bill to prevent local authorities "charging for preventative services and information, advice and assistance."**

7. Charging and Financial Assessment

We are concerned that Part 5 of the SSW Bill on Charging and Financial Assessment does not state explicitly that the £50 per week cap on charges for domiciliary care and support will be retained.

We assume that this will be incorporated into the regulations but seek reassurance that the £50 cap will not be abolished when the existing Social Care Charges (Wales) Measure is repealed.

We understand that Coalition on Charging Cymru have submitted a detailed response to this part of the Bill, which we support.

> **The partner organisations call upon the Committee to seek confirmation that the £50 per week cap on charges for domiciliary care and support will be retained under new regulations.**

SAFEGUARDING

8. Risk

We are concerned that Part 7 of the SSW Bill on Safeguarding places a strong emphasis on protecting "adults at risk" but fails to place this within a context of transforming the present risk averse culture in Social Services.

A Joseph Rowntree Foundation report on *The Right to Take Risks: Service Users' Views of Risk in Adult Social Care* [8] states*:*

> The culture and ethos surrounding risk and rights, both in wider society and within individual services, is risk-averse, with a tendency to blame individuals when something goes wrong...the overpowering culture is for individuals to fear standing up for their (or other people's) rights.
>
> A significant fear for many people, particularly at this time of welfare reform and service cuts, reviews and reassessments, is the fear of losing their independence...Several people supported the view that the right to independent living for disabled people should be enshrined in law.

The paper acknowledges that "The landscape surrounding risk and rights remains immensely complex". Because one person's choices and risks may not be appropriate for others it is vital to ensure that risks are managed on an individual basis and are not subject to blanket regulations designed to protect agencies rather than service recipients. Individuals should be enabled to make fully informed choices about risk taking, ensuring that they can live the life of their choosing, and giving them the same rights as everyone else.

> **The partner organisations call upon the Committee to seek an amendment to the SSW Bill to acknowledge the right of individuals to take risks, to take full account of the positive use of the Mental Capacity Act requirement, and to ensure that they are supported to manage risk on an individual basis.**

SOCIAL SERVICES FUNCTIONS

9. National Outcomes Framework

The partner organisations strongly support the introduction of a National Outcomes Framework designed to achieve the primary policy objective of improving well-being outcomes for people who need care and support and for carers who need support. Some of the partners have been instrumental in initiating the 'I Matter, We Matter' campaign on behalf of WCVA’s Alliance of Alliances, which aims to identify the outcomes that citizens wish to achieve.

Whilst supportive of the outcomes approach in principle, we are concerned that the Bill and Explanatory Memorandum do not provide a strong enough vision for how this will be achieved. We suggest that the approach outlined in the Bill and Explanatory Memorandum is in practice likely to be more managerial than transformational, with an emphasis on organisational performance measures and targets rather than on achieving personal outcomes. This leaves us concerned that the end result will be “business as usual”, with an increase in bureaucracy rather than a reduction, and power and control still firmly in the hands of local authorities.

We wish to draw the Committee's attention to the Talking Points Personal Outcomes Approach which has been developed by the Scottish Executive's Joint Improvement Team since 2006. The aim of the Talking Points project was to develop an outcomes approach to planning, delivering, evaluating and improving services [9].

The project has conducted in-depth research, gathered a wealth of evidence and developed clear, practical guidance on implementing a citizen-led approach to achieving personal outcomes across social services and health. Talking Points supports a bottom up, relationship centred approach which contrasts significantly with the top down, performance focused Results Based Accountability (RBA) approach.

The table below contrasts the key elements of the Talking Points and RBA approaches.

Talking Points Personal Outcomes Approach	**Results Based Accountability Approach**
Engagement - dialogue between the individual and their supporters exploring the outcomes that the individual wants to achieve in their life.	**Creating Outcomes** - Outcomes developed nationally or locally are supported by measures which track progress of services.
Recording of information information gathered with the individual that helps them to work with support to achieve what matters in their life.	**Managing through performance** Commissioning and development of services is evaluated through the effectiveness of achieving these outcomes, assessed through the use of proxy measures.
Use of information at service or commissioning level to change the delivery of support to achieve more of 'what matters to people' within the resources available.	**Measuring Progress** The recording of services is shaped around the need to gather outcomes and measures in an efficient manner.
National or service area outcomes are curated from the common experience, derived from 'what matters to people' in the course of living their lives.	**Professionally-led conversations** The conversation with the citizen becomes influenced by what matters to professionals in evidencing progress with achieving centrally agreed outcomes.

As the above table shows, Talking Points and RBA lead to two very different approaches, which may be characterised as outcomes focused and service led. The key objective of Talking Points is to support a shift from service led ways of doing things to a focus on the outcomes that are important to people, as summarised below.

Personal outcomes focused	Service led
Assessment and planning based on activity with the person at the centre, to establish what matters to them, i.e. person centred planning	Tick box approach to assessment and planning
Focus on strengths and capacities and what the person wants to achieve	Focus on problems and what the person is unable to do
Think more widely about the people involved in the person's life and using community based resources	Think about a limited range of service options
Services do things with people	Services do things to or for people
Outcomes are what matters to the person e.g. being more confident about the caring role	Outcomes have been defined by what matter to services e.g. increase numbers of people going through training
Staff role is about engaging with the person and supporting them to identify outcomes	Staff role is about form filling and completing tasks
A focus on relationships between staff and service users and unpaid carers	A focus on processing people

A briefing by Talking Points states:

> The benefits at an organisational level are that Talking Points supports organisations to deliver on policy goals, including increased independence, personalisation, enablement, prevention, improved integration and a shift in the balance of care from hospital to the community. Becoming an outcomes focused organisation involves re-orientation of systems and processes to support new ways of working. There are a range of approaches organisations can take to do this work, including logic modelling, theory based evaluation and appreciative inquiry. **Organisational change in turn requires a supportive national context and policy which is joined up and driven by concern for personal outcomes over and above systemic priorities** (emphasis added).

We propose that WG should consider incorporating the Talking Points

Personal Outcomes Approach, rather than the Results Based Accountability Approach, at the heart of the National Outcomes Framework.

As a forum which links together people with a variety of perspectives and experience across different sectors, the Wales Alliance for Citizen Directed Support is well placed to support development of the Talking Points approach in Wales.

> **The partner organisations call upon the Committee to consider bringing the Talking Points Personal Outcomes Approach, as developed by the I Matter, We Matter campaign, to the attention of WG, with a view to incorporating its principles and practice into development of the National Outcomes Framework.**

10. Co-production

The principles and practice of Co-production underpin the Talking Points Personal Outcomes Approach. Co-production is defined variously as:

- "delivering public services in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours" (new economics foundation) [10]
- "empowering citizens to contribute their own resources (time, will power, expertise and effort) and have greater control over public resources to achieve a valued outcome" (Cabinet Office Strategy Unit) [11]
- "involving citizens in collaborative relationships with more empowered frontline staff who are able and confident to share power and accept user expertise (Social Care Institute for Excellence) [12]
- "public services and citizens making better use of each other's strengths, assets and resources to achieve better outcomes and improved efficiency" (Governance International) [13]

The new economics foundation and NESTA have set out six key principles of effective co-production:

1. **Recognising people as assets**: seeing people as equal partners in the design and delivery of services, not passive recipients of – or worse, burdens on – public services.

2. **Building on people's existing capabilities**: rather than starting with people's needs (the traditional deficit model), co-produced services start with peoples capabilities and look for opportunities to help make these flourish.

3. **Mutuality and reciprocity**: co-production is about a mutual and reciprocal partnership, where professionals and people who use services come together in an interdependent relationship recognising that each are invaluable to producing effective services and improving outcomes.

4. **Peer support networks**: engaging peer and personal networks alongside professionals as the best way of transferring knowledge and supporting change.

5. **Blurring distinctions**: blurring the distinction between professionals and recipients, and between producers and consumers of services, by reconfiguring the way services are developed and delivered.

6. **Facilitating rather than delivering**: enabling professionals to become facilitators and catalysts of change rather than providers of services.

The Talking Points Practical Guide states that the Personal Outcomes Approach "resonates well with current policy, which is focussed on co-production, enablement and prevention of crisis". We suggest that encouraging local authorities to pro-actively adopt Co-production will enable WG to achieve its goal of transforming Social Services.

Whilst acknowledging that effective Co-production cannot be legislated for, we are concerned that neither the SSW Bill, as introduced, nor the Explanatory Memorandum contain any reference to Co-production.

> **The partner organisations call upon the Committee to seek an assurance from WG that the Code of Practice will establish Co-production as the preferred method of delivering a genuinely transformed Social Services across Wales.**

References

[1] *Consultation paper on the Framework for Action on Independent Living,* Welsh Government, 2012

http://wales.gov.uk/consultations/equality/frameworkforactionconsultation/?lang=en

[2] *UN Convention on the Rights of Persons with Disabilities*

http://www.un.org/disabilities/convention/conventionfull.shtml

[3] *UN Convention on the Rights of the Child*

http://www.unicef.org/crc/

[4] *Implementation of the Right of Disabled People to Independent Living,* Joint Committee on Human Rights, House of Commons, 2012

http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/257.pdf

[5] *Statement of Policy and Practice for Adults with Learning Disability, Welsh Government, 2007*

http://wales.gov.uk/topics/health/publications/socialcare/guidance1/disability/?lang=n

[6] *Social Care (Self-directed Support) (Scotland) Act 2013*

http://www.legislation.gov.uk/asp/2013/1/pdfs/asp_20130001_en.pdf

[7] *Explanatory Notes, Social Care (Self-directed Support) (Scotland) Act 2013*

http://www.legislation.gov.uk/asp/2013/1/pdfs/aspen_20130001_en.pdf

[8] *The Right to Take Risks: Service User' Views of Risk in Adult Social Care*, Joseph Rowntree Foundation, 2012

http://www.jrf.org.uk/sites/files/jrf/right-to-take-risks-faulkner.pdf

[9] *Talking Points: A Personal Outcomes Approach*

http://www.jitscotland.org.uk/action-areas/talking-points-user-and-carer-involvement/

[10] *Right Here, Right Now: Taking co-production into the mainstream*, new economics foundation

http://www.neweconomics.org/publications/in-this-together

[11] *Co-production in public services: a new partnership with citizens*, Cabinet Office Strategy Unit (2009)

http://webarchive.nationalarchives.gov.uk/+/http:/www.cabinetoffice.gov.uk/media/207033/public_services_co-production.pdf

[12] *Co-production: an emerging evidence base for adult social care transformation*, SCIE Research briefing 31

http://www.scie.org.uk/publications/briefings/files/briefing31.pdf

[13] *From passive customers to active co-producers: The role of co-production in public services*, Tony Bovaird, Elke Löffler and Frankie Hine-Hughes

http://www.mycustomer.com/topic/customer-experience/passive-customers-active-co-producers-role-co-production-public-services/1

Annex

List of supporting organisations	
All Wales People First	Arfon Access Group
Carers Trust	Carmarthenshire People First
Cartrefi Cymru	CLIP (Coping and Living In Pain)
Community Lives Consortium	Dewis Centre for Independent Living
Disability Action Group Wales	Disability Wales
Diverse Cymru	Drive
Every Link Counts	Gwalia Care and Support
Gwynedd Direct Payments Forum	Leonard Cheshire Disability Cymru
Learning Disability Wales	Ling Trust
Merthyr People First	Mind Cymru

Mirus	My Great Life CIC
Powys People First	Shared Lives Plus
Shaw Trust	Shine Cymru
Social Services Citizens Panel – North Wales	Social Services Citizens Panel – SW Wales
Social Services Citizens Panel – SE Wales	The Rowan Organization
Vale People First	Vision in Wales
Wales Alliance for Citizen Directed Support Provider Network	Wales Council for Deaf People
Wales Disability Reference Group	Wales Neurological Alliance
Walsingham Wales	

Contact

Paul Swann

Policy Officer (Independent Living)

Disability Wales

paul.swann@disabilitywales.org

02920 887325

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 16 – NCMA Cymru

Claire Protheroe (Senior Manager Wales)
National Childminding Association Cymru / Cymdeithas Genedlaethol Gwarchod Plant Cymru
Ocean Buildings, Bute Crescent, Cardiff, CF10 5AY
Tel: 0845 8801299 Email: **Claire.Protheroe@ncma.org.uk**

NCMA Cymru General Information

NCMA (the National Childminding Association) is a professional membership association. Since 1977 we have worked with registered childminders and nannies as well as other individuals and organisations such as local and national government, to ensure families in every community in England and Wales have access to high quality home-based childcare, play, learning and family support.

NCMA Cymru is an integral part of PACEY providing a dedicated Welsh service for our members, all other childminders and our partners across Wales, including local authorities, the Welsh Government and their statutory agencies.

Our work in Wales builds on the membership package provided by NCMA and enables home-based childcarers to raise their professionalism and provide high quality childcare.

In addition to supporting our members and other childminders in Wales, NCMA Cymru is a key partner in the Welsh Government's Child Poverty Strategy. Much of our work is focused on improving outcomes for families across Wales and raising childhood prosperity. We help and support childminders to provide care for vulnerable and disadvantaged children and families across Wales.

NCMA Cymru wishes to make a general comment about the bill in line with the response from Children are Unbeatable against question 8- Other comments

Are there any other comments you wish to make about specific sections of the Bill?
NCMA Cymru argues, in line with the Children are Unbeatable Campaign, given the overall context and the overall aims of the Bill, the Stage 1 Report should recommend that a clause should be added to remove the "reasonable punishment" justification for common assault on children in Wales. The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to remove the defence and NCMA Cymru believes that this power to legislate needs to be utilised. In addition, the October 2011 debate and vote in the Assembly showed a strong cross-party majority of AMs encouraging the Government to introduce the necessary legislation.

NCMA Cymru, in line with the Children are Unbeatable Campaign, urges the Health and Social Care Committee and the Children and Young People Committee to recommend in the Stage 1 Report inclusion in the Bill of the necessary provision to remove the "reasonable punishment" defence. NCMA Cymru agrees with all points raised in the Children are Unbeatable response to the bill and cites these as evidence on NCMA Cymru's view.

Submission of evidence to the Health and Social Care Committee – Consultation on the Social Services and Well-being (Wales) Bill

What is "My Care My Home"?

An organisation set up jointly by The Shaw Foundation, an Exempt Charity supporting the health and social care sector and Shaw Healthcare (Group) the largest staff owned healthcare Group in wales and possibly in the UK. Its founding purpose was set up to meet the very needs that the Bill now seeks to address; namely that information about care, how to evaluate it, what is available, what is reliable and good and what is not, how to pay for it; this information is not readily available to most people when the crisis hits. My Care My Home has made it its business to make this information and advice freely and readily available to everyone and it has made significant progress in doing this.

My Care My Home very warmly welcomes the Bill which will give statutory force to what has been and remains My Care My Home's driving mission. The organisation is very well placed to assist Local Authorities throughout Wales to achieve the objectives that the Bill gives them.

- A staff owned Social enterprise organisation which is also part owned by an Exempt Charity (The Shaw Foundation)
- Operates UK wide but its Board of management and head office is based in Cardiff
- Draws on the care assessment and care quality expertise of the Shaw organisation and can tap into Shaw's UK wide knowledge of the aspirations, wishes of older people who need some level of care and help and advice with funding some of their care and accommodation needs.
- The Shaw organisation is also a staff owned social enterprise also part owned by an Exempt charity and is headquartered in Cardiff. It has a turnover of £100 million a year, employs over 4000 staff and is probably the largest independent healthcare operator whose head office is Wales based.

What service does" My Care My Home "provide?

- It provides free advice to anyone in Wales in the security of their own home on all matters relating to the care, accommodation, funding, quality and legal issues faced by those needing care and who may have to fund part of the cost of that themselves (self – funders). However the advice is not limited to self funders; it is available to all and is completely free.
- How does it do this? By visits to the person who needs care in their own home and explaining to them and their family (and any advocate they may have) just what their options are; options for lifestyle; options for receiving care in a variety of ways (by engaging their own carers; employing a care agency; moving to sheltered/ Extra Care living or moving to a care home; initial advice on how the costs of care which are not eligible for state funding can be paid for; advice on adaptations and equipment which will facilitate living at home.
- It also makes available freely an on line search facility (www.Mycaremyhome.co.uk) with a searchable database of over 52,000 care/ retirement accommodation /domiciliary care providers ; thus enabling people to find the closest registered domiciliary care or care home providers or unregistered retirement living services to where they want it; to find good Independent suitably qualified and local Independent

Financial Advisors and suitably well informed and reasonably priced legal advisers in their vicinity

- In addition to offering free advice, My Care My Home also offers those specialist services that many people faced with the need for care require for example:
    - Help in finding a good care provider and checking out that they really do have the required quality of service and management competence to deliver a sustainable high quality care service
    - Help in negotiating a contract with a chosen care provider (whether domiciliary or residential) that gives the recipient the protections and safeguards that they should have.
    - Regular monitoring of the quality of care received from that service
    - Help in costing and then managing any conversion work and equipment installation (from stair lifts to sensors) required to enable someone to continue to live safely and securely in their own home
    - Help with managing their finances so as to be able to fund those elements of their accommodation or care that the State will not fund.
    - Help with selling their house and buying or renting out their house if they want that
    - Help with finding an a well informed local legal advisor or Independent Financial Advisor

  For all these services, which the customer is free to choose or not to choose; My Care My Home makes a defined charge. It is this charge which funds the free advice service.

How does My Care My Home relate to Local Authorities?

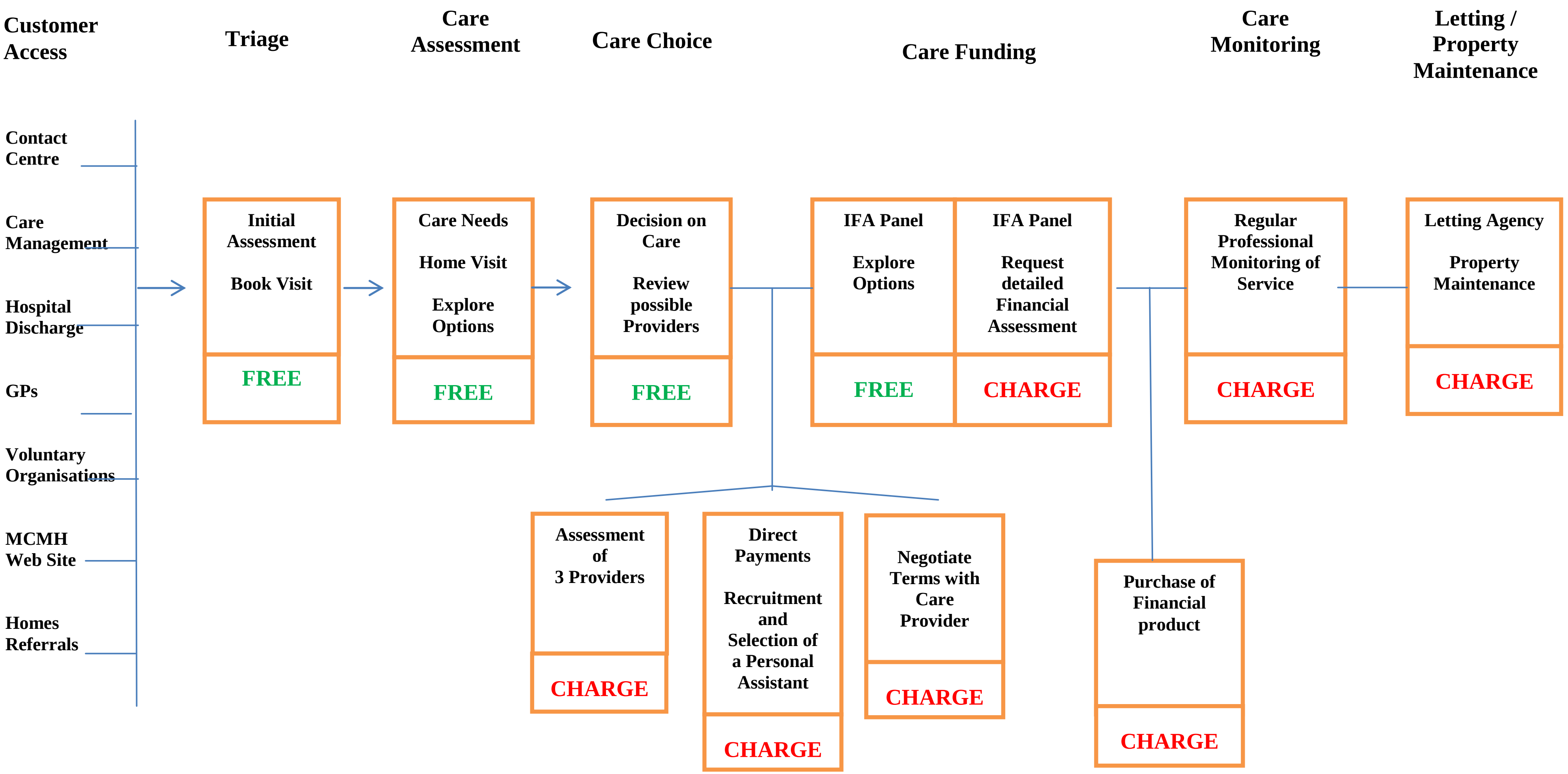
- It offers the Local authority the option of a free click through to My Care My Home's call centre (when calls are allocated to local Care Advisors who meet the individual in their own home)
- It seeks to establish this arrangement with the Local Authority on the basis of a Memorandum of Understanding between My Care My Home and the named Local Authority. We now have a number of these in place and operational.
- The advice service is offered to all- regardless of income, assets or lack of them. The advice offered is "whole of market"; all Care Providers within the type and criteria selected are shown. The local Independent Financial Advisors and Legal advisors who will be showcased on the Mycaremyhome website (Service to be launched in May 2013) will have been pre screened for specialist competence in the field of advice to for people of all ages but especially the elderly

How will My Care My Home save Local Authorities money?

- By enabling self funders needing care to get good financial advice which will enable many of them to purchase care fees insurance policies which will save them from ever running out of money and becoming a charge on the Local Authority's Social Care budget. It will, over time, remove the burden of "Asset depleters" from the Local Authorities budgets.
- By providing a whole of market care and financial advice service to all citizens in the Local authority area thereby enabling the Local Authority to meet what will shortly be its new expected statutory responsibilities
  (Check the wording here with Richard Perry and ask him to amend as he sees fit)
- By providing a high quality care assessment service to care providers in the Local authority area; this will be an eagerly desired service which will be provided at no cost to the Local authority

Annex

My Care My Home
CARE ADVICE PATHWAY



January 2012

Cyngor Sir Ynys Môn

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru) - Ymateb i'r ymgynghoriad

1. Mae consensws cyffredinol bod angen deddfwriaeth a fydd yn caniatáu un ddeddf i Gymru: deddf a fydd yn dwyn ynghyd dyletswyddau a swyddogaethau'r awdurdodau lleol a'r partneriaid mewn perthynas â darparu gofal cymdeithasol.

   Tra bo teitl y ddeddfwriaeth nawr wedi ei newid, a hynny yn adlewyrchu cyfrifoldebau ehangach y ddeddfwriaeth tu hwnt i Wasanaethau Cymdeithasol, mae angen gwneud mwy er mwyn sicrhau clirdeb y neges a synnwyr o gyd gyfrifoldeb ar draws darparwyr gan gynnwys partneriaid statudol datganoledig a rheini nad ydynt wedi eu datganoli, ynghyd â'r sector annibynnol a'r drydedd sector. Ar hyn o bryd ystyrir fod y ddeddfwriaeth yn effeithio yn bennaf ar wasanaethau cymdeithasol yn hytrach na'i botensial fel gyrrwr newid sylweddol ar draws yr holl ddarparwyr gofal cymdeithasol.

   Mae'r ddeddfwriaeth gyfredol, yn enwedig mewn perthynas â gofal cymdeithasol ar gyfer oedolion, angen ei ddiweddaru er mwyn adlewyrchu'n well newidiadau demograffig a newidiadau mewn disgwyliadau cymdeithasol.

   Mae angen cyflwyno'r ddeddfwriaeth mewn modd hawdd ei ddeall ac sy'n eglurhau pwy ddylai dderbyn cymorth a chefnogaeth.

2. O ystyried cyd-destun Cymreig y ddeddfwriaeth mae'n siomedig nad oedd cydnabyddiaeth gryfach i anghenion dinasyddion i dderbyn gwasanaethau gofal cymdeithasol drwy gyfrwng y Gymraeg. Oni bae fod yr agwedd yma yn cael ei chryfhau mae'n annhebygol y bydd y ddeddfwriaeth yn hwyluso ac yn sail i ddisgwyliadau "Mwy na Geiriau".

3. Wrth groesawu dyheadau a'r egwyddorion sy'n sail i'r Ddeddfwriaeth mae risg na fydd modd eu gwireddu oni bae fod gwir newid mewn diwylliant a disgwyliadau dinasyddion Cymru. Mae pwyslais cynyddol ar "les" a "gwasanaethau ataliol". Ni fydd y gwasanaethau ar gael nac yn fforddiadwy pe pery'r disgwyliadau mai rôl y "wladwriaeth" ac awdurdodau lleol yw darparu'r rhain. Mae angen pwyslais cynyddol a chlirdeb bod angen i'r ddeddfwriaeth gael ei gwireddu mewn cyd-destun ble mae mwy o gyfrifoldeb cymunedol a chyfrifoldeb dinesydd ar y cyd â gwasanaethau cymdeithasol. (Awdurdodau Lleol a phartneriaid) yn ymgymryd â rôl siapio a chomisiynu gwasanaethau uniongyrchol a gwasanaethau anuniongyrchol.

Heb glirdeb ynglŷn â’r adnodd a’r newidiadau sydd eu hangen mae risg y daw'r ddeddfwriaeth yn “addewid gwag”. Mae Awdurdodau Lleol, ynghyd ag asiantaethau partner, yn wynebu heriau ariannol sylweddol. Mae yna dybiaeth y bydd y newidiadau sydd yn cael eu hargymell yn adnabod arbedion ar gyfer darparu gwasanaethau ataliol ehangach. Mae profiad yn awgrymu nad dyna’r achos. Mae llawer o’r newidiadau arfaethedig yn cael eu cyflwyno fel rhan o arbedion effeithiolrwydd o fewn awdurdodau lleol a ni fydd y cyllid refeniw a rhagwelir ar gael i’w ail fuddsoddi.

4. Gyda’r newidiadau a rhagwelir mewn disgwyliadau a diwylliant gellid ystyried bydd gan adrannau gwasanaethau cymdeithasol rôl gynyddol mewn siapio, comisiynu a gwarantu ansawdd o fewn y sector ofal a rôl lai mewn darpariaeth uniongyrchol o wasanaethau.

5. Rhwystrau Posib

   Fel yr awgrymir uchod mae risg y bydd y Ddeddfwriaeth yn cynyddu disgwyliadau ar wasanaethau cyfredol lle bydd cyfran ehangach o’r boblogaeth yn ystyried eu bod yn gymwys am wasanaethau gan yr awdurdod lleol. Nid yw hyn yn ddymunol yng ngoleuni'r cyd-destun ariannol cyfredol, ac i’r dyfodol, ynghyd â chynnydd yn y boblogaeth hyn.

   Rydym yn ffodus yng Nghymru bod y gymuned gwasanaethau cymdeithasol wedi profi ymrwymiad i gyd weithio ar draws gwasanaethau a ffiniau daearyddol. Er hyn bydd disgwyliadau'r ddeddfwriaeth bod angen mwy o gysondeb gwasanaethau ar sail Cymru gyfan yn dod â gofynion sylweddol. E.e. Rydym yn ymwybodol fod angen llawer o waith er mwyn sicrhau cysondeb data ar draws awdurdodau lleol. Mae’r isadeiledd sydd ei angen ar gyfer mynd i’r afael â materion fel hyn, er yn ddymunol, yn sylweddol.

6. Dim sylw

7. Croesawir y ffaith fod gan y Gweinidog yng Nghymru'r gallu i lunio is ddeddfwriaeth addas ar gyfer dinasyddion Cymru. Er hyn cydnabyddir yr angen i sicrhau fod deddfwriaeth o’r fath wedi ei ymchwilio’n drwyadl o fewn y cyd-destun Cymreig a Phrydeinig. Mae deddfwriaeth gadarn sy’n berthnasol i ofal cymdeithasol yn gymhleth ac angen is adeiladed cadarn, a bydd y gofynion ar y gwasanaeth sifil cefnogol a’r rhwydweithiau cefnogol yn sylweddol.

8. Oblygiadau ariannol. Gweler uchod. Erys swyddogion ac Aelodau yn bryderus ynglŷn â’r cynnydd mewn disgwyliadau y gall y ddeddfwriaeth eu cyflwyno yn wyneb y pwyslais ar “les”. Bydd ehangu’r criteria mynediad i

wasanaeth ar gyfer defnyddwyr gwasanaeth yn cyflwyno baich ariannol sylweddol ar system sydd eisoes dan bwysau. Mae Awdurdodau Lleol yn medru dangos gwir ymrwymiad i geisio amddiffyn gwasanaethau gofal ar lefel leol ond yn amlach na pheidio mae hyn ar draul gwasanaethau cyhoeddus pwysig eraill.

Rydym hefyd yn herio’r dybiaeth y gellid cyflwyno’r newidiadau sylweddol ar sail dim cost.

Gwen Carrington
Cyfarwyddwr Cymuned (Cyfarwyddwr Statudol Gwasanaethau Cymdeithasol)

The Isle of Anglesey Mon County Council

Social Services & Well Being (Wales) Bill - response to consultation:

1. There is a general consensus that there is a need for the Bill which will allow for a single Act for Wales which brings together the local authorities' and partners' duties and functions in relating to the provision of social care. Whilst the amended title of the Bill does now better reflect the broader responsibilities of the Bill beyond Social Services more needs to be done to ensure clarity of message and a shared sense of responsibility across providers including devolved and non-devolved statutory partners as well as the independent and Third Sector. Currently the Bill is considered as impacting primarily on Social Services as opposed to its potential as a significant game changer across all social care providers.

   The current legislation, especially relating to adult social care, needs to be updated to better reflect demographic changes and social expectations.

   The Bill needs to be presented in a way that is easily understood and makes it clear who should get help and support.

2. Given the Welsh context for this legislation it is disappointing that there is not a greater recognition of the needs of Welsh speaking citizens when accessing social care. Unless this aspect is strengthened it is unlikely that the Bill will facilitate and underpin the expectations of "More than Words".

3. Whilst welcoming the aspirations and principles underpinning the Bill there is a risk that this will not be deliverable unless accompanied by a real change of culture and expectations by the citizens of Wales. There is an increased emphasis on "wellbeing" and "preventive services". The services will not be affordable or available if there is a continued expectation that the "state" and local authorities is expected to provide. There must be an increased emphasis and clarity that the Bill is delivered within a context where there is greater citizen and community responsibility with Social Services (Local Authorities and partners) playing an increased role in the shaping and commissioning of direct and indirect services.

   Without clarity about the resources and changes required there is a risk that the Bill becomes an "unfulfilled promise". Local Authorities, as well as partner agencies, are facing considerable financial challenges. There is an assumption that the proposed changes will identify the savings required to provide broader preventive services. Experience suggests that this is not the case. Many of the proposed changes are being introduced as part of the efficiency savings within authorities and the anticipated revenue funding released will not be available.

4. With the anticipated changes in expectations and culture it can be envisaged that the social services departments will have an increased role in the shaping, commissioning and quality assurance of the care sector and a reduced role in the direct provision of services.

5. Potential Barriers

   As suggested above there is a risk that the Bill serves to increase expectations on current services whereby a greater proportion of the population consider themselves eligibility for services provided by the local authority. This will not be deliverable given the current and anticipated financial context and increase in the older population.

   We are fortunate in Wales in that the social services community has evidenced a commitment to collaborative working across service and geographical boundaries. Nevertheless the expectations within the Bill for greater consistency of services on an all Wales basis will bring significant demands. E.g. We know that a great deal more needs to be done to ensure consistency of data across local authorities. The infrastructure required to address such issues, although desirable, is considerable.

6. No comment

7. The ability for Welsh Minister to have the power to make subordinate legislation appropriate for the people of Wales is welcomed. Nevertheless the practical requirements to make sure that such legislation is well researched within a Welsh and British context are acknowledged. Robust legislation relating to social care is complex requires a sound infrastructure and the demands on the supporting civil service and supportive networks will be considerable.

8. Financial Implications See above. Officers and members remain concerned about the increased expectations the Bill may introduce given its emphasis on “wellbeing”. Broadening the eligibility criteria for service users will introduce significant financial burdens on an already pressurised system. Local Authorities are evidencing a real commitment to trying to protect social care services at a local level but this is often at the cost of increased pressure for additional savings from other important public services.

The ability to introduce such significant changes on a no cost basis is also challenged.

Gwen Carrington
Director of Community (Statutory Director Social Services)

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 19 – Chartered Society of Physiotherapy

CHARTERED SOCIETY
OF PHYSIOTHERAPY
CYMDEITHAS SIARTREDIG
FFISIOTHERAPI

CSP Wales Office
1 Cathedral Road
Cardiff CF11 9SD
029 2038 2429
www.csp.org.uk

Committee Clerk
Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

14th of March 2013

Dear Chair of Committee and Health and Social Care Committee Members

Consultation on the Social Services and Well-being (Wales) Bill – Response from the Chartered Society of Physiotherapy (CSP) in Wales

Introduction

The Chartered Society of Physiotherapy (CSP) in Wales is pleased to provide a response to this committee led consultation and is also pleased to be playing an active part in the Social Services and Well-being Bill Advisory Group. Whilst physiotherapy staff in the main are not directly employed by social services, increasingly they are working as part of inter-agency teams planning and delivering services across health and social care.

As more services are delivered at home/closer to home, integration of health and social care will become increasingly important and physiotherapy services will be integral to keeping people independent and in their own homes for as long as possible. It will also mean providing ever more complex care for children, young people and adults in their communities.

The CSP welcomes much of the Bill’s content, in particular the focus on well-being with a strong definition encapsulating work, play and leisure. The CSP also welcomes the intention of the Bill to ensure well-being is enhanced and services respond to the developing needs of individuals but also the needs of carers.

The CSP welcomes the Bill’s focus on prevention and applauds the more ‘preventative’ approach being taken by Government to the delivery of social care.

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.

The CSP considers there is a need for a Bill to provide a single Act for Wales that simplifies current legislation and provides clarity on the duties and functions of local authorities and their partners in improving the well-being of people who need care and support and carers who need support.

The physiotherapy profession does have concerns around a few areas which we urge the Committee to seek clarification over, and where necessary call for amendments.

Clarification is required with regard to repeal of existing legislation and assurance is needed that duties and functions contained in current legislation will be replicated within the Social Services and Well-being (Wales) Bill. Examples include:

1) Chronically Sick and Disabled Person's Act 1970 (particularly regarding the duty to assess the needs of a disabled person and a duty to provide equipment and adaptations)
2) Definition of a disabled child – there are some concerns that the Bill, as currently worded, could potentially be seen to dilute the rights of disabled children to assessment and services.
3) Social Care Charges (Wales) Measure. Part 5 of the Bill on charging and financial assessment does not state explicitly that the £50.00 cap on charges for domiciliary care and support will be retained.

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 CSP considers the Bill is positive with regard to its stated objectives and fully supports the principle of a person centred approach. There remains, however, an over-riding interpretation that the Bill presents a service driven model that matches services to people rather than an 'individual outcome' focused model that looks at what people need and develops solutions to meet those needs. A tension exists between working with someone to agree the best way to support them, meet their needs and achieve their outcomes and determining whether someone is entitled (eligible) to receive services.

In order to provide people with 'voice and control', the Bill must include measures that require local authorities to actively involve people in assessment, planning and provision. This should not just be restricted to the use of direct payments. The CSP believes this will need to be clarified on the face of the Bill.

The CSP remains concerned about eligibility. Whilst welcoming a national eligibility framework in principle, the Society would welcome more detail on the Welsh Government's intentions, as without this, it is difficult to know how the Bill will work in practice. The CSP supports universal access to preventative initiatives that includes reablement, falls prevention, and provision of aids, appliances and adaptations free of charge before eligibility criteria are applied. There remains a concern about how the Bill addresses the needs of people with low to moderate needs that might not be eligible for support or who do not pass the financial assessment but choose not to self-fund. What is the local authorities' responsibility in these cases?

Clarification is required in relation to charging with a concern around the potential charge for information and advice. This may have unintentional consequences which could undermine the Government's stated objectives. In addition, clarification is required around how assessment of need, application of eligibility and financial assessment will work in relation to providing preventative services, promoting well-being and managing needs. There is a lack of clarity about who would have access to preventative services and around the difference between when a person requires on-going care and support needs but may need short-term targeted intervention to prevent them needing care and support.

The CSP welcomes the intentions of the Bill in relation to well-being which reflects the idea of a more 'individual outcome' focused model.

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.

The CSP considers that there are issues around charging for information and advice and for preventative services that will need to be addressed. Sharper definitions will need to be provided and clarity around what is included in each. Facing charges for such services may deter people from accessing them and could result in them accessing care and support services far later than appropriate with a potential greater expense. Currently, the profession fails to see how the Bill will incentivise early intervention. The profession supports the model proposed by John Bolton[1] with universal services, targeted interventions for lower level needs and eligible services for those who have on-going needs although this will have financial implications which will need to be met by Welsh Government.

The CSP believes it is imperative that community based intermediate care services, which are currently provided by NHS services must remain free at the point of need, funded by general taxation. These services must be included in the regulations as care which must always be provided free. If these services are transferred to be the responsibility of local government they must not become subject to means testing. More clarity is needed on the role of Local Health Boards in providing preventative services.

The profession welcomes the intention in the Bill for greater collaboration between health and social care but requires more detail from the Welsh Government about their intentions and how they envisage it working in practice. There remains a tension around charging for services in social care and those services provided by health being free at the point of delivery. Where health and social care integrate, these tensions will need to be addressed. The CSP also notes the importance of housing departments and would expect them to play a part in partnership arrangements. The Bill does not elaborate on specific geographical areas for partnerships. The profession would welcome clarity in this area.

The CSP has some serious concerns about the Regulatory Impact Assessment. (See also response to Q7b).

---

[1] SSIA (2011) Better Support at Lower Cost www.ssiacymru.org.uk/olderpeople

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 change the way social services are provided, particularly if more focus is placed on preventative ‘enabling’ services which reduce the need for care and support.

However, it is not clear what is meant by ‘preventative’ services and the CSP is concerned that as the Bill stands currently, ‘preventative’ services is open to misinterpretation. The profession considers that preventative services must include access to aids, adaptations and equipment and secondary prevention services, such as falls prevention. At present, this is not clear on the face of the Bill.

The Bill contains a list of purposes for services which are not person centred. The CSP wishes to see reference to ‘enablement’ on the face of the Bill to ensure social services have a duty to provide reablement services.

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

The CSP considers cost will be a barrier to implementing a Social Services and Well-being (Wales) Bill that meets all aspirations. The profession has concerns about the costing provided in the Explanatory Memorandum, in particular costs for training being restricted to staff in social services. With an intention in the Bill to facilitate closer working between health and social care it will be essential for joint training to be provided across the sectors.

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.

The CSP does not consider there is an adequate balance between the powers on the face of the Bill and details to be left to regulations. The profession is concerned that much of the detail on regulations is not publicly available and the CSP does not consider that Assembly Members should vote on the Bill’s ‘General Principles’ at the end of stage one of the passage of the Bill without sight of the draft regulations.

Definitions, in particular, need to be tightened up and included on the face of the Bill. What exactly is ‘a care and support’ need? What is covered in the term ‘preventative services’? What exactly is included within ‘information and advice’?

The CSP considers more is needed on the face of the Bill to demonstrate that it is ‘outcome focused’ not service driven. To that end, the profession supports the suggestion by the Law Commission[2] that the statue should set out a checklist of factors that must be considered before a decision is made in relation to an individual’s needs.

The Society notes that in some places where regulations are to be applied the Bill states services ‘may’ rather than ‘must’. This needs to be strengthened as ‘may’ allows that the

---

[2] Adult Social Care, Law Commission, 2011

service could not be provided, which will potentially lead to a postcode lottery across Wales.

Powers to make subordinate legislation

7a) 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.

The profession is content that there will be areas that are appropriate for subordinate legislation; however it is difficult to be wholly comfortable about what appears on the face of the Bill prior to sight of any statutory instruments such as regulations, orders and directions. As highlighted earlier, the profession would expect these to be published prior to Assembly Members being required to vote on the Bill's general principles at the end of stage one.

The CSP considers there will need to be a review of some of the subordinate legislation that is to be left to negative procedure. Particularly in relation to financial matters, there will need to be an appropriate level of scrutiny of these measures.

Financial Implications

7b) 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.

The CSP has serious concerns about the Regulatory Impact Assessment and considers that costs will be much greater than that predicted. As already mentioned, the cost of training should extend to the wider social care workforce and partners across other sectors, not just social workers.

There are also likely to be other costs such as for the establishment of new safeguarding boards and for operating 'partnership boards' between health and social care.

Other comments

8. Are there any other comments you wish to make about specific sections of the Bill?
The CSP notes there is no detail about paying for care in the Bill even though the Dilnot Commission report *Fairer Care Funding* was published back in July 2011. Welsh Government decisions on funding/paying for care will help in the overall assessment of whether the social care and support system is adequately resourced presently. Further detail is urgently required on this.

Concluding comments

The CSP has been pleased to contribute to this consultation and looks forward to continuing to play an active part in the next stages of the legislative scrutiny. If you have any questions about this response please do not hesitate to contact the CSP.

Philippa Ford MCSP
CSP Policy Officer for Wales

fordp@csp.org.uk
(w) 029 2038 2429
(m) 07990542436

In association with:
CSP Welsh Board
Welsh Physiotherapy Leaders Advisory Group

About the CSP and Physiotherapy

The Chartered Society of Physiotherapy is the professional, educational and trade union body for the UK's 51,500 chartered physiotherapists, physiotherapy students and support workers. The CSP represents 2,000 members in Wales.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity. Physiotherapists and their teams work with a wide range of population groups (including children, those of working age and older people); across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote independence, helping to prevent episodes of ill health and disability developing into chronic conditions.

Physiotherapy delivers high quality, innovative services in accessible, responsive and timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person centred professionalism. As an adaptable, engaged workforce, physiotherapy teams have the skills to address healthcare priorities, meet individual needs and to develop and deliver services in clinically and cost effective ways. With a focus on quality and productivity, physiotherapy puts meeting patient and population needs, optimising clinical outcomes and the patient experience at the centre of all it does.

Written submission from BASW Cymru

In relation to oral evidence for

The Social Services and Well-being (Wales) Bill

On the theme 'Access to services by adults, children and carers'

Introduction

BASW Cymru represents nearly 1,000 social workers in Wales and is the only professional association for social work and social workers. We work with a wide range of organisations and stakeholders that directly and indirectly impact on the social work profession. We also communicate regularly with individuals and social work groups to enable them to be better supported and trained to undertake the best possible services for the most vulnerable people in our communities.

In addition to the above work, we are also directly involved in influencing policy that affects social work and social workers e.g. The Social Services and Well-being (Wales) Bill Advisory Group.

Well-being duties, preventative services, information and advice

BASW Cymru are in support of the proposed descriptions of 'Well-being' as defined in the Bill (Part 1, Sections 2 and 3). We would also support the description of the 'Overarching well-being duties' (Part 2, Section 4). It is pleasing to note the intentions of importance placed on preventative services and information and advice.

Whilst we would support the assertions made in ‘Assessment of needs for care and support, support for carers and preventative services’ (Part 2, Section 5), there remains some ambiguity in relation to how each local authority and Local Health Board will work together to achieve these duties.

Within ‘Preventative services’ (Part 2, Section 6), there needs to be greater clarity in relation to the issues that refer to care and support. Although much of this will no doubt be detailed in the regulations, it needs to be acknowledged that preventative services may be provided to people with support needs that may not include care. It is not clear about the definitions of care and support. In order to address the aims of the Bill, we would wish the wording in Section 6, sub-sections 2 and 3 be amended to state care and/or support, together with definitions. A good example of where this might apply is in a reablement service. Where there is an expectation that local authorities will only provide care and support (except as stated for carers), this may lead to a reduction or lack of services to address people’s well-being.

In Section 8, ‘Provision of information, advice and assistance’, we would again recommend the proposed amendment to the wording for care and/or support (as stated for Section 6 above). Furthermore, there will need to be clear and robust guidance to ensure that local authorities, Local Health Boards and NHS Trusts provide a consistent level of information for all citizens of Wales.

Promoting user-led and socially-orientated services (social enterprise, user-led, voluntary sector, etc.)

BASW Cymru are fully supportive of the requirements under Section 7, ‘Promoting social enterprises, co-operatives, user-led services and the third sector’. We believe that it is essential to promote the development of such services on a local basis to ensure ownership and control by users and carers in meeting (or helping to meet) their own needs in their own localities.

Assessing adults, children and carers

Overall, BASW Cymru are supportive of the intentions to clarify the assessment process for adults, children and carers.

Assessing Adults

In ‘Duty to assess the needs of an adult for care and support’ (Part 3, Section 10), please refer to the comments made for Part 2, Section 6 above, in relation to care and/or support. Sub-section (5) states that ‘the needs assessment……..is one that the local authority considers proportionate,…’.

How will consistency be ensured across all local authority areas for the citizens of Wales?

Assessing children

Again, please see the need for amendment to wording in Section 12 to incorporate care and/or support.

Who are likely to be ‘persons specified in regulations (if any) wish to achieve in relation to the child, and’ (Sub-section 5iii)?

Assessing carers

The duty of undertaking of assessments for carers under Section 15, ‘Duty to assess the needs of a carer for support’, will have significant resource implications on already ‘over-stretched’ social work services.

Has a costed analysis of this duty been undertaken?

Currently, many people have to wait for assessments due to current resource constraints.

Supplementary

Section 17, ‘Combining needs assessments and other assessments’, also needs to include the amendment to care and/or support. In Sub-section (2), will require very clear guidance regarding the process of ascertaining agreement to combine assessments. In Section 18, ‘Regulations about assessment’, what consultation process will be undertaken before additional regulations are introduced about assessments? In this respect, Sub-section (1) and (2) will need to reflect a clear process before new or additional regulations are introduced.

Meeting the needs of adults, children and carers, including Direct Payments

BASW Cymru fully support the intentions of responding flexibly to the developing needs of individuals, their families and carers. However, we feel that the Bill needs to identify more clearly, the steps taken in providing proportionate support to people e.g. clarification of eligibility criteria (for assessments or needs?) and the promotion of self-responsibility, voice and control.

In Part 4, ‘Meeting Needs’, there needs to be clarification and amendment to the issues relating to care and/or support (as previously stated under Section 6).

In Section 19, ‘Determination of eligibility and consideration of what to do to meet needs’, there will need to be clear guidance on interpretation of eligibility criteria to ensure consistency and clarity on where support needs are addressed to support citizens well-being e.g.

How would reablement services be interpreted by local authorities if they are not specifically addressing care needs but are providing support to promote well-being through a preventative service?

Also, in Sub-section (2)(b),

How will local authorities determine charges to promote preventative services that provide support and how will this be made a consistent process across Wales?

Sub-section (5) is not clear enough and needs cfurther clarification with a Case example stated. In addition, there appears to be some ‘confusion’ about where eligibility applies to the right to assessment and/or services to meet needs following an assessment.

Section 20, ‘How to meet needs’, provides examples of what may be provided to meet the needs in Sub-section (2). Whilst BASW Cymru supports the mention of ‘social work’ in the list, the options appear very traditional and do not reflect the ever-increasing multi-disciplinary way in which new models are being provided e.g. with a range of different professionals and their expertise.

What duty will local authorities have to provide preventative services? And

Will people be able to challenge a local authority decision not to provide a preventative service?

In Section 21, 'Duty to meet the care and support needs of an adult' (not withstanding the points previously made about care and/or support and eligibility),

What consideration and arrangements has been given to the issue of local authorities charging people who may return from (or intermittently receive) the same services that are not charged by another organisation e.g. reablement services with Local Health Boards and NHS Trusts?

Under what circumstances would Section 22 Point (3) apply?

In Section 28, ' Supplementary provision about the duties to meet carer's needs',

What does '…..so far that it is feasible to do so,…' mean i.e, how will this be measured?

Within Section 29, 'Power to meet support needs of a carer', Sub-section (8) highlights the need for clearer and consistent resolution processes between local authorities and Local Health Boards or an NHS Trust.

Direct Payments

We are happy with the proposed legislation as outlined in Sections 34 to 39.

Supplementary

Under Section 40, 'The portability of care and support', we support the intentions of this area. However, *Will this legislation be applied to people moving to and from local authorities in Wales , from and to othe areas of the UK outside of Wales? and*

If so, how will this be enforced on those local authorities outside of Wales?

Charging and Financial Assessment

BASW Cymru recognise the need to ensure that, in implementing legislation of this kind, there will be a properly costed impact analysis on the potential outcomes. We are concerned about charging for information and advice. We are not generally opposed to the principle of charging, we feel that greater emphasis needs to be put in Section 45, 'Regulations about the exercise of a power to impose a charge' will require to change the wording from '…the regulations may…' to '…the regulations must…' in Sub-sections (1), (2) and (3). This issue will also need to be reflcted in Sections 46, 48-55 and 57 will also need to reflect greater clarity in the same way as Section 45 above. This will ensure clarity and consistency for all citizens across Wales, thus removing different interpretations in different local authorities.

In Section 53, 'Deferred payment agreements', Sub-sections (10) and (12) refer to properties in Wales or England.

Why do these Sub-sections not reflect other parts of the UK?

Conclusion

The overall emphasis of the Bill is positive, although we believe that some further clarity and amendments are necessary. The main concern that we have is with the reliance of detailed regulations to address 'the gaps'. The regulation has not been written or distributed at this point in time and consequently makes it difficult to interpret this proposed legislation fully. In addition to this, there are some parts of the Bill that need further clarity as they are concerned with principles. Thus, we would not wish them to be left to the possible vagaries of Guidance.

Robin Moulster
Country Manager
BASW Cymru
14th March 2013

St John's Ambulance supports the call on the Welsh Assembly to fulfil its promise to ban the physical punishment of children. We are committed to all measures that protect children from harm and promote their health and well-being.

We consider the current defence of "reasonable punishment" for common assault of children (under section 58 of the Children Act 2004) to be dangerous for the following reasons:

- The definition of common assault excludes anything that causes a visible injury to a child but does not exclude assaults that risk serious injury, for example blows to head or stomach, or assaults that cause children pain or humiliation. The law is also potentially discriminatory as children with dark skins are less likely to show bruising.
- A small but significant proportion of parents escalate from 'mild' smacking to serious assaults. This is because smacking, while sometimes effective in stopping a child misbehaving in the short term, is ineffective in teaching the child to behave well in the long term. Parents, particularly those in stressful circumstances, then go on to smack harder.
- Research studies have shown that physical punishment in childhood is linked to many adverse behaviours, including aggression in childhood and adult life, mental health problems, substance-abuse, domestic violence, criminal and antisocial behaviour.
- Even a mild smack may have unintended consequences. For example a blow may hit the wrong target where the child is struggling and, for example, cause eye or ear injuries, or may cause a small child to topple over and hurt themselves on furniture. Thus no smack is ever 'safe'.

Linda Dominguez,
Head of Safeguarding
St John Ambulance
27 St John's Lane, London EC1M 4BU

T 020 7324 4285
F 020 7324 4291
M 07956 428671
Out of hours emergency 07956 428671

Response to the Social Services and Well-being (Wales) Bill stage 1 consultation

From: 'Sdim Curo Plant/Children Are Unbeatable! Cymru

CAU! Cymru is an alliance of Welsh organisations and individuals campaigning for legal reform to give children the same protection from assault as adults by prohibiting all forms of physical punishment. We also seek the active promotion of positive, non-violent forms of discipline.

CAU! Cymru is part of a UK-wide alliance of more than 600 organisations and projects, including all the major early years, child protection, domestic violence and parent-support organisations as well as many local early years groups, Local Safeguarding Children Boards, professional bodies (including six Royal Colleges of health) and faith groups.

Children are the only group in society who do not have full protection under the law against assault. In England and Wales corporal punishment has been prohibited in state schools since 1987 and in independent schools since 1998. All forms of physical punishment against children placed in local authority care have been prohibited in regulations issued under the Children Act 1989. So children placed in foster care have the same protection from assault as adults, but children who live with their parents or who are adopted can still be physically punished: section 58 of the Children Act 2004 allows parents and some other carers to justify common assault on a child as "reasonable punishment".

In a debate held on 19th October 2011, the National Assembly for Wales voted by a clear majority for a motion calling on the Welsh Government to introduce legislation to guarantee children equal protection under the law on assault. [1]

Successive Welsh Governments for more than 10 years have been committed to achieving this reform. There has also been strong cross party support in successive Welsh Assemblies. In October 2011 the First Minister confirmed that Wales now has the devolved power to legislate to remove the defence of 'reasonable punishment'. We have also taken independent legal advice that supports this opinion.

The commitment of Wales to banning physical punishment was reported to the UN Committee on the Rights of the Child in 2007 and acknowledged by the Committee in its 2008 concluding observations on the UK Government's report under the

---

[1] For 24, abstain 13, against 15, Record of proceedings, National Assembly for Wales, 19th October 2011

Convention on the Rights of the Child. The enactment of the Rights of Children and Young People Measure in 2011 reinforces the need to legislate now.

The **Social Services and Well-being (Wales) Bill** is the first major legislation introduced into the Assembly to address well-being and safeguarding; it is the obvious vehicle for fulfilling the long-standing commitment. Now there is a legislative opportunity: we question why should Welsh children wait any longer to have the same level of protection as adults under the law on assault? Children across Europe are already enjoying this equal protection before the law. Within the European Union, 17 states have banned smacking completely and another six are committed to doing so, leaving just four which have neither achieved reform nor committed to it: France, Belgium, the UK and Malta – which shares the same English law defence.

Ending violent punishment is a fundamental equality and human rights issue for children in Wales NOW. The law that allows parents and some others to justify common assault as 'reasonable punishment' is unjust, unsafe and unnecessary.

Children are unbeatable! Cymru urges the Health and Social Care Committee to recommend in its Stage 1 Report that the necessary provision to remove the "reasonable punishment" defence should be included in the Bill. This written evidence sets out our arguments for the inclusion. We would welcome the opportunity to give oral evidence to the Committee.

THE EVIDENCE

The objectives and principles of the Bill (question 3)

Question 3 of the consultation asks: "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."

We do not consider that the Bill satisfactorily meets its objectives because it does not include the fundamental measure of child protection that has long been promised by successive Welsh Assemblies and administrations, namely to protect children from all forms of physical punishment by repealing the defence of "reasonable punishment" under section 58 of the Children Act 2004.

While the superficial business of the Bill is to consolidate social service duties and functions, the Explanatory Memorandum makes clear that this is not simply an exercise in moving deckchairs but is intended to transform the lives of those who need care and support together with their carers.

Now that the Welsh Assembly has acquired the devolved powers to protect children from common assault, any failure to deliver this protection undermine and contradicts the Bill's overall objectives, for the following reasons:

1. "Inclusive policy-making" – focus on human rights, equality and dignity

The Equality Impact Assessment included in the Explanatory Memorandum refers to the Inclusive Policy Making model developed by the Welsh Government which requires that all policy and legislation is developed to meet "the identified needs of individuals and communities, placing a citizen focus based on the principles of human rights; fairness, respect, equality and dignity at the centre of all our policy actions." (para. 179).

Children's right to respect for their human dignity and physical integrity and to equal protection under the law requires the removal of the "reasonable punishment" defence. The issue is fundamental to children's status in society as well as to their well-being, safety and protection.

This right has been recognised for over two decades, and the following UN human rights treaty bodies have specifically recommended that the UK prohibit in law all corporal punishment of children:

> **The Committee on the Rights of the Child**: three times, in 1995, 2002 and 2008. In addition the Committee's General Comment No. 8, on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, emphasises that a ban is "an immediate and unqualified obligation of States parties."
>
> **The Committee on Economic, Social and Cultural Rights:** twice, in 2002 and 2009.
>
> **The Committee on the Elimination of Discrimination against Women:** in 2008
>
> Successive **UN High Commissioners for Human Rights** have also called for legal reform to prohibit physical punishment, as did the 2006 report of the UN Secretary-General's **Study on Violence against Children**. Many UN member states have also called on the UK to ban physical punishment in the **Universal Periodic Review** at the Human Rights Council.
>
> Within Europe, in 2005 and again in 2012, **the European Committee of Social Rights,** reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family. In 2008, the **Commissioner for Human Rights of**

the Council of Europe, following his visits to the UK in February and March/April 2008, stated in a formal Memorandum to the UK Government that laws allowing physical punishment are not compliant with international human rights standards. Also in 2008, the **Council of Europe** launched a Europe-wide campaign for prohibition of all physical punishment and the promotion of positive non-violent parenting in its member states.

2. The Bill's focus on "well-being"

According to the Explanatory Memorandum the addition of "Well-being" to the title of the Bill came about because consultation respondents asserted that the key principles of the Bill were about much more than social services and social care: "The principle of promoting well-being for people – children, adults and carers - is central to the Bill. This way ensures that focus is on individual need. The Bill sets out the shift in emphasis from services to individual need, and to take a rights based approach. Focussing on well-being plays much more strongly into the prevention and early intervention service model that the Bill aims to establish." (para. 188)

Section 2 of the Bill sets out the definition of "well-being", with particular regard to children's well-being. Aside from the human-rights imperative to ban physical punishment, research findings increasingly show that all these elements of well-being would be improved by a ban on physical punishment.

What follows is a brief summary of some of the main findings in this respect. If the Committee is interested we would of course be happy to provide them with greater detail. It should be noted that in 2002 a major meta-analysis of 88 studies on corporal punishment by parents and associated child behaviours and experiences was carried out by Elizabeth Gershoff.[2]

N.B. Studies included in the meta-analysis are referenced to Gershoff, more recent studies have separate footnotes. It may also be noted that few of these studies were conducted in the UK. This is not because we are avoiding presenting the findings by British researchers: it is because there are very few such studies.

The definition of well-being in clause 2 of the Bill:

a) physical and mental health and emotional well-being

The links between corporal punishment and poor mental health in childhood and adulthood are clear. In Gershoff's meta-analysis, all 12 studies on mental health in childhood concluded that corporal punishment is significantly associated with a decrease in children's mental health, including anxiety and disruptive disorders in young children and depression and hopelessness in adolescents. All eight studies on mental health in adulthood found an association between corporal punishment and

---

[2] Gershoff, E. T. (2002), "Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review", *Psychological Bulletin*, 128(4), 539-579

poorer mental health, including low self-esteem, depression, alcoholism, self-harm and suicidal tendencies.

Moreover, a nationally representative study in the USA found that people who had experienced physical punishment, but not more severe forms of violence, were more likely to experience mental health problems including major depression, mania, anxiety disorders, alcohol and drug abuse and personality disorders.[3]

Although many studies concentrate on more severe forms of corporal punishment, these associations have been shown to exist even where children experience corporal punishment infrequently. A study of 2,000 10-16 year olds in the USA found that the more often the young people had been "spanked", slapped or hit by parents or guardians in the past year, the more likely they were to have experienced psychological distress (including feeling sad, feeling alone and feeling bad about themselves). The association was significant at all levels of frequency of corporal punishment, including for young people who had experienced physical punishment once or twice in the past year. Those who experienced "frequent" corporal punishment (at least once a month) were also more likely to have been depressed (feeling sad many times or all the time) in the past month. The study controlled for young people's experience of violence identified as abuse and for their age, gender and parent's income. The study also examined the effect of parental support and perhaps surprisingly, concluded that:

> "The findings… suggest… that using physical punishment is not beneficial to the well-being of children or adolescents even in the context of a supportive parent-child relationship. In fact, this "loving" context may affect the meaning that children attach to the punishment, such that they are more likely to attribute it to their own failures and deficiencies, or experience the discipline as arbitrary and unexpected."

Corporal punishment may also have a negative impact on children's physical health. For example, a study of 3,355 13- to 19-year-old students in Hong Kong, found that those who had experienced corporal punishment in the past three months were more likely to feel that their health was poor and to experience physical illnesses (for example asthma), or to take up risky practices such as smoking, alcohol consumption and fighting with others.[4]

b) protection from abuse and neglect

All physical punishment, however "mild" and "light", carries an inbuilt risk of escalation, because its effectiveness in controlling children's behavior decreases over time, encouraging the punisher to increase the intensity of the punishment.

---

[3] Afifi, T. O. et al (2012), "Physical Punishment and Mental Disorders: Results From a Nationally Representative US Sample", *Pediatrics,* 2 July 2012

[4] Lau, J. T. F. et al (1999), " Prevalence and correlates of physical abuse in Hong Kong Chinese adolescents: A population-based approach", *Child Abuse & Neglect*, 23: 549-557

In Gershoff's meta-analysis, all 10 of the studies on this topic found that corporal punishment was significantly associated with physical "abuse" (although it perhaps is more accurate to say that all physical punishment *is* abuse). A study of 830 substantiated physical abuse cases in the USA in the 1980s concluded that "almost invariably" parents defined their actions as "disciplinary procedures that were required in response to the child's behaviour."[5] Two large Canadian studies of reported child abuse in the last decade have consistently found that around 75% of substantiated physical abuse of children "occurred during episodes of physical punishment."[6] A study in the USA found that children who had been "spanked" by their parents in the past month were 2.3 times as likely to suffer an injury requiring medical attention than children who had not been spanked.[7]

c) education, training and recreation

Several studies suggest that corporal punishment can have a negative impact on children's cognitive development. For example, studies of the association between corporal punishment and poorer cognitive development in young children from the USA include a study of over 2,500 children which found that those who were "spanked" aged one were more likely to score worse on a test of their mental development aged three.[8] And in a study of 337 children of African-American mothers, the children were tested as infants and at age seven. The study found that children whose mothers used reasoning to resolve conflicts were more confident with words at age seven and that the more children were "spanked", the more difficulties with attention and hyperactivity they had at age seven (for example, being easily distracted or having difficulty awaiting their turn).[9] A further study from the USA, in which over 1,500 children did tests of their cognitive ability (including tests of their reading and maths, memory of locations and motor and social development), found that the more times children were "spanked" by their mothers in the week prior to the study, the less their cognitive ability had increased four years later.[10]

---

[5] Kadushin A and Martin J A (1981). *Child abuse: An interactional event*. New York: Columbia University Press, p.249

[6] Trocme N and Durrant J (2003), Physical punishment and the response of the Canadian child welfare system: Implications for legislative reform. Journal of Social Welfare and Family Law, 25, 39–56; Trocmé, N. et al (2010) Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Executive Summary & Chapters 1-5. Public Health Agency of Canada: Ottawa, 2010; see also A. & Trocmé, N. (2013), *Physical Abuse and Physical Punishment in Canada*, Child Canadian Welfare Research Portal Information Sheet # 122

[7] Crandall, M. et al (2006). Injury in the first year of life: Risk factors and solutions for high-risk families. *Journal of Surgical Research, 133*, 7-10

[8] Berlin, L. J. et al (2009) "Correlates and Consequences of Spanking and Verbal Punishment for Low-Income White, African American, and Mexican American Toddlers", *Child Development* 80(5):1403-1420

[9] Jester, J. M. et al (1999) "Do Maternal Reasoning and Physical Punishment Contribute to Development of Verbal Competence and Behavior Problems?", presented at the Society for Research in Child Development Biennial Meeting, Albuquerque, New Mexico, April 1999

[10] Straus, M. A. & Paschall, M. J. (2009) "Corporal Punishment by Mothers and Development of Children's Cognitive Ability: A Longitudinal Study of Two Nationally Representative Age Cohorts", *Journal of Aggression, Maltreatment & Trauma,* 18:459-483

d) domestic, family and personal relationships;

Corporal punishment inflicted on a child by her or his parents can cause damage to the parent-child relationship. In Gershoff's meta-analysis, all 13 studies on the topic found an association between corporal punishment and a decrease in the quality of the parent-child relationship.

Corporal punishment was also associated with adult domestic violence towards a partner in all five studies on the topic included in Gershoff's meta-analysis.

A major study involving men in Brazil, Chile, Croatia, India, Mexico and Rwanda found that those who had experienced violence, including corporal punishment, during childhood, were more likely to perpetrate intimate partner violence, hold inequitable gender attitudes, be involved in fights outside the home, pay for sex and experience low self-esteem and depression, and were less likely to participate in domestic duties, communicate openly with their partners, attend pre-natal visits when their partner is pregnant and/or take paternity leave.[11]

A study of 717 boys in Canada found that experience of harsh parental practices (being punished by being hit, slapped, scolded all the time or called names and feeling rejected by parents) contributed directly and significantly to the boys being perpetrators of "dating violence" at 16 and 17 years old.[12] A study of 608 respondents in the USA who were interviewed in 1982 at ages 12-19 and again ten years later found that those who had experienced "harsh physical discipline" were more likely to be violent towards a "romantic partner" as adults.[13]

A study which used data from over 4,400 adults in the USA, who took part in a nationally representative survey of American heterosexual couples with and without children, found that the more often respondents – both men and women – had experienced physical punishment as teenagers, the more likely they were to physically assault their partners as adults and to approve of violence in adult relationships, such as slapping a partner's face).[14]

In our recent submission on domestic violence, CAU! Cymru commented:

> "It should be self-evident that attitudes to violence begin in the home and are influenced by treatment in pre-school years… We know that

---

[11] Contreras, M. et al (2012), Bridges to Adulthood: Understanding the Lifelong Influence of Men's Childhood Experiences of Violence, Analyzing Data from the International Men and Gender Equality Survey, Washington DC: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo

[12] [12] Lavoie, F. et al (2002), "History of family dysfunction and perpetration of dating violence by adolescent boys: a longitudinal study", *Journal of Adolescent Health*, 30, pp 375–383

[13] Swinford, S. P. et al (2000), "Harsh physical discipline in childhood and violence in later romantic involvements: The mediating role of problem behaviors", *Journal of Marriage and the Family, 62,* 508–519

[14] Straus, M. A., & Yodanis, C. L. (1996), "Corporal punishment in adolescence and physical assaults on spouses later in life: What accounts for the link?" *Journal of Marriage and Family, 58,* 825–841

> parents act as role models – smoking parents encourage children to smoke, parents who have gone to prison are more likely to have children who commit offences and so forth – and it is therefore imperative that measures are taken to stop parents hitting their children. Whatever the disciplinary intention, the message physical punishment carries is overwhelming – that hitting a loved-one in order to punish or control them is acceptable behaviour. This message is transmitted to children at an early stage of their development and is internalised and unexamined. Banning physical punishment is part of preventing violence in later life."

e) the contribution made to society

We all want children to grow into thoughtful, respectful and well-behaved citizens. Much of the research on corporal punishment's effect on children's learning has focussed on whether parental corporal punishment "works" –that is to say, examining the effect it has on children's behaviour rather than any other developmental aspect. This research has consistently found that far from teaching children how to behave, corporal punishment makes it less likely that they learn the lessons adults want them to learn.

Although in Gershoff's meta-analysis, three of the five studies on the topic found that corporal punishment is associated with immediate compliance, 13 of the 15 studies on long-term compliance found that corporal punishment does not contribute to the child's long-term compliance to the desired behaviour. Corporal punishment does not teach children how to behave or help them understand how their behaviour affects others. Rather than helping children to develop the desire and motivation to behave well of their own accord, corporal punishment teaches children that it is desirable not to get caught: rather than behaving differently next time, they are therefore likely to repeat the undesired behaviour and use strategies to avoid being caught. Corporal punishment may also decrease long-term compliance through its effects on children's cognitive development – for example, by making children less able to regulate their own behaviour– and by damaging adult-child relationships (see below), introducing fear and undermining the powerful behavioural motivations of children's love and respect for their parents and other adults involved in their care and education.

A recently-published Department for Education (England) study on *How is parenting style related to child antisocial behaviour?* found that a negative parenting style was clearly associated with more severe child antisocial behaviour. Positive parenting practices included praise and rewards and parental involvement and negative parenting practices included corporal punishment, lack of consistency in discipline and failure to monitor the child. The study said the findings "remained true even after a range of child and family socioeconomic factors were taken into account". Children of parents who were in the top quarter of reported use of negative discipline showed twice the rate of severe child behaviour problems, compared to the children of the other parents.[15]

In another example, a study involving 102 college students in the USA found that those who had experienced “minor” corporal punishment such as “spanking” or slapping as children had lower levels of empathy, while those whose parents had used explanation of the consequences of their actions as a discipline method had higher levels of empathy. Empathy was measured by a test where participants indicated their level of agreement with statements such as “I get really angry when I see someone being ill-treated”. The authors of the study suggest that corporal punishment may prevent people from developing an internalised set of values, meaning that they need to rely on external sanctions when making decisions about moral issues.[16]

f) securing rights and entitlements

See pages 1-2 above on children’s recognised human right to a ban on physical punishment in the section on “Inclusive policy-making”.

g) social and economic well-being

Corporal punishment has been implicated in a variety of studies as a factor in antisocial behaviours such as bullying, lying, cheating, running away, truancy, school behaviour problems and involvement in crime as a child and young adult. In 12 of the 13 studies included in Gershoff’s meta-analysis, corporal punishment was found to be significantly associated with an increase in delinquent and antisocial behaviour.

Above all, there is abundant evidence that corporal punishment is associated with increased aggression in children. All 27 studies on the topic included in Gershoff’s meta-analysis found an association, and this has been confirmed by numerous other studies. Studies which use a prospective design increasingly refute the idea that children who are more aggressive experience more corporal punishment – research consistently suggests that experiencing physical punishment directly causes children’s levels of aggression to increase.

…in relation to a child ‘well-being’ also includes a) physical, intellectual, emotional, social and behavioural development

See a)-g) above for evidence of the multiple adverse effects of physical punishment on children’s development.

---

[15] Scott, S. et al (2010) How is parenting style related to child antisocial behaviour? Preliminary findings from the Helping Children Achieve Study, Department for Education.

[16] Lopez, N. et al (2001) “Parental disciplinary history, current levels of empathy, and moral reasoning in young adults”, *North American Journal of Psychology*, 3:193-204

(b) "welfare" as that word is interpreted for the purposes of the Children Act 1989

It should be noted that the interpretation of children's "welfare" in the 1989 crucially includes an obligation to have regard to children's own wishes and feelings on the matter in question (section 1(3)(a) of the Children Act 1989).

There is a tendency by governments to give priority to the views of parents when considering this issue. While polls of parents almost invariably show majority opposition to the notion of "criminalising" smacking, these views should not be over-simplified. In September 2010 a literature review of 138 articles and recent surveys of parental views on physical punishment (including the UK Government's survey undertaken as part of its 2007 review of section 58) was conducted.[17] The researchers concluded:

> "Lack of parental support for a complete ban on physical punishment must also be viewed alongside the fact that a majority of parents believe that using it is upsetting to both themselves and their children and rarely results in increased obedience, respect or teaching right from wrong. High levels of emotional arousal, stress and frustration also suggest that the context in which such discipline is administered is often far from controlled. A comprehensive review of the literature on parental views of physical punishment shows that parents are often ambivalent about physical discipline, do not view it as an optimal method of behaviour management and are more prone to smack when stressed or angry. Nonetheless, many parents continue to smack despite the fact they do not believe it to be effective."

It should also be noted that polls consistently show that younger parents are less likely to smack and are more likely to support a ban than older parents. But, above all, research shows that once a ban is enacted, parental support for, and use of, physical punishment rapidly diminishes.[18]

As regards the views of children, when the UK government in Westminster reviewed section 58 in 2007 it commissioned a survey of the views of children. In-depth interviews were held with 64 children aged 4-16, two-thirds of whom reported

---

[17] Bunting L, Webb M A and Healy J, *In two minds? Parental attitudes toward physical punishment in the UK,* Children & Society Vol 24 (2010), pp 359-370.

[18] Undoubtedly the clearest example is Sweden, see for example, Modig C (2000)*Never Violence – Thirty Years on from Sweden's Abolition of Corporal Punishment*, Government Offices of Sweden and Save the Children. Some supporters of smacking have suggested that smacking was in decline before 1979: this is correct, but in fact the defence against a common assault was actually repealed in 1957, when 90% of Swedish parents supported the use of physical punishment. Since then it has steadily declined, and is now under 10%. It might also be noted that a 2010 survey of 1,353 parents by Ireland's Minister for Children and Youth Affairs found a majority in support of a legal ban – perhaps as a result of the Irish government publicly committing itself to taking this step.

personal experience of being smacked.[19] The government's overview report of the exercise reported the following findings:

> "Many children accepted that discipline and punishment were an important part of growing up and whilst it was often unpleasant it was necessary. However, most felt that smacking was out of place in modern childhood, and that other punishments were more effective in bringing about reflection, changing behaviour and supporting good and close relationships with parents. Whilst smacking was the most feared form of punishment, it was the emotional distress and humiliation that can be caused by smacking, rather than any physical pain, which children feared."[20]

3. The Rights of Children and Young People Measure

The Explanatory Memorandum explains (para. 191): "The Rights of Children and Young People Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy". It goes on to state that the Bill "takes forward Wales' distinctive and internationally regarded rights based approach to children's social care. It notes that the assessment of the impacts that the Bill will have on children and young people confirms a rights based approach and lists relevant Articles that "are being dealt with in the Bill".

Among the articles of the Convention listed as being 'dealt with' in the Bill is Article 19: under this article it is noted that: "Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them". The Memorandum goes on to note a number of provisions in the Bill relevant to observance of children's Article 19 rights.

But the complete absence of any provision to remove the "reasonable punishment" defence and thus provide children with equal legal protection from common assault is not explained in the assessment (although the issue was raised by a number of respondents to the Consultation on the draft Bill).

The Committee on the Rights of the Child has consistently interpreted Article 19 as requiring the prohibition and elimination of all physical punishment of children, including in the detailed guidance provided in its General Comment No. 8 in 2006. In concluding observations on successive reports from the UK it has recommended removal of the defence; in its 2008 concluding observations, it commended the National Assembly for its commitment "to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation".

---

[19] Sherbert Research *A study into children's views of physical discipline and punishment,* October 2007

[20] Department of Children, Schools and Families *Review of Section 58 of the Children Act 2004* October 2007

Successive Welsh Governments for more than a decade have accepted that achieving equal protection from assault for children is a fundamental element in a rights-based approach to children.

In 2002 the Welsh Government formally expressed its support for the Committee on the Rights of the Child's recommendation that all physical punishment should be prohibited in law.[21] In the following years Children Are Unbeatable! Wales received funding from the Welsh Government, the Welsh Assembly voted by a large majority to express its formal regret that the UK had failed to legislate to ban physical punishment, a number of Ministerial statements were made on the Welsh commitment to ban and Assembly Members visited Sweden to explore the effect of its ban (passed over 30 years ago). In 2004 the Welsh Assembly Government issues *Rights to Action* setting out its proposals for policy and provision for children and young people in Wales, including full prohibition:

> "The Assembly Government believes that the current legal defence of 'reasonable chastisement' should be ended. We wish to encourage respect for children's rights to human dignity and nonviolent forms of discipline, including through public education programmes. We have made representations to the UK Government about this…Children who are smacked are more likely to believe that the strong get their own way and that violence is an acceptable manner of expressing a view or dealing with anger or frustration."[22]

In 2009 the Welsh Government launched its five year action plan, of which one priority was to "make physical punishment of children and young people illegal in all situations"[23].

In 2011, following confirmation by the First Minister that the Assembly now has power to repeal section 58 and thus ban smacking, the National Assembly voted by a majority of 24 to 15 to urge the Welsh Government to introduce this legislation (Government ministers abstained in this vote).[24] This Bill provides an obvious and immediately available vehicle for the necessary amendment.

Conclusion

A great deal of preparatory work has already been done to encourage parents in Wales not to smack their children and children should not have to wait now that

---

[21] Cabinet Statement, Supporting children and parents in Wales, 23 October 2002.

[22] Framework for Partnership *Children and Young People: Rights to Action* Welsh Assembly Government, July 2002

[23] *Getting it right 2009 United Nations Convention on the Rights of the Child A 5-year rolling Action Plan for Wales setting out key priorities and actions to be undertaken by the Welsh Assembly Government in response to the Concluding Observations of the UN Committee on the Rights of the Child 2008*, November 2009, Welsh Assembly Government

[24] National Assembly for Wales record of proceedings, October 19 2011

Wales has the power to legislate. Would women be asked to wait for protection from assault while men were re-educated or unemployment was eradicated? Banning smacking does not add to the problem of vulnerable families. Parent-educators are unanimous that stopping smacking invariably benefits family life: parents become less stressed, children better behaved and family relationships improve. And while parents who smack would technically be 'criminalised', just as any person who commits a minor assault on an adult is 'criminalised', it is scaremongering to suggest parents would be dragged through the criminal justice system for minor smacks, since both CPS and childcare services have confirmed that this would not be the case[25].

Wales was the first nation of the UK to ban smacking in childcare settings, the first to appoint a Children's Commissioner; the first to incorporate the UN Convention on the Rights of the Child into legislation – Wales should be the first nation to ban smacking and ensure equal protection for children in the law on assault.

Children are Unbeatable! Cymru
cau@chiuldreninwales.org.uk

---

[25] In evidence to the Joint Parliamentary Committee on Human Rights on May 25 2005 the then Director of Public Prosecutions did not rule out the possibility that a parent might be taken to court for a mild smack, but stressed that this might be appropriate only in very rare circumstances. In a joint statement in 2008 the Association of Directors of Children's Services, BASW, BASPCAN, Unite – Community Practitioners' and Health Visitors' Association; NSPCC, Parenting UK and Royal Colleges of paediatrics and nursing confirmed that the threshold of "significant harm" for social work intervention in families at risk would not change following a ban on smacking..

CARERS Wales
the voice of carers

River House, Ynysbridge Court, Cardiff CF15 9SS
Tel 029 2081 1370 Fax 029 2081 1575
info@carerswales.org www.carerswales.org

Consultation Response

Social Services and Well-being (Wales) Bill

Consultation questions

1. **Is there a need for a Bill to provide 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?**

   Yes, there is a need for a single Act for Wales especially given the poor knowledge and understanding of existing law amongst social care practitioners in Wales. This is therefore a once in a generation opportunity to draft new legislation to reshape the legal framework for social care in Wales, however as the Bill will be replacing a range of cornerstone legislation which has underpinned the delivery of social care for a considerable time, it will be vital that the relationship between the new legislation and previous laws are absolutely clear. It will be essential that the scrutiny process investigates this in detail and the implications of changing or removing key definitions and duties is understood e.g. definition of a disabled child (Children's Act 1989) or duty to provide aids and adaptations (Chronically Sick and Disabled Persons Act 1970). It will be important for the Welsh Government to provide a clear explanation of how the new Bill will integrate all previous legislation.

   We very much welcome the high profile given to carers throughout the Bill and the intention that the law relating to carers will be integrated in one place in the new Bill and that carers will be treated in the same way as the person needing support. Carers provide 96.8% of all community care in Wales[i], saving the Welsh economy £7.7 billion a year[ii]. Cares Wales is pleased that Welsh Government has recognised the huge contribution carers make to society in Wales and the profile that carers have been given throughout this Bill.

   Broadly we support the Bill's intention to modernise and help simplify and clarify the plethora of community care legislation that exists. We also welcome that the Bill will enable Welsh Government to enhance and impose new duties on health and social services, however health and social services already have a duty to work together under existing law and we seek clarification about how the new legislation will provide the legal basis to ensure that this rhetoric becomes a reality.

   The conflict between health and social care is historic. In our opinion the Bill seems to miss this valuable opportunity to close the gap between the political rhetoric to drive forward through legislation this joint working and close this organisational divide. We would like to see the law mandated to encourage more shared working, shared budgets and encourage more joint commissioning of services.

We would also like to see prescribed within the Bill itself a commitment that when an individual moves on to an NHS Continuing Care package that social services still has a duty to assess and provide services to meet non nursing care and other support needs. This would help avoid protracted debates about who is responsible for what.

Carers Wales has evidence from carers, who had received a Direct Payment package from social services for the person they look after and had it taken away when the person then moved on to NHS Continuing Care. Carers are then left floundering and filling in the gaps where social services identified a need and the NHS has not included that need in the continuing care package.

We are also concerned that the Bill the definition of a disabled child provided under the Children's Act 1989 and be replaced by a more general definition of disability.

Under the existing legislation if a child meets the specific definition of a disabled child then they are automatically seen as a child in need and come under the local authority duty to provide a range and level of services appropriate to their need. This 1989 Act definition meant that disabled children were legally defined as children in need, and acted as a passport to assessment and services. The Bill as currently worded could potentially dilute the rights of disabled children to assessment and services.

We also fail to understand the rationale behind excluding carers from the positive introduction of portability of assessment and care plans from one local authority to another. The decision to exclude carers also seems to conflict with item 170 within the Regulatory Impact Assessment provided in the Explanatory Memorandum where it states that the aims to increase the portability of care plans "also help both users and carers to move in order to take up or remain in employment, which would bring benefits to the wider economy" (page 79).

As the Bill states, it should not be assumed that carers can and will provide care for a disabled person. If a carer has had an assessment they may possibly receive services in their own right. In our opinion the assessment and services should transfer across to the new authority and that authority should honour the assessment and provide the services until a review has taken place. This is an anomaly in the Bill that needs to be rectified otherwise there is potentially a risk to a carer's well-being, employment prospects as well as their ability to care whilst waiting for services to be re-instated.

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.**

Well-being and prevention

The aims of the Bill are admirable, in particular the focus on wellbeing and prevention, as well as promoting user-led and socially orientated services, but the language of the Bill seems to dilute the intentions stated in the aims and objectives of the Explanatory Memorandum.

This could relate to the nature of legislation and legal language but the stated aims of increased voice and control, individual access to preventative services which promote wellbeing do not come across as strongly in the wording of the Bill and are quite general. We do not feel that the Bill is prescriptive enough on preventative services and well-being at an individual level and the new law does not state how it will facilitate the flow between universal, preventative, and targeted care and support plans.

The sections of the Bill on voice and control, well-being and prevention tend to be of a general nature and do not explain how this would affect an individual's rights and access to services.

Who will take the decision to offer preventative services or will there be another level of assessment in addition to those already outlined, will there be a charge etc?

This could potentially work against the objective of transforming social care and possibly end up reinforcing a narrow service led approach. The period of scrutiny of the draft Bill provides an opportunity to address these issues and improve the wording of the Bill to strengthen these key areas.

With regard to the enhanced duties to meet the prevention agenda we would seek clarification on how individuals will be identified and by whom and if assessed how their eligible needs will be decided and acted upon.

We also need clarification on what sorts of preventative services may be provided, from whom and in what circumstances.

The Bill states that regulations may make provision for charges, we need further information on what circumstances would it be likely that charges will be imposed for receiving information, advice or services. Given the current economic climate and changes to benefits this may deter people from accepting assistance or advice.

Assessing the needs of individuals

It must be borne in mind that the vast majority of people will not want or need contact with social services or have any form of assessment. For those who do wish to be put in contact with social services we feel that we have not had enough information on how eligibility thresholds will be formulated and at which level of the criteria individuals will need to meet to become eligible for services.

It is our opinion that if the criteria for eligibility is set too high then this this will have a negative impact on the aspirations for prevention and well-being contained within the Bill and falsely raise people's expectations for the provision of services. If eligibility criteria is set too high then preventative measures and services may not be provided until that individual reaches a crisis point.

To truly reach the aspirations contained in the Bill there will be a need for strong leadership and cultural change within both health and social services in the way that they deliver services and identify people who may be in need.

If the ambition for a person centred approach and voice and control is to be fully realised then services should be provided to individuals rather than trying to match people to services that already exist. This will require a huge sea change from the current assessment process and the way that health and social services currently meet the needs of individuals, either through the services they provide themselves or, through their commissioning of services from external agencies.

We are unsure whether the Bill as currently worded will deliver the stated transformation in social care as described but could potentially drift back to a narrow service led approach.

The lack of information on eligibility criteria is a serious cause for concern and as it stands the current wording of the Bill could easily be read to facilitate increased gatekeeping by local authorities.

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.**

Within the Regulatory Impact Assessment accompanying the Explanatory Memorandum there will need to be a much more thorough analysis of the real costs. We are worried that the costs of the new system may have been under-estimated and given the opportunities for charging contained within the Bill we have real concerns that existing and additional costs will be transferred to service users and carers.

The sections in the Bill on charging give cause for unease especially the ability to charge service users and carers for preventative services and the provision of information and advice. We feel that this undermines the transformative agenda contained in the Bill and are anxious that the Bill could potentially open the flood gates to charging for all manner of services.

Carers Wales is a member of the Coalition on Charging led by Disability Wales and re-iterate the concerns that they are raising through written evidence to this consultation.

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

Carers Wales welcomes the high profile and status given to carers throughout the Bill and believe that it provides a real opportunity to transform existing social services provision by putting carers at the heart of social care in Wales.

There are 370,000 unpaid family carers in Wales[iii] and it is vital that carers are recognised within this Bill and are seen as equal partners in the provision of care within social services and health. However it is also crucial that carers are not exploited, have rights and have a right to a life of their own and to decide how much of a caring responsibility they can and are willing to provide.

We would hope that the Bill will be a catalyst for change in the way that services are commissioned and provided. We would hope that social services embrace the Bill and consult with a wide range of individuals including carers within their own areas about what sort of services they would wish to see. The impact would be that people are put at the heart of services and that any services are provided or commissioned around their need rather than the other way around where people are meant to fit into services that are already provided.

The Carers Strategies (Wales) Measure which is already in place should complement many aspects of the bill relating to the provision of information. Although it is early days to tell how effective the Measure is, we would hope that it will be properly monitored to ensure that any gaps are plugged in any shortfalls. We know from our research that carers list information at the right time and the right place as a key priority. They use it to apply for vital benefits or access support and services to enable them to have an element of choice and control in their lives. We welcome that the Bill introduces a duty on local authorities to provide this information, advice and assistance and to ensure that people know about how the care and support system works, what services are available locally and how to access services. We do, as we have previously mentioned, are uneasy that the Bill states that in certain circumstances this may be charged for and we seek clarification on exactly what that means.

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

In February 2013, Carers Wales held a major policy conference for professionals within health and social care. In workshops, we asked them to consider what does and doesn’t work well in the current system. This has highlighted some of the current existing barriers that will need to be overcome to implement the Bill and truly realise the Government’s vision for sustainable social services in Wales.

One of the biggest barriers they identified was that the current system is institutional, not person centred and is process and resource driven. These issues need to be addressed internally within local government and health, with clear direction and driven from the top to the bottom of the organisations. Without radical new thinking to drive forward new ways of working the objectives of the Bill to promote voice and control for the people it is meant to benefit, we fear will not be met.

Services also need to be developed, be objective to the needs of people and be flexible and responsive enough to meet changing needs. This is particularly important to achieve the prevention and well-being agenda.

Resources and developing new services locally are another potential barrier to implementing the new Bill. Local authorities will need to investigate what services they provide or commission locally and possibly re-structure the way some social services functions are currently being delivered. We cautiously welcome the new duties on local authorities to promote the development of new models of derlivery through social enterprises, so-operatives, and user-led and third sector services.

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?**
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)?**

Carers Wales does not at this stage feel that it has enough information to give an adequate response to these questions. We feel that the Bill is open to a lot of conjecture and that the devil will be in the detail of the regulations and code of practice that will accompany it. We look forward to receiving these in due course.

Carers Wales
14th March 2013

---

[i] Welsh Institute for Health and Social Care Data from 2011 census
[ii] Valuing carers – Carers UK May 2011
[iii] Census 2011

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 24 - Stroke Association

cymdeithas Strôc | Stroke association

Claire Griffiths
Deputy Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay, CF99 1NA

14 March 2013

Dear Claire

Stories in response to the Social Services and Wellbeing (Wales) Bill

I enclose our response to Stage One of the scrutiny process for the above legislation. These stories are based on comments raised during a stroke survivor consultation event held at our office in Tongwynlais on Wednesday 20 February 2013.

At the Stroke Association, we believe in life after stroke and it runs through everything we do. Our work includes helping people at risk of stroke know how to better prevent it, funding ground breaking research, campaigning for change and producing support to over 35,000 stroke survivors across the UK through our Communication and Information, Advice and Support Services.

We believe that all stroke survivors should be supported to make their best possible recovery. Working across both health and social care, our co-ordinators offer stroke survivors a lifeline by helping them to understand what has happened to them and guide them as they navigate the often complex social and health care systems.

They are able to give practical advice and assurances to get people home as quickly as possible and work to prevent hospital readmissions and future social care interventions.

The Stroke Association does not offer these comments from a legal perspective; rather they provide an insight into the experiences of stroke survivors as they seek to navigate the social care system once they return home from hospital.

Names have been changes to protect the identity of those contributing:

Paul

Paul got up in the night to go to the toilet and had his stroke. He fell flat on the floor. He was lucky, he was allowed home from hospital at the weekend, though no assessment was carried out on his home.

“I was discharged, and then nothing – no-one got in touch – I had to muddle through and my wife became my carer. She had to push for everything, eventually she got a handrail for the bath, but it was not fitted properly and because of my one-sided weakness, I fell and hurt myself. No-one really knows what you go through - you need to fight every day”.

In December following his stroke, the heating in Paul’s house stopped working. From December to February he did not have any heating in his home and was left with a £400 electricity bill. No-one from Social Services called to his house to check that he and his wife were coping with the aftermath of his stroke.

Jane

Jane had her stroke 12 years ago. She was in hospital for eight months.

When she came home she didn’t have any speech or mobility.

“I’ve had to fight for everything I’ve had – give up and you’ve had it”

Jane is lucky, she has a carer. She thinks this is because she does not have anyone at home who could have looked after her once she returned home from hospital.

Gareth

Gareth had his stroke on his way home from work. He felt hot, sweaty and confused. He collapsed metres away from his front door. He spent six months in hospital. He lost his speech, mobility in his right side and was unable to swallow.

“I didn’t receive an assessment from social services. I’ve had to pay for all the adaptations in my house myself. I devised my own physiotherapy routine with the help of a gym instructor – 10 years later – I’m still getting better, but I’ve lost everything except for the love of my family”

Assessment and Eligibility

Two of these stroke survivors did not receive an assessment to see whether they were eligible for help from social services. It seems that as there was a carer at home, an assumption was made that this person (in this case the wife of both Paul and Gareth) would automatically take on the role of carer. Neither were offered a carers assessment.

Not one of the three was given a Care Plan

In May last year, The Stroke Association launched its report Struggling to Recover which demonstrated that stroke survivors are being denied the chance to make their best possible recovery because of lack of post hospital care and poor coordination between health and social care services. The report surveyed over 2,200 people affected by stroke and showed that:

- 51% of stroke survivors had not received an assessment of their social care needs and 33% didn't know they were entitled to one

- Almost half (42%) of those receiving services said that health and social care services did not work well together – forcing families and carers to take on the responsibility for co-ordinating care

- One fifth (18%) reported services being withdrawn even though their needs had stayed the same

- 51% were unaware that their carer was entitled to an assessment to help them in their caring role

The Stroke Association feels this is an unacceptable bleak picture for life after stroke services and hopes the reforms that the Social Services Bill will bring into effect will go some way to ensure that these trends are reversed. In particular we want to see appropriate assessments and provision of services at the right time to ensure that best possible outcome for stroke survivors.

Whilst we realise we cannot offer comment on how the legislation should be framed, we hope our insights demonstrate the impact this vital legislation will have on people's lives. We are incredibly concerned about assessments, eligibility and care planning and would want the committee to consider robust direction in relation to these issues.

For further information, please do not hesitate to contact me on 029 20524400 or email Lowri.griffiths@stroke.org.uk

Yours sincerely

Lowri Griffiths
Head of Communications and External Affairs, Wales

Social Services and Well-being Bill Advisory Group response to the Health and Social Care Committee call for evidence (Stage 1)

About the Advisory Group

The Advisory Group aims:
To help ensure that the Social Services and Well-being (Wales) Bill delivers robust outcomes for the people of Wales who need access to social care services to live full and independent lives.

We are made up of representatives from a series of third sector and professional organisations who work with people who use social care and support services in a range of settings throughout Wales.

Our members are:
Leonard Cheshire Disability Cymru (co-secretariat)
Sense Cymru (co-secretariat)
Age Cymru (co-secretariat)
Barnardo’s Cymru
British Association of Social Workers (BASW) Cymru
Carers Wales
Chartered Society of Physiotherapy
College of Occupational Therapists
Hafal
Mencap Cymru
MS Society Cymru
NAS Cymru
NSPCC Cymru Wales
RCN Cymru
Scope Cymru
WRVS

We welcome this opportunity to respond to the call for evidence. We have limited our response to those areas where all members of the group are in agreement.

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.**

We broadly support the Bill's aim to bring together duties and functions in relation to well-being of people who need care and support and carers who need support. We support the idea of bringing legislation together and modernising it. We believe the legislation should be clear and accessible for people who are affected by it.

We do, however, have some concerns. As the Bill is currently worded local authorities would have a duty to maintain well-being for people who need care and support and carers who need support. However, it remains unclear about whether this covers people with a need or an eligible need, and how this would work in terms of preventative services or self-funders. This must be resolved in order for the Bill to meet its stated aims.

Repeals

There are positive intentions around well-being. However, without a clear list of repeals and more explicit reference to which legislation is being replaced it is unclear whether this is achieved. The Bill clearly aims to move current legislation into a Welsh statute. However, as the list of repeals is as yet incomplete we are concerned about whether all appropriate statutes have been included.

For example, in current legislation the Chronically Sick & Disabled Persons Act 1970 (Section 2) requires local authorities to assess the needs of a disabled person (as defined by National Assistance Act 1948, Section 29). The Welsh Government has said it would like to simplify existing legislation into a single statute, so we expect the single duty to assess in the Social Services and Well-being Bill would replace the duty in the 1970 Act and the others that exist in other Acts. However, the assessment duty in the 1970 Act exists in legislation covering England and Wales.

A further example exists in the definition of a disabled child. The Bill draft will mean that the specific definition of 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. Under the existing legislation if a child meets the specific definition of disabled child they will automatically be seen as a child in need and therefore come under the local authorities' duty to provide a range and level of services appropriate to their needs. The 1989 Act definition of a disabled child, while not perfect, meant that disabled children were legally defined as children in need, which acted as a 'passport' to assessment and services. The Bill as currently worded therefore could potentially be seen to dilute the rights of disabled children to assessment and services.

We believe this and other relevant parts of existing legislation would need to be revoked to make way for the Social Services & Well-being Bill. We suggest that the Committee examines these examples to assess how the Bill will affect existing care and support.

Sustainable Development White Paper

We also note that the White Paper for the Sustainable Development Bill aims to enhance: 'economic, social and environmental wellbeing of people and communities'. However, it contains no reference to the Social Services and Well-being (Wales) Bill (and vice versa), which is a cause for concern. We would hope that there was cross-government working to ensure these, and all, pieces of legislation complement each other and work together in practice.

We believe there should be a common definition of well-being adopted across the Welsh Government.

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.**

We fully welcome the positive objectives as laid out in the Explanatory Memorandum. However, we are concerned that these aspirations are not realised within the current drafting of the Bill.

Voice and control

We welcome the principle of the person centred approach of voice and control for people using care and support services. However, we are concerned that important sections of the Bill will not achieve voice and control, as it is currently drafted. In parts the Bill still keeps a service led model (matching people to available services) rather than focusing on individual outcomes and finding ways to meet those needs.

Co-production

We would like to see provisions that require local authorities to actively involve the person in the whole assessment and care planning process; to co-produce the care plans and outcomes, and to promote the options that are available for people to exercise voice and control. This applies across all local authority duties and is not restricted to individual methods, such as direct payments.

However, in the direct payments example we know there is limited take up in Wales. People can access direct payments as the law stands now, but there is a proportion of the population that does not know about them or understand what they are. In this area the Bill should result in people being provided with accessible information about direct payments, so that they can decide whether or not to use them. The outcome we would wish to see is people being able to take informed decisions about their care and support.

Collaborative working (e.g. LHBs)

We are concerned that the role of partners (such as Local Health Boards) remains unclear. We are unsure that the Bill extends the role of partners beyond that which is already in place, or how it will encourage work between NHS and social services and with social enterprises, co-operatives and third sector.

For example, in the case of assessments we had hoped to see local authorities/LHBs able to delegate this to each other, where appropriate. However, the Bill allows for people to undertake assessments at the same time but not to delegate. The person’s overall experience of the system would be improved – and resources could be saved - by an assessment being undertaken by one appropriate person or team.

We would also highlight that without a meaningful relationship between local authorities and the health service there could be potential conflicts about charging. Although the Bill provides for local authorities to be able to charge, LHBs will be unable to do this. This could cause conflict in terms of joint working between health and social care rather than encourage cooperation.

More detail around the Welsh Government’s intentions for charging would be particularly welcome.

Eligibility

We welcome in principle the proposed introduction of national eligibility criteria as we would not want to see care restricted by local authority boundaries.

The eligibility framework is important because it will set the criteria used by local authorities to decide whether or not a person’s needs or desired outcomes will be met by local authority social care and support services. So, it is impossible to envisage how the proposals outlined in the Bill will work in practice without knowing the plans for eligibility criteria.

We are also concerned that without knowing the current numbers of people currently within each level of ‘need’ in the current system, it is impossible to estimate the financial (and other) implications for individuals and local authorities of any proposed changes.

We would like to know the Welsh Government’s vision and intentions around eligibility, so we can best understand whether the proposals will meet the needs of individuals for care and support services.

We are also concerned about a potential three stage process – assessment of needs, eligibility tests and financial tests – and how this will work in relation to promoting well-being, prevention and managing needs. We are particularly concerned that some people might not receive the right amount of support due to potential charges applied. We would like to see more clarity about this and details of at what point the local authority has discharged their duty in relation to people who need care and support services.

Well-being

We think there should be a standard definition of wellbeing across the Welsh Government. Within the Bill there should be a clear reablement duty based on the concept of improving wellbeing.

The intention of the Bill to ensure that wellbeing is enhanced and that services respond flexibly to the developing needs of individuals, their family and carers is excellent. The Bill needs to identify more clearly the steps envisaged to provide proportionate support to people. This links to the national eligibility criteria and assessment, and to the intention to promote self responsibility and voice and control.

Likewise we believe the preventative services section should define prevention in terms of well-being to ensure that there is a clear definition of services at an individual and community-wide level that could be considered preventative.

Duties to meet needs in different ways

The Bill identifies the importance of providing advice, information and signposting to anyone who requests it. The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; the difference between when a person ‘needs’ some targeted intervention to prevent them needing care and support and the point at which they are deemed to have ‘care and support’ needs. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences for this Bill.

Thus, the Bill needs to be explicit about social services’ duties to:

1. Provide universal/self management/'normal' community support (information, advice, signposting or generic services accessible to the general population)

2. Provide targeted/preventative interventions (what makes a person 'eligible' for these? These should be before financial tests and eligibility tests as they must be provided to people who are traditionally ‘low’ priority or they will not achieve their intended effect)

3. Undertake full integrated assessment and provision of support for complex needs and thus entry to significant services, which should attract financial assessment given the potential for making a contribution to care costs (and what makes a person 'eligible' for these?)

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.**

Charging
Provisions in the Bill will allow local authorities to charge for information and advice. We are concerned about these provisions and would welcome indication from the Welsh Government about its policy intentions, i.e. what kind of information and advice services might be subject to charging.

If charges have the effect of deterring people from receiving the information and advice they need to prevent their care and support needs from escalating then the Bill will not make social services more sustainable.

Preventative services
We welcome the acknowledgement of preventative services in the Bill but believe the current drafting raises issues for implementation. Preventative services are important to both making social services financially sustainable and in promoting wellbeing and positive outcomes.

There are issues around establishing a clear picture of the care and support needs of a person, so that these can be managed and reduced if possible. The current drafting implies that a person will receive a needs assessment to establish what their care and support needs are and how they might be reduced through preventative services.

The Bill’s current drafting allows for preventative services to include universal services, e.g. libraries for information services. We would welcome an indicative definition of preventative services on the face of the Bill to ensure that local authorities provide both general, universal prevention and more targeted, person-level prevention.

The Bill suggests that the application of preventative services will be discretionary, that is not subject to an eligibility framework. However, we would like to see a transparent and fair framework for deciding individual entitlement to prevention services. At present we cannot see how local authorities will decide who is entitled to receive prevention services.

We cannot see how the Bill will incentivise early intervention. Our concern is that prevention work will not bring benefits if the threshold for accessing them is set too high. We believe the model proposed for John Bolton has considerable merits: with universal services, targeted interventions for lower level needs and eligible services for those who will have ongoing needs.

Assessments

We think that formal assessments are the best way to establish people’s care and support needs. We would be anxious to ensure, therefore, that access to assessments is not restricted in any way by the Bill.

By not making carers’ assessments portable we believe the Bill will undermine the policy intention to extend the same entitlements to carers as the people for whom they care. We believe this must be rectified.

Resource implications

We have concerns about the Regulatory Impact Assessment. These are dealt with in responses to Question 5 and 7b.

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

Information and assistance services

Information services are vital to promote voice and control, so that people have the support they need to access services to raise their wellbeing. The availability of information needs to be improved. We would recommend that the Carers Strategies (Wales) Measure could be used as a good practice model for adults, e.g. that information should be made available at the earliest possible opportunity.

Advocacy

Advocacy is also vital to promote voice and control, but is currently largely missing in the Bill. Access to independent advocacy will be important to enable people to access new service models brought about by the Bill.

Promotion of co-operatives, social enterprises, user led services and the third sector

We welcome the principle of promoting co-operatives, social enterprises, etc and believe there is great potential in the idea. However, we would like to see the Bill change practice and realise the policy intention, so we believe that the current list in the Bill of examples of services should be expanded; The list of care and support services given as examples in section 20 of the Bill is not helpful as helpful as a clear definition of a care and support need would be.

We are keen to ensure the any repeal or replacement of the equipment and adaptation provisions in the Chronically Sick and Disabled Persons Act 1970 does not mean that the duty to provide these is lost.

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 aspirations stated in the Explanatory Memorandum that the Bill aims to deliver. However, there are many potential barriers to implementation of the provisions of the Bill.

Costs

We see the main barrier as the cost projections and are especially concerned about the lack of clarity on this. As already stated we are concerned by the lack of clarity in the Bill and Explanatory Memorandum. As mentioned the Explanatory Memorandum does not sufficiently cover all the costs that will be incurred. We are also concerned that, as currently drafted, the Bill will not produce the savings predicted through lawyers' fees because we believe some areas of the Bill are unclear and may lead to challenge.

We have concerns about the Regulatory Impact Assessment. For example, the only cost listed to implementation of the Bill is cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services, including health, housing, education and welfare.

We are also concerned that the cost of maintaining the status quo is not listed. We recognise the argument that change is needed in order to make social services sustainable. However, we would therefore assume that there is a model which includes costs of how much social care services would cost if the changes were not made. We expected to see this in the Explanatory Memorandum.

Collaborative working

We are concerned by the lack of explicit duties on the health service, and would have liked to see further scope for better joint working in the Bill. We feel that what is drafted will maintain the status quo, and cultivate silo working rather than meaningful joint working. We have already stated our concerns around joint working, particularly with LHBs.

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 do not believe there is an adequate balance between the powers on the face of the Bill and details that will be left to regulation. We would like to see a series of additions, particularly relating to definitions (such as what is an assessment) on the face of the Bill. Our response to Question 7a deals with regulations in more detail.

We are concerned that the Bill as currently drafted formalises current practices in law rather than delivering the Welsh Government's vision and objectives.

Definitions and clarity

We would welcome social care and support legislation that is easier to understand. However, we believe some definitions in the Bill are either not as clearly defined as we would like or defined in a way that may have unwelcome consequences.

The Explanatory Memorandum states that: [The Bill]
"Integration and simplification of the law for people will also provide greater consistency and clarity to people who use social services, their carers, local authority staff and their partner organisations, the courts and the judiciary."

We are concerned that there are some key definitions which seem to have been overlooked in the drafting of the Bill. We believe following concepts are not defined:

- Assistance.
- Abuse and neglect.
- A care and support need.
- Disabled child.

We also note that it is not currently clear what is meant by ‘preventative’ services. The Bill contains a list purposes for services which are very process-driven rather than person centred; the focus should be improving wellbeing and quality of life for individuals. We believe there should be a reference to promoting enablement on the face of the Bill to ensure that preventative services are outcome focussed.

Principles

On outcomes we believe the Bill needs to focus on the person and individual outcomes, not fitting people into existing services. We are especially keen to see a set of principles which someone receiving care and support can expect to be abided by.

We endorse the Law Commission’s recommendation[1] that the statute should set out a checklist of factors that must be considered before a decision is made in relation to an individual. While we recognise that these are with reference to adult social care and support only we believe that they provide a good starting point to draft principles that work for both adults and children.

Thus the decision maker would be required to:

- “Assume that the person is the best judge of their own well-being, except in cases where they lack capacity to make the relevant decision;
- Follow the individual’s views, wishes and feelings wherever practicable and appropriate;
- Ensure that decisions are based upon the individual circumstances of the person and not merely on the person’s age or appearance, or a condition or aspect of their behaviour which might lead others to make unjustified assumptions;
- Give individuals the opportunity to be involved, as far as is practicable in the circumstances, in assessments, planning, developing and reviewing their care and support;
- Achieve a balance with the well-being of others, if this is relevant and practicable;
- Safeguard adults wherever practicable from abuse and neglect; and
- Use the least restrictive solution where it is necessary to interfere with the individual’s rights and freedom of action wherever that is practicable.”

---

[1] Adult Social Care, Law Commission, 2011

Regulations

We also have concerns that in places where regulations are appropriate the Bill could be more prescriptive about what ‘must’ be detailed, rather than what ‘may’ be detailed in regulations.

There are many examples of this. One example exists in Section 115:

115 Funding of Safeguarding Boards

(3) Regulations **may—**
(a) require payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented, and
(b) provide for how the amount of those payments is to be determined in respect of a specified period.

There is a clear case that regulations **‘must’** require partners to make requirements and provisions as listed in (a) and (b).

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)?

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.

We recognise the need for some issues to be left to regulation. However, we have concerns that the balance is inappropriate. We are particularly concerned that much of the detail of regulation is yet to be drafted and would like assurances that this is published before Assembly Members are required to vote on the Bill’s general principles at the end of Stage One.

We are particularly concerned with the level of subordinate legislation that is left to negative rather than affirmative procedure. An example of this is Section 48 in the table in the Explanatory Memorandum, Chapter. Regulations on “carrying out financial assessments” is a significant issue which should be subject to ‘affirmative’ procedure to ensure the regulations are given proper scrutiny. It may be minor in terms of the number of regulations but it will have a huge impact on individuals who need care and support and carers who need support.

We would like to see this table looked at again, with the needs of those who use social care and support services taken into account and more accountability in the National Assembly of Welsh Ministers.

7. (b) 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.

We have concerns about the Regulatory Impact Assessment. For example, the only cost listed to implementation of the Bill is cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services.

Please refer to our comments on costs in our answer to question 5.

We note that there will be additional costs that are not included such as for the establishment of new national safeguarding board.

We also believe it is critical to understand the cost implications if Welsh Government were to continue the current FACS four-level eligibility levels in the new system. We are concerned that the Government is unaware of the number of people currently receiving care at each level[2], therefore making it difficult to predict whether any new model will have cost implications.

We would like to see a fully drafted regulatory impact assessment which takes into account the full costs of implementing the proposed changes in the Bill, as set against the proposed costs of maintaining the status quo.

We would like to see a more detailed cost analysis published before the end of stage 1, which takes into account the full cost of the Bill, including preventative services.

There are other implications that we think the Explanatory Memorandum has not adequately dealt with:

- Equality impacts.
- Adherence to relevant UN conventions and principles, such as UN Convention on Rights of the Child and on Persons with Disabilities, and the UN Principles for Older Persons.

---

[2] Written Assembly Question 61983 and WAQ61984, answered on 25 January 2013

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

Paying for care

We are concerned that there is no detail about paying for care in the Bill, i.e. the cost to individuals for paying for the care and support that they need. The Dilnot Commission report *Fairer Care Funding* was published in July 2011 and has been taken into account by UK Government announcements. We would welcome the Welsh Government publishing their proposals for the cost of care as soon as possible, and would have liked to have seen them alongside this Bill. For example, the Dilnot review suggests the current social care and support system is underfunded.

There are some concerns in the third sector about the diminishing of children's safeguarding in consolidating the legislation; that creating a single safeguarding board could undermine the current provision for children, rather than enhance it for everyone.

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 increase spending on social care and support services.[3]

We would like to see these costs accounted for in the Regulatory Impact Assessment. They could also help the Welsh Government make the case for change and give a robust analysis of the Bill's effects.

Contact details:

Mary van den Heuvel
Policy & Assembly Officer (Wales)
Leonard Cheshire Disability Cymru
Telephone: 02920444122
Email: mary.vandenheuvel@LCDisability.org

Nick Morris
Policy & Campaigns Officer
Sense Cymru and RNIB Cymru
Telephone: 0845 127
Textphone : 0845 127 00920090
Email: nick.morris@sense.org.uk

---

[3] Welsh Government, Analysing the impact of the UK Government's welfare reforms in Wales – Stage 2 analysis, February 2013

Health Committee Consultation on Social Services and Well-being (Wales) Bill (Stage 1)

Joint response by Sense Cymru, RNIB Cymru, Action on Hearing Loss Cymru, Vision in Wales and Guide Dogs Cymru

About the responders

sense
ar gyfer pobl fyddarddall
for deafblind people

Sense is a national charity that supports and campaigns for children and adults who are deafblind. We provide tailored support, advice and information as well as specialist services to all deafblind people, their families, carers and the professionals who work with them. We also support people who have a single sensory impairment with additional needs.

RNIB Cymru
yn cefnogi pobl ddall ac â golwg rhannol
supporting blind and partially sighted people

RNIB Cymru works on behalf of over 100,000 people in Wales with sight loss. We campaign to create a society more inclusive of people with sight loss and we promote eye health by running public health awareness campaigns. We also work in partnership with organisations across Wales to provide local services, providing practical solutions to everyday challenges.

ACTION ON HEARING ~~LOSS~~
Cymru

Action on Hearing Loss Cymru is the new name for RNID Cymru. We are the charity working for a Wales where hearing loss

does not limit or label people, where tinnitus is silenced – and where people value and look after their hearing.
We use the term 'people with hearing loss' to refer to people with all levels of hearing loss, including people who are profoundly deaf.

Guide Dogs Cymru is part of the larger Guide Dogs charity which operates throughout the UK. Our purpose is to deliver a world class service as part of a range of mobility services and work to break down barriers to ensure blind and partially sighted people can get out and about on their own terms. Website: http://www.guidedogs.org.uk/guide-dogs-cymru

Vision in Wales (formerly Wales Council for the Blind) is the umbrella agency representing visual impairment within Wales. We work to campaign, lobby and support the improvement of services for people with sight loss. Vision in Wales seeks to expand its current remit to provide a platform for the voices of vision impaired people to be heard.

Response to Stage 1 consultation

We welcome the opportunity to respond to the general principles of the Bill. While we deal with general principles we think it is helpful to illustrate our points with specific examples from the Bill but recognise that the committee will examine the detail of the Bill at Stage 2.

Throughout the response we use the term ‘single sensory loss’ to refer to people who are blind or partially sighted (i.e. with sight or visual impairment) and people who are deaf or hard of hearing (i.e. with hearing impairment). ‘Dual sensory loss’ refers to people who are deafblind, i.e. people who have combined sight and hearing difficulties that affect their day to day lives.

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?

1.1 We support the principle of bringing together the various duties and functions of social services into a single Act. In practice, however, the challenge is to ensure that at the very least people do not experience worse services as a result of the changes and that there are no technical legal issues arising from the changes.

1.2 The Bill does not appear to state what will happen to existing duties in legislation. For example, the Chronically Sick and Disabled Persons Act 1970 placed assessment duties on local authorities following from the National Assistance Act 1948. There is no statement on revocations of these duties in the Bill or the Explanatory Memorandum. We would urge the National Assembly and Welsh Government to ensure relevant revocations are made or included in UK Parliament legislation.

1.3 We welcome the use in the Bill of ‘care and support’, which more fully reflects the range of support services that can be delivered. People with single or dual sensory loss often need ongoing or one-off interventions of social care and support to help with a range of needs, including mobility, communication or access to information rather than personal care services.

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

There are areas where we think the Bill falls short of the Welsh Government's objectives:

Voice and control

2.1 We would recommend that the Bill needs to be changed to properly realise the aim of giving greater voice and control to people who use care and support services. For example, accessible information, advice and assistance are vital to making people fully aware of the control they have and options available to them.

2.2 For people with single or dual sensory loss we think the requirement should be for the provision of accessible information. This is notionally covered by Section 8(2), the requirement to "…seek to ensure that the service is sufficient to enable a person to make plans…" However, the requirement should be made explicit to reinforce existing provisions on reasonable adjustments in the Equality Act 2010.

2.3 Care and support plan provisions in Sections 38 and 39 set out the scope of future regulation in this area. The plans still appear to be presented as a process performed on a person rather than with them. There should be a requirement on the face of the Bill to set out in regulation the provisions to consult and involve the individual in their own care and support plan. Furthermore we believe a statement of principles to promote voice and control at the beginning of the Bill could guide future regulations and interpretation of the Bill. This is fundamental to the success of the planning process and in keeping with the spirit of the Bill, to promote the individual's voice and control.

2.4 Sections 34-37 (direct payments) need to be amended to fully realise the Welsh Government's aim of voice and control for service users through direct payments. Research by Sense (2008) suggested that almost a third of deafblind people surveyed (31%) in England and Wales did not even know what direct payments were. The research also found there was geographic variation in the hourly rates offered to people with similar circumstances.[1] We think the direct payments sections must require minimum standards to promote awareness of the options that people have and ensure that local authorities offer a full breakdown and indication of the rationale behind the amount offered as a direct payment.

2.5 We believe proposals throughout the Bill to make regulations should include clauses to specify with whom Welsh Ministers may or must consult in the preparation of draft regulations.

Preventative services

2.6 We welcome that prevention work will be recognised in law. However, without a proposed eligibility framework it is difficult to judge how effective the preventative measures will be in reducing care and support needs. At present we are concerned that in the Bill prevention services are not subject to a clear local authority duty and might not be interpreted as services specifically delivered to reduce individuals' needs for care and support. We are also concerned that the preventative services section lacks a requirement for local authorities to justify decisions to deliver or not deliver preventative services as they are currently supposed to do through the Fair Access to Care Services (FACS) system.

2.7 We would recommend that the future eligibility level should be set at moderate or at the equivalent of moderate in the current FACS system to ensure effective prevention work takes place. CSSIW research in 2010 found that local

---

[1] Sense, Deafblind people and families' experiences of direct payments, 2008

authorities that raised their eligibility threshold did not necessarily save money because of the preventative work missed as a result.[2]

2.8 Reablement aims to help people accommodate their condition by learning or re-learning the skills necessary for daily living through one-off or time limited interventions. It is based on the principle that a person should be encouraged and assisted to look after themselves. Reablement in particular is important to people who acquire single or dual sensory loss. For example, a deafblind person who has recently acquired sight loss in addition to existing hearing difficulties may find cooking more of a challenge and is therefore at risk of not maintaining a healthy diet safely and independently. One way to meet the person's needs would be to provide a communicator-guide support worker to help them cook food safely by supporting them to work safely in the kitchen, read food labels etc. However, while the communicator-guide service would meet a clear care and support need it would not reable the person to cook for themselves. At this point the reablement duty that we suggest would ensure the local authority makes upfront investment to provide the person with training tailored for people with dual sensory loss and aids/equipment that could help a person cook (e.g. tactile markers on cooker controls). This means that a potential ongoing care and support need has been reduced by a time-limited reablement intervention.

2.9 We believe that there should be a duty on the face of the Bill to provide preventative services to people with single or dual sensory loss. At present the Bill does not clearly how a preventative service for people with single or dual sensory would be triggered. In the traditional view of reablement for older people this might be triggered by a hospital visit, e.g. after a fall. The preventative services definition in the Bill (reducing care and support needs) suggests that the care and support needs are known to the local authority, which implies that people have had an assessment of their needs. We would suggest that assessment is the ideal time to consider prevention and reablement. Sensory loss registers

---

[2] CSSIW, National Review of Access and Eligibility in Adults' Social Care, September 2010, p. 5

provide a referral mechanism into assessment after single or dual sensory loss is identified.

2.10 We are concerned that if assessment is limited to outcomes someone wishes to achieve in day-to-day life this may restrict reablement. By definition reablement for people with single or dual sensory loss involves the uncomfortable process of learning or relearning tasks or doing tasks they may have thought impossible. For example, a blind or deafblind person who recently lost their sight might not say that they want to work during their needs assessment because they are unaware of the support, aids/equipment, training etc available. Without this information they may continue to believe they would never be able to work again. The person should have this information, so they can decide whether or not they would like to work.

2.11 In the current FACS eligibility system the risk is that work below the eligibility threshold that has a preventative effect is not carried out and people's needs are addressed only when they exceed the eligibility threshold. We would not want to see this reproduced in the new system, so would recommend Welsh Government guidance should further define the concept of 'disproportionate expenditure'. Upfront expenditure in early preventative services should not be deemed 'disproportionate' when the result is local authority delays until needs become more acute.

2.12 There is a need for support and the processes needed to access support to be timely. Needs that are unaddressed are likely to remain or become more acute. For example, a blind person consulted by RNIB Cymru and Cardiff Institute for the Blind (CIB) about the Bill said she had lost her partner and had to wait six months for a needs assessment. She said that if CIB had not been available to help she would have struggled to carry out every day tasks like food preparation and dealing with bills. A deafblind person surveyed by Sense said that one of their main concerns about the current system was "The fight and length of process, as well as the support needed to get [an assessment]…we had to engage a solicitor."[3]

---

[3] Sense Cymru, Fair Care for the Future, November 2012, http://www.sense.org.uk/content/fair-care-future

2.13 RNIB Cymru's Eye Clinic Liaison Officer (ECLO) service is based in ophthalmology departments in hospitals in Wales and provides information on the impact of a condition, help registering as blind or visually impaired, advice on reducing falls, emotional support and referrals. A City University study (2011) found 90% of clinical staff who work with an ECLO agreed that they significantly improve the patient experience. This kind of service, which is free at the point of use, has a preventative role.

Child wellbeing and eligibility

2.14 We are pleased that Section 2 recognises the principle that there are aspects of wellbeing that are unique to adults and children. We would expect that the future eligibility framework will also take account of this by setting out separate eligibility tests for adults and children and for disabled children to continue to be 'people in need'. We think that restricting "physical, intellectual, emotional, social and behavioural development" to the wellbeing of people under 18 represents an artificial distinction that does not match the reality of children and young people with single and multi-sensory loss (and may also apply to other groups, such as people with learning disabilities).

2.15 The nature of single or multi-sensory loss means that children and young people often acquire knowledge and skills at a slower rate than hearing and sighted peers. Partly this is because of the reality of sensory loss - they do not have full use of hearing, sight or both senses. Sometimes their single or dual sensory loss is not identified early or misidentified, which leads to delays in support that could help development or inappropriate support given. The result is that some young people with single or multi-sensory impairment may still be developing intellectually, emotionally, socially and behaviourally beyond the age of 18 and after they have left the statutory education system. We would suggest that the development aspect should apply to people of all ages (or at the very least it should be extended to age 25, which appears to be the Welsh Education Department's definition of a young person).

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?

3.1 Some social services interventions interact with NHS budgets. For example, care and support services for someone with recent visual impairment (e.g. mobility training) could result in fewer and less severe falls, which would save NHS treatment funds. Delivering preventative services to people should be done in collaboration between the NHS and social services.

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

Role of suitably qualified people and assessments

4.1 We would want to ensure that duties that currently provide for minimum standards in the system are continued. For deafblind people the current statutory duty is to provide an assessment by a 'suitably qualified' professional. While this will be dealt with in regulations we would recommend that the Law Commission recommendation that deafblind people show always have a specialist assessment is followed to ensure that expertise is brought to bear in the assessment process.[4] Therefore, without this regulation the legal reform will have resulted in a worse service.

4.2 Likewise, there is a need to engage specialist knowledge at different points in the process for people with single or dual sensory loss. We would like assessment regulations to ensure that people with single or dual sensory loss are assessed by a person with appropriate knowledge and experience of sensory loss. People should not be 'pre-assessed', e.g. generic staff at a telephone contact centre should not be replied on to decide what a person's needs

---

[4] Law Commission, Adult Social Care, 2011, para. 5.86

may be. A blind person consulted by RNIB Cymru and Cardiff Institute for the Blind about the Bill said: “Many local authorities use a central contact centre these days. I phoned about a talking book machine and they had no idea what it was. One person cannot possibly know everything.”

4.3 In the current system we are aware that local authorities in England and Wales have not always maintained a clear separation between assessment to gauge a person’s needs and decisions about the eligibility of the needs. We welcome that the Bill will require decisions about whether to undertake an assessment are taken regardless of the level of likely needs and a person’s financial circumstances. We think the assessment should also consider needs that are currently being met as well as those that are unmet. We believe that assessment should be the starting point for someone with apparent needs even if the result is that they do not receive care and support services.

Charging and finance

4.4 Regulations on charging and financial tests are forthcoming and we understand the rationale behind not putting these on the face of the Bill. However, provisions in the Bill to allow for charges may have an unwelcome effect on social services provision.

4.5 Section 54 allows for provisions to regulate the charging for information, advice and assistance services. We do not welcome the principle of charging for information and advice and continue to believe this should be considered a universal service. Charging for assistance would be problematic because Section 8(1)(b) suggests that assistance means “assistance in accessing care and support”. There will be cases where someone needs assistance during the assessment, eligibility and care planning processes to help them access care and support services. If their receiving assistance will determine whether or not they end up with a service this would cause problems and may lead to people not receiving care and support services because of the cost involved in accessing them.

4.6 We would like regulations on information and advice to re-affirm the Equality Act 2010 principles that people with dual or single sensory loss who require accessible formats or languages (such as British Sign Language) should have equitable access to these.

4.7 There are also standards we would like to see maintained in the area of charging. For example, the income threshold for charging should remain at two times income support plus 50%.

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

Registers of sensory loss

5.1 Section 9 deals with registers of sensory loss. We welcome that the inclusion of this section means the Welsh Government is committed to registers as a tool for referral and has accepted the Law Commission’s recommendation to continue sight impairment and deafblindness registers.

5.2 At present registers of sight impairment, hearing loss and deafblindness need to be renewed because not everyone who is eligible to register had done so. We recognise that some people simply would not want to be ‘on a list’ and this should be respected. However, research by RNIB in England found that there were other reasons why people were not registering as sight impaired, including inconsistent or poor practice by healthcare professionals and lack of awareness of the reasons for registering among those advising people who were eligible.[5] It would be reasonable to assume these might also be factors in Wales.

5.3 To link registers to local authority practice we would recommend that Bill includes a further duty to proactively

---

[5] RNIB, Certification and Registration processes: Stages, barriers and delays, 2012

identify people who may join the registers and to keep in periodic contact with people on the registers.

5.4 We would be anxious to ensure the role of registers should be clearly defined as primarily a referral tool for individuals between health and social services rather than an overall indicator of the number of people with single or dual sensory loss (because of the factors mentioned in 5.2). We would like to see the benefits and rationale behind registration to be promoted to healthcare professionals, social care and support workers and people eligible to register.

5.5 We would like to eliminate use of outdated terms, such as ‘blind’ to refer to all people with any level of sight impairment or ‘deaf’ to refer to all people with any level of hearing loss.

5.6 9(1)(a) uses the term ‘blind’, which we believe should be ‘sight impaired or severely sight impaired’ instead, to match the categories in the Certificate of Visual Impairment (CVI). The CVI is necessary to register and the use of identical wording would link to the existing sight impairment register.

5.7 Likewise the register for ‘deaf’ people should also include people with hearing loss (i.e those who are hard of hearing) and not just people who are deaf.

5.8 Deafblind registers include people with combined sight and hearing difficulties that may give rise to care and support needs. We are concerned that current wording in 9(1)(c) ‘both blind and deaf’ might be interpreted as medically registerable as blind and deaf, which would not count people who have relatively ‘milder’ dual sensory loss that still affects their wellbeing and gives rise to care and support needs. We would suggest this is made clearer on the face of the Bill and also in regulation.

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.

6.1 Major provisions that will determine the success of the Bill have been left to regulation. We understand why this is necessary but would like to see an indication of the timetable and intent the Welsh Government is pursuing.

6.2 We are pleased that there will be a single duty to assess where needs appear to be present and that there is a duty to meet eligible needs. However, with no knowledge of the eligibility framework we are unable to say how the Bill will affect social services delivery. We would like to see a formal timetable and statement of intent from the Welsh Government on the eligibility and charging frameworks.

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)?

7.1 We have tried to indicate throughout our response the areas we think should be elevated to the Bill.

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.

8.1 While we are satisfied there is a compelling case for reform of the care and support system we are concerned about the financial implications. We are not reassured that the Regulatory Impact Assessment has calculated the full implications of the Welsh Government's proposals. We note that in the Explanatory Memorandum the Welsh Government said cost and benefits of the reforms "will be realised over time".[6]

8.2 We are particularly concerned that the Social Services Minister responded recently to an Assembly question that "Statistics are not collected centrally on the numbers of people who had their needs assessed through FACS, nor on the number of services they received."[7] We would have expected that the Welsh Government collects these

---

[6] Social Services & Well-being Bill, Explanatory Memorandum, para. 132

[7] WAQ61984, 24 Jan 2013

statistics, which are necessary for deciding whether to continue FACS or to introduce a new system. It is essential that the Bill commands broad support across Wales and that the calculations behind it are realistic, so we would urge the Welsh Government to collect these statistics.

Contact

Nick Morris - Sense Cymru and RNIB Cymru

Email: nick.morris@sense.org.uk
Telephone: 0845 127 0090

Address: Sense Cymru, Tŷ Penderyn, 26 High Street, Merthyr Tydfil, CF47 8DP

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 27 - City And County of Swansea

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

We welcome the Social Services and Wellbeing (Wales) Bill for creating a single modern law which can be easily understood by all stakeholders. We believe that it assists in defining the functions and duties of local authorities and their partners to work together for the wellbeing of people who need care and support and their Carers.

There has been much debate about the sustainability of services as they are currently provided and the Bill provides an opportunity to address way that support is provided to people in need in the face of changes that have been occurring in society over recent years and are predicted to continue to change in the future, in particular: demographic change; changes in expectations about choice and control of service, the quality of services and how they will be delivered; the resource environment.

The Bill is ambitious in scope but we are concerned that it does not address the following issues:
- funding for long term social care.
- plans for funding for whole sector workforce training
- development of shared outcomes to facilitate partnership and collaborative working
- the role of social care in addressing health and other inequalities
- synergy between the Bill and the proposed Framework for Action on Independent Living

To make the Bill (Act) work it will be critical for Welsh Government to work closely with Local Government and Professional Associations when drafting the regulations and statutory instruments. Whilst the emphasis of doing things differently is supported, the Bill lacks detail on what this might mean and how this will achieve the aim of sustainability. There is concern about funding the transformational change the Bill promotes and that it will not be "cost neutral".

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.

Broadly yes, although there is a lack of detail in some places.

We would welcome a greater emphasis and clarity on the responsibilities of other organisations and how they will contribute to a more integrated approach. We are also not convinced that the Bill will lead to a reduced demand for formal services, given the wider duties to Carers and the wellbeing duty. While the focus on prevention may result in alternative approaches to supporting people and helping them to become independent at an earlier stage, it is possible that the Bill will create greater demand.

It needs to be acknowledged that especially among more deprived communities extending years of healthy/disability free life expectancy will be a long term aim, and there will need to be considerable care and support provided alongside a preventative focus.

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.

The Bill supports the idea of doing things differently rather than just doing the same things in a different way, but there are concerns that if this has not been costed properly then there will be similar pressures on services which will make them unsustainable. There need to be enough resources to deliver the preventative care and the costly and acute care. If there are insufficient resources, then local authorities and partners will struggle to deliver the change agenda and the preventative agenda that will be necessary to reduce the acute care within manageable levels.

We would welcome greater detail on delivery in a co-produced, citizen centred way. Sustainability will be dependent on working alongside people in need to design, deliver and perhaps provide the preventative approach which is advocated. The welfare reforms are likely to create further pressures on the health and social care system, and this could undermine the sustainability of the new model. In addition, transport, accessibility, suitable housing, affordability of fuel etc will be crucial to both health plans and those of Social Services. Some of these pressures are outwith the remit of the Welsh Government.

Integration between the NHS and local government may well bring efficiency savings to both, and we are supportive of this at a local level. However, collaboration does not necessarily reduce cost, and requires a high level of initial investment to ensure effective partnership. A shared ‘outcomes framework’ would facilitate cross agency buy in.

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

It would be helpful to develop a national vision of Social Services in Wales post 2015.

In consultation exercises with front line staff on the impact of the Bill, they have expressed positive views about the likely changes in:

- proportionate and shared assessment
- greater focus on a person in need within the context of their family and community
- greater focus on support for Carers in order to enable their caring role
- people in need defining their own outcomes and social services/ social workers facilitating in achieving these (reclaiming social work)
- multi agency/multidisciplinary teams working in neighbourhoods/communities

- better provision of advice, information and advocacy to enable citizens to make better informed choices and arrangements to meet their needs
- the development of a national eligibility framework
- improvements to safeguarding with new powers for safeguarding adults, and the alignment of the safeguarding adults framework with children's safeguarding
- extension of Direct Payments

Less positive views about the impact of the Bill include:

- a reduction in formal services is of concern to service provision staff
- concerns about integration of services with the NHS might lead to a relegation of Social Services to a junior partner role, and therefore a focus on health organisational outcomes
- concerns about dilution of children's rights/ child protection in the context of a family perspective

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

Barriers to implementation of the Bill include:

- Whether the cost assumptions have been assessed accurately; if they haven't then it will prove harder to achieve the stated aims of the Bill
- The change required in practice and delivery of services to achieve people maintaining independence will require new skills and knowledge within the workforce. This change will require investment in professional development so that the current workforce can develop their skills, knowledge and practice without losing their existing skills.
- The impact of rising demand for formal services (demographics/ dementia) will be greater than anticipated or calculated in the assumptions behind the Bill
- The impact of the Welfare Reforms is an unknown element, but it has the potential to derail implementation because of the potential that it could cause a greater rise in demand for support than is anticipated in the assessment of resource implications
- The absence of a shared outcome framework between health and social care
- Using the same old language of 'care plans' is unhelpful and needs changing to assist transformation
- Training and re-skilling staff will be essential. This has cost implications

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.

This is difficult to judge. More information would be welcomed in the areas of integration, eligibility and safeguarding

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.

It is difficult to respond to this without knowing what will be proposed in the subordinate legislation. It would have been helpful to have more detail in the Bill

Financial Implications

7. 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.

We are concerned about the view that the impact of the Bill will be cost neutral. In addition to the requirement that managers, staff and providers implement and embed the new requirements placed upon them by the Bill, we ask that recognition be given to the cost of changes to business, workforce, ICT, training etc.

This is not to say that we do not welcome the change in direction. We are concerned that the Bill will not achieve its objectives without the additional resources necessary to implement change

Other comments

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

Carers
We believe that there will be more costs arising for Local Authorities as a result of the widening of access for Carers to have an assessment. We recognise that at this stage it is difficult to estimate the overall cost because the requirements for what needs to be contained within an assessment have yet to be determined. We would want to urge a thorough exploration of approached to carrying out assessments for Carers and for the people they support to ensure that citizens are given the maximum opportunity to have their needs assessed, while at the same time the approach to carrying out assessments enables a proportionate response that enables social work resources to be used to maximum effect.

PREVENT
There is an opportunity to integrate PREVENT (part of the Wales CONTEST Strategy) within the Social Services and Wellbeing Bill as part of the existing framework for safeguarding vulnerable people.

One of the strategic objectives in the Wales CONTEST Action Plan is to prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support.

Consideration could be given to addressing the needs of vulnerable people at risk of being radicalised as part of the mainstream social care/safeguarding frameworks for young people and adults, thereby increasing their access to services.

Response from the College of Occupational Therapists
Social Services and Well-being (Wales) Bill
15.3.13

The College of Occupational Therapists (COT) is the professional body which represents over 29,000 occupational therapists, support workers and students from across the United Kingdom and over 1500 in Wales. COT is pleased to respond to the stage 1 consultation of the Social Services and Well-being (Wales) Bill.

Occupational therapists (OTs) work in the NHS, local authority social care services, housing, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services. They play a vital role every day in the delivery of care and support services, working with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties.

OTs[1] assist those requiring care and support with their knowledge and skills in prevention and early intervention; reablement and rehabilitation; reducing the effects of a disabling environment through equipment, minor adaptations and assistive technology – often resulting in recommendations for Disabled Facilities Grants (DFGs) or other adaptation grants; the safe management of certain progressive conditions; and the moving and handling of people, by utilising their specific understanding of hoists and slings[2].

Despite their small numbers (occupational therapists make up 1.5% of the social care workforce in Wales (Riley 2012)), occupational therapists are reported as handling over 35% of the referrals for adult social care services and their skills have been identified as key to the delivery of policies in Wales (Riley 2007). Occupational therapists are therefore a critical part of the social care workforce, and in order to reflect their pivotal role they need full recognition within the legislation.

The College welcomes the following in relation to the Bill namely

- The definition of well-being. This is clear and explicit. In particular we congratulate the Welsh government in achieving a definition which incorporates access to work, play, education and leisure activities among others. An additional statement of the importance of participating in meaningful activities would be welcome.
- The duty to provide or arrange for preventative services given that occupational therapists are the profession skilled in prevention and early intervention.
- The intention to drive person centred services and give citizens real voice and control;
- The promotion of integration, which the College has supported for many years and,
- The promotion of social enterprises

There are however a number of areas where further interpretation and clarification is required. Many of the matters raised are underpinned by the lack of clarity in relation to whether the Chronically Sick and Disabled Persons Act 1970 is repealed. COT broadly welcomes the Social Services and Well-being (Wales) Bill, but recommends that a number of issues in the following areas are carefully considered:

---

[1] OTs are regulated by the Health and Care Professions Council (HCPC)

[2] This is by no means an exhaustive list. We would refer you to our College of Occupational Therapists Position Statements: The value of occupational therapy and its contribution to adult social services and their carers (2010); and Occupational therapy in social care in the UK: Future Focus and Potential (2012).

a) Clarification on the provision of equipment and adaptations currently provided by Social Services organisations (clause 20)
b) Guidance on the relationship between the draft Bill and the Housing Grants, Construction and Regeneration Act 1996, relating to the provision of Disabled Facilities Grants
c) Clarification on charging and financial assessment (clauses 43-52)
d) Clarification on the inclusion of equipment and adaptations in direct payments
e) Clarification on the portability of equipment and assistive technology (clause 40)
f) Clarification on the continuation of registers for disabled people
g) The potential conflict of interest in carrying out an assessment on an individual and their carer by the same person.

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.

The current legislation in relation to local authorities' duties to enable people who need support to live fulfilled lives is complex and disparate. This Bill offers an opportunity to make the duties more coherent. COT believes there is an opportunity to ensure that partners work together in achieving that aim which is not yet fully realised in this Bill

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.

We welcome the purpose and intended effect of the Bill but are concerned that these are not always realised in the current drafting of the Bill:

Promoting well-being

The definition is excellent and we welcome the intention. However, it is not clear whether this places a duty on local authorities for the whole population, only for those identified as needing 'care and support' or whether this includes people accessing preventative services. We believe the duty needs to be more clearly delineated.

Preventative Services

COT proposes that universal access to preventative initiatives including equipment, aids, falls prevention and reablement for those in need continue to be provided free of charge before the eligibility criteria is applied. Charging for preventative initiatives (clause 7(3)) may be counterproductive, costly to implement and may not deliver the intended outcomes.

Eligibility for Services

COT proposes there is a tension between the proposal for National Eligibility Criteria and the intention to drive person centred services. It is difficult to see how and where the person or carer will have voice and control if local authority assessments are driven by definitions of eligibility.

Integration of services

COT welcomes the proposal to improve integration of services and has encouraged such integration for many years. Integration offers the opportunity for more person centred services, reduced gaps and duplication, including over assessment and better use of resources. However, the Bill only refers to duties on Local Health Boards to integrate. There is a missed opportunity to recognise the vital impact adaptations and other housing services have on people's health and well-being. Indeed Housing is explicitly excluded in section 31. Further, section 17 allows joint assessments but does not appear to allow the local authority to delegate assessments to a partner in an integrated service. This may not achieve the desired effect (Explanatory memorandum, p100 paragraph 50) of avoiding duplication of assessment.

Meeting needs
Clause 20(1-2) sets out some examples rather that a clear list of what should be provided by a local authority to meet an individual's need. We feel that not having a clear, definitive list does not provide clarity for either disabled individuals or healthcare professionals. We acknowledge that this list is not exhaustive, but remain concerned that the repeal of Section 2 of the Chronically Sick and Disabled Persons Act 1970 will result in confusion and variable practice across the country in terms of how equipment and adaptations will be provided in the future.

Clause 20 (2) should also include occupational therapy services, reablement, and rehabilitation as well as counselling, advocacy and other types of social work.

Therefore, and in order to achieve one of the core objectives of the Bill, *"to make provision about improving the well – being outcomes for people who need care and support"*, COT proposes that:

- Given their vital importance within care and support services, equipment and adaptations are included separately in the list in clause 20(1-2); and
- Clause 20(2) also includes occupational therapy services, reablement, and rehabilitation as well as "*counselling, advocacy and other types of social work*".

The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; what is the difference between when a person 'needs' some targeted intervention to prevent them needing care and support and the point at which they are deemed to have 'care and support' needs. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences for this Bill.

Thus, the Bill needs to be explicit about social services' duties to:

1. Provide universal/self management/'normal' community support (information, advice, signposting or generic services accessible to the general population)

2. Provide targeted/preventative interventions (what makes a person 'eligible' for these? These should be before financial and eligibility tests as they must be provided to people who are traditionally 'low' priority or they will not achieve their intended effect)

3. Undertake full integrated assessment and provision of support for complex needs and thus entry to significant services, which should attract financial assessment given the potential for making a contribution to care costs (and what makes a person 'eligible' for these?)

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.

COT is disappointed that the Bill does not further the stated intention of previous strategies for a multi professional social services. If services are to meet needs, local authorities will have to have access to a range of skilled staff who can deliver different targeted interventions and complex care and support.

The intention of the bill to drive improved integration of services is excellent. Sustainable social services will only be achieved by transforming the way in which public services work together and by improved early intervention. As identified above this could be stronger. One example of a potential issue is that of charging. Provisions allowing charging for preventative and care and support services maybe counter- productive to the aims of the Bill and could create a barrier to integrated services as the NHS is free at the point of delivery. How would integrated reablement services for example be affected by any charging policy of the local authority?

National Eligibility

National Eligibility Criteria will assist the reduction of differences between authorities. COT would very much like consideration given to the model outlined in Better Support Lower Cost (Social Services improvement Agency 2011), whereby information and advice plus targeted interventions such as; equipment and adaptations, falls prevention etc are provided before the eligibility test is made. This would reduce some of the charging issues for equipment and prevention that could hamper an individual's realising their potential. However given that the National Eligibility Criteria will not be known until the relevant regulation is made receipt of services will continue to differ during this interim period. It is also not clear to what extent local authorities can vary their levels (clause 19, 4b).

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

a) Clarification on the provision of equipment and adaptations currently provided by Social Services organisations (clause 20)

A key responsibility for occupational therapists is the assessment of the potential of a disabled individual. They then work with the disabled person to achieve agreed goals and assist them with access to facilities within their home, making it easier to undertake daily living activities that were previously problematic. This may involve the provision of equipment and adaptations, or changing the way in which the task is approached.

The assumption is that Section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDP) is repealed and that this Bill will replace some of the duties contained within the CSDP Act, which sets out the support a local authority has a duty to provide in order to meet the needs of disabled individuals. The list of services referred to in Section 2 of the act are clearly in need of updating, but the Welsh Government must clarify where the central duty to provide equipment and adaptations now lies in the Social Services and Well-being (Wales) Bill.

b) Guidance on the relationship between the draft Bill and the Housing Grants, Construction and Regeneration Act 1996, relating to the provision of Disabled Facilities Grants

Within the Housing Grants, Construction and Regeneration Act 1996 there is a duty to consult the welfare authority on facilities for access to, and within, a disabled person's property to determine whether the proposed adaptations are *"necessary and appropriate"* for a DFG. 95% of assessments are carried out by OTs, and their recommendation forms the basis for the disbursement of a DFG.

Similarly, under the Chronically Sick and Disabled Persons Act 1970, many authorities in Wales have continued to top-up or contribute to a service user's assessed financial contribution for a DFG. Given the uncertainty of the continuation of the responsibilities of the CSDP Act in Wales, it is not clear whether this practice will continue under the new legislation or the impact that it may have on DFG funding.

c) Clarification on charging and financial assessment (clauses 43-52)

COT requests further clarification regarding charging and financial assessment for equipment and adaptations. The Bill refers to a financial assessment for care and support, but does not make clear whether the proposed financial assessment will include the provision of equipment and adaptations. There is currently no charge for equipment and adaptations provided by local authorities to individuals, but it not clear whether this will remain the case.

In addition, COT is particularly concerned about how the draft Bill relates to the Health and Safety Executive Manual Handling Regulations 1992, and the protection of staff in the workplace. Currently, the social care workforce can ask for a risk assessment (often performed by an OT) under the Health and Safety Executive Manual Handling Regulations 1992, if they feel that they need equipment to be provided to enable them to safely perform their job (e.g. hoists, supports, specialist beds or chairs). If equipment is deemed necessary to protect the health of the worker, it must then be provided free of charge by the employer (for example, a care home or local authority).

It is not clear in the draft legislation whether equipment provided as part of a manual handling assessment will now be financially assessed, but COT suggests that it should not be either financially assessed or included in direct payments, because it is part of the organisational responsibility of the employer to protect staff in their work.

Occupational therapists consider preventing the need for ongoing care and support in all assessments. Therefore, we propose that OTs should be more involved in designing and planning services. This may mean re-focussing the occupational therapy workforce in areas where they can contribute more fully to prevention and early intervention.

d) Clarification on the inclusion of equipment and adaptations in direct payments

While COT welcomes the move towards direct payments, there are two issues that need clarification:

- Under section 2 of the Chronically Sick and Disabled Persons Act 1970, funding is provided for adaptations. COT seeks clarification on whether minor adaptations, including equipment, will be included in direct payments;
- Guidance will need to be provided on ownership and servicing of equipment funded via a direct payment.

e) Clarification on the portability of equipment and assistive technology (clause 40)

The Bill provides an opportunity to clarify that within the continuity of care set out in clause 40 of the bill, individuals will be able to move equipment between local authorities where feasible. There is currently variable practice relating to the transfer of equipment or assistive technology between local authorities when individuals move house, as the local authority is the legal owner of the equipment. There are currently no guidelines on the transfer of equipment or assistive technology, and a lack of clear process often causes unnecessary distress for individuals and could easily be clarified. COT proposes that there is a straightforward process to transfer ownership of equipment between local authorities, and that further consideration is given to how this will work between the four UK nations.

f) Clarification on the continuation of registers for disabled people

Whilst the need to retain registers for the blind and partially sighted is understood, it is less clear why the need for registers of the disabled should still remain in modern social care law reform. In practice these registers are not currently used with any rigour and some people are uncomfortable that this undermines the social model of disability approach that the Welsh Government espouses.

g) The potential conflict of interest in carrying out an assessment on an individual and their carer by the same person.

Consideration needs to be given to how these assessments for both an individual and their carer are undertaken in order to achieve a fair approach and understanding of the situation that is confidential. There can be occasions when the needs of individual and their carer are in opposition.

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

COT suggests that the main barrier will be costs. It is of great concern that the Regulatory Impact Assessment identifies the only cost as that of training social services employed social workers. COT suggests that **all** staff in social services, including occupational therapists, will require training and it is highly likely that many staff in the NHS will also need to understand the new duties and expectations of them.

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.

A significant amount of detail is left to regulation. This makes it difficult to analyse the true impact of the Bill and the extent to which it will deliver the intended vision and impact. COT recognises that the Bill must be sufficiently flexible to last in the long term and to meet future needs. However, there is a strong case for placing a set of clear principles on the face of the Bill which makes explicit the intention to

- promote well-being
- enable independent living
- place a duty on public bodies to provide services which enable and enhance people's ability to live meaningful, fulfilled lives
- give people a voice and control in the style and type of intervention they receive

The Law Commission's recommendations for Adult Social Care also offer a list of factors to consider before making decisions about services for an individual. These could also provide principles to enhance the vision of the Bill. Such principles would show the intended effect of and for any future regulation.

Powers to make subordinate legislation

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)?

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.

COT is concerned that much that is left to regulation is not yet clear. We strongly recommend that these regulations should be timely, and be published before the end of stage one scrutiny of this Bill.

Financial Implications

7(b). 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. 6

Please see our response to question 5.

In addition, COT believes there will be additional cost in delivering the transformational change envisaged by the Welsh government. For example, the cost of developing preventative services which are not currently available across Wales (although these *may* deliver savings in the long term); the cost of developing new Boards and bodies such as National Safeguarding Board. We also believe there may be significant cost implications depending where the level of the new National Eligibility Criteria is set.

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

COT is concerned there is no detail about paying for care nor the continuation of the important charging limit in the Bill as detailed in our answers to question 4.

Coalition on Charging Cymru
Response to Health and Social Care Committee
Social Services and Wellbeing (Wales) Bill
Part 5 Charging and Financial Assessment

Introduction

The Coalition on Charging Cymru (COCC) is a consortium of national and local organisations that represent the interests of disabled people, older people and Carers. COCC believes that social care services should be provided free at the point of delivery to people assessed as needing them and has campaigned to this end since its formation in 2001. We believe that a system of free non-residential social care would provide consistency, clarity and equity in access to support and avoid discriminatory, unfair and resource-intensive means-testing and charging practices.

Whilst consistently opposing the policy and practice of charging, over the last twelve years, COCC has engaged constructively in a series of advisory task groups and consultations initiated by the Welsh Government which sought to mitigate the effects of charging on service users. In doing so COCC's purpose was to secure the best possible outcome on their behalf and has contributed to the following changes in Welsh Government policy:

- Income disregard ('buffer') increased from 25% to 35%
- Introduction of 10% disregard on disability related expenditure.
- Maximum weekly charge of £50 across Wales
- Removal of Day Service transport charges
- Right to request a Financial Assessment
- Guidance on process for challenging charges

COCC understands that the disregards outlined in WAG Fairer Charging Guidance (2008) removed three thousand service users from charging and reduced the charges of a further eight thousand people. Moreover the First Steps Improvement Package introduced as part of the Social Care Charging (Wales) Measure in 2011 meant that in one third of local authority areas, people paying the maximum charge saved on average over £7,000 a year. In other authorities, those on maximum charges saved between £2,000 and £5,000 a year.

These measures while falling short of zero charging are unrivalled in the UK and have proved an important means of tackling poverty amongst older people, disabled people and Carers. Given that most recipients of social care exist on benefits and/or modest occupational pensions, it is also proving a vital tool in mitigation against the impact of the UK Coalition Government's policy on Welfare Reform. COCC is aware that tens of thousands of disabled people in Wales will see a drop in their income as a consequence of the combined effect of the introduction of the 'under-occupation' charge or 'bedroom tax', the abolition of Disability Living Allowance to be replaced by the Personal Independence Payment and linking benefits up rating to the Consumer rather than Retail Price Index.

The Social Services and Wellbeing Bill

COCC welcomes the goal of the Bill to bring about a transformation in social care services which ensure equality, voice and control for all who use services. It will however confine its response to Part 5 of the Bill regarding charging and financial assessment in non-residential care highlighting areas where it has concerns, seeks clarification on specific points or where it believes that the bill and accompanying regulations provide an opportunity to improve on the current situation.

£50 maximum weekly charge

We note that local authorities will continue to have the power to impose charges for providing or arranging a service together with a duty to undertake financial assessments in 'certain circumstances'. We understand that this will bring the provisions of the Social Care Charging Measure (Wales) 2011 into the bill. However given that the current disregards (additional buffer and disability related expenditure) and the weekly maximum charge are set out in regulations we seek a commitment from WG that these will be retained within the new arrangements.

It is also vital that WG takes the opportunity to strengthen the regulations. For example the £50 maximum weekly charge greatly benefited disabled people in high charging authorities, however given the lack of proportionality applied to those charged less than £50 a week it had little impact on them. For individuals on benefits, a charge of say £30 a week is a significant amount. COCC is concerned to learn that some LA's have increased the charges of those paying less than £50 per week despite no change in their income. In light of the impending cuts in benefit and increased living costs, COCC calls on WG to review the level of the maximum charge including the need for proportionality for those paying less.

Charging for Preventative Services

COCC is deeply concerned to learn that WG intends to introduce a power that would enable local authorities to charge for preventative services including the provision of information, advice and assistance. It is strongly of the view that this will undermine the transformative agenda sought by the Bill and be a retrograde step in the light of the WG's track record in reducing the level of charging, by introducing charges where hitherto none existed.

The levying of charges for preventative services may deter many from taking them up, the more so in the current economic climate. Charging for information and advice about one's rights and entitlements including the availability of services provided by the local authority itself is not only inappropriate, it is also inequitable. It is likely to disproportionately affect individuals who, because of their impairments, literacy levels or lack of social media skills are unable to find out about and interpret this information for themselves.

It will also introduce another item of expenditure or form of taxation for individuals who, through no fault of their own and very often due to failings in society itself and public bodies in particular, require the support of intermediaries such as advocates, brokers or counselors.

COCC does not accept the argument that in order to provide preventative services they must be paid by for by the individuals assessed as needing them. We believe very strongly that WG and LAs should be exploring more imaginative ways of developing preventative services through co-production with third sector and citizen organisations and more fully utilizing resources already available in the community.

Financial Assessments and Charging Reviews

COCC calls for clarification from WG regarding undertaking financial assessments in 'certain circumstances'. As long as charging remains, COCC believes strongly that comprehensive financial assessments should be undertaken where that is the wish of the individual so that any charges are made in the context of their full circumstances including the disabling barriers they face.

COCC also calls for a review of the process for challenging charges through a short, consistent and straightforward review process. During the discussions of the Social Care Charging Measure Advisory Groups, we did not support WG's conclusion that the Social Services Complaints Procedure was the appropriate mechanism for individuals to challenge the specific amount that a LA charges them. The Complaints Procedure is a route for those who feel that their Social Services department has not followed due process or who have concerns about the way in which they have been treated. It is less appropriate for challenging charges where the dispute is over its affordability and not necessarily regarding the manner in which the decision was reached.

COCC is concerned to learn that due to the inappropriate guidance in place, some Local Authorities are continuing with the traditional 'Panel' approach, consisting of officers and members of the Council who examine in minute detail an individual's finances making judgments regarding how they should use their income.

Monitoring

COCC believes that on-going monitoring of the effects of the regulations and guidance in relation to charging is vital. It calls on Welsh Government to make available the information it has collected on the impact of the Social Care Charging (Wales) Measure and to use this to inform the development of the new regulations and code of practice.

Appendix 1

This response was coordinated by Disability Wales on behalf of the Coalition on Charging Cymru following a meeting by telephone conference on 26 February 2013. It is endorsed by the following COCC members:

Age Cymru
Arfon Access Group
Carers Wales
Disability Wales
Gwynedd Direct Payments Forum
Learning Disability Wales
Leonard Cheshire Disability Cymru
Mind Cymru

COCC's response has additionally benefited from the input of individual service users affected by charging.

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

Name:	Rhian Huws Williams
Organisation (if applicable)	Care Council for Wales This response is on behalf of the organisation
E-mail address	
Telephone number	029 2078 0630
Your address	Care Council South Gate House Wood Street Cardiff CF10 1EW

If you wish to submit evidence, please send an electronic copy of your submission to mailto:HSCCommittee@wales.gov.uk and entitle the e-mail Consultation – Social Services and Well-being (Wales) Bill.

Care Council response – Social Services and Well Being Bill

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.

The Care Council welcomes the introduction of a Social Services and Well-Being (Wales) Bill (the Bill), its focus on promoting people's independence, giving them stronger voice and control whilst taking steps to ensure consistency across Wales

The focus of the Care Council's response is from our perspective as the regulator of the social work and care worker workforce, and the regulator of social work training.

The Bill is ambitious and has far reaching changes across those providing and delivering care and support in Wales Introducing the changes will be significant for social services and all partners. It sets out a cultural change and consequently requires a major emphasis on the development of social workers and those providing care and support and also on the leadership across the sector

The new emphasis on care and support for people who do not always need high levels of services but may require support to create solutions to address their needs is a shift. We welcome the step change in the role of social workers and social care managers and workers, with a shift in emphasis from processes to working with people to make the changes necessary to improve their situation.

The Bill will mean a real change of direction and we recognise the importance of having a Bill which provides the architecture to support the improvement and well-being for people in Wales. A single Act will provide the bedrock for collaboration and integration of all our social care services in Wales. This should make the approach to the delivery of social care services clearer for practitioner, carers and service users alike. The Care Council acknowledges that there are several layers of changes essential in the promotion of wellbeing which is multi-faceted and often requires the coordinated input of support from a range of sources. No one will disagree with the principle of social care promoting the well-being of people; one which focuses on individual need, taking a rights based approach by giving people a strong voice and real control. The emphasis on co-operatives, user led services and Third Sector organisations are welcomed and are in line with our community and citizen led development programme. This approach to delivering services at a local level using community partnerships is a model which the Care Council supports. The Care Council recognises that there will be further work, with the Welsh Government, on the definition of the social care workforce covered by the Bill.

As the regulator of social care practitioners in Wales there are important workforce and public assurance issues which will need to be considered. They will have implications for the proposed White Paper on Regulation and Inspection Services in Wales.

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 Care Council agrees that the Bill provides the architecture in which public bodies should meet the challenges facing social services in Wales taking a shared responsibility in promoting the well-being of people in Wales (including carers). Its aim of simplifying legislation, strengthening preventative and safeguarding arrangements through aligning services for all people cannot be disputed. The Bill outlines how the Welsh Government will meet one of its primary policy objectives in reforming social services law. The users of the services (and their carers, families) need to have a stronger voice and greater control of the services received. The Care Council will be responding, in further detail, to the Regulations that support the Bill.

The Care Council welcomes the publication and monitoring of a National Outcomes Framework. It will be important that the National Outcomes Framework focuses on the outcome on people using the services rather than relying on outputs and numbers. Outcome based results will provide evidence for all partners in the delivery of social services to inform continuous improvement within the sector.

The Care Council strongly supports the need in making the information and advice of social care services available and accessible. The provision of user friendly, clear and accessible information will be integral to the success of the Bill. The Care Council's own regulatory information is available on line and accessible in a number of different formats. At the heart of our joint working with the Care and Social Services Inspectorate Wales (CSSIW) is the development of an accessible information portal, which will provide information guidance on the care of vulnerable adults in Wales.

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.

The sustainability of the change set out in the Bill will be dependent on the implementation, to ensure smooth transition for all parties affected by the legislation. It is important that Local Authorities, their partners work with stakeholders in the management of change as well as the relevant Codes and Guidance supporting the implementation of the Bill.

The Bill provides the architecture to enable local authorities, with their partners, to meet the challenges and take shared responsibility. The question is whether, in this current economic climate, the investment of resources required to manage the change whilst also continuing to deliver high quality care and support to people is feasible. The Bill aims to remove some of the barriers by writing new social service law and placing more responsibilities on Local Authorities for assessing and meeting needs. There is total support for the vision; the big challenge is how to secure there is capacity to turn the vision into reality.

Transformational leadership will be important in delivering the step change outlined in the Bill. This does not mean just leadership within social services of Local Authorities but across all departments within Local Authorities and the leadership of partners involved in the change. This new style of leadership, with new attitudes and behaviour, is more than just a set of competencies required by the Director of Social Services in Local Authorities. It is important that the Bill is clear on whom these ‘relevant partners’ are, their responsibilities and obligations set out in this new legislation. The Regulations to be developed to support this Partnership Working will be vital.

The Bill focuses on the need for greater collaboration and joint working. In any collaborative models of working there will be high initial resource investment by those involved. This will not happen overnight and can take a while to realise the longer term impact. It is also important that the Bill has a duty for health boards to provide similar integration. Unless social services have powers to enforce health to become involved or health has a duty to get involved when requested by social services, this will not be robust enough to make any difference.

The workforce strategy for the future is pivotal to the delivery of the changes outlined in the Bill. It will be important to be clear about the workforce strategy for the future. The Care Council looks forward to working with the Welsh Government on what workforce regulatory arrangements will be needed to give public assurance and drive up professionalism of practitioners delivering care and support in Wales.

The Bill sets out Regulations which Welsh Ministers may set to prescribe new integrated ways of working in particular areas or across services. It is, therefore, difficult to fully state whether the changes are sustainable without knowing more of the detail. However, in principle the Care Council recognises the importance of a more integrated approach to the delivery of care and support across Wales.

One of the key agents of this change will be the social care workforce delivering the care and support. Much has been achieved in the development of the professional social work workforce. We will need to build on what has been achieved and consider the implications of the Bill and its impact on the workforce delivering these services in the White Paper on Regulation and Inspection Services. Ensuring the sustainability of the workforce delivering the change for people is critical to the success of the ambition of the Bill.

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

The Care Council welcomes the new emphasis on care and support as a response to the needs of people who do not always need high levels of services, but may require support to create solutions that address their needs. The shift of focus to positive outcomes for people and preventative approaches is welcomed as an alternative to focussing purely on services. This shift emphasises the view that most people, both young and old, wish to remain with their families and communities rather than being reliant on services to lead their lives.

As the Explanatory Note outlines the provision of social services has the potential to reach out to the population of 3 million in Wales. The changes have a huge impact on those delivering the services including local authorities, NHS, Housing and in particular, the social care workforce.

There are workforce implications in order to address the social care needs of an ageing population, including the increases in the number of people with long standing complex disabilities. The Care Council will be considering the implications of the Bill for inclusion with the White Paper on Regulation and Inspection.

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

The main barrier in implementing the scale of change required by the Bill is the resources required to do so. Section 8 of the explanatory notes concedes that the costs associated to implementing the Bill have a measure of uncertainty. In the current economic climate the financial implications of implementing the Bill will require regular monitoring and review. Developing and investing in the workforce to deliver high quality person centred care and support requires sustained investment. The implications on the social care workforce cannot be underestimated at a time when all organisations are hitting resource pressures whilst delivering their services. The Care Council will consider further following development of the Regulations supporting the Bill.

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.

The Bill does not contain enough on the regulations and also only makes reference to Codes or Guidance which will be needed to support implementation of the Bill. Further information and consultation will be needed on these Regulations as this is where the detail of requirements and implications will be set out. The Bill provides a framework but it’s only in the detail will we will see the full implications of its requirements.

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.

The Care Council believes that Welsh Ministers should be able to make subordinate legislation to support the Bill. There seems to be power in the Bill for Welsh Ministers to make extra subordinate legislation if required. It is sensible that Welsh Ministers have the power to make Regulations to ensure ‘future proofing’ of the Bill’s arrangements. It is important that these Regulations involve consultation and involvement by key partners in their development.

There will need to be more detail in the Codes and Guidance to support the implementation of the Bill. For example, there needs to be more detail about how Welsh Ministers would take over the running of services of local authority who are failing on their services.

It is important that any subordinate legislation is proportionate in order for the focus to be on delivering the transformation set out in the Bill rather than getting bogged down by bureaucracy. The Care Council would like to work with the Welsh Government on the development of any advice, guidance and Regulations that have implications for social workers, the social care workforce.

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.

There are two elements on the financial implications of the Bill:

- The cost to the person (their families) in receiving care and support; and
- Cost to organisations delivering the high standard of care and support.

It is difficult to answer the first element as the Bill provides Welsh Ministers with the powers to create a framework for charges. This will require consultation as this will be whether charges and financial assessments are reasonable to the person incurring the costs. This has the potential to cover costs associated to information, support to access services and certain preventive services. There is potential that by charging it may prevent people accessing services and cause either higher need and cost or great suffering. Or that the cost of the service provision drives service availability rather than the needs of people.

The Care Council recognises that it is difficult to calculate the costs of the Bill and its implementation. It would be useful to have more detail about the £2 million savings mentioned in the Explanatory notes.

It is a challenging time financially for all those in delivering public services. The impact of the coalition’s welfare reforms is ever deepening and from April more families, children and young adults including care leavers may move into poverty. This in turn may create more demands on social care services. It is important in raising public expectations about an improved quality of service that the Government is able to deliver within available resources, always a tension in policy development of course.

All relevant partners involved in the implementation of the Bill will want to improve the well-being outcomes for people and carers who need support along with reforming the social care law in Wales. The Care Council looks forward to working with the Welsh Government and Ministers on the implementation project on the implications of the Bill on the social care workforce.

Other general comments

It would be useful to have an explicit statement within the Bill relating to Welsh Language service provision particularly given the publication of the recent More than Words Strategy and an Equality and Diversity statement.

Safeguarding for those who receive care and support is mentioned throughout the course of the Bill, there also needs to be protection of the workforce providing these services. This could be detailed further in the White Paper on Regulation and Inspection Services.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 31 - Older People's Commissioner for Wales

Claire Griffiths
Deputy Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

8th March 2013

Dear Committee Members,

Re: Consultation on the Social Services and Wellbeing (Wales) Bill

Thank you for the opportunity to provide initial written evidence to the Health and Social Care Committee on the general principles of the Social Services and Wellbeing (Wales) Bill.

As Commissioner, I have a statutory duty, as set out within the *Commissioner for Older People (Wales) Act 2006* and *The Commissioner for Older People in Wales Regulations 2007* to keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales. Effective and robust scrutiny of the Social Services and Wellbeing (Wales) Bill, from the perspective of older people, is therefore a major priority for me in discharging my legal powers.

In my scrutiny of the Bill, I have three specific points of interest. Firstly, my overriding priority is to ensure the adequacy of the proposals from an older person's perspective i.e. that the intent of the proposed legislation will deliver the changes that older people have told me are needed.

Secondly, I will take a view on the extent to which the detail contained within the Bill reflects this intent, and thirdly, the level of assurance I have that the Bill will in practice deliver the outcomes that it aspires to.

As I outlined when I spoke with the Committee in a private session recently, it is crucial that the Bill remains focused, as the initial Framework for Sustainable Social Services did, on the impact it will have on the lives on people. It is essential that it remains a Bill about people, rather than a Bill primarily about systems and services.

From my perspective as Commissioner, there is much in the Bill that I welcome, including simplification of the ways that people's needs are assessed, improved rights for carers and a commitment to ensuring that high quality services are delivered more consistently across Wales. I particularly welcome the upfront focus on wellbeing and the central role for prevention. However, at this stage there are number areas of the Bill that, as currently drafted, limit its potential to make a real difference to the lives of older people. These areas are explored further in my response to the questions below, but in summary relate to:

- The absence of statutory principles on the face of the Bill.
- Lack of clarity around how the bill will deliver greater voice and control to older people and a failure to recognise the role od advocacy, particularly independent advocacy, within this
- Overreliance on regulations, particularly in respect of some high risk areas including eligibility criteria
- The need for further clarification and strengthening of proposals around adult safeguarding
- Potential risks around the practical implementation of new partnership and collaboration duties, which will require leadership, cultural and governance changes alongside legislation if they are to be effective

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.

I have strongly and publicly supported the aims and aspirations behind the Social Services and Well-being (Wales) Bill to transform the way that social services are delivered, making them simpler and giving people stronger voice and more control. Older people frequently inform me that services are complicated, difficult to access and often fail to provide a little bit of help on a timely basis. Older people also raise with me their concerns about the unacceptable variations in the way that services are delivered across Wales.

A Bill that brings together local authorities' and partners' duties and functions in order to improve the well-being of people who need care and support is a significant, once in a generation, opportunity to 'reboot' our social services systems in Wales around the issue of wellbeing and ensure that in future they are more simplified, integrated and outcome focussed, and more importantly, informed by the voices of service users. It is imperative that we get this right.

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.

In general, the objectives set out in Chapter 3 of the Explanatory Memorandum are reflected by the areas covered within the Bill. However, there is one significant exception that is of critical importance to ensuring that the Bill delivers on its stated aims, and this relates to the current absence of statutory principles.

I have previously called on Welsh Government to introduce statutory principles on the face of the Bill in order to uphold the human rights of all those affected by it and I am extremely are disappointed that this is not reflected in the current draft. The overarching well-being duties currently included in the draft Bill (to promote the well-being of people who need care and support and of carers who need support) **are not statutory principles**.

Statutory principles should be included on the face of the Bill for three reasons:

1. They will provide a solid statutory foundation. This would make them 'hard' law as opposed to 'soft' law that is tucked away in a Code of Practice.

2. Core legal expectations should not be assigned to a Code of Practice. They should be on the face of the legislation to guide the reading and interpretation of it; they must be at the forefront of the mind rather than considered later.

3. Principles set out clear statutory parameters for those who must exercise professional judgement when using the legislation. They also provide a good basis for service users to assess and, if necessary, challenge decisions made about them. Decision making can be measured against the letter of the law and against the spirit of the principles.

The principles should:

1. Demonstrate the policy aims behind the legislation and maximise the probability that these are reflected in decision making. They should ensure that decision makers give effect to the purpose behind the legislation.

2. Reflect human rights principles.

3. be consistent with the requirements of related legislation, e.g. the Mental Capacity Act 2005, the Mental Health Act 1983.

It is my view that more must be done to ensure that the Bill takes a human rights approach for both adults and children. Statutory principles MUST be included on the face of the Bill in order to uphold the human rights of all those affected by it. Through the discharge of my statutory duties my formal advice, as Commissioner, is that inclusion of principles in a Code of Practice is not sufficient, and the lack of statutory principles will significantly undermine the impact of the Bill.

I am currently preparing a separate paper on potential wording of these statutory principles which I will forward to the Committee sedately.

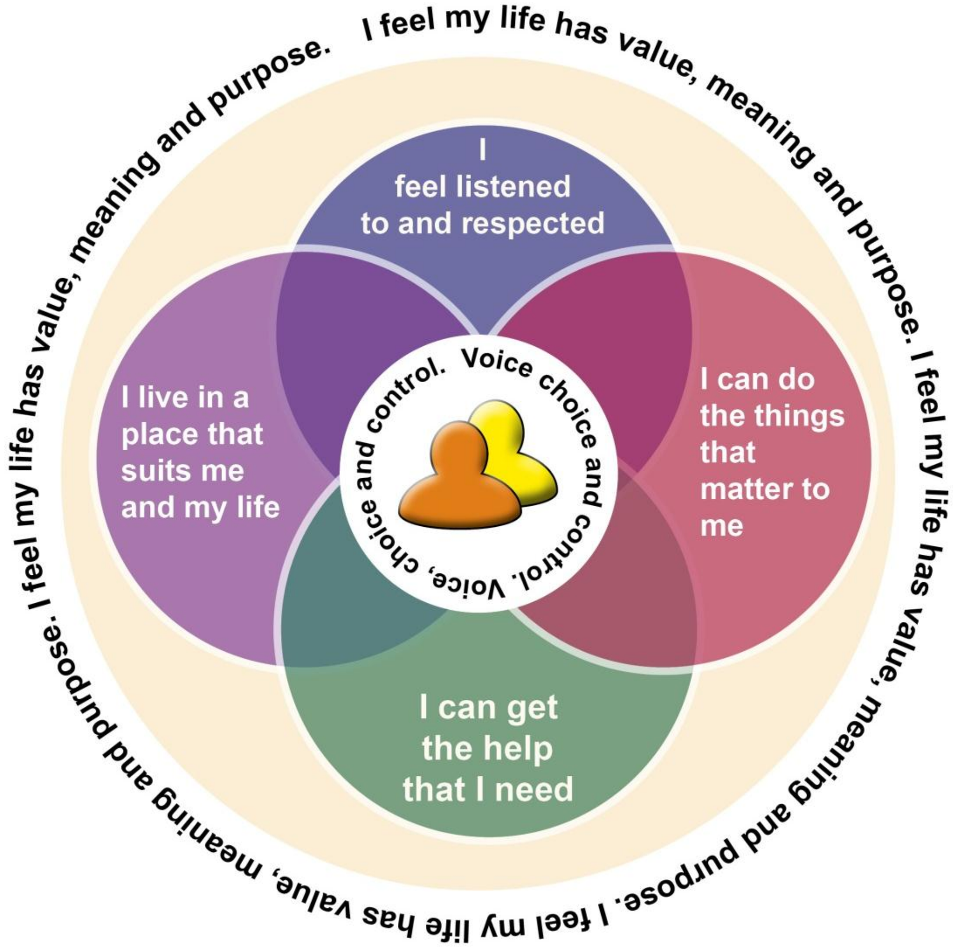
3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are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

I have strongly and publically welcomed the renewed focus on wellbeing in the draft Bill. The inclusion of 'domestic, family and personal relationships' and 'contribution to society' within the definition of wellbeing strongly resonates with the issues that older people often tell me matter to them. Issues such as loneliness and isolation have a huge impact on physical health, as well as quality of life, yet older people tell the me that they don't feel these issues are taken seriously, or given priority by providers of public services. The new duty on service providers under the general functions of the Bill to promote social and economic wellbeing as well as physical wellbeing is therefore welcome.

It is my view that the Bill needs to strengthen its definition of wellbeing and place it in a context that is more outcome focused and more closely aligned towards the intent of the legislation rather than services or systems.

I will shortly be publishing my own four year Framework for Action which focuses around four key themes that older people have told me are central to their wellbeing, or to living a life that has value, meaning and purpose, based around effective voice choice and control. These are:

- I feel listened to and respected
- I can do the things that matter to me
- I get the help I need, when I need it, in the way that I want it
- I live in a place that suits me and my life



These themes have a strong alignment to the wellbeing outcomes referred to in Part 9 of the draft Bill. I have already shared my own approach to wellbeing outcomes with members of the Health and Social are Committee who found this approach to definition very useful, and suggested that it would be helpful if this was replicated in the next draft of this Bill. Further work is currently underway by my office in respect of how this model could be integrated.

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

I strongly welcome the Bill's ambitions to shift the balance of social care more firmly towards prevention. This will, if properly executed, increase older people's independence and help shift the balance of service provision in favour of early intervention rather than supporting people once they have already reached crisis point. This is a significant step forward, and one which I strongly welcome as a means to enhancing older people's wellbeing and quality of life.

The Bill contains some excellent proposals in relation to prevention, in particular the proposed duty on local authorities to provide (or arrange the provision of) a range of services to meet the public's need in relation to prevention), within which I see a strong role for the Third Sector.

One exception and an area of concern for me relates to potential charges for preventative services. The over-arching objective of the Bill in this regard is to expand access to prevention and to ensure that local authorities are providing services which can prevent an individual's need from escalating. However, the Bill also states: "*Regulations may make provision about charges for... information, advice or assistance*" (p39, lines 32 and 34).

Whilst I accept that charging for preventative services may be necessary, it seems impossible to reconcile the ambition of expanding access to prevention with making provision for authorities to charge for information and advice which might signpost individuals towards those services. I am deeply concerned that this measure would actually <u>reduce</u> the likelihood of older and vulnerable people seeking support rather than widening access.

Older people frequently tell me that some information and advice on a timely basis is often all they are looking for, and that getting the basics of this right would make a huge difference to their experiences of public services. There should not be any question of authorities being allowed to charge for information and advice services, which are critical in directing individuals towards preventative service. This needs to be made clear in the Bill.

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

One of the stated aims of the Social Services and Wellbeing Bill is to transform the way social services are delivered, promoting people's independence to give them stronger voice and control. However, I am concerned that, as it stands, the realisation of this is missing in the Bill and there is a risk that the Bill will not deliver on one of its key aspirations.

The current draft of the Bill does not recognise the vital importance of advocacy, in particular independent advocacy**,** and fails to make any legal provision for independent advocacy in a social services context. This is a significant omission. Current definitions of advocacy in law are restricted to the Independent Mental Capacity Advocacy, Independent Mental Health Advocacy, proposals in the Mental Health Measure and Community Health Council complaints advocacy

Independent advocacy, as part of a spectrum of advocacy provision, is required for individuals in key situations of vulnerability, where information and advice is not sufficient or where there are no family or friends to stand up and speak out on their behalf. Independent advocacy, at times of major decision making such as hospital discharge or entry into residential care, can be essential in supporting a person to express their views and wishes, pursue their rights, make their own informed decisions, and to explore and understand the options available to them. It is also particularly important when an older person is at risk of harm.

I would strongly encourage the Health and Social Care Committee to consider the impact of failing to include advocacy, and in some circumstances independent advocacy, for people in situations of vulnerability, on the face of the Bill. It is my view that the legislation would be significantly enhanced, and would go much further towards meeting its aims of increasing choice and control, by the inclusion of a legal duty to assess the need for independent advocacy for people in particular situations of vulnerability and to provide this when such a need is found to exist.

Another significant potential barrier relates to the capacity and capability of social services departments to respond to the duties within the new legislative framework. Linked to this, the level of formal partnership working and collaboration between health and social services needs be much stronger if the Bill is to deliver its intended outcomes. CSSIW's annual report for 2011-12 published recently stated that,

The viability and prospects for the success of the partnership with health services was assessed by CSSIW as a significant risk in more than a third of the councils in Wales.

Current problems largely stem from the difficulties of different systems working together. The present regime for continuing healthcare funding is just example of this, whereby perverse incentives exist to cost shift from one sector to the other. It is evident that effective partnership working will not be achieved simply through legislation, and if the ambitions of the Bill in this area are to be realised, a whole range of leadership, cultural and governance issues across health and social care organisations need to be considered alongside legislative drivers.

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.

The Explanatory Memorandum accompanying the Bill makes it clear that a significant proportion of the legislation will be subject to supporting regulations, delegated to Welsh Ministers. Whilst I am aware of the rationale for this approach, in my view there are some potentially 'high risk' areas that are being devolved to regulations, and are therefore of particular concern to me.

Whilst I welcome for example, the proposals for common eligibility criteria, and believe that in principle, this will help reduce inconsistencies across local authority areas (an issue which is often raised with me by older people) I am strongly of the view that eligibility must be dealt with much more explicitly in the Bill. Without seeing the detail of proposals around eligibility, it is impossible to comment on them in any meaningful way.

I would strongly urge the Committee to seek more details on the proposed eligibility criteria from the Welsh Government. Without this information, there can be no meaningful discussion on the potential impact. The Welsh Government needs to outline openly its proposals on eligibility (or at the very least give an indication of the desired direction of travel) and explain how this links to the proposed duty on preventative services.

The final position on eligibility must be open to strong and critical scrutiny and robust impact assessment. This is an area that as Commissioner I will taking an ongoing interest in.

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.

The provisions within the Bill for Welsh Ministers to make subordinate legislation are numerous and wide ranging. I understand the intention behind this approach in that it will allow Minsters to develop legislation that is flexible, responsive and that will be fit for purpose over a long time period. However as my response to the previous question indicated, there are significant risks associated with this approach and my overriding concern is that provisions that are subject to subordinate legislation will not be subject to the same level of scrutiny as the overall Bill.

As Commissioner, I will be taking a strong interest in the extent to which regulations, orders and directions are considered by the National Assembly and the openness and transparency of this process. It is imperative that all subordinate legislation is subject to robust scrutiny and proper impact assessment and not simply ‘nodded though’.

7. Other Comments

I strongly support the aspirations of the Bill to strengthen powers for safeguarding adults at risk, so that vulnerable people older people in our society can be protected more effectively. I believe the Bill sets out the right direction of travel in this respect and I welcome many of the functions laid out in Part 8 of the draft legislation**.** However, a number of the specific safeguarding functions must be further strengthened if the Bill is to officer sufficient protection to adults at risk.

The definition of 'adult at risk' still relies too heavily on the previous definition that defined vulnerable adults as those in receipt of social services. It currently reads that *because* a person has care and support needs they cannot protect themselves from harm; whereas the true situation is that *because* a person cannot protect themselves from harm they have care and support needs.

Under the current drafting, a local authority has no duty to make enquiries unless they suspect a person may be an adult at risk. In many situations it will be impossible to determine whether or not a person is an adult at risk *until* enquiries have been made.

In relation to the duties on Safeguarding Boards to co-operate, the current wording states that Safeguarding Boards *may* co-operate with each other; this should be changed to say *must* unless the legislation envisages the National Independent Safeguarding Board enforcing requests to co-operate from regional Safeguarding Boards (i.e. a vertical duty to the NISB). The same point applies to the sharing of information between Safeguarding Boards.

I support the introduction of adult protection and support orders and these directly reflect our advice to the Government in as far as they go. There remains a question around what would be done if a person is under the psychological control of another and is unable to take the step of leaving an abusive situation. It is likely that in the majority of cases such a situation would also fall under the definition of domestic abuse and there may be solutions via the police; however, I do not think the legislation goes far enough and would support an additional order that allows a social worker to remove someone to a place of safety against their will in rare situations where a Justice of the Peace can be convinced that such a court order is necessary in order to protect a person who cannot protect themself.

My final point relates to the quality of the equality impact assessment that has been undertaken. The Bill must ensure that it reflects and takes into account the needs of all older people, as defined by the Equality Act 2010. I am not currently convinced that sufficient scrutiny has been afforded to the Bill in line with the public sector equality duties. My office has already begun some more detailed work on this and I will be happy to share this with you over the summer.

I look forward to giving further evidence to the Committee to support the Bill's progress through the detailed scrutiny process.

Yours sincerely,

Sarah Rochira

Sarah Rochira

Older People's Commissioner for Wales

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 32 - Diverse Cymru

diverse
cymru
Promoting equality for all

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@diversecymru.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."

NSPCC
Dim mwy o greulondeb i blant. DIM.
Cruelty to children must stop. FULL STOP.

Cymdeithas Genedlaethol er Atal
Creulondeb i Blant

National Society for the Prevention
of Cruelty to Children

Diane Engelhardt House, Treglown Court, Dowlais Road, Cardiff, CF24 5LQ
Tŷ Diane Engelhardt, Treglown Court, Dowlais Road, Caerdydd, CF24 5LQ
Phone/Ffôn: 0844 892 0290 Fax/Ffacs: 029 20487085
Email/ebost: d.mannion@nspcc.org.uk

15th 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 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

Direct Payment Support Schemes Network

The Case for Extending Direct Payments within a Welsh Model of Citizen Directed Support

March 2013

Introduction

This paper was drafted in response to the introduction of the Welsh Government's Social Services and Well-being Bill on 28 January 2013.

The Direct Payment Support Schemes Network (DPSSN) consists of organisations which provide third party support to recipients of Direct Payments in Wales. The Welsh Government's practice guidance recommends that all local authorities should have contracts with independent providers of Direct Payment support schemes. Despite this guidance, some local authorities provide this service in house.

Whilst pleased that the Welsh Government remain committed to promoting Direct Payments, the DPSSN is disappointed that the Social Services and Well-being Bill does not provide a vision for extending Direct Payments within a Welsh Model of Citizen Directed Support. This contrasts sharply with the Scottish Executive's Social Care (Self-directed Support) (Scotland) Bill, which received Royal Assent on 10 January 2013. [1]

The DPSSN ask the Welsh Government to consider broadening the scope of the Social Services and Well-being Bill to enable Direct Payments to be extended within a Welsh model of Citizen Directed Support.

The Direct Payment Approach

Direct Payments enable people to have greater choice and control of their own lives. They support people to identify what's important to them, what they want to achieve and what's needed to make that happen. They enable people to choose what, how and when support is provided, and by whom.

Direct Payments remove the restrictions which traditionally provided services impose on people. Whereas domiciliary care tends to limit people's options, Direct Payments aim to move people on in their lives and reduce dependence on state funding, ensuring effective use of resources.

Instead of being primarily concerned with basic *personal care* tasks, such as getting people out of bed in the morning, the Direct Payment approach focuses on what people get out of bed *for*, facilitating social and economic involvement through achieving *personal outcomes* such as getting to work.

This approach ensures that resources are used purposefully and effectively to address the barriers to inclusion in the community.

The underlying assumption is that individuals can be active contributors to their communities, not just passive recipients of services.

Direct Payments and Citizen Directed Support

Whilst Direct Payments work well as far as they go, Citizen Directed Support (CDS) envisages a more creative and flexible model which provides a more cost effective use of resources. Framing social services in terms of personal outcomes would bring greater flexibility in how resources are used and would be a step towards CDS.

CDS is envisaged as a set of nationally agreed values, principles and practices which support innovation, enhance well-being, enable Independent Living and support citizens to achieve their chosen goals and lifestyles by:

- putting citizens in control of all aspects of their support arrangements, to the extent that they are comfortable with, by providing a range of options for administering support packages, including Direct Payments and co-operative models;

- focusing on identifying and removing the barriers that prevent disabled and older citizens from actively participating in their communities; and

- supporting citizens to establish fulfilling relationships with everyone in their lives, and in particular ensuring that relationships with support workers are empathic and appropriate.

Instead of professionals dictating service-led solutions, CDS views individuals as their own experts who know best what support they need. By focusing on outcomes from the individual's perspective - encouraging people to ask "how can I achieve my goals?" - CDS ensures the best use of available resources.

Within this model of CDS, the role of local authorities and social workers will shift from controlling and allocating limited resources to *identifying and removing barriers to Independent Living and social inclusion and enabling individuals to achieve their chosen outcomes.*

Direct Payments are an effective method of administering CDS.

Cost & quality

One of the main drivers for Direct Payments was the potential for savings, yet many local authorities have failed to capitalise on this.

Direct Payments are cost effective because administrative costs and profit margins are reduced, and people are encouraged to manage available funding and resources in the best way they can. Local authorities which actively promote the take up of Direct Payments recognise that unit costs are significantly lower than mainstream methods. For instance, "Most local authorities stated that their hourly direct payment rates were lower than the average costs of preferred independent sector domiciliary care providers, as well as lower than the costs of in-house domiciliary care." [2]

The focus on achieving personal outcomes through Direct Payments can result in a reduction in long term support, enabling strategic and sustainable use of resources. By committing a relatively small amount of funding to achieve specific outcomes, resources can be withdrawn in the short term, e.g. someone who obtains a driving license can overcome long term dependency on inadequate public transport, enabling them to work and be an active contributor to their community, reducing long-term dependence upon public resources.

Quality standards are assured by individuals themselves because they can monitor, manage and, if necessary, address quality issues by changing provider. This control of quality leads to greater customer satisfaction.

People also feel safer if they have control over who provides support and when.

The ILF Model

There may be learning from the success of the Independent Living Fund (ILF), as evidenced by the 90% of service recipients and their families whose responses to the DWP's recent consultation on the future of the ILF supported retaining the Fund instead of abolishing it. [3]

Whereas the current system of social services requires Care Managers to act as gatekeepers to limited resources, the ILF focus on supporting individuals to achieve personal outcomes that support Independent Living and which enable them to be active participants in their communities.

This leads to a more person centred approach, with recipients and carers reporting higher levels of satisfaction with assessments carried out by ILF than by local authorities.

ILF also report that a light touch to monitoring has proved cost effective, resulting in just 2% administrative costs, rather than 13-20% for local authorities. [3]

It may be significant that ILF only provides funding, not services.

Obstacles to increasing take up

On 31 March 2012 there were 3,211 recipients of Direct Payments in Wales, up from 2,734 in March 2011. This represents less than 5% of the 64,912 people receiving community-based services. [4] [5]

Some local authorities are less proactive than others in promoting Direct Payments, being more concerned with individuals' *suitability* for a Direct Payment, instead of their *eligibility*. This restricts opportunities for individuals to move on in their lives and achieve their goals.

Although Direct Payments tend to be used as a means of employing PAs, regulations and guidance make it clear that Direct Payments can be used for any provision necessary to meet an assessed need. However, in practice they are often used as a way of replacing services rather than promoting innovation.

Within the current system Care Managers are trained to think in terms of traditional service provision, rather than to be imaginative and creative. The system requires them to be more concerned with meeting assessed needs than with supporting individuals to achieve personal outcomes. Consequently, services focus on practical personal care tasks instead of identifying and removing the barriers that prevent people from being active participants in their community.

To transform social services it is necessary to change the culture and the ways that people think. We need to move beyond unimaginative needs-led assessments and service-led solutions to outcomes-focused assessments and more creative person-centred and citizen directed solutions.

Social Care (Self-directed Support) (Scotland) Act: A way forward for Wales?

In contrast with the Scottish Executive's Social Care (Self-Directed Support) Bill [6], which received Royal Assent in January 2013, the SSW Bill falls short in terms of advancing Direct Payments in Wales, where less than 5% of adult recipients of Social Services currently have a Direct Payment.

The Scottish Act introduces the language and terminology of self-directed support into statute and places a duty on local authorities to offer four options to individuals who are assessed as eligible for care and support:

Option 1 The making of a direct payment by the local authority to the supported person for the provision of support.

Option 2 The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.

Option 3 The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.

Option 4 The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

The Act requires local authorities to “give the supported person the opportunity to choose one of the options for self-directed support, unless the authority considers that the supported person is ineligible to receive direct payments”.

The legislation requires that local authorities must also:

- take steps to promote the availability of the options for self-directed support

- give effect to the option for self-directed support chosen by the person.

The Act also requires local authorities to inform supported individuals of the amount of each of the self-directed support options that are available for them to choose from, and the period to which the amount relates.

Local authorities are also required:

- to explain what each option means in practice.

- to provide information about how they might manage their support after they have chosen their preferred option

- to provide information about organisations and persons who can provide help or further advice to help them choose an option

- to provide information about providers of independent advocacy services when appropriate

- to provide relevant information both in writing and in alternative formats appropriate to individual communication needs.

The Act is underpinned by the principles of involvement, informed choice and collaboration. These principles require local authorities to collaborate with individuals in both the assessment of their needs and the provision of support or services following the assessment. The principles also require that individuals must have as much involvement in the assessment of their social care needs, and the provision of support or services, as they wish. Individuals must also be provided with reasonable assistance in order that they can express their own views about the choices available to them and make an informed decision about their preferred choice.

The Act places a duty on local authorities to take reasonable steps to facilitate further principles when carrying out their functions. The Explanatory Notes [7] state:

These principles – for persons to have their right to dignity and their right to participate in community life respected – reflect core principles of Independent Living. A further element of independent living – control – is reflected in the provisions of the Act enshrining choice...(and in individuals having as much involvement as they wish in relation to the assessment and provision of support or services).

Similar legislation in Wales - with Direct Payments at its core - would maximise citizens' choice and control over the support they receive.

References

[1] Social Care (Self-directed Support) (Scotland) 2013 Act
http://www.scottish.parliament.uk/parliamentarybusiness/Bills/48001.aspx

[2] Direct Payments: A National Survey of Direct Payments Policy and Practice, Personal Social Services Research Unit
London School of Economics and Political Science, May 2007
http://www.pssru.ac.uk/pdf/dprla.pdf

[3] ILF officers, workshop on ILF Transition arrangements, Newtown, 7 March 2013.

[4] Expert guide to direct payments, personal budgets and individual budgets
http://www.communitycare.co.uk/articles/30/01/2013/102669/direct-payments-personal-budgets-and-individual-budgets.htm

[5] Assessments and Social Services for Adults, Wales, 2011-12

http://wales.gov.uk/docs/statistics/2012/120904sdr1462012en.pdf

[6] Social Care (Self-directed Support) (Scotland) Act 2013
http://www.legislation.gov.uk/asp/2013/1/pdfs/asp_20130001_en.pdf

[7] Explanatory Notes, Social Care (Self-directed Support) (Scotland) Act 2013
http://www.legislation.gov.uk/asp/2013/1/pdfs/aspen_20130001_en.pdf

Contact

David Palmer
Chair, DPSSN
Dewis Centre for Independent Living
Amber House
Upper Boat Business Park
Upper Boat
PONTYPRIDD
CF37 5BP

Tel: 01443 827930
Email: david.palmer@dewiscil.org.uk

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 35 - Wales Co-operative Centre

Wales Co-operative Centre
Canolfan Cydweithredol Cymru

National Assembly for Wales
Health and Social Care Committee

Social Services and Well-Being (Wales) Bill
Call for written evidence to assist in the scrutiny of the Bill

Response from the Wales Co-operative Centre
15th March 2013

About the Wales Co-operative Centre

The Wales Co-operative Centre shares the Welsh Government's commitment to social justice and equality of opportunity. We are a core partner of Government delivering strategic programmes to confront persistent social inequalities as experienced by individuals and communities across Wales. We do this through:

- Support for social enterprise and co-operative business development and growth;
- Encouraging people to use digital technologies, and;
- Facilitating access to joined-up financial advice and support services, including those offered by credit unions and the wider social enterprise sector.

The Wales Co-operative Centre's Impact Report 2011-2012 demonstrates how we are improving communities, creating jobs, tackling exclusion and changing lives. During this period:

- 60 co-operatives and social enterprises received business support services helping to create 74 jobs
- We provided 69 training courses to help 864 people to improve their skills
- As the lead delivery partner of Communities 2.0, the Welsh Government's digital inclusion project, 84 community organisations and voluntary groups received support around digital technologies, as did 50 small enterprises
- Communities 2.0 helped 7,506 people to 'get online' and enrich their lives through digital technology also helping 70 people into employment
- We worked with local authorities and private landlords to tackle homelessness through financial inclusion
- We developed the 'Tackling Financial Inclusion through Digital Inclusion' project bringing to intertwined agendas closer together.

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.

The Wales Co-operative Centre believes that there is a need for the Social Services and Well-being (Wales) Bill. If there is to be a transformational step-change in social services the Bill presents an opportunity to do this in a co-ordinated way. It brings together local authorities and partners' duties and functions to achieve the policy directives set out by Welsh Government in its white paper, "Sustainable Social Services for Wales: A Framework for Action" (February 2011).

General principles that resonate with the Wales Co-operative Centre as an agency focused on social justice are:

- A strong voice for the citizen
- Real citizen control from the design to the management and delivery of the services
- Responsive high quality services
- A market driven by preventative services that respond to a citizen's 'need' as well as a citizen's 'want'
- Care and well-being services delivered by providers that share the same ethos as public service providers
- An offer to co-operatives and social enterprise, along with other service providers, to take a seat at the table with local authority partners
- Demands for service integration between local authorities, health boards and other 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.

Part 2 - General Functions, section 7 Promoting social enterprises, co-operatives, user led services and the third sector

We are concerned that Part 2, General Functions, section 7 of the Bill, "Promoting social enterprises, co-operatives, user led services and the third sector" will not deliver the Government's stated objectives.

The proposed 'duty to promote' co-operatives and social enterprises is unlikely to lead the transformational change that Welsh Government is seeking.

We believe there is a compelling case for a greater role for co-operatives and social enterprises because of the added value of the approach to social services. This added value includes:

- high quality services that are value-based
- Services that are responsive as they are citizen directed giving a much stronger voice and greater control to service users and carers. This is achieved through membership structures, democratic control and ownership
- a workforce that is empowered as a critical stakeholder, for example in a multi-stakeholder co-operative through democratic control alongside service users.

Co-operatives and social enterprises are anchored in their communities. Any investment by the public sector in co-operative and social enterprises will stay in the community and will be recycled for wider economic and social benefits.

As a result the Wales Co-operative Centre proposes that the Bill is amended to insist that local authorities ensure there is provision of services by social enterprises and co-operatives. We suggest the following amendment to the Bill to ensure Welsh Government delivers its stated policy objectives:

Existing text on the face of the Bill (Part 2, section 7)

> *Promoting social enterprises, co-operatives, user led services and the third sector*
> *(1) A local authority must promote—*
> *(a) the development in its area of social enterprises to provide care and support and preventative services;*
> *(b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;*
> *(c) the provision of care and support and preventative services in its area in ways that involve service users in the design and running of services;*
> *(d) the availability in its area of care and support and preventative services from third sector organisations.*

Our proposed amended text for the face of the Bill (insertions in **bold**)

> *Promoting social enterprises, co-operatives, user led services and the third sector*
> *(1) A local authority must promote—*
> *(a) the development in its area of social enterprises to provide care and support and preventative services;*
> *(b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;*
> *(c) the provision of care and support and preventative services in its area in ways that involve service users in the design and running of services;*
> *(d) the availability in its area of care and support and preventative services from third sector organisations.*
>
> ***(2) A local authority must secure the provision of care and support and preventative services in its area by social enterprises or co-operative organisations or arrangements.***

In addition to the aforementioned change to the Bill, the Wales Co-operative Centre believes there is a need to provide further clarity about what is meant by 'promote the development.'

The Bill states that:

> *(1) A local authority must promote—*
> *(a) the development in its area of social enterprises to provide care and support and preventative services;*
> *(b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;*

In the body of Explanatory Memorandum point 22, a short description of promotion is given as:

> *"this could include the local authority assisting in the setting up of a new business which can be categorised as a social enterprise or supporting service users setting up a co-operative arrangement*

The Explanatory Memorandum in Annex 1 – Explanatory Notes states:

> *"this provides that local authorities must promote social enterprises, cooperatives, user led services and the third sector in relation to their development and their involvement in the provision of care and support services"*

We believe this explanation is open to interpretation. Action taken under the new duty could be as nominal as the availability of a promotional flyer through to sign posting to a business support agency. The Bill does provide opportunities for a transformational change in the nature of social service and social care, but it will be missed if this particular duty on the Bill is not strengthened. We believe that the duty to promote must be explained as including access to specialist business support, access to finance and social investment, appropriate procurement processes and inclusion in supply chains

Part 4 - Meeting Needs, Direct Payments

The Wales Co-operative Centre supports the intention that the use of direct payments is extended. Expansion of direct payments offers greater choice, control and independence in social services, but the current system offers limited support for effective use. This can be addressed through co-operative approaches.

In due course the Wales Co-operative Centre will publish research that provides evidence of a powerful affinity between co-operative principles, direct payments and disabled people's organisations. Featured case studies will provide practical examples of how this is being done and how it can be extended to other groups.

Collective management approaches in co-operative direct payment schemes can break down barriers for citizens wanting to use direct payments. We would like to see a commitment on the face of the Bill for a co-operative approach to the development of direct payments.

Part 9, Chapter 2 - Co-operation and Partnership

The Centre is concerned that Part 9, Chapter 2 appears to prioritise partnership between statutory bodies and does not appear to extend to partnership with other partners such as co-operative and social enterprise businesses delivering social care and well-being services.

The public and social enterprise sectors share many values. There is substantial experience in the co-operative and social enterprise sector of designing and delivering services in partnership with other organisations such as housing, health, education and local authorities. Partnership arrangements should ensure this experience is included any new arrangements.

In the body of Explanatory Memorandum point 82 under “Co-operation” it states, “the partners that must co-operate with the local authority are listed on the face of the Bill”. The partners listed are only local authorities and health boards.

We believe the list of partners needs to be expanded. The list must include non-statutory partners including co-operatives and social enterprises.

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.

The Centre believes that local authorities should work to ensure there is provision by co-operatives and social enterprises as one of the best ways of enabling the delivery of social services that are sustainable.

As businesses rather than charities, co-operatives and social enterprises are less dependent on grants and run on a commercial basis. They have greater flexibility to trade than charitable organisations.

Co-operatives and social enterprises are anchored in their communities (membership, ownership and governance arrangements) and will remain committed to that community.

As businesses with a social purpose, surpluses can be reinvested in service development and staff training.

Staff often have an ownership stake, as with Care and Share Associates (CASA), an employee owned domiciliary care business in the north of England. As a result staff turnover can be lower than the private sector, cutting costs and providing continuity of care for clients.

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

The Bill if successfully implemented could create new, and strengthen existing, co-operatives and social enterprises. This type of business delivers the tangible economic and social benefits and added value to meet Welsh Government policy objectives.

Co-operatives and social enterprises:

- Are united by commitment to bring people together to achieve positive social change
- Make a contribution to social and economic inclusion and equality of opportunity
- Allow citizens to take a greater role in delivering services
- Build trust that leads to effective engagement
- Provide opportunities for 'efficiencies' not necessarily cost savings but unique ways of financing assets and resources
- Have flexible capacity with paid staff and volunteers working across functions often in multiple roles
- Work across local authority boundaries often integrating services of different care providers
- Help diversify a local market of social service providers
- Are anchored in the local economy creating employment and re-investment in the local area.

We present three short case studies to illustrate the potential positive impacts the Bill can have focusing on co-operatives and social enterprises as new models of service.

Wellbeing Regeneration
In Wales, Wellbeing Regeneration provides low level health and social care interventions. Its first service, affordable foot care, operates on the insight that reduced mobility and lack of exercise have far-reaching effects on well-being. It offers a range of services based on social engagement and activity to re-enable people to participate in society.

The social enterprise grows its services by continually consulting and listening to its customers and responding accordingly. It is an organic process that aims to understand the need of individual and importantly their 'want' for social services. This is testament to the added value that social enterprise brings to service delivery giving a voice to the customer as critical stakeholder in the business.

The Foster Care Co-operative
In England and Wales, the Foster Care Co-operative membership is its staff as well as its foster carers. They are consulted every six weeks leading to a direct impact on the success and longevity of the child care placements.

Navigo
Navigo offers mental health and associated services to its local community, in north-east Lincolnshire. The business is accountable to both staff and clients who share equal rights as voting members.

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

Evidence in our response on the general principles of the Bill has highlighted the potential barriers. If barriers are not lifted the vision for transformational social service reform will not be achieved. We offer the following solutions.

We believe the duties on local authorities in relation co-operatives and social enterprises are weak and need to be strengthened (see question 2). The current emphasis on "promote" is of serious concern and a substantial barrier if the social enterprise sector is to thrive. The lack of clarity or emphasis on the meaning of 'promote' and 'development' leaves the duty wide open to interpretation. This is compounded by the lack of budget development costs assigned to this new duty in the Impact Assessment.

We have argued for stronger definitions (see question 6) on the face of the Bill and in the explanatory memorandum. This will protect the sector from rogue operators while ensuring that the wider economic and social benefits are accrued through co-operatives and social enterprises delivery models.

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 would like to see stronger definitions on the face of the Bill or at least a firm commitment to clearer definitions through regulations.

Social enterprise

The definition of social enterprise could be made stronger through the inclusion of a criterion of social ownership. The tightening of the definition of social ownership will ensure people who benefit from the business have greater control over what the business does. This will protect the sector from rogue operators.

Under section 7 "Promoting social enterprises, co-operatives, user led services and the third sector, subsection (2), the definition includes a clause that states a social enterprise:

> (e) "is owned, controlled and managed in a way that is consistent with its social objects"

We believe this should be amended to state that a social enterprise:

> **(e) "ensures people who benefit from the business have a stake in its ownership and/or involvment in its governance".**

Co-operatives

We would like to see the following definition of co-operatives included in the Bill or through regulation:

> **"Businesses owned and run by and for their members, whether they are customers, employees or residents. As well as giving members an equal say and share of the profits, co-operatives act together to build a better world through co-operation."[1]**

---

[1] Co-operatives UK definition

The Explanatory Memorandum uses the term “co-operative arrangement”. We ask that this is clarified with the words **“co-operative arrangement as defined by its values and principles of equality and democracy”**.

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.

We have no additional comments to make.

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.

There appears to be no budget costs assigned in the Impact Assessment section for the promotion and development of co-operatives and social enterprises. We would argue for an appropriate investment in supporting co-operatives and social enterprises to deliver social care to ensure they become established as significant providers of services.

The need for funded specialist business support
The business support needs of social enterprises and co-operatives can not be delivered through mainstream provision. There are clearly specific requirements associated with the setup, governance and running of co-operatives and social enterprises. For example these businesses have different legal structures, access finance from different places and measure their success in different ways. This requires a different approach to business and financial planning. This specialist knowledge does not exist within mainstream business support and that is why Welsh Government has committed to specialist support for the social enterprise and co-operative sectors.

Structural Funds
We are concerned in the general principles of the Bill about the lack of budget to develop new service delivery models such as co-operatives and social enterprises. From our experience working with business support programmes, funded via the Welsh European Funding Office (WEFO), we understand that those public services that are deemed ‘statutory’ are not eligible for European money. There appears to be a gap in financial resources allocated to successfully implement the Social Services and Well-being (Wales)

Bill. This is an opportune moment to influence the new Structural Funds programmes (2014 – 2020) and address this issue. A positive outcome would be a clear direction from WEFO that Structural Funds will support some of the costs of developing co-operatives and social enterprises to provide care and support and preventative services.

Other comments

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

We have no further comments.

Contact details

Donna Coyle
Research and Development Officer
Wales Co-operative Centre

Tel: 029 2055 6191
Email: donna.coyle@walescooperative.org
www.walescooperative.org

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 36 - 5 Local Safeguarding Children Boards in South East Wales

Response to the Health and Social Care Committee re Social Services and Wellbeing (Wales) Act

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 wellbeing of people who need care and support and carers who need support?

The intention to bring together local authorities' and partners' duties and functions in relation to improving wellbeing is generally welcomed. Whilst there is a need for legislation and guidance to guide the way that services are delivered to people by public services, there is currently a plethora of legislation and guidance that pertains to this and simplifying this would be beneficial to services and citizens who sometimes have to negotiate complex systems to get what they need. This would hopefully reduce bureaucracy and release officer time and energy to focus on delivering services that improve outcomes for people.

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

Yes, however, much of the detail will need to be included in regulations and we would want sight of these before being completely assured that the legislation will achieve the changes that it intends.

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 wellbeing of people. Do you feel that the Bill will enable the delivery of social services that are sustainable?

If it achieves the objectives that have been set out. However, there is little information currently about how much resource will be required to implement these changes. A very crude measure has been used to calculate some of the benefits that will be achieved. We agree that if processes and systems are streamlined this should free up social worker time to do more face to face work, however, more information is needed about what level of resource Local Authorities will have to commit to these changes e.g. developing preventative services whilst also having to meeting the needs of service users that have a high level of need currently.

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

The move to focusing on outcomes and what difference we are making is very much welcomed. Streamlining the large number of policies, laws, regulations will hopefully reduce bureaucracy and this is something that social workers in particular, have been asking for a long

time. The fact that more face to face work will be undertaken by social workers is also to be welcomed – this is why people enter the profession in the first place and a focus on managerialism in the last few years has reduced the ability of social workers to do this.

Using the definition of wellbeing will potentially mean that large numbers of the community who would not previously have involvement with Social Services will request assessments of their needs. The impact on Local Authorities is as yet unknown and requires further exploration.

Whilst preventative services make sense and many of the Local Authorities already have such services in place, it has to be recognised that in many cases this will only delay the need for intensive services. There is a balance to be had in developing preventative services and continuing to provide services for service users with complex and high level needs.

Regionalising Safeguarding Children Boards is something that we have reservations about although we are in the process of developing a South East Wales Board. There does not appear to be much evidence of this improving the effectiveness of Boards. We welcome the research that has been commissioned by the WLGA that may enable us to better understand the benefits and challenges of regionalisation. The main concern of members is the loss of local links that has been the focus of much of the work of the Local Boards in South East Wales. The challenge will be establishing a Board that has an overview of local practice in five Local Authority areas in our case.

There are also concerns from practitioners and managers that merging the Adult and Children's Safeguarding Boards will result in one agenda being dominated by the other leading to a loss of focus on either children and young people or vulnerable adults.

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

- **There is still no national formula for Safeguarding Children Boards and therefore the issues that we faced as Local Boards are the same following regionalisation. There is still considerable debate about who should be contributing and how much and whether or not this should be in kind or cash. Until these matters are resolved Boards will continue to struggle to implement work programmes and therefore make any progress in co-ordinating and improving the effectiveness of multi agency safeguarding children practice.**
- **Lack of information about how much resource will be required by Local Authorities to make the changes proposed in the Bill.**
- **The ability of Regional Boards to hold member agencies to account needs to be strengthened as does the role of the Chair of**

the Board. Without this, Boards will lack the 'teeth' to challenge and hold to account 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?

It is better that only those issues that require legislative change be included in the legislation and that all other guidance be included in regulation.

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)?

This may be required and provides for a level of flexibility to create supportive elements for the legislation which may only become apparent as the changes brought about by the law evolve.

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

Please see previous comments in relation to resources.

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

Although the regionalisation of Boards will bring some challenges, for example, working across five Local Authority boundaries, we are also viewing this as an opportunity to further develop the good work that the five Boards in Gwent undertook. There is considerable commitment to establishing an effective Board in South East Wales that provides strong leadership, clear strategic direction and strengthens the links between front line practice and the work of the Board and thereby improves outcomes for children and young people.

Regionalising will also provide some economy of scale, certainly for agencies such as Health, not doing the same/similar thing five times will free up officer time and decrease the number of partnership meetings they have to attend.

The Board may also have more influence and be better able to hold agencies to account for their role in safeguarding children. It may also be better able to influence the direction of safeguarding policy given the relationship it will have with the National Board.

Response sent on behalf of the five LSCBs in South East Wales, currently in the process of merging to become the South East Wales Safeguarding Children Board from April 1st 2013.

Domestic violence and physical punishment

Time to move on

Not so very long ago women could be lawfully assaulted by men in their own home, and as recently as 1991 women could be lawfully raped by their husbands.[1] Such views are now unacceptable and the law, supported by social and educational measures, rightly protects women from all forms of assault. But children have been left behind. Under the defence of "reasonable punishment" (section 58 of the Children Act 2004) some parents can – and do – hit their children with impunity.

Children, like all human beings, have a right to respect for their physical integrity and human dignity. Hurting them in the name of discipline violates this right. There is nothing "reasonable" about it: smacking is never necessary and often harmful. Children have the same right to legal protection from assault as adults – in fact their vulnerability makes it even more vital that the law protects them.

This organisation supports the complete removal of the defence of "reasonable punishment" under 58 of the Children Act 2004 in order to fulfill children's human rights, prevent their abuse and combat the social acceptability of violence in inter-personal relationships.

ORGANISATION…………………………………………….

SIGNED……………………….…...   DATED……………

Why physical punishment undermines efforts to end domestic violence

It breaches the universal human right to protection from violence

The Committee on the Elimination of Discrimination against Women, which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women, has recognised that the Convention requires governments to protect women against violence of any kind occurring within the family and other areas of social life,[2] and that full implementation of the Convention requires States to eliminate all forms of violence against women.[3] In its concluding observations on the UK's report in 2008, the Committee noted with concern "that corporal punishment is lawful in the home and constitutes a form of violence against children,

---

[1] See Regina V R (Rape: Marital Exemption) The Times, 24 October 1991; (1992) Cr. App. R. 216 and the Criminal Justice and Public Order Act 1994, section 142, enacted 3rd November 1994

[2] General Recommendation No. 12 on Violence against women, 1989, preamble

[3] General Recommendation No. 19, 1992, on Violence against women, para. 4

including the girl child". The Committee recommended "that the State party include in its legislation the prohibition of corporal punishment of children in the home".[4]

The UN Convention on the Rights of the Child (CRC) requires states to protect children from "all forms of physical or mental violence" while in the care of parents or others (article 19). It requires discipline in schools to be "administered in a manner consistent with the child's human dignity" (article 28). Children, wherever they are, must never be subjected to "torture or other cruel, inhuman or degrading treatment or punishment" (article 37). The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment in the family and all other settings, linked to awareness-raising and public education. In 2006, the Committee adopted General Comment No.8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment: addressing corporal punishment of children is "a key strategy for reducing and preventing all forms of violence in societies".[5]

Other human rights treaty bodies, including the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee Against Torture, have also condemned corporal punishment of children, as have regional human rights mechanisms such as the Council of Europe.

It teaches children that violence is acceptable.

Whenever children are physically punished, two messages are sent to them. The first is that hitting someone is a legitimate way to exert control over them, sort out a conflict or express displeasure. The second message is that the recipients of physical punishment deserve such treatment. Both messages can have a toxic effect on the growing minds of children and contribute to the social acceptance of violence in adult life.

For example, government research found that around two in ten adults believe it is sometimes acceptable for a man to hit or slap his wife or girlfriend because of what she is wearing.[6] A survey of more than 2,000 young people aged 14-21 found nearly half of the young men and a third of the young women could envisage circumstances when they believed it would be acceptable for a man to hit a female partner, and one in eight of the young men thought that "nagging" was a justification for violence.[7] An NSPCC survey of young people found that almost half (43 per cent) of teenage girls believe that it is acceptable for a boyfriend to be aggressive towards his partner.[8]

Perpetrators of domestic violence often seek to justify their behaviour with reference to victims' behaviour, using language which is strongly redolent of physical punishment – "it was just a smack", "she was asking for a slapping". Such views do not appear out of the blue. Research has

---

[4] 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

[5] 21 August 2006, CRC/C/GC/8, Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)

[6] Opinion poll in England and Wales commissioned by the Home Office, February 2009

[7] Research findings published in Humphreys & Mullender (1999), *Children and domestic violence: a research overview of the impact on children*. Cited by the Department for Children, Schools and Families, Ev 397, and the House of Commons Home Affairs Committee report on *Domestic Violence, Forced Marriage and "Honour"-Based Violence* (sixth report of session 2007-08), vol. 1

[8] NSPCC, Teen abuse survey of Great Britain (2005)

shown that there may an association between physical punishment in childhood and partner-abuse in later life.[9] The acceptability of punitive violence is internalised from an early age and is deeply rooted in our society.

It weakens the principle of "zero tolerance" of violence in the home

Professionals working in domestic violence have expressed deep frustration with the smacking law; Women's Aid and Refuge have pointed out the irony of introducing a law which makes common assault between adults an arrestable offence in the same year that introduced the defence of "reasonable punishment" for common assaults against children, and of having a law which acknowledges the harm to children of *witnessing* domestic violence while denying them protection from *experiencing* it.[10] The vast majority of services in the field of domestic and sexual violence do not just support the aims of the Children are Unbeatable! Alliance, they also practice what they preach by maintaining a true zero tolerance policy, banning all forms of violence in refuges, including the physical punishment of children.

However Government support for zero tolerance of violence in the domestic home does not extend to children, against whom an arbitrary level of violence is allowed under the defence of "reasonable punishment". It is perhaps no coincidence that the National Assembly for Wales, the only Government body to be committed to prohibition of physical punishment, is also the only body in the UK to include children in its definition of domestic violence.[11]

Physical punishment plays a central role in child abuse but child protection professionals are unable to deliver clear messages to families that hurting children is not allowed. Section 58 fails to protect children from painful, dangerous, humiliating or frequent assaults and, by permitting an invasion of children's physical integrity, creates a potential pathway to sexual abuse. Those witnessing (or experiencing) physical punishment are often reluctant to intervene or complain.

Removing the "reasonable punishment" defence would not lead to the prosecution of parents for trivial smacks unless this was considered to be both in the public interest and in the best interest of the child concerned. There would be no change in the threshold for formal social work investigations of "significant harm". But the law would be doing all it could by sending into the family home the clear message that it is as illegal and unacceptable to hit a child as to hit anyone else.

---

[9] See, for example, Simons, R. L., Johnson, C., Beaman, J. & Conger, R. D. (1993), "Explaining women's double jeopardy: Factors that mediate the association between harsh treatment as a child and violence by a husband", *Journal of Marriage and the Family,* 55, 713–723; Cast, A. D., Schweingruber, D. & Berns, N. (2006); "Childhood physical punishment and problem solving in marriage", *Journal of Interpersonal Violence*, 21, 244-261; Lavoie, F., Hebert, M., Tremblay, R. E., Vitaro, L. & McDuff, D. (2002), "History of family dysfunction and perpetration of dating violence by adolescent boys: a longitudinal study", *Journal of Adolescent Health*, 30, 375–383

[10] Submissions to the Government's 2006-7 review of section 58 – the new laws referred to are s120 Adoption and Children Act 2002 and s10 of the Domestic Violence, Crime and Victims Act 2004

[11] The Welsh Assembly defines domestic abuse as "the use of physical and/or emotional abuse or violence, including undermining self confidence, sexual violence or the threat of violence, by a person who is or has been in a close relationship", *Tackling Domestic Abuse: The All Wales National Strategy*, 2005. The definition used by the rest of the UK is "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality": this definition is under review.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 38 - Citizens Panel for Social Services

SOCIAL SERVICES and WELL-BEING [Wales] BILL [Draft for PO Determination]

Although I agree mostly with the **Social Service and Welfare Bill,** there are points where the bill needs to be clarified. There is a need to make changes for the benefit and protection of those using the service and those who deliver the service, there must be a clear understanding of the meaning in the paragraphs with some of the wording in the description of what they mean to ensure a positive and clear understanding to all concerned. These are the points that I have looked at and the changes that would give a clear understanding to the citizen in my view.

Part 1 - 3/4 [page 5] Children who take on the responsibility of caring for an adult should have an age limit so that the child fully understands the responsibility of caring. The term **"child"** should be changed to Young Person, as it is demeaning when that individual is taking the responsibility of an adult. Social services should also involve other relatives wherever possible.

Part 2 - 4/4/ a-b [page 7] The views of the child/young person should be taken into account as this will ensure the right attitude in relation to the parent or those with parental responsibility from the child or young person.

Part 2 - 8/4 [page 9] to ensure protection for those that may be neglected or abused. Hospitals must register and report any report by members of staff of any serious suspected neglect or abuse by a parent or those with parental responsibility to the social service and other authorities within its area immediately

Part 2 - 9/5/ a-b-c [page 10] Added to this should be those who are neglected abused or are suspected of neglect or abuse. Changes must be made in paragraph 5 from "may" to "**must**" to safeguard the individual, it must include the provisions for adults who are abused or suspected of being abused placed in a separate register

Part 2 - 15/1 [page14] Paragraph change from "if" to **"when"** the word "if" implies that the local authority can refuse support as in the case of stress,

Please Note: There is a need for Social Service Providers to ensure that the staff they employ have enough time for their own social life, I have met and talked to some carers and the most talked about problem was that there was no time for their social life and the stress factor they are under.

Part 4 - 20/1 a-b [page 17] Paragraph a-b both need to be changed to **"providing *necessary support*" from** " providing something"?

Part 4 - 23/4 [page 19] change "does not apply" to **"also"** to protect the child from abuse within the service this ruling must also apply to adults.

Part 4 - 24/3 [page 19] change "whether or not it has completed a" to **"and require a full assessment"** so that a full and complete assessment is known before a decision is made

Part 4 - 24/4 [page 19] change from "does not" to **"must"**

Part 4 - 25/1[page 19] In the contexts of this section a young person must have the right to choose to be in contact or not with his or her family or indeed the social service if circumstances are not putting the young person in any difficulty.

Part 4 - 27/3 [page 21] condition 2, but the child/young person must be of a certain age and understands the responsibility of providing care for the cared adult

Part 4 - 29/2 [page 22] the word **"and"** must replace" whether or not." [Without a full assessment the full facts cannot be made of the necessity of the need]

Part 4 - 31/6 [page 23] Consultation with NHS for arranged nursing care for adults, young persons and children

Part 4 - 31/10 [page 24] the words **"not"** and **"does not need to be provided"** must be deleted from this paragraph

Part 4 - 35/3/ [page 26] condition 1, Could the term **"Parental Responsibility"** include trusted friend/friends

Part 4 - 37/1/k [page 28] In these cases the words **"believes or no longer lacks"** must be based upon factual evidence, which includes Medical evidence/advice

Part 4 - 39/f [page 30] note: The person concerned should have the right to be consulted and asked for consent without pressure being applied in given copies to a third party

Part 6 - 60/1/2/3/4 [page 44] A set help period of time must be introduced from the social service for those who are visitors and are not UK citizens so that the system is not abused by the people who use the system to benefit their own welfare.

Part 6 - 60/5 [page 44] Add before may **"subject to vetting of that person"**

Part 6 - 67/1/2/3/4/5/6 [page 49/50] note: Young person/child who is capable of understanding the plan [s] of reviews can be included in the discussions of the plan [s] also the consent of the person must be asked for when copies are given to a third party

Part 6 - 72/ a/b/c/d. [page 50] the young person/child opinion must be taken into consideration.

Part 6 - 76/d-1/2 [page 51] note: The young person or child with an understanding of the religious persuasion must be independently allowed to choose to follow or not the religious persuasion. Those of parental responsibility or any other person [s] must not impose religious following on him or her.

Part 6 - 82/8 [page 56] Add after **"withdrawn** "However the Authority must seek an explanation for the refusal from the young person or child and if necessary an investigation be made to find out the circumstances of the refusal.

Part 6 - 90/3 [page 61] Add "with the exception of disabled persons and requested support from those of 25 years and over depending on the circumstances"

Part 6 - 95/3 [page 65] Add after "regulation" subject to savings account after £10,000 [suggested amount]

Part 6 - 99/6 [page 68] Part 7

[Policing within the Social Service]

As far as I am aware at present any inspection/investigation being made has to inform the care home of arrival and produce an ID. This may give a warning of the impending check and with foresight certain person [s] in the home could prepare for the event so that the real situation is not known. To prevent neglect and abuse in all care homes a special team should be set up to report or prevent such practice in Wales. This team could have unlimited powers within the law to act when necessary at any time and need not announce their presence, [undercover] unless it is an open official investigation. This will not only act as a deterrent to neglect and abuse but will also prevent any sexual abuse of children or lead to arrests of those involved in such crimes. The team can be made up of Police Officers/Detectives and medical staff who have experience in this area supported by the NHS, Police Service, Courts and any local council departments to help them in an investigation. Working at a national level the team would be answerable to the Director of Social Services and the Safeguarding board. May I also ask the committee to consider an idea of psychological vetting/assessments in the Social Service for potential carers in children/Adults Homes as a safeguard for the well being of children and adults whom are cared for, If these measures could be introduce into the bill it would considerably help the Social Service to achieve its goals in the protection of individuals in care.

Respectfully I ask the Committee to consider this idea and incorporate the into the Bill

Part 8 - 132/1-ch1 [page 84] changes from "if" to **"when"** - change from "think it is expedient" to **"have evidence"**

Part 9 - 137/1-ch1 [page 86] change from "time to time" with**"over a set period of time"**

Part 9 - 141/2d-ch1 [pages 88] add provide**"appropriate"**staff

Part 9 - 141/3b-ch1 [page88] change from"appear" to **"are"**

Part 9 - 143-ch2 [page 89] note: As Part 6 - 99/6 [page 68] Part 7
Part 9 - 146/1/b/c - ch2 [page92]

In conservations with carers from different providers the most talked about during these conversations was the fact that carers did not have any social life for themselves or quality time with their families. Most of the time is spent working on their days off having little time for themselves. Providers must give the carers some quality time off to adjust and relax by providing a better working practice. The amount of stress that the carers are under is very high and can in time create severe problems for that individual and their families, which could reflect in their work and may produce serious consequences

Paid carers have the responsibility of a trained nurse, as an example: people who are cared for rely on them for medicines in the correct dosage. Carers in most cases are on a wage that do not reflect the need of their service [i.e. - minimum wage or just above] perhaps a wage system could be introduced based on the ability of the carers skills in providing service.

I ask the committee with respect to review the wage provision and working practice by providers for carers who provide the service and use their influence on the providers to provide a realistic and fair system for carers.

Part 10-ch1 [page97] 153/2/g replace with **"all matters must be considered"**

Part 10-ch1 [page100] 155/6 Replace "at least one person" with **" a proportion of persons who have an interest in the proceedings and"**

1.Definition of disabilities

The Medical model definition [Equality Act 2010] is correct to a point. It is the social barriers that create the problems in society; this has to be recognized by all in the society, when any disability occurs. The guiding principles of policy should be to remove these barriers and create an enabling society, to promote the rights and full inclusion of disabled persons.
There is a fundamental need to remove the institutional, attitude and environmental barriers that create the limitation of opportunities for the disabled in society.

I agree with the panel on this issue and ask the committee to consider an amendment to the Social Service and Welfare Bill and create a new definition of the meaning of disability incorporated within a social Definition model.

2. Independent Living

There seems to be an oversight in the Social Service and Welfare Bill to recognised the need for Independent Living for disabled persons, however there is an opportunity to rectify the matter by combining the **Social Service and Welfare Bill** and **Framework for living** so that a clear understanding of the definition of the meaning of well being is formulated.

I also agree with the panel on this issue and ask the committee to consider the proposal given for the definition of the meaning of well being.

3. Citizen Directed Support

Considering the need for independent living in the Framework for Action the highest priorities that has been identified are in a range of options, choices and control in personalised care and support. This will enable disabled citizens to fulfil their relationships with their families and friends and those who support them in the social service on equal standing in the community.

I agree with the panel on this issue and ask the committee to give an assurance from the Welsh Government that the Code of practice is clarified and support the model of Citizen Directed Support.

4. Charging and Financial Assessment

I am also concerned about that part 5 of the SS&W Bill on charging for domiciliary care. It should not be totally abolished but modified based on the ability to pay without causing any hardship to the person paying a charge, retain the £50.00 per week cap for those who require the need of the support. The charge of care of those who could pay should cover any shortfall and could also be used to exempt certain individuals of from paying any costs at all.

I agree with the panel on this issue and ask the committee to seek confirmation to retain the £50.00 cap but to look at modifying part 5 of the SS&W Bill to include the ability to pay based on user income in total.

Graham Williams
Citizen Panel for Social Services - South East Wales

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 39 - Snap Cymru

Sent on behalf of Denise Inger:

Re: Consultation on the Social Services and Well-being (Wales) Bills

Snap Cymru supports the "Children and unbeatable" campaign and would urge the committee to seriously consider the beneficial impact of repealing the reasonable force justification and, in so doing, promote the welfare of children and families in Wales

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

A response from WCVA

14 March 2013
WCVA
Baltic House
Mount Stuart Square
Cardiff
CF10 5FH

Wales Council for Voluntary Action

A response to the call for written submissions to Consultation on the Social Services and Well-being (Wales) Bill

Introduction

1. Wales Council for Voluntary Action (WCVA) represents the interests of voluntary organisations, community groups and volunteers in Wales. It has over 3,350 organisations in direct membership and is in contact with many more through national and regional networks. WCVA's mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.

2. WCVA works with the major umbrella bodies and networks relevant to this policy area of social services and social care, and the local county voluntary councils (CVCs), and facilitates their involvement in the Third Sector Partnership Council and Ministerial meetings under the auspices of the Welsh Government's Third Sector Scheme. These networks harness the sector's knowledge and experience to inform, shape, influence and contribute to Welsh Government policy, strategies and delivery. The Welsh Government has a Partnership Agreement with WCVA, the CVCs and the Volunteer Centres to provide general support to the third sector, at national, regional and local levels: this recognises and underpins the third sector coherent and integrated support structure, and demonstrates the intrinsic value of the third sector to the quality of life for people and communities in Wales.

3. Our response is informed by our continuing specific work with the sector on social care and well being, including facilitating the:
    - Alliance of Health, Social Care and Well-being Alliances
    - Network 3
    - Local Health and Social Care Facilitator Network
    - Biannual third sector meetings with the Welsh Government Minister for Health and Social Services
    - Third sector representation on key national working groups
    - Citizen Directed Support Reference Group.

4. WCVA welcomes the introduced Social Services and Well-being (Wales) Bill overall, but believes it can be strengthened. The Bill provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities: it is important therefore to ensure that this new legislation best enables transformation of Wales's social care landscape for people and communities. WCVA wishes to submit a response informed by all our working with the third sector.

5. Part 2 – General Functions - 7 Promoting social enterprises, co-operatives, user led services and the third sector

WCVA welcomes the duty on local authorities to promote the development of and availability of social enterprise, co-operatives, user led services and the third sector in their areas. However the way in which the legislation as introduced separates out these community activities, rather than seeing them as linked and interdependent. The separation is unhelpful and is in danger of disabling user/carer/community co-production: restricting to a more meagre service provision as against enabling the growth of richer reciprocity and mutualism. This artificial separation of types of activity is also likely to introduce barriers to empowering service users, carers and communities to co-produce, that is to come up with solutions to their support and care needs that enable fulfilled lives and well-being by making the focus type of organisational structure at the beginning. In designing the service solutions, people and communities need to be able to develop the best and most appropriate model on the continuum of self-help, volunteering, mutuality, community action, organisations and paid employment, and enterprise generating income and building a local financially sustainable future.

Co-production brings the co-design and co-delivery of public services, where activities and services are designed and delivered by a wide range of actors – bringing together the third sector and the public sector with the citizen and the community at the centre. It means investing in community capacity and initiative in order to provide mutual support that complements, and reduces demands on state services. The approach can involve:

- Citizen-directed support
- Service user led services
- Community led services
- Mixed volunteer and staffed services
- Integrated services.

Citizen's voice and control is fundamental to this dynamic, with engagement and active participation in maintaining and enhancing wellbeing through communal mutuality which includes the state.

We want to see the very rich plurality of support and care enabled within our communities, transforming what is accessible and available for people, and that social care is enabled to be reciprocal, as against 'provision for': there is a danger in separating out social enterprises that this will encourage a focus on financial models and 'spin-outs of existing statutory provision, as against transformation through co-production.

Further this separating out of social enterprises, co-operatives and user-led services does not reflect the current third sector. In terms of the legal, regulatory and operational characteristics of the third sector, *Third Sector Statistical Resource 2013*, WCVA reports that there has been a marked increase in the number of companies limited by guarantee or shares (from 350 in 2010 to 1,845 in 2012 – there are 33, 000 third sector organisations in Wales). In terms of sources of funding for the third sector in Wales, trading and investments is now the largest source, at 30 per cent: larger than public giving 27 per cent, Welsh Government and national funding 19 per cent, and local government and health board funding 12 per cent. The legislation does therefore need to recognise and understand an up to date profile of the third sector and its likely future development.

The partial definitions offered in the legislation as introduced for social enterprises and third sector are too vague, and this is recognised in that it then goes on to leave it to the regulations to clarify whether or not: activities might reasonably be considered carried on for the benefit of society; organisations are to be treated as social enterprises, co-operatives, or third sector organisations; and what does, does not or may constitute a section of society.

There is already a definition of the third sector that has been agreed between WCVA and other stakeholders in Wales, including the Welsh Government, as part of the statutory Third Sector Scheme (clause 2.1): the third sector includes '*voluntary organisations, community groups, volunteers, self-help groups, community co-operatives and enterprises, religious organisations and other not for profit organisations of benefit to communities and people in Wales.'*

The third sector is therefore very broad including social enterprises, community businesses, housing associations, co-operatives and mutual organisations, with all third sector organisations having some important characteristics in common, being:

- Independent, non-governmental bodies;
- Established voluntarily by citizens who choose to organise;
- Value driven and motivated by the desire to further social, cultural or environmental objectives, rather than simply to make a profit; and
- Committed to reinvesting their surpluses to further social, cultural or environmental objectives. (*The Third Dimension*, Welsh Government, 2008).

It is essential that the third sector remains on the face of the primary legislation in order to ensure that the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities includes the third sector as a named partner, avoiding the integration becoming solely concerned with Health and Social Services. The legislation needs to enable Wales to take full advantage of the opportunity to transform services and well-being within our communities, optimising the third sector contribution.

WCVA therefore recommends that Part 2: 7 is reworded as follows:

7. Promoting social enterprises, co-operatives, user led services and the third sector

(1) A local authority must promote –

(a) the development in its area of third sector organisations, including social enterprises and co-operative organisations, to provide care and support and preventative services;

(b) the provision of care and support and preventative services in its area in ways that
involve service users in the design and running of services;

(2) In this section –

"care and support" ("*gofal a chymorth*") includes support for carers;

"preventative services" ("*gwasanaethau ataliol*") means services the local authority considers would achieve any of the purposes in section 6(2);

"third sector organisation" ("*sefydliad trydydd sector*") means an organisation which a person might reasonably consider exists wholly or mainly to provide benefits for society, and includes community associations, self-help groups, voluntary organisations, charities, faith-based organisations, social enterprises, community businesses, housing associations, co-operatives and mutual organisations

"society" ("*y gymdeithas*") includes a section of society;

(3) For the purposes of this section, regulations may provide—

(a) that activities of a specified description are or are not to be treated as activities which a person might reasonably consider are activities carried on for the benefit of society;

(b) that organisations are or are not to be treated as third sector organisations;

(c) for what does, does not or may constitute a section of society.

6. Part 2 – General Functions: 8 Provision of Information, advice and assistance

The Bill as introduced states that a local authority must secure the provision of a service for providing people with both information and advice relating to care and support, and assistance in accessing care and support. WCVA is concerned that independent advocacy is not explicitly named within this duty on local authorities to secure provision.

While advocacy was included in the Government of Wales Act 2006 definition of social care services, its omission in this new legislation is puzzling as it is fundamental to 'a strong voice and real control', the first principle in *Sustainable Social Services: A Framework for Action*, Welsh Government 2011.

Independent advocacy is the important additional element alongside information, advice and assistance in enabling people to access care and support, to be heard and have a significant say in what matters to them, make decisions, control their own lives, and contribute as individuals with their own networks and communities.

There are examples of well-developed practice in independent advocacy in Wales, for example Dewis Centre for Independent Living, a third sector organisation working in seven Local Authorities: Rhondda Cynon Taf, Powys, Vale of Glamorgan, Newport, Merthyr Tydfil, Blaenau Gwent and Monmouthshire. Dewis works in partnership with the Social Services Departments of each of these authorities.

WCVA recommends that Part 2: 8 is Provision of Information, advice, assistance and independent advocacy, with a duty on local authorities for securing the provision of independent advocacy.

7. Part 9 – Chapter 1: Well-being outcomes

The first Principle of *Sustainable Social Services: A Framework for Action*, Welsh Government 2011 is 'A strong voice and real control' with the commitment by Welsh Government to 'provide help to make people's voices strong and clear...[and] actively listen and act on what we have heard.' There is nothing within the introduced legislation's duty for Welsh Ministers to issue a statement of the outcomes to be achieved that enables citizen's voice.

The Deputy Minister has introduced the Citizens Panel that attends the Social Services Partnership Forum, supported by Participation Cymru, but this has being for an initial period and is now being reviewed. Complementary to this, WCVA with the major alliances of Age Alliance Wales, Children in Wales, Wales Carers Alliance, Wales Alliance for Citizen Directed Support, Wales Alliance for Mental Health, Wales Disability Reference Group and Wales Association of County Voluntary Councils are running the *I Matter, We Matter* campaign to build the national outcomes through a discussion with people http://imatterwales.org.uk/ Social media in particular enables citizen's voice, alongside the more traditional methods. A formal commitment to this approach to citizen's voice through the primary legislation is essential.

Citizen's voice and control is, we believe, the fundamental principle in transforming services. It is not sufficient to leave this to the Code of Practice and the Code is to 'achieve the outcomes' not to develop the outcomes, the commitment to this transformative approach of people and communities being able to say what is important to them and to hold those delivering against this to account is primary. Social media and civil action is another form of democratisation, not to be ignored.

WCVA recommends that Part 9 – Chapter 1: Well-being outcomes includes a duty on Welsh Ministers to enable citizen's voice in the outcomes.

8. Part 9 – Chapter 2: Co-operation and Partnership

The legislation as introduced states that a local authority must make arrangements to promote co-operation between each of the authority's relevant partners: the list of partners does not include the third sector. This would appear to be because the third sector is not able to be included because as a non-statutory body it cannot be made to pool budgets. The legislation includes provision for partnerships between health and local authorities, including Partnership Boards.

The omission of the third sector in this part of the legislation does not correspond to and complement Part 2: 7 where the third sector is explicitly named. The third sector is not only a service provider (as indicated by Part 2:7) but also a full partner in commissioning, which is identifying need and developing solutions, including resources. The commissioning role is undertaken by County Voluntary Councils (CVCs), working as a partner with local authorities, health boards, and on local service boards.

This legislation in enabling relevant partners to work together also has to recognise increasingly sophisticated ways of financing and working that are developing beyond the traditional public sector methods and boundaries. The WCVA *Wales Wellbeing Bond*, for instance, offers to invest millions of pounds in new approaches with statutory partners and a special purpose vehicle can be one way of organising formal arrangements between partners.

While it is beyond the ability of this legislation to impose statutory duties on independent third sector organisations, there can be a duty on the local authority to invite the CVC (or any successor equivalent body) to be a relevant partner.

There is a precedent for this approach in the 2003 Welsh Government statutory guidance on preparing Health Social Care and Wellbeing Strategies, which includes the following:

The Duty of Co-operation (Regulation 3)

2.4 In formulating and reviewing local Strategies local authorities and local health boards are under a duty to co-operate with:

a. NHS Trusts providing services to the local population;
b. Community Health Councils (CHCs) representing the local population;
c. County Voluntary Councils (CVCs);
d. Health Commission Wales (Specialist Services).
e. any private, business, voluntary or other organisation with an interest in the provision of health and well-being services; and

2.5 If there is not a CVC in the local area the local authority and local health board should co-operate with a body or group which performs similar functions to a CVC.

WCVA recommends that a local authority duty of co-operation with the third sector is included in this primary legislation in Part 9: Chapter 2 in order to ensure that the third sector is fully enabled as a commissioning partner.

CA
WCVA
14 March 2013

Written evidence from BAAF Cymru on Social Services and Well-being (Wales) Bill for The Health and Social Services Committee

1. The Organisation

BAAF is a UK wide association and registered charity with a distinct national footprint across Wales. BAAF Cymru is also registered as a voluntary adoption and voluntary adoption support agency.

We have been educating, advising and campaigning to improve the lives of children and young people in care and on the edge of care since 1980, identifying permanent families for children unable to live with their birth families whilst working to secure placement stability and optimise outcomes.

Members include local authorities, voluntary adoption agencies, independent fostering providers, local Health Boards, law firms and other organisations/individuals working with our priority groups of children and young people. A Helpline is also available and accessible to all including non-members and members of the public.

Our priority objectives in Wales are underpinned by a policy and legislative mandate set out by Welsh Government and include the following:

1. High quality training, consultancy and information to improve delivery of fostering and adoption services.
2. Accessible and responsive advice and information to members of the public affected by adoption and fostering
3. Enhanced public understanding about adoption ad fostering by effective collaboration with partner agencies and the media
4. Provision of specialist advice to Welsh Government
5. Delivery of services informed by the voice of the child

In providing this written evidence BAAF Cymru has sought to represent views from a number of different perspectives based on our experience and work within the field of adoption and fostering and is provided within the context of Q 8 additional comments on specific sections of the Bill. In providing a considered response we have found this to be a fairly challenging exercise without knowing what elements of present legislation are now going to be repealed as a consequence of this Act. BAAF Cymru acknowledges the Welsh Government's long term aim of creating a separate statutory framework for children’s law in Wales, and that the present Bill is the start of the journey. Whilst we welcome the opportunity to look afresh at these provisions we would urge that clarity is maintained in stating which parts of the Children Act 1989 are to be repealed. Furthermore it would be helpful when considering this Act there is an explicit understanding about its interface with new Children and Families Bill for England and Wales that is presently going through the parliamentary process at Westminster.

PART 4 Meeting Needs

cl 27 We would suggest that regulations ,for a young adult sibling defined as between age 18-20 ,ensure extra support if they care for a sibling who is also a child.
cl 40 We would suggest that portability of assessments has some criteria attached to them. It is of course sensible that a person with long term health needs may not require a reassessment if they move a few miles to another Local Authority Area. However vulnerable children’s needs can change when new adults join the household or preventative services are no longer available if the family moves to another area.

Part 6

LOOKED AFTER AND ACCOMODATED CHILDREN

cl 59(4)(a): we would suggest that the term ‘independent fostering provider foster parents’ is added;

cl 60: this is a reworking of the provisions of s20 Children Act 1989. However, the provisions of s20(4), which relate to short break or respite care are missing from cl 60. It is important that, if the provisions of s20 CA are to be repealed, that there should be a provision reflecting a local authority’s powers to provide respite / short break care.

Similarly the provisions of s20(5) are not reflected in cl 60 (the power to provide accommodation in a community home between the ages of 16 and 21 if the local authority considers that to do so would safeguard or promote the child’s welfare. It is imperative that, as in all aspects of the Bill that there is implicit referencing to the UNCRC, particularly when considering the needs of young people post 16.

cl 62(2)(a); we suggest that this is amended from ‘ a duty to promote the child’s educational achievement’ to ‘a duty to promote the child’s education’, so reflecting the all-round benefits of education for all looked after children, regardless of academic ability or achievement.

cl 62(3): we would urge that ‘the views, wishes and feelings of the child concerned’ creates a new subsection (a);

cl 65(8)(a): we suggest that the duty of a local authority to ensure that a child’s placement is near the child’s home should include the caveat ‘if it is in the child’s best interests;’ There are occasions when, for the child’s safety and well-being, he or she is placed at some geographical distance from the family home;

cl65(8)(c): Similarly we would suggest the caveat of ‘if it is in the child’s best interests’ is also included here. There are occasions when the assessed needs of children necessitate a placement apart from their sibling

cl 65(10)–(13): the ‘fostering to adopt’ provision’:

It is BAAF Cymru’s view that this provision will not provide any of the outcomes sought by the Welsh government in seeking early permanent placements for children.

Firstly, this is not the same provision as concurrent planning, where dual approved foster carers and prospective adopters agree to a child being placed with them, usually at the commencement of care proceedings. These carers work with the local authority in facilitating contact with birth parents and working toward reunification with birth family, if that is the court’s preferred care plan. It is only after the court provides authority to place the child for adoption, by the making of a placement order under the Adoption and Children Act 2002 and the adoption agency makes a decision that that child should be placed in an adoptive placement with these prospective adopters, that the foster placement transforms into an adoptive placement.

The chart below sets out the differences between concurrent care planning and ‘fostering to adopt’.

CONCURRENT PLANNING	**FOSTERING TO ADOPT**
Dual approved carers I I I Child placed with concurrent carers (as a foster placement) at start of care proceedings I I I Care proceedings I I I Should be placed for adoption decision I I I Placement Order made (authority to place) I I I Matching panel recommendation and ADM decision I I I	Dual approved carers I I I Child placed with other short term foster carers at start of care proceedings I I I Care proceedings I I I Should be placed for adoption decision I I I Matching panel recommendation and ADM decision I I I Child moves to F to A carers (as a foster placement) I I I Placement Order made

Concurrent carers become prospective adopters	(authority to place) I I I F to A carers become prospective adopters

The ‘fostering to adopt’ carers will also have to be dual approved. However, under the provisions of cl 65 a placement will not be made to these carers until a ‘should be placed for adoption’ decision has been made. The child will, therefore, be moving from an established short term foster placement to the dual approved carers after a should be placed decision and matching decision by the adoption agency but before the court has given authority to place for adoption.

Fostering to adopt creates the following difficulties without the concurrency model’s benefit of maintaining the same placement if the care plan for adoption is accepted:

1) The placement with the carers, in taking place before the court gives authority to place, creates uncertainty for the carers and, more importantly, the child. How can the work usually undertaken with children about to be placed with their forever family be undertaken when the court might not approve the care plan for adoption?

2) The child’s move to fostering to adopt carers will take place at a critical time during care proceedings, where the parties, if contesting the local authority care plan, will be marshalling their evidence and filing statements in order to oppose the local authority. There will inevitably be Articles 6 (right to a fair trial) and 8 (right to a private and family life) ECHR arguments by those representing both parents and children that the adoption agency, in placing with foster carers at this stage who are also approved and matched as prospective adopters for this child, is pre judging the decision of the court. If a court does not approve the local authority’s care plan, then the fostering to adopt placement will have to end, in favour of reunification or a friends and family placement. Are these carers best placed, after only a few weeks of caring for these children, to facilitate another move? How will the child be affected by another move?

3) Even if the above concerns can be overcome, it is highly unlikely that an adoption agency will be able to make a should be placed decision and a recommendation from panel followed by a decision on the match with time to spare before the end of proceedings and the hearing for the application of the placement order. With the provisions of cl 14 of the Children and Families Bill bringing care proceedings into a 26 week timetable, there will simply not be the opportunity to bring about a fostering to adopt placement.

4) The provisions of cl 65(b) specifically demand that the child has been matched, under the Adoption Agencies (Wales) Regulations 2005 with the fostering to adopt carers before placement. Although there is nothing to prevent a matching decision taking place before the placement order is granted, current case law (Re K (Adoption: Permission to Advertise [2007] EWHC 544 (Fam)) warns that permission to advertise a child as available for adoption (in Be My Parent or Children Who Wait) would be unlikely to be granted before a final care order is made.

5) The additional cost and time which would be incurred in approving carers under both the Adoption Agencies (Wales) Regulations 2005 and Fostering Services (Wales) Regulations 2003 is disproportionate to the time a child could be placed before a placement order would be made and so authority given to place with prospective adopters. The time spent with the carers as foster carers would, in most circumstances only amount to six to eight weeks at the most.

Any perceived benefit of an earlier adoptive placement for children under this clause is far outweighed by the many factors militating against it. BAAF Cymru is an advocate of the concurrent model of placement, seeing significant benefits to the children for whom this type of placement is an option. For those children for whom concurrency is not an option, we are cautiously optimistic that the Welsh Government proposals to create a National Adoption Service will ensure consistently across Wales in the timely approval of well trained and rigorously assessed prospective adoptive parents who receive appropriate support during their adopted children’s minority in order to meet their immediate and longer term needs.

In summary rather than the foster to adopt provision, we would have preferred a more general duty to be placed on a local authority to be obliged to consider as part of the permanency plan for a child ,placement with carers who could become that child’s permanent carers where this is in the child’s best interests. The system as a whole needs to move firmly towards recognising the position of the child and the fact that he or she must not carry the burden of adult or system inertia or hesitancy. But it must do so in a way that is fair and just and retains the confidence of society as a whole. This would have benefit for children being considered for long term fostering, special guardianship or for permanent placement with family and friends as well as that small proportion of children for whom adoption is the plan.

cl 67: Care and support plans

BAAF Cymru is in support of the creation of well prepared and supported care plans, but would urge that this new duty does not create an additional layer of administrative form filling for over-burdened social workers and ensures that the new care and support plans dovetail other regulatory provisions concerning planning and reviewing for looked after children.

The Welsh Government has the ideal opportunity, in the creation of this new power, to create an additional duty to ‘ensure that arrangements for the delegated authority for foster carers is considered at each review’. This provision would ensure that the Welsh Government Guidance, ‘Fulfilled Lives, Supportive Communities: delegated Authority for Foster Carers’ is followed far more widely and properly than it has been to date.

Cl 75: Regulations about the disruption of education.

We suggest that any regulations take account of other crucial stages of education in addition to Key Stage 4; for example the move to primary school and to secondary school

Cl 76: Regulations about the placing of children with local authority foster parents.

Cl 76(d)(i) – we would suggest that the better wording for this would be that the placing local authority gives ‘due consideration to the child’s religious persuasion, racial origin(s) and cultural and linguistic background’, with a specific reference to the needs of children whose first language is Welsh.

Cl 76(d)(ii) – again this provision should be widened to the foster parent giving an undertaking that due regard shall be had to the child’s religious persuasion, racial origin(s) and cultural and linguistic background, including those children whose first language is Welsh.

Clauses 79 and 80: contact provisions

Here the Welsh Government has the opportunity to put right something which has always been missing in the contact provisions set out in the Children Act 1989 – to create a distinct duty to promote contact between siblings who are placed separately. Research is clear that some of the most long standing and enduring relationships in our lives are those with our siblings. We believe that far more focus should be given to promoting sibling contact, with the addition of a new cl 79(1)(b) and cl 80(2)(b). This is particularly important at a time when siblings are not always able to be placed together.
Clause 88 Young people entitled to support under 89 -96
Whilst we understand the need to distinguish between different categories of young people we would urge some reframing of this clause as an unintended consequence could result in young people being referred to by their category rather than status.

PART 7 SAFEGUARDING

The first important point to make explicit under this section is that safeguarding is neither distinct or separate from fostering and adoption . We need to be mindful when debating such issues of both the Brighton and Hove and Wakefield SCR recommendations , within the context of maintaining respectful uncertainty in matters pertaining to the needs of vulnerable children living in both fostering households and children who are adopted .

Specific points to consider are as follows
cl 108 **Duty to report children at risk**.Without the framework of duty to investigate, this could be seen in isolation, as purely a duty to **report** children who are the responsibility of other Local Authoriries without the explicit need to investigate all children deemed at risk and then, as appropriate, the duty to inform the area where the child is living or proposes to live .This clause would be strengthened by including the explicit duty regarding 'child at risk'in own authority as well as for those with whom there is a link to another local authority.;rather than just a cross reference in 108 subsection (3) to the s47 TCA CA 'duty to investigate ' children at risk 'be they in the home authority or those alluded to in subsection (1)

(1)-(3) This clause cannot be viewed in a vacuum, there is a need to dovetail the definition of 'risk' included here with the other thresholds of concern contained within other legislation, namely the 'in need' (TCA 1989 s.17); 'significant harm' (TCA 1989 s.31) definitions in regard of which there is a developed shared understanding and agreed assessment format . This would be helpful in order to ensure that the whole continuum of child welfare from child in need to child in need of protection is afforded sufficient consideration.

This is particularly relevant if certain aspects of The Children Act 1989 were to be repealed.

The proposed sections in the Bill do not appear to consider these thresholds other than by this reference.

109-118 – Safeguarding Boards

In the context of the changing landscape of independent external service providers, in relation to both the National Independent Safeguarding and the Safeguarding Childrens' Board consideration should be given to ensuring that the organisational governance arrangements cover these independent providers.

cl 117 – Whilst developing a shared understanding and providing a structured forum for cross fertilization is positive, historically there are very good reasons for separate consideration of safeguarding responsibilities for adults and childen in order to ensure due regard for children's needs.

THE NATIONAL ADOPTION REGISTER

BAAF Cymru accepts and agrees with the Welsh Government that the creation of a separate National Adoption Register for Wales is both desirable and achievable. However, we would urge the Welsh Government to consider the timing of such a departure from the joint England and Wales Register. Current statistics obtained by present Adoption Register for England and Wales evidence that, for every prospective adopter from a Welsh Agency placed on the current register, there are 16 children from Welsh Local Authorities waiting for a match. This compares with the position in England where for every prospective adoptive family registered, there are seven children waiting. We are informed by the current Register Manager that within the context of this data more Welsh children are being placed in England than English children being placed in Wales.

Whilst we would all wish to give Welsh children the opportunity to retain their birthright of growing up in their own country, and with the establishment of the National Adoption Service for Wales and intended improvements in the recruitment of adoptive families this may be possible in the future, the current shortfall is very concerning. There are presently no Welsh adopters on the register approved for sibling groups of three or more. We would not wish there to be the unintended consequence of the creation of a Welsh National Adoption Register at this stage to be a further hampering of successful family finding. Of course there will be reciprocal arrangements between the four Nation Registers, but systems do need to be embedded to ensure they are efficiently and operationally robust to respond to need

We would therefore suggest that, for a period of time, the Register is maintained for both England and Wales until such time as the new NAS has been established and we have sufficiently increased our Welsh pool of adopters to meet the needs of more children in Wales.

Chapter 2

Co-operation and Partnership

151 **Adoption Service –joint arrangements**

This small section of the Bill which refers to adoption specifically will allow Welsh Government the powers if necessary to direct Adoption agencies to join together in relation to specified services without amending the Adoption Agencies overall regulatory responsibilities. In its broadest sense this is to be welcomed and demonstrates an on-going commitment to have a more inclusive and consistent adoption service across Wales. However the detail provided is limited on what these powers may enforce and what criteria would constitute enforcement. Is it in respect of those Adoption Agencies that are deemed failing or is it to assist in the formation of national and regional delivery of services under the auspices of a National Adoption Service .For example 3 (d) working in conjunction with registered adoption societies.. What circumstances would necessitate Welsh Government directing Local Authority Adoption Agencies to work with a Voluntary Adoption Agency? 3(f) Does this mean in practice that if necessary the present Adoption Agency (W)Regulations 3 that restricts more than 2 Adoption Agencies joining together to hear panel business can be amended through these powers ? If so this is to be welcomed particularly as would provide the legislative mandate to rationalise resources and enable regionalised organisation of adoption panels .Very disappointingly there is no mention of post adoption services in specified arrangements under (3).. one could interpret that this could come under financial arrangements to deliver such services but we would strongly urge that the importance of the provision of adoption support services to be included within this section. Indeed at BAAF Cymru we would very much welcome Welsh Government considering the report recently produced by the House of Lords Select Committee which urges Westminster to include adoption support in primary legislation.

Children adopted from care have complex needs which can persist after adoption despite the ordinary loving care of their adoptive families. Unless these children and their adoptive families are properly supported there is a high risk these difficulties will not improve and ultimately the placement may break down. This can only result in more damage to the child as they return to care. It also leaves the adoptive parents devastated.

Current legislation gives people affected by adoption the right to an assessment for adoption support services, but no duty to provide those services. There is also a postcode lottery of provision from one authority to another.

The House of Lords Scrutiny Committee Report highlights all of these issues in their comprehensive and important Report. This recognises that in order to increase the number of adopters coming forwards and ensure adoption succeeds, local authorities, health and education should have a statutory duty to provide support. The Committee recommends that birth parents from whom children have been removed should also receive support to break the patterns of behaviour which have led to the removal of the child. This is a fundamental recognition of the plight of many of these women – and for many, time and time again. BAAF wholeheartedly supports the recommendations of the Committee especially at a time when we are considering a once in a generation opportunity to reform adoption services in Wales. We do recognise and accept the significant impact on resources. But when the State has intervened in such a dramatic way in removing and then placing a child for adoption, it is a socially responsible investment that will, over time, reap dramatic rewards.

Evidence provided on behalf of BAAF Cymru by Sarah Coldrick , Legal Advisor and Wendy Keidan Director BAAF Cymru

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 42 – Dr Meurig Williams

Dear Sir or Madam,

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

I am responding to the above as an individual consultant physician working in Wales, with 35 years' experience of practicing general internal medicine in hospital settings. My opinions on the particular issue referred to below is shared by many medical and nursing colleagues with whom I have discussed these matters.

Reducing bed blocking

The separate funding streams for health services and social care has resulted in the development of complicated and expensive burocratic processes to determine the funding channels for many hospital inpatients with social care needs who are medically fit for discharge. The resulting delayed transfer of care has several adverse consequences. Hospitals are a potentially hazardous environment for this vulnerable group who may succumb to hospital acquired infections during the extra time spent in hospital. This extra time also represents a substantial economic cost, as hospital care is more costly than care home or community care. It has been previously shown that hospital wards run most efficiently when the bed occupancy in around 85%. Delayed transfer of care makes a major contribution to the near 100% bed occupancy currently seen on many wards, with consequent disruption of activity, as illustrated by the following examples: 1) patients requiring specialist care on a stroke or cardiac ward often end up being housed wherever a bed can be found on another ward and may subsequently be moved more than once during their hospital stay; 2) patients inappropriately housed on a surgical ward often results in cancelled operations; 3) when there are no beds available to transfer acute admissions from A&E departments, the latter may become overwhelmed resulting in a build up of ambulances waiting to transfer ill patients. I would therefore urge that pooled budgets should be made a requirement in new arrangements for cooperation between local authorities and health boards, so as to improve the efficiency of the discharge process.

Yours faithfully

Meurig Williams

Dr Meurig Williams
Consultant Physician
Hywel Dda Health Board

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 43 – Grwp Mynediad Arfon Access Group

Chair ~ Vin West ~ Cadeirydd
Glyn Dŵr, Llandwrog Uchaf, Caernarfon, Gwynedd LL54 7RA
Tel: 01286 880761 Email: vin.west99@btinternet.com

Friday, 15 March 2013

Health & Social Care Committee
National Assembly for Wales Cardiff Bay Cardiff CF99 1NA
Attn: Sarah Beasley, Clerk to Health & Social Care Committee, Legislation

Hi Sarah,

Please find a brief note that I would be very grateful if the Committee could consider when scrutinising the Social Services & Wellbeing Bill.

I am a full time Carer for my 29 year old daughter, Chair of my local Access Group in Arfon in Gwynedd, Secretary of the Gwynedd Direct Payments Forum, a Council Member of the Wales Alliance for Citizen Directed support, and a member of the North Wales Citizens' Panel on Social Services whom I represent on the Partnership Forum.

Disabled people and Carers were very hopeful about the potential for transformational change promised by the Deputy Minister in the Sustainable Social Services policy document, along with some very excellent co-productive work on the Independent Living Framework and the I Matter We Matter work on the Outcomes Framework and the earlier consultation document on the Social Services Bill.

From discussions today with Welsh Government officials in the All Wales Citizens' Panel meeting it would seem that there are some misunderstandings regarding terms that we had thought were widely understood and unanimously agreed:

- Many of us were dismayed to see the term 'choice' lost from the phrase 'choice and control' to be replaced by 'voice and control'. This it seems is as a result of rejection of the direction of travel of developments in Social Services in other countries towards a commercialised approach. While voice is important we feel that choice is critical and it is important to bring it back into the Bill, albeit accompanied by a clear definition strapping it firmly to the Sustainable Social Services agenda.
- Similarly, there seems to have been concern expressed that the term 'independent' in 'independent living' refers to managing without support. This is

very worrying indeed since we thought that the Framework for Action on Independent Living had pinned down disabled people's preferred definition of independent living as:

  - "*Independent Living enables us as disabled people to achieve our own goals and live our own lives in the way that we choose for ourselves.*" *The* document goes on to state that "the term 'independent living' is used in two ways: - to express the aspirations of disabled people as set out above; and - to describe an approach to public service provision that supports and empowers this aspiration." We hope that your committee can urge the Deputy Minister to use this agreed approach in this Bill, not least to ensure consistency between it and the Independent Living Framework

- The third area where confusion seems to have seeped in is the concept of Citizen Directed Support. Again we thought that consensus had been broadly achieved here and we were surprised and disappointed that after a great deal of work on the consultation paper on CDS by members of WACDS and an apparently firm commitment to CDS in the Welsh Local Government Implementation Plan, the paper had somehow slipped beneath the surface and the language in the Bill has shifted back a decade or two and now talks about 'citizen-centred' instead of citizen directed. From discussions it would appear that a concern was expressed that not every disabled person wanted to control the provision of their services, but this is not news and no-one ever anticipated forcing everyone into a managerial position.

- We have been constantly available to discuss any and all of these concerns as they arose and it is frustrating that decisions have been taken that radically change positions that we thought had been agreed without consultation. This is particularly frustrating given the groundbreaking establishment of the Citizens' Panels which, while a little late in the process, we nevertheless all welcome . So again we would be most grateful if the Committee could encourage the recovery of the consultation on CDS and bring the appropriate progressive language back into the Bill

- The next area of concern that we feel goes to the heart of Welsh Government's approach to and respect for disabled people is the definition of 'disability' - this is crucial because it sets up a whole sequence of positive connections and attitude shifts if the language is right but reinforces decades of institutionalised disablism if not.

  - In adopting the Social Model of Disability in 2002 the Welsh [Assembly] Government committed itself to distinguishing between 'disability' and 'impairment', where 'disability' exists exclusively in the barriers with which society excludes and marginalises people with 'impairments'. One cannot therefore 'have a disability'.

  - I am sure that Miranda French, Paul Swann and I would be happy to sit down with the Welsh Government legal people to arrive at wording that is legally acceptable while fully supporting and promoting the Social Model so that government are meeting their Public Sector Equality Duties. It would seem that since the Social Services & Wellbeing (SSW) Bill is primary legislation it is the perfect opportunity to correct the drafting error in the Equality Act 2010 that used a regressive 1995 definition of disability rather than the 2005 definition based on substantial and long term impairment coupled with societal barriers, which disabled people had been promoting since the early 1970s.

- Getting the language and terminology right is the beginning of applying the Social Model across the piece so that removal of barriers to inclusion is the goal rather than the (unintentionally) patronising and paternalistic 'care' approach to the aspirations of disabled people. As was unanimously agreed in the Partnership Forum meeting, Carers provide care for family or friends whereas disabled people require not care but 'support' from local authorities.
  - This then leads to reviewing the use of the term 'care' in relation to services that local authorities may offer. Again, this is not a matter of semantics but of being clear about what service or support can be offered and who can provide it.
  - The logic here is that once the title 'Carer' is defined as someone providing support without expectation of financial reward then the only people who can provide 'care' are 'Carers' because everyone else (Support Workers, Personal Assistants, Local Authority Support Staff, Commercial Support Agencies etc.) provide support in return for payment, either from the individual, their employing agency or through the Revenue Support Grant.
- The next key definition then is Independent Living, and Disability Wales has of course provided this as the basis for the Framework for Action on Independent Living, so compatibility between these two strands will obviously avoid confusion and strengthen the Bill and the Act.
  - In order to achieve Independent Living the mechanisms of support need to meet individual requirements, whether though Direct Services, Agency Staff, co-productive arrangements or directly employed Personal Assistants under a Direct Payments scheme. Citizens therefore need a clear summary of their options, so plain language definitions will be needed for all possible options or combinations and the personnel involved.
  - There is a huge difference between a citizen choosing between services and that same citizen directing their own services, so again we need I believe to return to the consultation on Citizen Directed Support so that both individuals and local authorities are clear about the degree to which individuals can and should have autonomy over their support and are encouraged to design their own support plan and package. One of the North Wales Panel members reported that her daughter was supported to write her own Care Plan and having done so discovered that she was the first person in Wales to have done so.
- Lastly, that same citizen may need advocacy in constructing both support plan and support package and there is an urgent need for clarity about what

constitutes independent advocacy. There is a very strong argument in favour of Centres for Independent Living (CILs) as the natural home for independent and peer advocacy, which of course is why the Deputy Minister chose to launch the consultation on the SSW in Dewis CIL.

  - There were detailed discussions about independent advocacy in the consultation events on the earlier version of the Bill so it is extremely discouraging to have lost the notion of advocacy from the current text to be replace by references to information and advice, both of which are important but neither of which can replace independent advocacy by someone who is not controlled by the local authority and who is a peer so understands many of the relevant issues.

Thank you for your attention,

Vin

Vin West

RCN Wales response to the National Assembly for Wales Consultation on the Social Services and Well-being (Wales) Bill

The Royal College of Nursing in Wales welcomes the opportunity to respond to the National Assembly for Wales consultation on the Social Services and Well-being (Wales) Bill.

Question 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.

The Bill's aim to bring together duties and functions in relation to well-being of people who need care and support and carers who need support is a positive one. We support the idea of bringing legislation together and modernising it. The legislation should be clear, accessible and understandable for people who are affected by it.

There are some concerns. The Bill, as currently worded, places a duty on local authorities to maintain well being for people who need care and support and carers who need support. However, it remains unclear about whether this covers people with a need or an eligible need. This requires clarification and an explanation of how this would work in terms of preventative services or self-funders. This must be resolved in order for the Bill to meet its stated aims.

Repeals

There are positive intentions around well-being. However, without a clear list of repeals and more explicit reference to which legislation is being replaced it is unclear if this is achieved. The Bill clearly aims to move current legislation onto the Welsh statute books. However, as the list of repeals is as yet incomplete we are concerned about whether all appropriate statutes have been included.

For example, in current legislation the Chronically Sick & Disabled Persons Act 1970 (Section 2) requires local authorities to assess the needs of a disabled person (as defined by National Assistance Act 1948, Section 29). The Welsh Government has said it would like to simplify existing legislation into a single statute, so we expect the single duty to assess in the Social Services and Well-being Bill would replace the duty in the 1970 Act and the others that exist in other Acts. However, the assessment duty in the 1970 Act exists in legislation covering England and Wales.

It might be that this and other relevant parts of existing legislation would need to be revoked to make way for the Social Services & Well-being Bill.

Sustainable Development White Paper

We also note the White Paper for the Sustainable Development Bill aims to enhance: ‘economic, social and environmental wellbeing of people and communities’. However, this Bill contains no reference to the Social Services and Well-being (Wales) Bill (and vice versa), which is a cause for concern. We trust that there will be cross-government working to ensure these, and all, pieces of legislation complement each other and work together in practice.

Question 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 positive objectives laid out in the Explanatory Memorandum are welcome. However, it is not evident that these aspirations are not realised within the current drafting of the Bill.

Voice and control

The principle of the person centred approach of voice and control for people using care and support services is a welcome one. However, important sections of the Bill will not achieve voice and control, as it is currently drafted. Parts the Bill still retain a service led model (matching people to available services) rather than focusing on individual outcomes and finding ways to meet those needs.

Assessment and care planning

It is essential that local authorities actively involve the person in the whole assessment and care planning process to jointly produce the care plans and outcomes, and to promote the options that are available for people to exercise voice and control. This applies across all local authority duties and is not restricted to individual methods, such as direct payments.

It is known there is limited take up of direct payments in Wales as individuals can access direct payments as the law stands now. There is a lack of awareness of the availability of direct payments. The Bill should therefore lead to the production of accessible information about direct payments, so that they can decide whether or not to use them.

Formal assessments are the best way to establish people’s care and support needs. We would be anxious to ensure, therefore, that access to assessments is not restricted in any way by the Bill. By not making carers’ assessments portable we believe the Bill will undermine the policy intention to extend the same entitlements to carers as the people for whom they care.

Partnership working (e.g. Local Health Boards)

The role of partners (such as Local Health Boards) requires further clarification. There needs to be further explanation of whether the Bill extends the role of partners beyond that which is already in place.

More detail around the Welsh Government’s intentions for charging would be particularly welcome.

Eligibility

It is essential that the proposed introduction of national eligibility criteria would not want lead to restrictions on care by local authorities. The eligibility framework is a key component of the practical application of the Bill because it will set the criteria used by local authorities to decide whether or not a person’s needs or desired outcomes will be met by local authority social care and support services. In the absence of an existing eligibility framework it is not possible to analyse how the Bill’s proposals will work in practice.

Without knowledge of the current numbers of people currently within each level of ‘need’ in the current system it is not possible to estimate the financial (and other) implications for individuals and local authorities of any proposed changes.

Well-being

The Bill needs to identify more clearly the steps envisaged to provide proportionate support to people. This links to the national eligibility criteria and assessment, and to the intention to promote self responsibility and voice and control.

Duties to meet needs in different ways

The Bill identifies the importance of providing advice, information and signposting to anyone who requests it. The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; the difference between when a person ‘needs’ some targeted intervention to prevent them needing care and support and the point at which they are deemed to have ‘care and support’ needs. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences for this Bill.

Question 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.

Charging

It is a concern that there is a proposal that the Bill will allow local authorities to charge for information and advice. Information and advice is essential to meet the preventive aspirations of the Bill but there is increased likelihood that individuals will not be able to pay and therefore not have access to preventive resources. It would be helpful for there to be more information about this policy intention, i.e. what kind of information and advice services might be subject to charging.

Preventative services

We welcome the acknowledgement of preventative services in the Bill but believe the current drafting raises issues for implementation. Preventative services are important to both making social services financially sustainable and in promoting wellbeing and positive outcomes. It would be helpful if there is a definition of preventative services on the face of the Bill to ensure that local authorities provide both general, universal prevention and more targeted, person-level prevention.

We cannot see how the Bill will incentivise early intervention. Our concern is that prevention work will not bring benefits if the threshold for accessing them is set too high.

Resource implications

We have concerns about the Regulatory Impact Assessment. These are dealt with in responses to Question 5 and 7b.

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

Information and advocacy services

Information and advocacy services are vital to promote voice and control, so that people have the information and advocacy support they need to access services to raise their wellbeing.
Access to advocacy will be important to enable people to access new service models brought about by the Bill.

Promotion of co-operatives, social enterprises etc

If the Bill is to change practice and realise the policy intention, the current list in the Bill of examples of services should be expanded.

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

The aspirations stated in the Explanatory Memorandum that the Bill is welcome. However, there are many potential barriers to implementation of the provisions of the Bill. There is a lack of clarity on costs of the Bill. The Explanatory Memorandum acknowledges the cost of staff training in social services but this seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services.

There is no comparison with the costs of the current system. How is it possible to know what is a cost effective change?

Joint working

There is a lack of clarity about the explicit duties on health service providers. It would be useful to have a clearer explanation of how joint working will be practically applied.

Question 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.

There is not sufficient balance between the powers on the face of the Bill and details that will be left to regulation. It would be helpful to see additions, particularly relating to definitions (such as what is an assessment) on the face of the Bill.

Definitions and clarity

One of the themes of this response is a concern about lack of clarity. It is important that proposed new legislation is easy to understand. Some definitions in the Bill are either not as clearly defined as they could be or defined in a way that may have unwelcome consequences.

For example the following concepts are not defined:

- Assistance.
- Abuse and neglect.
- A care and support need.
- Disabled child.

Principles

On outcomes it's important that the Bill needs to focus on the person and individual outcomes, not fitting people into existing services.

Regulations

There are concerns the Bill could be more prescriptive about what 'must' be detailed, rather than what 'may' be detailed in regulations.

There are many examples of this. One example exists in Section 115:

115 Funding of Safeguarding Boards

(3) Regulations **may—**

(a) require payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented, and

(b) provide for how the amount of those payments is to be determined in respect of a specified period.

There is a clear case that regulations **'must'** require partners to make requirements and provisions as listed in (a) and (b).

Question 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)?

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.

Much of the detail of regulation is yet to be drafted. It is important that this detail is published before Assembly Members are required to vote on the Bill's general principles at the end of Stage One.

There is concern about the level of subordinate legislation that is left to negative rather than affirmative procedure. An example of this is Section 48 in the table in the Explanatory Memorandum, Chapter. Regulations on "carrying out financial assessments" are a significant issue which should be subject to 'affirmative' procedure to ensure the regulations are given proper scrutiny. It may be minor in terms of the number of regulations but it will have a huge impact on individuals who need care and support and carers who need support.

This table needs to be reconsidered with the needs of those who use social care and support services taken into account.

7 (b)
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.

Concerns exist about the Regulatory Impact Assessment. As stated earlier the only cost listed to implementation of the Bill is cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services. There is no comparison with the costs of the current system. How is it possible to know what is a cost effective change? There will be additional costs that are not included such as for the establishment of new national safeguarding boards.

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

Paying for care

There is no detail about paying for care in the Bill, i.e. the cost to individuals for paying for the care and support that they need. The Dilnot Commission report *Fairer Care Funding* was published in July 2011 and has been taken into account by UK Government announcements. The Welsh Government need to publish proposals for the cost of care as soon as possible as the Dilnot review suggests the current social care and support system is underfunded.

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 increase spending on social care and support services.

These costs should be accounted for in the Regulatory Impact Assessment. They could also help the Welsh Government make the case for change and give a more realistic backdrop to the Bill.

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

This response has been prepared by Dr Julie Doughty, Lecturer in Law, Cardiff University Law School, Dr Sally Holland, Reader in Social Work and Dr Heather Ottaway, Lecturer in Social Work, Cardiff University School of Social Sciences. This response is made in a personal capacity and our views do not necessarily represent those of Cardiff University.

We are responding to parts of the Bill that relate to services for children within our respective areas of expertise.

1. We welcome many aspects of the Bill, including the desire to simplify and integrate complex laws regarding social services provision, the commitment to greater involvement and control by people who receive services and the emphasis on prevention and early intervention.

Large parts of the proposed changes will be included in regulations published by Welsh Ministers. We believe it will be important that these regulations are made available in accessible forms for public consultation and scrutiny because of the likely significant implications of these regulations and the duties placed on Welsh Ministers by the Children's Rights Measure 2012.

Many social workers and social care workers currently feel restricted in their attempts to work effectively with individuals and families in the community due to excessive administrative demands. We would welcome the introduction of regulations that would remove unnecessary bureaucratic demands on practitioners. They should instead be enabled to practice relationship-based social work in order to meaningfully engage with individuals, families and communities to assess needs and enhance well-being through providing evidence based support and, if necessary, decisive action to prevent harm.

Sections 12 and 19 are new provisions enabling eligibility criteria for assessing children in need. While there are advocates of this idea,[1] attempts in England to introduce criteria under s 17 Children Act 1989 have proved very problematic. Lawful criteria will have to be developed with very extensive consultation.[2]

2. Most of **Part 6** of the Bill reproduces sections from the Children Act 1989. We understand that the purpose of the Bill is to integrate care for looked-after children into a framework for social care for Wales. We note that the Explanatory Memorandum indicates that there is no substantive change from the 1989 Act here

---

[1] Mitchell, E. (2007) 'R(LH and MH) v London Borough of Lambeth: provision of services for disabled children' *Child and Family Law Quarterly* 19

[2] Hoult, P. 'Lambeth withdraws children in need eligibility criteria after JR challenge' *Local Government Lawyer* 19 June 2012

so this might be achieved more effectively by simply cross referencing to the 1989 Act. While we support new legislation in Wales that provides for improvement in services, replicating and re-numbering existing legislation seems to us to introduce unnecessary complications.

It will be essential to clarify which legislation applies in Wales after the Bill is passed as there is potential for great confusion amongst legal and social work agencies. For example, from what point in time will a child be accommodated under **section 60** instead of under s 20 Children Act 1989? Is it intended to repeal the equivalent sections of the 1989 Act in Wales?

3. Implementation of the 1989 Act was accompanied by a widespread multidisciplinary training programme across England and Wales. Such a programme will be required for all social work and legal practitioners in Wales, including the judiciary, to ensure that the correct legislation is understood and applied. We welcome the commitment in the Explanatory Memorandum to funding extensive training. The changes will have implications for legal and social work education providers in Wales. We will need to know to what extent to adapt our curricula to address the envisaged timescales for the changes to take effect and the fact that our students could be taking up employment in England or Wales.

4. We have not had time to study the clauses closely enough to ascertain whether all the amendments under the Children and Young Persons Act 2008 which had been implemented only in England are now incorporated in the Bill. These amendments led to the English government issuing substantial volumes of statutory guidance. Presumably detailed new guidance will be issued in Wales. This would be quicker to produce if the replication we refer to above was removed.

5. We note that **Section 65 (10) - (11)** introduces the status of ‘fostering to adopt’. This is a controversial provision (being debated in the House of Commons this week in the Children and Families Bill 2013 which was preceded by consultation in England. However, because the clause in the Children and Families Bill does not apply in Wales there was no specific consultation in Wales about this provision. The Welsh Government does not appear to have removed the duty to consider kinship placements and placing sibling groups together to the extent that is proposed in the English legislation, which are amongst the causes for concern in England. However, there are other practical problems with ‘fostering to adopt’ and we urge the Welsh Government to undertake a separate consultation on this section of the Bill.

Research evidence suggests[3] that for those children for whom it is appropriate concurrent planning is a positive option and we would welcome the expansion of

---

[3] Laws, S. et al. (2012) *Concurrent Planning Study: Interim Report*, Coram, http://www.coram.org.uk/assets/downloads/Coram_Concurrent_Planning_Interim_Report_final.pdf [accessed 11/3/13]

concurrent planning services into Wales. Clarification is required about how the ‘fostering to adopt’ provision in the Bill differs from, or is similar to, concurrent planning. We welcome the provision that fostering to adopt should be considered *if* it is not appropriate to place the child with a relative or friend. There is evidence that family and friends care is a positive permanency option for children[4]. In general we would welcome moves to encourage mechanisms which allow and encourage an earlier move to a prospective adoptive home if this has been included in the care plan of the local authority and birth parents have had the opportunity to respond to this plan during court proceedings.

Sections 79 and 80 consider the issue of looked-after children’s contact with birth family members. We are concerned that there is no specific provision here for the maintenance of contact with separated siblings. Sibling relationships have the potential to be our most enduring relationship through the life-span, but most children in care or adopted are separated from at least one sibling[5]. Furthermore, whilst existing practice guidance emphasises the importance of promoting contact between separated siblings, the extent to which this is carried through in practice is questionable. Research indicates that contact between separated siblings is difficult to establish and tends to dwindle or cease over time, particularly if siblings are subsequently adopted[6]. We therefore recommend that sections 79 and 80 are strengthened to include a duty to promote contact between separated siblings.

6. **Section 88.** We concede that the definitions used in the Children Act 1989 for young people leaving care are complex and we welcome an attempt to clarify these. However we do not think it appropriate to refer to young people leaving care as ‘Category 1’, ‘Category 2’ etc which is terminology used in the prison service. We suggest that more suitable terminology is used here.

7. **Adoption.** We believe that clarification is necessary on the future status of the National Adoption Register in Wales, in the light of clause 6 of the Children and Families Bill.

We welcome the intent to improve adoption services for children in Wales. The proposed national adoption service has the potential to increase consistency and timeliness of services and we await a more detailed plan with interest. We wish to highlight the conclusions of both the NAW Children and Young Person’s Committee

---

[4] Hunt, J. (2008) *Family and Friends Care: research and Practice Briefing,* DCSF, https://www.education.gov.uk/publications/eOrderingDownload/DCSF-RBX-03-08.pdf

[5] Rushton et al (2001) *Siblings in Late Permanent Placement*. London: BAAF; Selwyn, J., Sturgess, W., Quinton, D. and Baxter, C. (2006) *Cost and outcomes of non-infants adoptions*, London: BAAF; Neil, E. et al (2011) *Supporting Direct Contact After Adoption*, London: BAAF.

[6] Neil, E and Howe, D (2004) *Contact in adoption and permanent foster care*. London: BAAF; Sanders, R (2004) *Sibling Relationships: Theory and Issues for Practice.* Basingstoke: Palgrave Macmillan; Thomas, C. (2013) *Adoption for looked-after children: Messages from research*, London: BAAF.

Inquiry into Adoption and the House of Lords Select Committee on Adoption Legislation which emphasise the need to strengthen the provision of post-adoption support to adopted children and their families in order to enhance well-being and prevent adoption break down. This Bill provides the opportunity to strengthen legal rights to receive post-adoption support following an assessment of need.

15 March 2013

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 46 – Wales Carers Alliance

Cynghrair
Cynhalwyr Cymru
Cymdeithasau gwirfoddol yng Nghymru yn ymwneud â Chynhalwyr

Wales
Carers Alliance
Voluntary organisations in Wales concerned with Carers

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

Wales Carers Alliance response **15.03.13.**

Consultation questions

1. **Is there a need for a Bill to provide 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?**

   The Wales Carers Alliance welcomes this once in a generation opportunity to provide a single Act for Wales that brings together local authorities and partners duties and functions in relation to improving the well-being of carers and people who need care and support. We support the high profile and status given to carers throughout the Bill and welcome the clear duty for carers to be treated in the same way as the person needing support. This recognition acknowledges the key role played by carers in social care across Wales and offers the potential to transform the way carers are supported by the statutory agencies.

   We fail to understand therefore the rationale behind excluding carers from the positive introduction of portability of assessment and care plans from one local authority to another. The exclusion of carers from this section of the Bill is inconsistent with the stated aim of treating carers in the same way as the person needing support and we call for carers to be fully included the portability of assessment and care plans, as recommended by the Dilnot Commission (Fairer Care Funding, The Report of the Commission on Funding of Care and Support 2011).

   There is currently a poor knowledge and understanding of existing legislation amongst social care practitioners across Wales so a single Act could provide a valuable impetus to the delivery of better care and support services. The Alliance however, has some concerns about the extent to which the Bill as currently drafted fully integrates existing legislation which has provided the legal framework for social care for a considerable time. It will be vital to make sure that the relationship between the new legislation and previous laws is made explicit, so that the implications of changing or removing key duties and definitions is clear and understood e.g. definition of a disabled child (Children's Act 1989 or duty to provide aids and adaptations (Chronically Sick and Disabled Persons Act 1970).

The Alliance appreciates and supports the ambitious aims and objectives of the Bill but are not convinced that the Bill as it currently stands does enough to address many of the longstanding legal barriers to greater cooperation and coordination between health and social services. There are numerous mechanisms in place currently to encourage and enable greater joint working between health and social services which are not fully taken up and the Bill does not seem to substantially change the legal status quo in this area. If this Bill is to achieve its stated aims and objectives we would call on the Welsh Government to strengthen the duty on health and social Services to cooperate.

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 Wales Carers Alliance welcomes the ambitious aims and objectives of the Bill outlined in the Explanatory Memorandum in particular the full inclusion of carers, the emphasis on voice and control, the focus on well-being and prevention and promoting user-led and socially orientated services.

Our key concern would be that the wording of the Bill as currently drafted does not clearly describe how these admirable aims will affect carers and the people they care for on an individual basis. The sections on well-being and prevention tend to be general rather than specific to individuals and therefore do not clearly explain how the new law will facilitate the flow between universal, preventative and targeted care and support. We do not feel that the Bill is prescriptive enough on preventative services and well-being at an individual level e.g. who will take the decision to offer preventative services or will there be another level of assessment in addition to those already outlined and will there be a charge? This could potentially work against the objective of transforming social care and possibly end up reinforcing a narrow service led approach.

We are concerned that we have not had enough information on how eligibility thresholds will be formulated and at what level will needs be set to become eligible for services. In our view, if the criteria for eligibility is set too high then this this will have a negative impact on the aspirations for prevention and well-being contained within the Bill. Not everyone will want or need contact with social services or have a formal assessment to access services. For those individuals who do request assessments, if eligibility criteria is set too high then preventative measures and services may not be provided until that individual reaches a crisis point, which happens all too often at the moment. The lack of information on eligibility criteria is a serious cause for concern and as it stands the current wording of the Bill could easily be read to facilitate increased gatekeeping by local authorities.

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.**

   To deliver sustainable social services it is essential to have a thorough knowledge and understanding of existing costs and future challenges. The Alliance have reservations about the current Regulatory Impact Assessment provided in the Explanatory Memorandum and would call for a much more thorough analysis of the real cost implications of the Bill. We are concerned that the costs of the new system may have been under-estimated and given the opportunities for charging contained within the Bill we would be anxious that existing and additional costs will increasingly be transferred onto service users and carers.

   The Alliance has particular concerns over the sections in the Bill on charging for services to carers as well as charges for preventative services and the provision of information and advice. The possibility of charging for information and advice seems particularly perverse and would seem to undermine the transformative agenda contained in the Bill.

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

   The Wales Carers Alliance welcomes the high profile and status given to carers throughout the Bill, we believe that this provides a real opportunity to transform existing social services provision by putting carers at the heart of social care in Wales. For this change to occur it will be vital that carers, individually and collectively, are seen as equal partners in the provision of care with social services and health, whilst also having a right to a life of their own and a real choice about whether to continue caring or not.

   We would hope that the Bill will be a catalyst for change in the way that services are commissioned and provided. We would hope that social services embrace the Bill and consult with a wide range of individuals including carers within their own area about what sort of services they would wish to see. The impact would be that people are put at the heart of services and that any services are provided or commissioned around their needs rather than the other way around where people are made to fit into services that already exist. The sections on voice and control in the Bill at an individual and collective level will need to be strengthened to ensure this change in services takes place across Wales.

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

   The Wales Carers Alliance thinks that the main barriers to implementing the provisions of the Bill will be the increasing demands on social care due to demographic changes, the associated accumulative costs and limited financial resources to meet demand. However other barriers are inherent in the Bill itself such as; the lack of a new legal framework to increase joint working between health and social services, unclear definition and description of prevention and preventative services and uncertainty over eligibility criteria. For the Bill to be successful it will be important for these key areas to be clarified and strengthened.

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?**
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 answer to both these questions there seems to be considerable amount of detail which has either been left to regulations at a later date or to the powers for Welsh Ministers to make subordinate legislation. The Wales Carers Alliance would be concerned that too much detail has been left to regulation and subordinate legislation and we would hope that much of this information will become clearer through the passage of the Bill.

Keith Bowen

Chair of the Wales Carers Alliance.

Social Services & Well-being Bill (Wales) Consultation

Community Housing Cymru Group response

1. About Us

Community Housing Cymru (CHC) is the representative body for housing associations and community mutuals in Wales. Our members provide approximately 153,000 homes across Wales and invest heavily in housing-led regeneration and social care. In 2011/12, our members directly employed 7,500 people and spent over £850m in the Welsh economy.[1]

In July 2010, CHC formed a group structure with Care & Repair Cymru and CREW Regeneration Wales to jointly champion not-for-profit housing, care and regeneration.

Care & Repair Cymru (C&RC) are the 'Older People's Housing Champion'. We are a national charitable body and actively work to ensure that all older people have homes that are safe, secure and appropriate to their needs.

Care & Repair Cymru is committed to improving the health and well-being of older people in Wales by providing advice and assistance with home improvements, adaptations and general repairs.

We work in partnership with a number of organisations including the Welsh Government, Local Government Housing and Social Care Teams, NHS, Occupational Therapists, third sector organisations such as Age Alliance Wales, the Older Peoples Commissioner, and housing associations to ensure that older people have access to a range of housing and social solutions that enable them to live in housing that meets their individual needs.

There are 22 Care & Repair Agencies covering the whole of Wales. Each agency provides a wide range of services and support for older and vulnerable people, helping them to remain living independently in their own homes and communities.

---

[1] Measuring the Economic Impact of Welsh Housing Associations, November 2012

Care & Repair Agencies

The 22 Care & Repair Agencies in Wales operate to the same boundaries as local government, and provide housing services to some 40,000 older people every year. The type and scale of services provided in 2011/12 was:

Core Care & Repair service

- 29,199 older people helped
- 69% of people helped were over 75 years old
- 11,383 (43%) of people helped received the intensive Casework service
- 1,330 people received help to apply for additional welfare benefits which increased household income by £2.5m
- £433,000 raised on behalf of 475 clients from charitable funds to pay for repairs or adaptations
- £11m repairs and adaptations facilitated
- 2,200 older people helped to make their home more affordable to heat

Rapid Response Adaptations

- 13,500 older people helped
- 4,100 of whom helped return home from hospital
- 10,400 of whom had works that helped prevent hospital admission
- Average time enquiry to completion was 8 days

General comments

The Community Housing Cymru Group welcomes this opportunity to comment on the Social Services and Well-being Bill (Wales). Having commented previously on the development of this Bill we are keen to ensure that the important contribution Registered Social Landlords (RSLs) and Care & Repair agencies make to social services outcomes is well represented. We would strongly encourage further engagement with the organisations with whom we work in shaping the detail of the national outcomes framework for social services associated with the Bill.

The creation and implementation of the Bill will mark a momentous shift in the way social services are delivered and the way in which people access information and are assisted to find the appropriate care and support relevant to their needs. Underpinning this through core legislative framework for social care and social services in Wales is highly encouraging. The aim of producing a system which ensures that organisations understand their shared responsibility in their approach to providing care and support is important and will pave the way for greater clarity and consistency in service delivery. In turn, this will provide individuals with a stronger voice and greater control over the services they receive. We also welcome the introduction of the National Eligibility Framework, with a view to standardising the quality of care services across the nation and eliminating the postcode lottery which currently exists across Wales.

With budgets tightening in social care and health, funding has been increasingly focused on critical services, with little recognition of the benefits and eventual cost savings of preventative services. Preventative services help people to remain independent and improve well-being. Early intervention around simple hazards in the home, for example, can prevent the escalation of problems into ‘crises’. The introduction of this legislation will help guide focus at commissioning level to consider that preventative action is the way to save money and improve services.

As Registered Social Landlords (RSLs), CHC members are both social housing providers and many are providers of care and support services. These services are wide ranging and include both long and short term services that address the needs of a variety of vulnerable groups, including those with a learning disability, older people and mental health. Care & Repair agencies support older and disabled people to live independently within their own homes through provision of timely adaptations and contribute to the sector largely through prevention of more costly social care services.

The services delivered by our members are designed to empower individuals to live as independently as possible, maintain close links and involvement with their local communities whilst being supported to achieve their goals and aspirations. Ensuring that the appropriate individuals are able to readily access such services is vital – it is encouraging that this will be supported by the Bill which considers (and provides procedures to facilitate) the portability of care and support plans, access to information and integrating compatible services.

Having formed a group structure with Care & Repair Cymru (C&RC) and CREW Regeneration Wales, as a membership body we reflect the role of our members as driving agents of improvement and positive change in the areas of housing, care and regeneration.

The Community Housing Cymru Group has responded to those questions that are most relevant to the work of our members:

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.

The Regulatory Impact Assessment included in the Bill provides an understanding of the outcomes associated with *not* developing the current system in any way. The consultation document rightly indicates that this will only serve to put a further strain on resources and fail to recognise the increasing need of the population in the coming decades. Furthermore, the Bill cites *Sustainable Social Services for Wales: A Framework for Action* which emphasises the need for social services to undergo a transformation in order to meet the needs of the population, noting that:

"The number of people registered with local authorities in Wales as having a learning disability is increasing and there is an increasing number of older people with complex care needs who can benefit from support - and whose support needs are extensive."

In considering the future demand for older people's services, Public Health Wales report that with decreasing birth rates and increasing life expectancies, the proportion of older people aged 60 or over is around 1 in 4. Over the next 20 years the population is only expected to grow by 3% but the percentage of those of retirement age is expected to rise by 11%. Furthermore the number of people aged 85 or over is set to increase by over a third to 82,000. The Personal Social Services Research Unit forecast that, compared to 2010, demand for social care will increase by 60% by 2030. [2]

The National Dementia Action Plan for Wales notes that the number of people with Dementia is expected to increase by 31% by 2025. The action plan emphasises the challenge this represents to Health in managing demand for services and ensuring that individuals do not remain in a hospital setting for longer than is needed. It is through greater interaction on a strategic level with health that our members can offer appropriate services to ensure that individuals live in a desirable, appropriate setting. We continue to develop our relationship with health and social care to ensure that we are able to champion such outcomes and facilitate the process whereby they come to be realised.

In relation to continuing health care, there is currently a project being taken forward with members who are sitting on the Social Care, Housing and Health Forum within the Aneurin Bevan Health Board region. This group represents a pro-active gathering of professionals from Health, Housing, Social Care and the Local Authorities to ensure efficient planning of

---

[2] Wittenberg, Raphael and Hu, Bo and Hancock, Ruth and Morciano, Marcello and Comas-Herrera, Adelina and Malley, Juliette and King, Derek (2011) Projections of demand for and costs of social care for older people in England, 2010 to 2030, under current and alternative funding systems. PSSRU discussion paper, 2811/2. PSSRU, London, UK

current and future housing stock for those with learning disabilities requiring continuing health care. The approach looks to make the best use of current housing provision and prompts greater planning when considering future accommodation need, separating out an individual's care need from their housing need.The model is being piloted in this context but the hope is that if the financial savings and benefits for individuals are realised, then it could be extended for use in services for a variety of clients groups where similar interactions occur.

The work being undertaken by this group is a broader reflection of potential gains that may be realised through increasing cross-sector working. Our members are ready and willing to undertake such work where strategies and projects have the potential to produce desirable outcomes. We are keen to highlight the benefits associated with making closer links between housing, health and social care at both a strategic and operational level.

It is clear that in order to produce the required shift, there is a need for closer collaboration on multiple levels. It is encouraging to note that the Bill seeks to firm up how duties and functions that already exist between Local Authorities (LAs) and their partners can further complement each other to provide greater outcomes for the well-being of individuals. It is important that the Bill does not lose sight of the Welsh Government's intention for the shaping of social services, as set out in the Programme for Government which stated:

"Better social services will be delivered by ensuring citizens have a much stronger voice and greater control over the services they receive. We will make the way that services are delivered simpler, and by working collaboratively with others we will focus on improving the well-being of all our citizens. We will lead a shared approach with our partners in the public, private and voluntary sectors to deliver the transformational vision set out in Sustainable Social Services."

Through the provision of high quality information and a simplified system of delivery, we believe that the understanding of social services functions will become easier to digest. This must rightly be met by consistent collaboration across Wales. We hope that the evidence and views provided in this response go some way to demonstrating how that is currently happening and highlights how the Bill will improve the breadth of this positive work.

We also welcome the inclusion of well-being within the bill; however, whilst the definition of well-being within the bill includes 'social and economic well-being', it does not specifically include 'housing issues', such as ensuring that people live in a safe and secure home. Housing impacts upon people's health, well-being and independence which is particularly pertinent as we age, as many older people spend disproportionately large periods of their life in their homes.

To highlight the issue of home safety and the significance for health and well-being for older people, it is useful to highlight the scale of the problem of falls. In Wales in 2009, 259 older people died as a result of a fall, over 20,000 people were admitted into hospital and over

44,000 attended emergency departments. [3] Most falls occur within a person's own home. Recent research by WRVS found that many older people lost confidence through falling and 17% of older people over 80 who had fallen preferred not to leave the house at all. [4] Improving home safety not only saves the lives of older people and increases their independence, it also saves money through preventing the need for other services, such as health and social care.

Current intelligence from Care & Repair agencies indicates a worrying level of housing disrepair and an increasingly complex older and frail client group. The incidence of poor domestic heating, fuel poverty, and dampness which have associated health consequences, as well as other factors such as neurological disorientation, and profound loneliness, stress and anxiety from poorly secured homes, all have the potential if not well managed to require crisis intervention. Care & Repair's proactive casework and technical service provides an assessment of need and sources timely solutions to address the most critical challenges that face older people.

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.

We welcome new duties on Local Authorities to promote the development of new models of service delivery through social enterprises, cooperatives and user-led and third sector services. In the context of limited resources and increasing pressure on services, this appears to be an apt time to ensure that this promotion is done. This will support RSLs and Care & Repair agencies. RSLs as providers of care and support services, delivered in partnership with Local Authorities, fall under the definition of social enterprise as detailed in the Bill. In addition our members often allocate individual staff members who are responsible for developing strategies aimed at involving service users in the delivery and development of services, recognising that meaningful development cannot take place without this attitude being present within the organisation. Care & Repair agencies are an example of how a third sector organisation can work successfully in partnership with social services and health organisations to provide seamless services to support older people to live independently and safely in their own home.

A system that is clear and comprehensive to members of the public is highly desirable. We support the measure to improve the consistency and quality of information and advice relating to the care and support options available across Wales. At a recent strategic day centred on older people's services, our members identified a need to promote their work in providing extra care to a greater degree. Whilst, as a representative body, CHC does much to ensure that this work is highlighted through channels such as our website, press releases

---

[3] Public Health Wales (2012) The Burden of Injury in Wales http://www2.nphs.wales.nhs.uk:8080/PHWPapersDocs.nsf/85c50756737f79ac80256f2700534ea3/10630ae242ba186480257a99003784a0/$FILE/20%2009%20BurdenOfInjuryInWales2012%20final.pdf

[4] WRVS (2012) Falls; Measuring the impact on older people http://www.wrvs.org.uk/Uploads/Documents/Reports%20and%20Reviews/Falls%20report_web_v2.pdf

and consultation responses, the facilitation of information to the public on their local services will complement this further.

The stipulation to make people aware of services that they may need now and *in the future is* particularly important. Whilst the expected increase in cases of Dementia (for example) and individuals requiring more intensive care services is well reported in line with commentary on the ageing population, it is vital that the public understanding of what type of care and support can be provided is appropriately enhanced, especially among those who do not interact with such services at present. Public perceptions around social services must be shaped further towards the understanding that these are enabling, life enhancing services that support individuals to live as independently as possible. Promoting this perception will help both those who may eventually require contact with such services as well as their family members.

The duty to meet need is an important and required aspect of the Bill. Some caution is required, however, in understanding who will be and who will not be served by this duty. It is encouraging to note that LAs will have the power to meet care and support needs without referring to the eligibility criteria. This will ensure that those who are in crisis and require a care and support service as a matter of urgency will not be delayed by a need to receive an assessment relating to their suitability in accordance with the eligibility criteria.

The portability of care and support plans is a very encouraging step and will ensure that those who want to move, to be closer to family members (for example), can do so. We welcome the improved rights of carers to an assessment of their own needs and the requirement to provide support directly to the carer. We would question why portability is not available for care and support plans relating to carers. In some instances it may be the case that (for example) between a married couple one may be the carer of the other partner. We would seek further clarification as to why one partner's care and support plan (the recipient of care) is portable whilst the care and support plan of the other (the care provider) is not. This may cause unintended complications or delays when a couple in this situation seeks to move to another LA area.

The duty on Welsh Ministers to publish a *statement of the outcomes to be achieved in terms of the well-being of people who need care and support and carers who need support* will place a clear role on Ministers in shaping the ends of social service provision in Wales. It is important therefore that Ministers work closely with service providers and service users to work collaboratively in matching up what should be expected using current resources.
CHC members work closely with the Care and Social Services Inspectorate (Wales) in providing services. As such, it would be expected that the duty relating to the aim of increasing the quality of services would draw heavily from such interactions to certify that the most is made of information already being collected through such regulation.

The definition of well-being within the Bill differs from other Welsh Government definitions of well-being, including the Strategy for Older People in Wales and the Housing Bill. We recommend that there should be an agreed definition of ‘well-being’ within the Welsh Government, carried through all strategies and other documents. This would enable a shared vision between the Welsh Government and other organisations of approaches to improving the well-being of Welsh citizens and lead to improved measurement of outcomes.

The move to promote integration through the Bill is strongly welcomed. A recent report from the National Housing Federation found that bringing together housing, health and care can deliver savings of between almost £3,000 to approximately £18,000 per year for each individual case.[5] It is important that, whilst this does not need recognition through additional regulation, an understanding of the contribution a person’s living situation, albeit in social housing or extra care housing (for example) makes to an individual’s well-being is appropriately recognised.

A greater emphasis on prevention in the bill is welcomed by the group. Proper investment in preventative services would improve the well-being of the people of Wales, whilst saving public funds. Helping more people to live independently, through services such as Care & Repair, reduces demand on the NHS and social services. The Rapid Response Adaptation Programme (RRAP) administered by Care & Repair is a fast response minor adaptations service and is an excellent example of how investing in prevention can both improve well-being, through enabling hospital discharge and preventing hospital admittance, and save public funds. For every £1 spent on the Rapid Response Adaptation Programme, £7.50 is saved from the NHS and social services budgets and yet Care & Repair services attract very little from these budgets. An equally powerful example of ‘prevention’ is demonstrated through the Care & Repair proactive assessment and advice service, visiting vulnerable older people in their own homes (and often before they reach the stage of ‘vulnerability’) to highlight threats to well-being and agree personalised strategies to deal with individual problems.

This legislation will serve to change attitudes at commissioning level with regard to the development of preventative services, which would both save money and improve services and health outcomes. The definition of ‘preventative services’, however, remains unclear. We feel that without specific guidance regarding evidence of what services work to help to prevent or delay the need for care and support, it will be extremely difficult for local authorities to negotiate which services to support or develop. The work of Care & Repair, for example, is extremely well evidenced. Care & Repair services help people to live independently in the community, reduce the need for care, improve well-being and prevent poor health. Timely home adaptations and reablement services get people home from hospital quickly and prevent hospital readmissions, helping them to recover their independence after illness.

---

[5] National Housing Federation (2013) Providing an alternative pathway The value of integrating housing, care and support. http://www.housing.org.uk/publications/find_a_publication/care_and_support/care_pathways.aspx

We are also concerned at the issue of charging for services, particularly information and advice services. Many information and advice services, including those provided by CHC Group members such as Care & Repair and Moneyline Cymru, are provided free to the service user. People in need of information and advice are often at their most vulnerable. It is concerning that such people will be charged to receive valuable information and advice, which could potentially transform their circumstances. Older people, for example, tell us that it is difficult to negotiate information and advice, particularly around complex issues such as welfare benefits. With many benefits being unclaimed, older people who are entitled to financial support are struggling to support themselves. It is vital that people can access such advice, and for such advice services to remain free of charge.

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and 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.

The challenges facing Local Authorities and their partners are wide ranging, particularly in the current financial climate. Our members interact with LAs in a number of operational environments, including housing, health and regeneration. Sustainability clearly needs to be at the heart of any Bill that seeks to shape the provision of social services in the future. The population projections and the increasing requirement to meet individuals with more complex needs should indicate that sustainability must result in a system that allows for flexibility and remains conscious of the expected changes associated with the care and support needs of future generations as well as today’s. The point being that these are likely to vary, and services should therefore be reflective of this potential trend.

The only way for services to meet the increasing demand would be for the health sector and local government (including social care and housing) to change the way that they work to achieve better alignment of services and strategy to see a holistic approach to delivery. The results would achieve significant savings, help achieve sustainable services, provide a better experience for service users and help to make a contribution to social inequalities in health.

In addition, we believe that the sustainability of the Bill is closely linked with the eligibility criteria for individuals deemed to require a care and/or support service upon assessment. These eligibility criteria will aid in clarifying what flexibility will look like and how individuals will be assessed and (potentially) referred to the appropriate service(s). The National Eligibility Framework is a potential threat to the sustainability of social services, depending upon the thresholds which are set. Without more specific detail on the criteria the impact of the bill cannot be properly evaluated, with regard to potential outcomes for those who receive services or the financial implications for local authorities and service providers.

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

The Bill comprehensively covers how collaborative working will look going forward and underpins this with an understanding of ‘why’ this is now required. With increasing population growth and a growing need for care and support services, the provision of such services to meet this demand will continue to be a challenge for our members and for others.

The increased shift towards formalising the arrangements for partnership work will clearly require (in some instances) a substantial shift in culture and attitudes within some working environments. Whilst in some areas of Wales there are strong traditions of collaboration, this is not the case in all areas of Wales. The Bill should therefore recognise that this transition will be more complex in some areas whilst in other areas, it will more or less formalise arrangements that are to some degree already taking place.

Conclusion

We strongly support the aims and ambitions behind the Social Services Well-being (Wales) Bill to transform the way that social services are delivered, making them simpler and giving people stronger voices and more control. We welcome the aspiration toward standardising the quality of care services across Wales and the opportunity for greater collaboration between sectors. We are also pleased about the recognition the Welsh Government has given to the importance of broadening the scope for preventative services.

The recent proposal by Welsh Government to develop a Public Health Bill for Wales recognised housing circumstances as a determinant of good health. Whilst the role of housing is acknowledged within this bill, we would like to see further recognition of the fruitful partnerships that cooperation between housing, health and social care produce. We have emphasised the role housing plays in relation to an individual’s well-being and quality of life, and the organisations with whom we work both provide flexible innovative housing models and work with individuals to sustain independent living.

Community Housing Cymru Group
March 2013

Community Housing Cymru Group Members:
Aelodau Grŵp Cartrefi Cymunedol Cymru:

Care & Repair Cymru

crew
Regeneration Wales
Adfywio Cymru

NI YW MACMILLAN. CYMORTH CANSER

WE ARE MACMILLAN. CANCER SUPPORT

Briefing for:	**Health and Social Care Committee.**
Purpose:	**Macmillan's response to the Consultation on the Social Services and Well-being (Wales) Bill.**
Contact:	**Nesta Lloyd – Jones, Campaigns, Policy and Public Affairs Officer, Macmillan Cymru.** **Nlloyd-jones@macmillan.co.uk**
Date created:	**13th March 2013**

Introduction

Macmillan welcomes and supports the Bill to reform social services and social care in Wales. Cancer is a health and social care issue due to the impact the disease can have on the whole of people's lives and also the needs of carers and the wider family.

There are three phases where people affected by cancer may have social care needs; when undergoing treatment, after active treatment has finished and at the end of life. Some people with cancer may have complex social care needs due to the length of treatment, the impact of treatment on their mobility, which affects their ability to perform daily tasks, as well as having emotional and financial needs.

Macmillan supports the Bill's aim to provide a more citizen-centred, integrated, accountable and consistent service across Wales. It is vital that people's individual needs are assessed, that relevant and accurate information and support is provided for people to understand their rights and options, and that carers are also supported.

For many people, cancer is still a short-term incurable illness, but for thousands of others, their experience of cancer is evolving into a long-term condition. In Wales, nearly 18,000 people are diagnosed with cancer every year and more than 120,000 people are living with or after cancer, around 4% of the population.[i] If current trends continue, by 2030 this will have almost doubled to 220,000, more than 7% of the population.[ii]

The good news is that 49%[iii] of people are now surviving for more than 5 years following diagnosis – many of these will need support to live well and as independently as possible with their cancer or the consequences of the treatment. Sadly, 51% do not survive for more than 5 years and will need support to die in the place of their choice, most often their home. This means more people will need person-centred support to live well and die well in the community.

This briefing highlights the key policy areas within the Social Services and Well-being (Wales) Bill that impact on people affected by cancer, which includes patients, carers and relatives.

Macmillan would be prepared to give oral evidence to the Committee.

People affected by cancer have social care needs

People affected by cancer fall within the definition of well-being within section 2 of the Social Services and Well-being (Wales) Bill due to the physical, emotional, social and economic impact of a cancer diagnosis.

Key Statistics

- 45% of people with cancer say the emotional effects of cancer are the most difficult to cope with.[iv]
- 58% people with cancer feel their emotional needs are not looked after as much as physical needs, and only 44% of people received information, advice, support or treatment for this.[v]
- More than 4 in 10 cancer patients say the financial impact of cancer has made them feel more stressed or anxious.[vi]
- 46% of carers of people with cancer say that caring impacts on their emotional wellbeing and mental health, citing stress, anxiety and depression (half a million people in the UK).[vii]
- Carers help to meet the social care needs of cancer patients, including personal care and emotional support, but 49% of these carers don't receive any support to care.[viii]
- 39% who completed treatment in 2009/10 say that no health or social care professional talked them through the needs they might have.[ix]
- 91% of households with people affected by cancer experience loss of income and/or increased costs[x];
- 94% experience physical health condition problems in their first year after treatment.[xi] and
- 78% of people with cancer have experienced at least one physical health condition in the last 12 months which can occur as a result of cancer or its treatment.[xii]

Whilst improvements in cancer treatment mean that more people are surviving or living longer following their illness, we know that their lives don't return to normal and, for many people, cancer can be a long-term condition that has a significant impact on their wellbeing.

With an ageing population, demand for care is increasing and health and social care services need to evolve to respond to these developments. Many people affected by cancer have both short-term and long-term social care needs that should be considered by local authorities and social care agencies in Wales.

Emotional and Psychological Impact: Cancer places many people under extreme emotional and psychological strain.[xiii] At the time of diagnosis, around 50% of people with cancer experience levels of anxiety and depression severe enough to affect their quality of life. In the year after diagnosis, around 1 in 10 people living with or beyond cancer will experience symptoms so severe they need specialist psychological or psychiatric services.[xiv]

Palliative Care and End of Life: It is essential that health and social services work together to ensure that people are able to die well and in the place of their choice. It is vital that the needs of people who require palliative care, and their carers, are considered. We know that 67% of people in Wales would choose to die at home.[xv] But only 26.1% actually do.[xvi] In England and Wales only 1% of people receiving a cancer diagnosis would choose to die in hospital.[xvii] Timely access to social care, as part of a package of end of life care, is often vital to enable cancer patients at the end of life to remain in and die in their own home. Social care could include counselling, advocacy, financial support, home adaptations, psychological and social support and information. When the end-of-life wishes of people with cancer are not met, it can lead to a traumatic experience and a lasting sense of guilt and remorse for friends and family left behind.

Carers: In Wales there are 55,000 carers of people living with cancer.[xviii] Caring for someone along the cancer journey can also have an enormous impact on someone's emotional, physical, financial and social wellbeing. Half a million UK cancer carers experience mental health issues such as stress and depression, and 150,000 cancer carers report that their physical health is suffering because of their responsibilities. A study by Macmillan found that only one in five people with cancer feel that their carer's needs are met by health and social care services.[xix] Carers generally are also in less good physical health than the general population and cancer carers report issues such as sleep problems, difficulties with digestion and back pain.

Survivorship and long-term conditions: More and more people in the UK are surviving cancer. Today the diagnosis and treatment of the disease is becoming ever more effective as advances in technology and medicines are made. As a result, many more people are living through cancer, with 10 year survival rates doubling over the past 30 years to 46%. For many, cancer is still a short-term incurable illness, but for thousands of others, their experience of cancer is evolving to a long-term condition with many possible outcomes. People can experience chronic illness – such as bowel problems, chronic fatigue, lymphoedema, impotence, infertility and depression – while new cancers or treatment-related conditions can emerge months or even years later which may need social care support. As the nature of cancer changes, so do the needs of people who are affected by it – and the range of health and social care professionals and services required to help meet those needs.

Financial Impact: A cancer diagnosis has a significant impact on people's finances and leads to new or increasing debts which affects people's emotional wellbeing.[xx] Over 50% of people with a cancer diagnosis say they are worried about their finances and evidence suggests that financial burdens can increase anxiety and stress, with some people feeling that financial difficulties are 'more of a worry than the cancer'.[xxi] Macmillan's recent report Counting the Cost of Cancer[xxii] highlights the financial impact of a cancer diagnosis across Wales's 22 local authorities. In the last year alone, Macmillan's Welfare Benefit Advisers have helped people affected by cancer claim more than £10 million in benefits.

Physical Impact: Cancer can have a significant physical impact on people living with cancer, both during treatment and post treatment. Surgery itself can limit people's physical strength and mobility, either temporarily or permanently, and people with cancer say they can find it difficult to do household chores, experience difficulty in driving or managing alone on public transport and mobility issues.

Wellbeing: Delivering person – centred care through information, support and self management

A person-centred approach for health and social care in Wales will mean moving away from focusing on processes, systems and targets to developing services that meet people's needs to ensure their empowered to make decisions and take control.

Macmillan's definition of person-centred care

Person-centred care means that the needs of the person living with cancer are always at the heart of how services are planned, not the needs of the service providers.

It means treating people with sensitivity and compassion and ensuring that their care is holistic in its planning and delivery.

This care goes beyond the clinical to address wider social, financial, emotional, practical, psychological and spiritual concerns.

Putting people at the centre of care planning means they[xxiii]:

- are given the opportunity to express their views, which are listened to and respected
- receive the care they need, when it is needed, regardless of organisational boundaries – and if a service can't be provided they are told why
- know where and how to access ongoing support and information.

Every person affected by cancer in Wales should be offered an assessment of their needs and the outcome of the discussion recorded within a written care plan and given to them. This assessment should include financial, emotional, psychological and information needs. Tailored and personalised care helps professionals provide support for those most in need, and reduce support to those who are willing and able to largely self-care with support.

Information and support is key to raising awareness and to empower people to make decisions about their future and the services that they need. Macmillan believes that people living with or beyond cancer, and their carers, should have easy access to high quality information and support.

Key statistics

- Over a third (35%) of people with cancer do not feel confident about how and where to access social care and support; [xxiv]
- Almost four in ten (38%) people with cancer want information, advice and support about the health and social services available, but nearly half of those people (47%) say that they aren't able to get it;[xxv]
- 50% of people living with or beyond cancer say no one talked through their health or social care needs after their treatment finished; [xxvi]
- 61% say they didn't receive any support from key health and social care professionals after treatment; [xxvii] and
- 49% of cancer carers don't receive any support at all to care.[xxviii]

Most people with cancer say they would like more information to ensure they are empowered to make decisions to enable them to live well and independently. It is important that people living with cancer and their carers can take an active role in decisions about their lives. This will help them to self-manage. We know that giving people personalised information and support, and helping them to self-manage, can lead to better outcomes.

When people are well informed they know what symptoms to look out for and what to do to manage their signs and symptoms. If they know what to expect, they worry less, are less likely to seek advice from emergency services and can resolve problems without professional intervention. This philosophy fits in with the Bill's objective to ensure preventative measures and early intervention services are accessibly within the community by putting a duty on local authorities, and Local Health Boards, to provide or arrange for provision which will prevent or delay the development of people's needs for care and support.

Wales needs a coordinated approach to information for people with cancer and their families, which cuts across both health and social care, to ensure that people can access information at the right time in a place and format that meets their individual needs.

Macmillan is aware of the Citizen Information Portal project, which is being led by Social Services Improvement Agency. Macmillan welcomes the ambition of this project, but to ensure the success of the portal it is vital that it links effectively with the NHS and third sector organisations.

Macmillan Information and Support in Wales

Macmillan is supporting the development of information and support for people living with and after cancer in Wales in several ways. The information that Macmillan can provide people living with cancer in Wales includes:

1. Through local cancer information and support services

In 2008, we began a programme of investment to improve access to cancer information and support. We are working with Welsh local authorities to pilot cancer information and support in local libraries. Our coordinators work alongside volunteers to deliver a comprehensive service for local people. We have worked in partnership with the NHS and other voluntary sector organisations to open Macmillan cancer information and support centres in Ysbyty Gwynedd, Glan Clwyd, University Hospital of Wales and Wrexham Maelor Hospital and have set up

Our range of services have been evaluated and we are able to provide clear evidence of the impact that our information services provide people affected by cancer and we would be happy to discuss this further with you.

2. Through Macmillan health and social care professionals

Macmillan supports a range of health and social care posts, many of which provide information directly or signpost people affected by cancer to other appropriate sources. Macmillan offers an e-learning programme to support health and social care professionals and volunteers to enhance the range of skills needed to provide high quality information and support.

3. Through online, phone line and mobile information services

Macmillan provides information and support directly over the phone and online to anyone in the UK on 0808 808 0000 between 9am – 8pm Monday – Friday, or via www.macmillan.org.uk. These services give people affected by cancer the opportunity to access information and support 24 hours a day, anonymously and in confidence. Macmillan also runs several Mobile Information Centres.

4. Welfare Rights Advice

Macmillan funds welfare benefits advisers in many parts of Wales, who can advise people which benefits they are entitled to and to help them fill out lengthy and complex forms. Macmillan's 12 welfare benefits advisers in Wales helped over 2,000 people affected by cancer to access more than £10m in benefits and provided a range of advice on debt, housing, employment and energy efficiency in 2012.

Our welfare benefits advisers can also advise patients on Macmillan grants – one-off payments to help with specific costs. In 2012, 1,917 people in Wales were given Macmillan grants totalling £545,000, to deal with additional costs associated with a cancer diagnosis such as clothes, special equipment, fuel bills, rent and mortgage bills, clothing and household appliances.

5. Macmillan Cancer Information Strategy Lead (Wales)

Macmillan Wales has invested in a cancer information strategy post, which is hosted by Public Health Wales. The project is to develop a vision for cancer information in Wales. The project will consider information giving in both clinical and community setting to ensure people affected by cancer's needs are met throughout their cancer journey. It will also assess whether the cancer information model can be transferred to other chronic conditions. This post has been involved in discussions with regards to the Citizen Information Portal highlighting the information and support needs of people with cancer in communities across Wales.

Key Points

1. Our vision is for person-centred services for all people affected by cancer in Wales.
2. Every person affected by cancer in Wales should be offered an assessment of their needs, and the outcome from the discussion is recorded in a written care plan and shared with them. This assessment must include reference to financial, emotional, psychological and information needs.
3. People affected by cancer must be at the heart of decisions about their care, and services should fit their needs as a result, and not the other way around. To realise this vision, the provision of high quality information and support is essential to ensure people are able to make informed decisions about their own care if they wish.
4. Timely access to social care services, as part of a package of end of life care, is often vital to enable cancer patients at the end of life to die well and in the place of their choice, most often than not, in their own home.
5. There needs to be increased awareness within local authorities and social care of the significant impact that a cancer diagnosis has on a person's wellbeing and that this can result in them having social care needs. This can also apply to friends and family, especially those who take on the caring role. Local authorities and social care services must recognise that for many people cancer is becoming a long term condition and, therefore, more people affected by cancer will need support to live well in the community.

Appendix

About Macmillan Cancer Support in Wales

Macmillan Cancer Support (Macmillan) improves the lives of people affected by cancer, which includes carers, relatives, people living with and beyond cancer, as well as those dying of the disease. We provide practical, medical, emotional and financial help to people affected by cancer and push for better cancer care across Wales.

In Wales, Macmillan provides significant support and advice to thousands of people affected by cancer. In 2012 this included;

- More than 250 Macmillan professionals who help people affected by cancer in Wales. We fund a variety of health and social care posts including: Welfare Benefits Advisers; Clinical Nurse Specialists; End of Life Coordinators; Specialist Social Workers Dieticians; Occupational Therapists; GPs; Specialist Physiotherapists; User Involvement Facilitators
- Across the UK Macmillan supports a total of 1616 professionals working in palliative and end of life care, which is 32% of our total Macmillan workforce and 28% of our charitable spend. In Wales Macmillan has more than 50 professionals working in palliative and end of life care, however many of our other professionals, such as Information and Support Coordinators, provide support to people at all stages of the cancer journey including end of life.
- In both 2011 and 2012, Macmillan spent almost £3.1m each year on new services for people affected by cancer in Wales;
- Providing financial advice and support to people affected by cancer through our Welfare Benefits Advisers. Our Welfare Benefit Advisers helped people affected by cancer access £10.1million in benefits last year;
- In 2012 Macmillan provided approximately £545,000 in grants to 1,917 people affected by cancer in Wales;
- We provide face to face support to 527,068 people across the UK through our healthcare professionals;
- We help 132,000 people across the UK through our free phone Macmillan Support Line;
- Macmillan reached over three in four people living with cancer across the UK through our services in 2011.

Macmillan is also a force for change; listening to people affected by cancer and working together to improve cancer care. People who live with cancer are experts by experience. They are a powerful resource; telling us what is needed and what must change. Together we can use this knowledge to make a positive difference to the lives of people affected by cancer. We believe that the voice of people living with cancer needs to be heard at all stages of health and social care services; from the design, implementation to the evaluation of cancer services.

In 2011, we developed an ambitious new strategy. Together with people affected by cancer, we created nine statements that we want everyone living with cancer to be able to say in 2030. We called them Macmillan’s 9 Outcomes.

I was diagnosed early	I understand, so I make good decisions	I get the treatment and care which are best for my cancer, and my life
I am treated with dignity and respect	I know what I can do to help myself, and who else can help me	Those around me are well supported
I can enjoy life	I feel part of a community and I'm inspired to give something back	I want to die well

---

[i] Crude estimates made for the end of 2010 and 2030. Estimates assume any increase is consistent across each nation and remains unchanged over the 20 years, as such they are indicative only, are not statistically reliable and could change as more information becomes available. Internal analysis by Intelligence & Research, Macmillan Cancer Support. Analysis based on data from Maddams J, et al. Cancer prevalence in the United Kingdom: estimates for 2008. British Journal of Cancer. 2009. 101: 541-547

[ii] Crude estimates made for the end of 2010 and 2030. Estimates assume any increase is consistent across each nation and remains unchanged over the 20 years, as such they are indicative only, are not statistically reliable and could change as more information becomes available. Internal analysis by Intelligence & Research, Macmillan Cancer Support. Analysis based on data from Maddams J, et al. Cancer prevalence in the United Kingdom: estimates for 2008. British Journal of Cancer. 2009. 101: 541-547

[iii] Together For Health - Cancer Delivery Plan Technical Supplementary Report 2012

[iv] Cardy P, et al. Worried Sick: The Emotional Impact of Cancer. *Research for Macmillan Cancer Support conducted by Opinion Leader Research.* 2006. Macmillan Cancer Support, London.

[v] Macmillan Cancer Support 'Worried Sick: The Emotional impact of cancer' 2006 p12

[vi] Macmillan Cancer Support/ YouGov online (August 2011) survey of 1697 people living with cancer in the UK. 197 respondents from Wales.

[vii] ipsos mori for macmillan cancer support, 2011

[viii] 2011 Ipsos MORI and Macmillan Cancer Support 'More than a million'

[ix] Macmillan Cancer Support/YouGov online survey of 1,495 UK adults living with cancer. Fieldwork conducted 1-16 Aug 2011. Survey results are unweighted.

[x] Macmillan Cancer Support, The Hidden Price Of Treatment, 2006

[xi] Elliot J, et al. The health and well-being of cancer survivors in the UK: findings from a population-based survey. *British Journal of Cancer.* 2011. 105:511-520.

[xii] Elliot J, et al. The health and well-being of cancer survivors in the UK: findings from a population-based survey. *British Journal of Cancer.* 2011. 105:511-520.

[xiii] Carlson L et al. (2004) High levels of untreated distress and fatigue in cancer patients. British Journal of Cancer

[xiv] National Institute of clinical excellence. (2004) Supportive and Palliative care: The manual. NICE

[xv] Views about dying at home, survey commissioned by Marie Curie Cancer Care, carried out by YouGov, 2008

[xvi] 2007 ONS mortality figures

[xvii] Macmillan Cancer Support. Feb 2010 online survey of 1,019 people living with cancer

[xviii] ipsos mori for Macmillan Cancer Support 2011

[xix] Macmillan Cancer Support 2006. *Worried Sick: The emotional impact of cancer.*

[xx] Pleasance P, Buck A, Balmer NJ, WilliamsK (2006) A Helping Hand – the Impact of Debt Advice on People's Lives, London, Legal Services Research Centre

[xxi] Wilson K, Amir Z, Hennings J, Young A (2010), A Qualitative Exploration of financial concerns, advice, support and coping in people diagnosed with cancer and their carers, Manchester

[xxii] Macmillan Cymru 'Counting the cost of cancer' 2012

[xxiii] National Service Framework for Older People in Wales,

[xxiv] Macmillan Cancer Support 'Worried Sick: The Emotional impact of cancer' 2006 p7

[xxv] Macmillan Cancer Support ‘Worried Sick: The Emotional impact of cancer’ 2006 p7

[xxvi] YouGov online survey of 1,912 UK adults living with cancer. 173 adults in Wales were interviewed. Fieldwork took place between 26 July-9 August 2010. Survey results are unweighted

[xxvii] YouGov online survey of 1,912 UK adults living with cancer. 173 adults in Wales were interviewed. Fieldwork took place between 26 July-9 August 2010. Survey results are unweighted

[xxviii] 2011 Ipsos MORI and Macmillan Cancer Support ‘More than a million’

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 49 – Hywel Dda Health Board

GIG CYMRU NHS WALES | Bwrdd Iechyd Hywel Dda Health Board

Consultation on the Social Services and Well-being (Wales) Bill Hywel Dda Health Board Response:

Hywel Dda Health Board (HDHB) welcomes the opportunity to contribute to the Consultation on the Social Services and Well-being (Wales) Bill. A feature of Hywel Dda Health Board's vision for the future is to be recognised as Wales' leading integrated rural health and social care system. The Health Board aims to provide integrated healthcare with 80% of NHS services provided locally, through primary, community and social care teams working together.

Consequently Hywel Dda welcomes increased alignment of nation strategy and policy aimed at supporting seamless integrated provision of assessment and delivery of care. Hywel Dda's model for 'out of hospital care' has being developed in accordance with the WG strategic delivery programme for Primary and Community Services: 'Setting the Direction' and aligned with the WG strategic framework 'Together for Health'. We are aligning our community service delivery to seven geographical localities within Hywel Dda to provide a locality partnership network of health, social and 3rd sector services that deliver a bespoke service that meets the needs of the local population. These localities are able to utilise the full community based resource to work as a locality network, responding to local needs and, where appropriate, create truly integrated multi-professional teams across health and social care.

HDHB welcomes a number of the Bill's requirements

- The duty to provide or arrange for preventative services. This complements the strengthening role of Public Health and establishes a robust platform for joint working
- The intention to drive person centred services and give citizens real voice and control. People can only be supported in managing their own health conditions in the context of accessing person centred services.
  The promotion of integration, as this underpins locality working arrangements in West Wales.
- Partnership with 3rd Sector Services. This growing area of partnership working has provides exciting opportunities to provide community support in a flexible, creative way.
- The clear recognition of the role and value of carers in delivering effective community care.

There are however a number of areas that are at risk of diverse interpretation that may cause tensions in providing joint agency services. There is a lack of clarity in relation to equipment provision. This is described currently for Social Services as part of the Chronically Sick and Disabled Persons Act 1970. These responsibilities are not described explicitly in the Social Services and Well-being (Wales) Bill and could be seen as having been forgotten. Similarly it would be helpful to clarify whether the Social Services and Well-being (Wales) Bill will have an impact on access to Disabled Facilities Grants.

Both access to equipment and home adaptation impact on the capacity of vulnerable adults to remain in their own homes and function independently with dignity. Should these services be restricted further than the constraints of current provision, then the health and wellbeing of those people needing to access this type of support will be compromised. Hospital services have historically been used as a safety net for the frail elderly who have breakdown of social support. The success of HDHB modernisation strategy is dependent on community services being strengthened by both health and social care. Provision of community equipment and home adaptation is part of this network of care.

The Social Services and Well-being (Wales) Bill also makes repeated reference to eligibility criteria. The recent DoH Guidance “Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care” applies in England only. For integrated services, even minor changes in social services eligibility criteria can have a significant impact on the balance of care available. Welsh guidance regarding eligibility should be developed in partnership with the NHS to support the establishment of reciprocal/integrated community support systems. Similarly the responsibility for and ownership of registers for disabled people could be considered as a component of partnership working.

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.

The current legislation in relation to local authorities’ duties has been built up over time through a range of legislation. It is complex and challenging for organisations working in partnership to combine responsibilities and deliver cohesive integrated services. It is timely to establish a single Act for Wales that frames partnership responsibilities. It would be helpful if some aspects were considered in greater detail in order to ensure reliable interpretation.

The fact that recognition, support, voice and equity for carers are central to the proposed bill is encouraging. Organisations such as Carers Wales have long campaigned for the needs of family carers, alongside those of service users, to be at the heart of social services. It has been argued consistently that carers need to be identified at an early stage in their caring journey so that they are better equipped to deal with the complexities and difficulties they are likely to face. Services need to be reconfigured towards earlier preventative support so that carers, and the people they look after, are able to maintain their health, wellbeing and sustain lives of their own.

The principles behind the bill are to give the people who use social services, including carers, a strong voice and real control over the services they may receive by focussing on the personal outcomes that people wish to achieve. It will also enable earlier intervention and prevention for carers and for people who need care and support in order to improve their well-being

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 purpose and intended effect of the Bill support the development of integrated services, but the responsibilities described no not reliably reflect a partnership approach. For example, where integrated community teams are established, social care staff are unable to delegate responsibility for assessment to NHS staff due to the responsibilities described in current legislation. Whilst this leads to inefficiency and duplication of effort, the opportunity is not acknowledged or addressed by the Bill.

For health boards discharging patients to a number of counties, variation in the eligibility threshold generates uncertainty regarding discharge planning and arrangements. People are still commonly transferred to a local NHS bed when there are significant community care needs. This practice has been established in response to the complexity of negotiating care on discharge where there are inconsistencies in the thresholds and processes to access care. The description of eligibility fails to recognise the need to consider this longstanding inefficiency when people are discharged from hospital.
The intention of the Bill to ensure that wellbeing is enhanced and that services respond flexibly to the developing needs of individuals, their family and carers is excellent. The Bill needs to identify more clearly the steps envisaged to provide proportionate support to people.

The Bill identifies the importance of providing advice, information and signposting to anyone who requests it. The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; the difference between when a person ‘needs’ some targeted intervention to prevent them needing care and support and the point at which they are deemed to have ‘care and support’ needs; the difference between NHS and Social Care preventative services.

It would be helpful if the role of reablement was described. There are significant variations in the way this service is perceived. It is most successful when it is an integral feature of integrated working arrangements, but this relationship is currently ad hoc.

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.

Whilst the intention to deliver sustainable social services is applauded, HDHB would welcome the added requirement of delivering reliable services. In rural areas there are ongoing difficulties in recruiting care staff to private agencies as well as social care. This continues to impact on the viability of people remaining in their own homes. A requirement to confirm reliable access to services may lead to more creative and proactive solutions.

Delivering preventative services in the context of eligibility and means testing may be challenging and consideration may need to be given to the infrastructure for this area of responsibility. Free preventative services may lead to greater savings in the delivery of care costs than a preventative service with charges, which have a more limited uptake.

The establishment of equivalent rights for carers to those they look after and a single duty for local authorities to undertake carers' assessments will have a positive impact on the sustainability of informal care arrangements. The removal of the requirement that a carer must be providing "a substantial amount of care on a regular basis" before they can be assessed, will enable support to be provided earlier in the caring process and will have a positive impact on carer strain.

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

- The lack of clarity regarding the provision of equipment has already been discussed.
- The relationship between Social Care and Housing regarding adaptation has already been highlighted as a concern.
- There may be tensions created by an assessment on a client and their carer being undertaken by the same person. There may be times where the assessment becomes biased towards one person's needs.
- Adopting a common approach to safeguarding (for adults and children) may dilute rather than strengthen the process.
- Greater clarity is needed regarding social services responsibility for delivering preventative services to gauge the impact

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

Costs continue to be a challenge when service change is required in the context of a limited financial flexibility. Additionally, lack of clarity regarding some responsibilities is likely to generate dispute between agencies which will delay effective implementation.

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.

A significant amount of detail is left to regulation. This makes it difficult to analyse the true impact of the Bill and the extent to which it will deliver the intended vision and impact.

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.

As above, a significant amount of detail is left to regulation. This addition detail is needed as a matter of urgency.

Financial Implications
7. 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.

Please see our response to question 5.
Delivering the transformational change envisaged by the Welsh government will generate additional cost, such as, developing preventative services which are not currently available; of developing new Boards and bodies such as National Safeguarding Board.

Other comments
8. Are there any other comments you wish to make about specific sections of the Bill?
None.

Leading Social Services
in Wales
Yn arwain
Gwasanaethau Cymdeithasol
yng Nghymru

ADSS CYMRU
WRITTEN RESPONSE

TO THE
CONSULTATION ON THE SOCIAL SERVICES & WELLBEING (WALES) BILL

March 2013

CONTENTS

INTRODUCTION

1. ADSS Cymru is the recognised professional and strategic leadership organisation for Local Authority Social Services in Wales. It comprises the statutory Directors of Social Services and all Heads of Services who have responsibility for adult services, children and young people services or business management. Our primary purpose is to promote the social well-being, protection, support and care of adults and children in vulnerable situations in Wales.

2. We are committed to:
    - providing modern, accessible and responsive services, which are delivered flexibly, consistently and sustainably across organisational boundaries;
    - working with all partners in the transformation of social services in Wales;
    - shaping and influencing public policy development across Wales;
    - ensuring that social services have a strong voice at the corporate centre of local government;
    - promoting public understanding of social services and the positive role it plays by engaging with the media, opinion formers and the wider public;
    - providing effective leadership for the social services work force;
    - strengthening relationships between commissioners and providers of social services; and
    - helping to ensure excellent public services as a whole.

3. ADSS Cymru welcomes the initiative taken by the Welsh Government in seeking to create a new legal framework for social services in Wales. This is the first opportunity we have ever been given in Wales to change the deeply confusing assortment of care and support law which exists at present. We support the ambition of the Welsh Government to introduce a Bill that draws together our legal framework for social services, in a way that both helps to bring about transformational improvements in the help available to people and also provides a clear, ambitious but realistic direction for social services.

4. In the past few years, a good start has been made in addressing the need to transform the delivery of social services, with the Welsh Government leading a programme of major reform. Local Government has demonstrated a strong commitment to delivering the changes required and to providing good leadership through its Sustainable Social Services Implementation Plan, developed by ADSS Cymru and the WLGA. The plan has been welcomed by the Deputy Minister as demonstrating "*the absolute commitment of local government to transforming social services in Wales, and to collaborating with all partners to deliver the improvements that are needed for people who need care and support*." We believe strongly that this emphasis on co-production and collaborative working across the range of stakeholders is the key to effective delivery of policy objectives.

5. In developing our submission, we have involved our members and other specialist officers in local authorities. ADSS Cymru and WLGA have worked together in developing written responses to the Bill because there are a number of areas where we share the same views and advocate the same solutions. Recognising that our role is different, we share the same desire to see local government at the heart of delivering more effective systems of social services on behalf of our communities and citizens.

6. Social care cannot be viewed in isolation. The care and support needs of the people of Wales are affected significantly by poor levels of health and socio-economic factors such as poverty. Effective solutions require local government to work as a trusted partner of Welsh Government and other key stakeholders. Hence our commitment to developing a strategic response at national, regional and local levels to the challenges we face in achieving sustainable social care and public services. We are intent on finding new ways to ensure that all the functions of local authorities contribute to this agenda, embracing the potential of increased citizen involvement in the design and delivery of services, stronger professional delivery teams and collaboration across public services.

Summary of key points

- We welcome the introduction of legislation to simplify the current law and to support delivery of new integrated service models.
- The Bill must be proportionate and enabling, achieving the right balance between primary legislation and regulation.
- The Bill is just one element of a bigger picture, where the care and support needs of the people of Wales are affected significantly by poor levels of health, and socio economic factors such as poverty.
- Improved wellbeing is a whole public service responsibility and, to be effective in its aim, the Bill must demarcate the specific role expected of social services.
- Local government is well placed to deliver locally determined models of care aligned to population requirements. Legislation must not undermine the autonomy of Councils to make decisions on resource allocation and service delivery as a result of needs analysis, engagement with service users and carers and democratic processes.
- Given the scale of new responsibilities and changes to current practice and patterns of service, resources will be required to deliver the policy objectives stated in the Bill, alongside efficiency savings being delivered by local government.

Philip Evans

Phil Evans, President ADSS Cymru and

Director Lead for the Bill

Gwen Carrington

Gwen Carrington,

Director Lead for the Bill

WILL THE BILL ACHIEVE ITS STATED PURPOSE?

7. In our opinion, a really good start has been made. We appreciate the progress made by Welsh Government in designing and getting consensus around its ten-year strategy for major reform in social care, a programme which includes the current legislation. The values and aspirations set out in the strategy and the Bill provide essential building blocks for the framework we will need for transformational change.

8. Local Government has demonstrated already a strong commitment to delivering this scale of change and to providing good leadership, in part through its Sustainable Social Services Implementation Plan developed by ADSSC and the WLGA. The Plan, owned by the twenty-two Welsh councils, supports the delivery of modern, accessible and responsive services capable of meeting people's needs and of being delivered flexibly and consistently. These changes are being taken forward at a local, regional and national level. Where all the stakeholders are working together, it has been possible to take real strides in areas such as remodelling services, joint commissioning, joining up health and social care services, and improving shared responsibility for safeguarding children.

9. Building upon the considerable and acknowledged strengths that exist in social services in Wales and working closely with the WLGA, members of ADSSC are intent on achieving service transformation through providing:
   - a clearer focus on improved wellbeing outcomes for the people using services;
   - greater control and choice for citizens about the help they want and improved access to that help, without unnecessary bureaucracy;
   - more effective and better integrated models of care and support and a more responsive range of services; and

- a better qualified workforce with skills that enable them to work across organisational boundaries.

10. This is a comprehensive agenda, properly so in the current and future context for social care services. Radical and urgent change is needed as the numbers of people needing care and support continue to grow year-by-year. We believe, therefore, it is appropriate that the Bill is extensive in scope and that it sets out to define:
    a. who should get help and support;
    b. what services should be available to them;
    c. where people can expect to have control and choice about the help they get; and
    d. how the most vulnerable groups in society will be protected from harm.

11. However, there are great hazards too if the Bill fails to provide a coherent way of providing social care fit for the 21st Century. It is essential that the changes made as a result of the Bill can become a reality on the ground, a force for positive change and not a series of promises which cannot be delivered in the even harder times that lie ahead. With great ambition comes increased risk, especially in terms of unintended consequences. Therefore, as always in looking at new laws, it is often the degree of coherence and the detail which tend to be most problematic.

12. The activities of local government are strongly shaped by the legislative context. In social services (and in contrast to some other areas such as criminal justice), we have been exceptionally fortunate in the major acts which have steered our work to date. Additionally, there is considerable experience in the task of making statute, regulations and guidance work in practice. Staff are often very idealistic, willing to embrace change where this has clear benefits for service users and carers. However, they also need to be very pragmatic, asking questions such as: what should I/we say or do to keep this person engaged and help them to achieve what they want? how do I/we help them to negotiate the

correct access, assessment and care pathway? what do the law and regulations require me/us to do in circumstances where there is conflict and risk? what does our agency say and what does evidence-based practice tell us works best? It is essential that, as far as possible, they are able to rely on a coherent framework for this work, one which is consistent and clear. Similarly, we have growing evidence about what makes for an effective social services department and here again clarity about purpose and priorities is a crucial factor[1].

13. In many ways, the Bill makes a good start in providing the legislative framework needed. It defines well many of the objectives which collectively we have agreed to be necessary.
    - To mitigate and manage the increasing demand for high quality social services
    - To drive forward an outcomes approach and focus for users of social services
    - To make savings and efficiencies at a time of acute economic pressures
    - To ensure the sustainability of services with more effective models of care
    - To reduce the unjustified variations in the quality of care across Wales
    - To achieve a more responsive, needs led, range of services with a strong and professional delivery team that can work across organizational boundaries
    - To safeguard adults, and protect children and young people more effectively
    - To ensure that users of social care services have a stronger voice, and real choice and control over their lives.

14. We welcome the focus on improved wellbeing outcomes; recognition of the role of information, prevention and early intervention; the potential for changes to assessment and eligibility; increased entitlements for carers; the impetus for integrating health and social care at the service level; the move to place adult safeguarding on a sound statutory footing; the emphasis on partnership

---

[1] For example, in 'Reviewing Social Services in Wales 1998-2008 - Learning from the Journey', CSSIW and the Wales Audit Office analysed what had been learned about organisational effectiveness from the joint review programmes. Also, to assist CSSIW in their annual performance evaluation of council social services functions, they have developed’performance descriptors' taxonomy.

working; and greater responsibility for promoting a more diverse social care market through an enhanced role for social enterprises. These are potentially strong pillars in new models of service provision.

15. However, as we will seek to demonstrate later in this document, there are legitimate questions about whether some of the proposed solutions in these areas have been spelled out sufficiently. In our judgement, they do not yet provide a sound guide for those who will be responsible for implementation. The sheer weight of the legislation only confuses the interdependencies of many of Bill's provisions and so it can be read as a mixture of seemingly unrelated measures, ,with attendant difficulties in identifying a coherent thread running through it. The underpinning emphasis on sustainable social services appears to have been lost in translating the ten-year strategy into legislation. The proposed Bill sets a whole range of new challenges that will have to be met at a time of severe financial restraints for local government and social services. It is right to remain cautious about whether there will be sufficient resources available to meet all the increased commitments and expectations in the Bill in the face of growing demand for services.

16. We believe that the there are reasons to question whether prevention and early intervention can deal well enough with increasing demand or act mainly to delay the need for more acute services. There is limited evidence to date whether extensive integration of health and social care services at an operational level can generate considerable savings in the Welsh context, especially as the Bill is not very ambitious in this area. The outcome may be increased competition for scarce resources which will undermine commitments to increased levels of engagement with citizens at an early stage, improved access to assessments, more services for carers and higher standards in protecting adults. Where will we find the resources needed for transformational change across so many areas of service on the scale set out in the Bill, in terms of improvement funding, bridging costs, sustained policy implementation and a determined focus on innovation with reducing numbers of staff? It is important also not to

underestimate the groundwork needed to put in place the significant changes in working practice and organizational cultures required to implement such ambitious reform.

17. We are currently conducting our annual survey of the social services budget position in each local authority. In many of them, there is a pattern of overspending against allocated budgets and SSA over many years. The pressures are 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, especially in the context of welfare reform and austerity measures. The impact of changes to eligibility criteria and charging regimes has not been assessed and some local authorities are still waiting to be reimbursed for significant loss of income from the First Steps requirements.

18. The case for transformational change has been well made. However, if there is to be no additional funding for implementing reforms on the scale set out in the Bill, we would want to ensure that it sets out more clearly the priority areas for change. Only in this way can we all focus on delivering a programme which is phased, properly understood and collectively promoted.

19. It is our view also that the Bill will affect profoundly local government as a whole and its key statutory partners, not only social services. The principle of wellbeing in the Bill cuts across all functions of local government, the NHS, other public services, the third or voluntary sector, independent providers of care and social enterprises. The Bill does not yet spell out in a compelling enough way their contribution to service transformation.

20. Shaping the Social Services and Wellbeing (Wales) Bill is one of the biggest challenges that the Welsh Government and the National Assembly for Wales have taken on. We are yet to be convinced that all the measures in the Bill require legislation. Some may well be redundant when they finally become law

and are implemented; others are on a relatively small scale and could be achieved by means other than legislation. This risks distracting effort from those which are crucial to the whole enterprise of reform. We believe that the Bill can only achieve its aims through a proportionate approach, legislating only where new duties and powers will support its aspirational aims.

21. A serious concern is that a significant part of the legislation is coming forward as delegated legislation and as powers for Ministers. 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, an area which Welsh government insists that local authorities should debate through transparent political processes, to ensure proper accountability and scrutiny. We do worry that there is too much scope for frequent amendments to secondary instruments, thereby undermining the stable direction which is needed.

22. Will the Bill achieve its stated purpose? Our current answer is “potentially and perhaps but this is not yet proven”. There is a serious risk that we are willing the ends without proper regard to means. Therefore, we would welcome the opportunity to provide further detailed evidence on specific sections of the Bill, using expert testimony from our members.

ARE THE BILL’S PROVISIONS APPROPRIATE TO DELIVER ITS STATED PURPOSE?

25. We believe that some of the key areas in the Bill will need considerable consideration during the scrutiny process. These are:

I. Wellbeing
II. Access, Assessment & Eligibility
III. Adult Safeguarding
IV. Remodelling care and support services and integrating with Health services.

I. WELLBEING

26. In our opinion, the concept of wellbeing is a powerful one, with a wide range of uses. It can be a helpful tool in defining the role that public services as a whole can play in improving the lives of citizens. It has merit as a way of fostering discussion about how far the state can and should take responsibility for such amelioration and what is the role of the individual or family. We should aspire to giving Welsh citizens, in the circumstances in which they are born, grow, live, work and age, better life chances and the opportunity to flourish in sustainable, cohesive communities. There is some consensus about the determinants of wellbeing. Use of the concept is not new in local government (as in the 2000 Act) and we know that Welsh Government may soon have two other Bills in which it is a key tenet. The concept of wellbeing is also embedded in the Government's anti-poverty agenda.

27. It is essential that social services are acknowledged as having a key role in this agenda. Social care and support services can be designed around and judged by their contribution to improved wellbeing. The Bill reflects the World Health Organisation's definition of the term. Consequently, this gives greater potential for local government and key partners such as the NHS to 'own' the definition and to generate a common understanding about need that supports joined up, outcome based planning and commissioning of service, as well as promoting good working.

28. However, perhaps we need to be somewhat wary as well about a term which appears to be so plastic and ubiquitous. It is hard to understand differences between its use at a population level and at the individual level. People generally do not approach local authorities or social services with a request for help that will improve a specific aspect of their wellbeing and they tend to use the word, if at all, as a general measure. It risks, therefore, confusing the dialogue between practitioners and potential service users and carers while increasing the numbers of people seeking help without being given any clear

idea about what and why. Are social services being given paramount responsibility for wellbeing or primarily for the wellbeing of those who may need care and support? This could be especially problematic if the definition includes economic wellbeing. Social services operate very rarely as a means of income maintenance, perhaps only for young people leaving care.

29. In these circumstances, there is a risk that the term will achieve limited congruence with other key aspects of the proposed legislation. In many places, it appears to be overtaken by reliance on the provision of information and prevention as the passport to social services. We are not entirely reassured when the Explanatory Memorandum outlines that the Welsh Ministers will publish at some point a statement of the outcomes to be achieved in terms of wellbeing for people who need care and support, and carers who need support.

30. ADSS Cymru believes there is scope for improvement. By placing the provision for wellbeing at the corporate centre of local government and partners such as the NHS, (but not on social services *per se*), public bodies can work together to improve ‘wellbeing’ in their local communities. We support WLGA’s general thrust that it is local government and other public bodies that must manage the wellbeing agenda in Wales. Legislation then becomes an enabling tool to pursue an outcome based approach to the creation of social services, based on the concept of social wellbeing but not constrained by tight bureaucratic definitions. The Bill’s provisions could then become largely a means of improving performance, accountability, and consistency in service provision. This shift in thinking provides empowerment and choice[2] for the users of social services, because measures of outcome will be firmly centred on the concept of social care interventions having value for users in ways that they themselves define.

---

[2] Forgeard M, Jayawickreme E, Kern M and Seligman M, 'Doing the right thing: Measuring wellbeing for public policy', *International Journal of Wellbeing*, 1(1), 2011, pp 79-106.

31. The following diagram is intended to clarify this issue about how we might demarcate more precisely the specific role of social services vis-à-vis other public services while still acknowledging the place of local authorities in providing leadership for the wellbeing agenda in their own area.

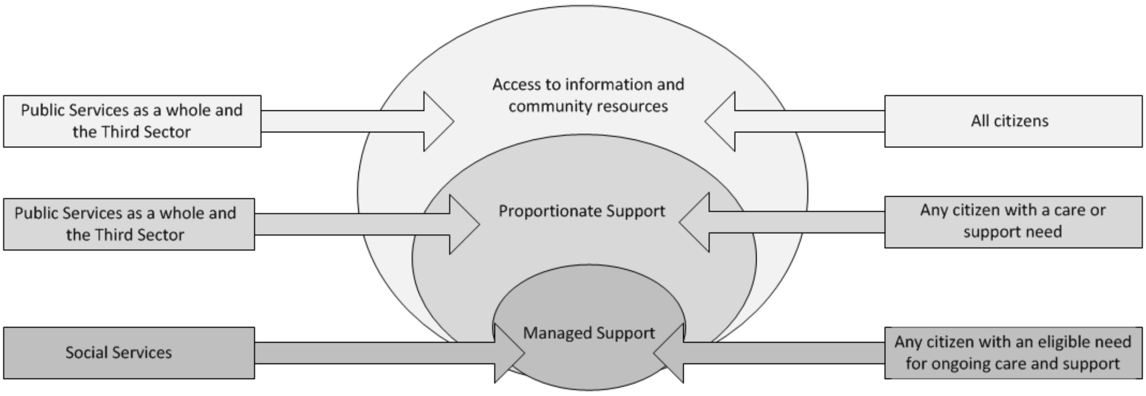


Diagram 1: Specific role of social services vis-à-vis other public services

II. ACCESS, ASSESSMENT AND ELIGIBILITY

32. The current system of access, assessment and eligibility has considerable flaws. It provides differential rights of access to care and support across different service user groups, consumes considerable resources with limited evidence of impact upon outcomes and acts to deter people seeking to arrange early intervention and prevention.

33. There is considerable consensus about the principles that should underpin new arrangements. Staff from local authorities have been working with the Social Services Improvement Agency (commissioned by Welsh Government) to develop and test out a new model which takes into account the requirements of the ten-year strategy. The report should be available soon.

34. If the national framework for these areas of work is to ensure a consistent approach to the way in which local authorities and partners interact with citizens and promote more responsive services, there is general agreement that the new arrangements should:

- begin with the provision of comprehensive information and advice, including what help is available within communities;
- allow access to early intervention and prevention services, without complex assessment processes;
- Offer proportionate assessment for those who may require managed care and support.

35. Changes of this kind are starting to emerge in practice with developments such as intermediate care and reablement, communication hubs and integrated hospital discharge services, Flying Start and Families First initiatives. However, we are learning too about how big is the gap between where we are now and where we will need to be in order to meet the statutory requirements set out in the Bill. The new model has considerable implications for all the stakeholders.

36. If we are to avoid duplication and confusion, the provision of information and advice needs to be managed in a unified way across the public sector and with partners. It is difficult to discern how costs can be apportioned and shared between those organisations that are resourced as universal providers of services and those who have a residual and rationing role. There is a need for further consideration about how systems for children and adults will align. In particular, the Bill as it stands appears to pays little attention to the complex interface between needs, problems, risk, capacity and outcomes. There will be people for whom there is prescribed duty to assess and plan.

37. One of our major concerns is with the next stage in the process when issues of eligibility become more central and centralised. The Bill provides for a new National Eligibility Framework which will introduce a uniform threshold for

people to access publicly funded state support wherever they live in Wales. This addresses the problem of substantial variability in adult services across council areas under the current system (i.e. the Fair Access to Care Services or FACS framework). However, in our opinion, national eligibility criteria should be applied initially to a small range of services, to allow a managed period of transition but also to ensure that a worthwhile goal (consistent eligibility) does not undermine another valuable principle (local determination about the best models of service that can be put in place in response to particular circumstances in the local context).

38. ADSSC broadly supports the modernisation of the system through these provisions but, as stated earlier, we do have some reservations about the anticipated outcomes from the Bill's drive on early intervention and prevention approaches in order to rebalance the system and make immediate savings. There is some evidence that, if poorly managed, such work can create unrealistic expectations, increase levels of dependency, and accelerate a "care career" which requires unnecessary provision of long-term support. Timely early intervention is critical to preventing high end, high cost interventions in some circumstances. For children and families, timely intervention depends on the coping capacity of the family and what is needed are the resources to determine when intervention will likely reduce escalation of need and therefore service demand. Greater access to assessment, even if assessment itself is more proportionate and less bureaucratic, risks taking capacity away from work that is geared towards assessing and managing risk and protection at a time when these are already stretched thinly.

39. Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential future cost pressures (for example, John Bolton's work in Coventry council[3]) rather than in existing

---

[3] http://ssrg.org.uk/wp-content/uploads/2012/01/2006files/10JohnBolton.pdf

budgets for acute needs can be reduced. We advocate, therefore, an approach which recognises the need for additional investment in information and prevention services alongside the development of outcome based, citizen centred/integrated models of care that prevent institutionalised care, support people in their own homes, and provide for integrated care pathways.

40. To be effective, the Bill has to encourage financial remodelling across the public sector to create sustainable investment in early intervention and prevention. This means ensuring good joint commissioning processes and the use of an appropriate range of delivery mechanisms (to include social enterprises, co-operatives and user-led initiatives]).

41. As Professor Bolton points out, there is an important link between prevention and outcomes but that does not always sit well with increased entitlement to assessment and eligibility. These complexities must be fully understood. Alignment of outcomes through a whole systems approach from delivery through to regulation including social care and health will minimise unintended consequences of some of the provisions in the Bill (elaborated later in this evidence).

42. The parallel system of eligibility that determines access to fully funded NHS continuing health care operates under a different legal and operational framework, and so creates another set of challenges to be resolved. The development of appropriate secondary legislation offers the opportunity for addressing some of the longstanding issues here.

43. There is a perception, also, that the proposed model of access, assessment and eligibility in the Bill is too focused on adults and that current legislation already allows children and families to benefit from a proportionate assessment response in relation to need (based upon development of the CAF and the team around the family approach). There may be greater benefit from

focusing attention on provisions that deal with the transition of young people from children's services to adult services.

III. SAFEGUARDING ADULTS

44. The Bill provides for putting on a statutory footing our work to safeguard adults at risk. ADSSC welcomes this new provision but believes that the Bill could further develop the parameters of a comprehensive framework for adult safeguarding and protection. If adult protection is to gain further force in policy and practice, the right to protection and the right to take risks have to be balanced. Reconciliation between prioritising protection and the role of choice in risk assessment and the management of risk is not easy. For example, aligning potentially competing needs of a carer and the person being cared-for can be a critical component in the management of risk. The Bill rightly emphasises the right to self determination, independent control over one's own life (except for those without capacity) and so the right to take reasonable risks. However, an individual is also entitled to protection from undesirable risks. The draft legislation is relatively weak on this very important matter, particularly when risk management can either viewed as a strategy for eliminating risk or a strategy for empowering an individual to take control. We would be concerned about replicating the development of children's safeguarding where a series of tragedies brought about more and more prescription in terms of process and procedures which acted to marginalise the voice of the child.

45. Unlike the legislation successfully enacted in Scotland in 2007, the new provisions in the Bill for safeguarding and protection have no new resources identified to support the implementation of the new framework or the new structures. Furthermore, the Bill does not acknowledge its lack of legislative competence over non-devolved partners such as the police and probation so these professional bodies are not required to contribute to the funding of the boards and may not be fully accountable to multi-agency boards. The absence

of a national funding formula will increase the financial burden on local authorities and may limit what the boards can deliver.

46. We welcome the creation of National Independent Safeguarding Board which should help to provide consistent leadership to drive forward the transformation of social care protection systems. ADSS Cymru and WLGA have jointly commissioned a study from the University of Sheffield to consider the benefits of regional boards. Our initial reservation is that the Bill focuses on creating structures for collaborative working at a strategic level rather than focusing on safe and effective practice. For this reason, we welcome the Committee’s invitation to contribute to the thematic oral evidence session on safeguarding in May.

IV. SERVICE REMODELLING AND INTEGRATING SOCIAL CARE AND HEALTH SERVICES: COLLABORATING FOR SERVICE IMPROVEMENT AND BETTER OUTCOMES

47. A national policy goal is for closer and more effective integration of social care and health services, rightly regarded as crucial to the sustainability of services and to improving health and wellbeing outcomes for service users. ADSSC welcomes the requirement for local authorities to promote partnership working and making arrangements to promote co-operation with partner bodies, as set out in the clauses of Part 9 of the Bill.

48. Whilst we support the Bill’s emphasis on the role of local government in championing the needs of the local population and those in need of help, we are concerned that the Bill does not contain sufficient detail making explicit the requirements on key partners. The evidence from our own consultation with stakeholders views the lack of well defined statutory duties on the NHS as a major challenge to the delivery of the Bill’s stated purpose.

49. Sustainable Social Services: A Framework for Action is prompting a radical change in the way that we organise and manage social care and health services. This is in response to wide range of issues, including an unsustainable current pattern of social care services which has the potential for increasing the costs of provision by 84% over the period 2010-2030. Specific tasks include:

- developing new service models for adults and older people predicated on principles of prevention and reablement and designed to improve outcomes for individuals while reducing demand for core services.
- reforming the commissioning and purchasing of Adult Social Care, through the potential use of joint commissioning arrangements and promoting the development of social enterprises;
- building management capacity to meet the challenges of the emerging agenda.

50. This agenda is being delivered in so far as it can be without a fundamental overhaul designed to overcome many of the formidable challenges and barriers to change, especially the difficulties both the NHS and local authorities are experiencing in their genuine efforts to work together effectively. This includes factors such as:

- meeting the costs of service transformation;
- the scale of the agenda, with a need to focus on innovation and continuous improvement in all areas of service design, delivery and evaluation;
- securing the right service scale - balance of local and regional and national
- budgetary pressures and the need for savings
- different funding and charging;
- the risks of cost shunting between partners and the potential for a breakdown in trust between partners
- finding the resources required to bring about transformational change
- effective leadership across all sectors
- difficulties experienced by Health Boards in shifting resources from acute services to community health and prevention.

- local authorities and health boards have their own local political, corporate, performance and improvement priorities

48. Only if working together on service remodelling and integrating services is seen as a joint statutory obligation and policy imperative is it likely that these challenges can be met. The current Bill is seen as too weak a tool to tackle such entrenched difficulties which undermine the key purpose of integration which is to deliver new service models, better citizen experiences of services and improved outcomes in terms of independence and wellbeing. In our opinion, it allows too much opportunity for silo working, rather than joint accountability for securing appropriate and high quality provision across health and social care in the local authority area. Government needs to be sure that the NHS is obliged to participate fully and not only to co-operate *when required* to do so by local government. Otherwise, the Bill's provision runs the risk of disengagement by the NHS leading to disjointed assessment processes, confusion over who is accountable for the provision of services for agencies and for service users, an increase in complaints due to unworkable care and support plans, an incomplete local offer to citizens and limited use of joint commissioning and pooled budgets where these are appropriate. Social care has to be regarded as having equal status with health, not a subordinate one, if partnership working is to be a joint responsibility and to have positive outcomes.

49. Government needs to consider the practicalities that will realise the vision of the Bill in relation to provisions to promote partnership working. We know that outcomes for adults and children can be vastly improved by integration on different levels, allowing for a range of professional perspectives to shape and develop effective models of intervention. But aligning the agendas of both health and local authorities does not happen automatically; it requires conscious effort to develop a matrix of management arrangements, resource alignment, shared policies, and a shared language about holistic outcomes for service users. Despite acknowledged difficulties, in our opinion, rebalancing

the burden of responsibility across partner agencies in the Bill is critical to the principle of integrated health and social care, and the success of this legislation.

50. The NHS has the power for pooling budgets but it is not used properly. Local authorities and the NHS have different financial arrangements and different regimes; at present, it can be very difficult to reconcile these differences. Government may need to reflect on the mechanisms that need to be in place in order for the provisions in the Bill to deliver its vision. For example, the Bill should place a duty on the NHS to participate in joint assessments and discharge other functions efficiently and effectively, such as the provision of information in the Carer's Measure, to address present variations across Wales.

51. We share the belief that good partnership working with health will strengthen the role and impact of the Bill's prevention agenda. There is a real opportunity here for public health to play a key role in addressing the wider social determinants of ill health through the full range of local government functions and partnerships. We know that Ill health can potentially escalate both the clinical and social care needs of vulnerable individuals. In England, for example, Professor Michael Marmot's Review[4] noted that only 4% of NHS funding is at present spent on prevention. Partnership working between primary care, local authorities and the third sector is proven to deliver effective universal and targeted preventative interventions for those most in need.[5] ADSS Cymru recommends that the present Bill should provide for a more inclusive role by Public Health Wales.

---

[4] http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review .

[5] Strategic Review of Health Inequalities in England Post 2010. Marmot Review. P.32

IMPLEMENTATION OF THE BILL – POTENTIAL BARRIERS

I.FRAGMENTED POLICY

52. There is body of evidence that points to disjointed policy initiatives in social care as a critical factor and a root cause in tackling crises of unsustainable cost increases, poor quality and inequity. Unfortunately, a series of narrowly-focused provisions in the Bill will serve further to fragment social care policy and may possibly undermine the Bill's broad vision or strategy for efficiently delivering a national social care system. The proposals for direct payments are a good example. The overly prescriptive approach taken in the Bill without due consideration to the wider policy context in which direct payments operate (that is, citizen centred support) means that the use of direct payments to encourage and support self determination and self management of social care needs loses its flexibility and become less responsive to the assessed needs of an individual. The danger of over-prescription is potentially the 'undoing' of complex whole system arrangements already in place on the ground. ADSSC advocates that legislative prescription on this scale should not be on the face of the Bill.

II.RESOURCES & FUNDING

53. ADSS Cymru would welcome a more evidenced appraisal of the resources and funding consequences of the provisions in the Bill. There is a real danger in creating increased expectations and duties at a time of depleting resources and the absence of an agreed funding formula for social services that we simply will not be able to meet the expectations of our citizens and deliver on the Act.

54. We are working with WLGA to produce more detailed financial modelling of the impact of the welfare reform and an interim report on likely resource implications of the Bill as currently drafted. We would appreciate a more

detailed assessment within the Explanatory Memorandum to support the assertion that in some areas costs are minimal or cost neutral.

UNINTENDED CONSEQUENCES

I.RISK TO LOCALISM

55. We do not feel that the provisions made on the face of the Bill are in keeping with the localism agenda and there is no guarantee that secondary legislation will acknowledge the potential differences between local areas, so that each area has a measure of flexibility to mitigate risks when implementing the Act. This is in keeping with the greater emphasis in the ten-year strategy on strong national leadership but there has been little debate about the potential impact of moves towards a national care service. Involving communities, adults, children, young people and carers in the development of 'local offers' is critical to successful wellbeing outcomes.

56. The Bill presents a mixed picture of provision where some areas (such as assessments, direct payments, safeguarding and adoption) appear to be overly prescribed and others (such as promoting integration and co-operation with partner agencies) are under-prescribed – often without any clear rationale for such differentiation. We believe that the Bill risks overriding the legitimate autonomy of sovereign bodies to plan and design services around local need which respects geographical terrain, diversity, local demographic profiles and local cultural sensitivities.

57. The Simpson report[6], commissioned by the Welsh Government in March 2011, made a valuable contribution to the debate on 'what services should be delivered where and on what scale'. There is much work being done to agree what services should be delivered at national, regional or local levels, within the limits of current governance arrangements. The Bill appears to

---

[6] http://wales.gov.uk/docs/dsjlg/publications/localgov/110325lnrservicesv2en.pdf

shed little light on this area apart from prescribing a national adoption service. We recognise the need to increase the pace of collaborative activity and our regional improvement collaboratives are making a significant contribution. The Bill gives Welsh Ministers substantial powers to pre-empt and override decisions which may be strongly grounded in local political and professional judgements about complex interdependencies of policy and practice at the point of service delivery.

II.CONSEQUENCES OF A DISJOINTED APPROACH

58. The interface of this Bill with the Sustainable Development Bill and the Public Health Bill suggests that the Welsh Government is working towards a holistic approach to sustaining people and place, helping communities to help people and communities to help themselves. However, it has not explicitly stated or debated its conclusions. Similarly, the recent Welsh Government White Paper on ‘Ending Violence against Women, And Domestic Abuse’ has crossovers with this Bill. It would be helpful to see an explanation of how the Government sees the provisions in this Bill sitting alongside those in other existing Acts and forthcoming Bills.

59. The Bill takes on board the Law Commission’s recommendation to consolidate and simplify existing adult social services law into a single legal framework for Wales. We support this endeavour. However, while acknowledging that this Bill will work alongside the majority of the provisions contained in the Children’s Act, it does struggle to connect coherently systems that will have to cater for a whole range of ages, from unborn babies to the very oldest people in our population. There are many common factors but different groups of service users also have different rights, different needs and different potential solutions for meeting needs for care and support.

60. We would want to ensure that the Bill is clear about (a) which provisions in other legislation have been repealed or transferred to this Bill so that local government might act lawfully and (b) provisions for the transfer of

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. 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[7]. The journey from adolescence to adulthood can be a challenging time for young people, (especially young carers and those with complex needs). As they move between different services, they find significant differences in the expectations, style and culture of these services while their own care needs are evolving at the same time. We recommend that the Bill takes these issues into consideration more explicitly.

61. It is understandable perhaps that the Bill makes little reference to the social care workforce, given the commitment to producing a White Paper on Regulation and Inspection. However, it would be helpful to see a better understanding in the Bill of the role played by strong professional teams across social care and health (many of which now operate in a very integrated way) and the need for training them to meet the changes and challenges it introduces. Associated with this issue is the future of training funds for the workforce which is under review currently.

ACHIEVING A REASONABLE BALANCE IN THE PRIMARY AND SECONDARY LEGISLATION

62. Given the complexity of what the Bill is aiming to achieve, ADSSC would welcome the opportunity to engage in debate about effective secondary legislation as this is material to the Assembly's understanding of how the legislation will operate successfully for individual citizens as well as on a theoretical level.

END

---

[7] http://www.everychildmatters.gov.uk/

For further information please contact:

Latha Unny,
Research & Policy Officer

Tel: 01633 648286
latha.unny@gmail.com

ADSS Cymru
ADSS Cymru Business Unit
c/o Fairfield House
Torfaen County Borough Council
Civic Centre
Pontypool, Torfaen
NP4 6YN
Tel: 01633 648574
Email: adss.cymru@torfaen.gov.uk
www.adsscymru.org.uk

Leading Social Services in Wales
Yn arwain Gwasanaethau Cymdeithasol yng Nghymru

A unified professional and strategic leadership voice for social services in Wales
Llais arweinyddiaeth proffesiynol a strategol unedig ar gyfer y gwasanaethau cymdeithasol yng Nghymru

Social Services & Wellbeing (Wales) Bill

March 2013

WLGA • CLlLC

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.

2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

3. The WLGA welcomes the opportunity to provide written evidence on the Social Services and Wellbeing (Wales) Bill, which has been developed in close consultation with local authority lead politicians, and the Directors of Social Services.

4. In constructing our response we have worked in partnership with local authorities, ADSS Cymru and the NHS Confederation. We have also sought to work closely with our partners in the third sector, and with the offices of the Children's and Older Peoples Commissioner for Wales.

5. In this submission, we make comments on those areas in the Bill required by the Committee, and limited to the principles of the Bill. We refer you to the ADSS Cymru submission for greater detail regarding key policy implications, and support their professional perspective on these matters.

6. We welcome the opportunity provided by the committee to provide additional oral evidence on provisions within the Bill, such as Safeguarding, and would advocate that wellbeing, integration, eligibility and assessment are also afforded the same opportunity, given their importance to the wider policy agenda. Work has already commenced with key colleagues on a number of areas to develop more detailed evidence, on areas with the Society of Welsh Treasurers and ADSS Cymru on the financial implications of the Bill, IPC on Assessment and Eligibility, Professor Jan Horwarth on Safeguarding and the King's Fund on integration with health..

7. Building a robust legislative framework to support the delivery of truly '*Sustainable Social Services'* in Wales is a critical task, and one in which we must work in partnership to ensure we get it right. Social Services cannot deliver this agenda alone and the contribution of partners in the wider public sector, and third and independent sectors will be crucial in delivering the policy objectives.

For further information please contact:

Martyn Palfreman, Head of Health and Social Services Directorate

Emily Warren, Policy Lead

Welsh Local Government Association
Local Government House
Drake walk
Cardiff
CF10 4LG

Tel: 029 2046 8600

<u>Introduction</u>

8. The WLGA welcomes the sustained commitment of the Deputy Minister for Children and Social Services to transforming social services in Wales, and her continued support for social services as a core function within Welsh Local Government.

9. Local Government values the open and constructive approach taken by the Deputy Minster in shaping the reform agenda for social services in Wales. The WLGA, working with ADSS Cymru, will continue to actively contribute to the developing the national policy framework through forums such as the WLGA's Social Services Policy Group, and Welsh Government's National Social Services Partnership Forum Strategic Leadership Group and thematic stakeholder groups.

10. We look forward to maximising opportunities to shape the forthcoming regulations, guidance and codes of practice, via these forums, and building on the existing collaborative and cross party approach to policy making established by the Deputy Minister.

11. ADSS Cymru and WLGA have worked together in developing our written responses to the Bill, as there are a number of areas of where we share the same views and advocate the same solutions. Whilst recognising that our roles are different, we have a shared desire to see local government remaining at the heart of social services transformation and delivering a more effective system of social services through effective political and professional leadership.

12. The WLGA wishes to work closely with the Welsh Government and the National Assembly to shape legislation which enables the delivery of truly sustainable social services. Given that increasing demands and reduced resources are placing social services under extreme pressure, we welcome the commitment by government to legislate, to ensure that social services are sustainable into the future.

13. We are clear however, that the Bill is just <u>one element</u> of the wider policy framework set out in the Welsh Government's policy framework 'Sustainable Social Services; A Framework for Action'. Legislation <u>must not be seen as an end in itself</u>, but used proportionately where it is deemed new legal duties and powers are the most appropriate option to achieve the stated policy objectives.

14. We believe that the introduction of the 'Social Services and Wellbeing (Wales) Bill', builds on the significant progress already made in Wales, as reflected by the 'Independent Commission on Social Services 2010', who stated *'we are building from a position of strength'.* Significantly, much has since been achieved, resulting from the publication in 2011 of Welsh Government's policy framework 'Sustainable Social Services;A Framework for Action'.

15. In demonstrating the commitment of local government to the 'Sustainable Social Services' agenda, the publication in October 2012, of the first 'Local Government Implementation Plan' for 'Sustainable Social Services', reflects both the commitment and leadership shown by social services in advancing improvement. The plan developed by WLGA and ADSS Cymru in partnership with NHS, third sector and independent sector colleagues was welcomed by the Deputy Minister as demonstrating '*the absolute commitment of local Government to transforming social services in Wales, and to collaborating with all partners to deliver the improvements that are needed for people w*ho need care and support'. She described the plan as a 'Landmark Document' which reflected '*that this is a further significant milestone your delivery of the local Government compact'*, which has since been completed.

16. Building upon the considerable and acknowledged strengths that exist in social services in Wales, the WLGA working with ADSS Cymru are intent on achieving service transformation , as set out in our implementation plan through providing:

- A clearer focus on improved wellbeing outcomes for the people using services;
- Greater control and choice for citizens about the help they want and improved access to that help, without unnecessary bureaucracy;
- More effective and better integrated models of care and support and a more responsive range of services; and
- A better qualified workforce with skills that enable them to work across organisational boundaries.

Achieving the Bill's stated purposes

Recommended Principles

- Legislation must simplify the current law, and support delivery of new and more integrated models of service.
- Achieving the right balance between primary legislation and regulation is critical
- Local Government are well placed to deliver locally determined models of care aligned to population requirements. Legislation must not therefore undermine the autonomy of Councils to make decisions on service delivery.
- Resources will be required to deliver the policy objectives stated in the Bill, alongside efficiency savings delivered by local Government
- Improved wellbeing is a public service responsibility, and to be effective in its aim, the Bill must demarcate the specific role expected of social services

17. In its current form the Bill is significant in scope, and larger than any other to come before the National Assembly to date. It is therefore of crucial importance that the legal framework it provides, is proportionate, deliverable and supports sustainability of services.

18. The WLGA looks forward to working constructively with the Health and Social Services Committee and Government, to ensure the Bill delivers the aspirations of 'Sustainable Social Services: A Framework for Action' . To do so, we believe that the Bill must deliver a reduction in bureaucracy, mitigate increasing demand and enable collaboration both within local government and with our key partners. We believe the Bill at this stage, does not set out how it will achieve these objectives.

19. Crucially, there needs to be a dialogue around the reframing of social services proposed by the Bill, which moves towards a more 'progressive universal care service'. We question whether as drafted, and with no additional resources, this vision can be translated into operational reality.

20. The Bill therefore provides a historic opportunity to build on existing innovation and progress, providing a Welsh legal framework which reframes how social services are delivered in Wales, aligned to the changing needs of the population. It is important, that we get it right, and that the legislation is fit for purpose. Therefore at this early stage we believe that the policy objective outlined in the Explanatory Memorandum is both too broad and too vague. The Explanatory Memorandum states the policy objectives are to '*improve the wellbeing outcomes for people who need care and support and carers who need support…*' This is an aspiration not an objective. To ensure the Bill succeeds, we would suggest greater clarity as to what the policy objectives are, and how legislation is being used to achieve these, as set out in paragraphs 15 and 16 above.

21. There also needs to be consideration on the apparent dichotomy in the Bill, between giving users real voice and control, and nationally prescribed arrangements as currently implied in the Bill. Specific elements of the proposed legal framework, such as those relating to assessment and eligibility, need to be framed in a way which enables and supports the development of models that deliver improved outcomes for people in need. Early modelling work by SSIA in relation to Access to Social Care services, and campaigns such as those of Age Cymru and WCVA provide a useful basis for new models that will meet the objectives within 'Sustainable Social Services'. Conversely, over-prescription within the Bill will distract from the development of responsive services that meet locally identified needs.

Are the provisions of the Bill appropriate?

22. We welcome the inclusion in the Bill of new provisions around safeguarding, integration with health, provision of information and advice, and assessment and eligibility as being some of the cornerstones of reform. There is a risk however, that the current drafting of the Bill, and its vast scope, may not be deliverable, particularly around the new duties in relation to wellbeing and prevention. We would recommend similar transitional provisions are placed on the Bill, as recommended in the Stage 1 report, of the regulated Mobile Home sites (Wales) Bill, under recommendation 8, to ensure deliverability.

23. There is also a risk that as currently drafted the Bill may undermine the sovereignty of local government, and its statutory and leadership roles in delivering social services to local communities. Potentially, it reduces subsidiarity and the democratic legitimacy of Councils, through the increased powers conferred on the Welsh

Ministers set out throughout the Bill. For example in 125 (2) power is provided to the Welsh Ministers, '*to direct the local authority to take any action which the Welsh Ministers consider appropriate ……in accordance with the requirements in the relevant code'*.

24. Additionally the Bill presents a mixed picture of provision where some areas appear to be overly prescribing For example we believe that section 8 (3) is too prescriptive, it should be left to local authorities to determine how they would deliver service, within the duties prescribed on the face of the Bill. Whereas other sections such as promoting integration and co-operation with partner agencies are under-prescribed – often without any clear rationale for such differentiation. We provide greater detail under the section on 'Balance'.

Costs

25. The WLGA believe that the Bill must achieve the collective aim of supporting the delivery of services that are both high quality and responsive, but that are sustainable, at a time of increasing pressure and reducing resources. Recognising the current pressures on the public purse we would advocate that the Bill should be focused on priority areas of transformation, which require statutory change, for example integration and safeguarding

26. The WLGA fundamentally questions the assumption within the Explanatory Memorandum, and stated by the Minister for Health and Social Services, that the Bill will be 'cost-neutral'. Colleagues from across the public, third and independent sector support this view, and share the view of the third sector advisory group that '*the main barrier to delivery will be cost projections'.* We share their view that there is both a lack of clarity, and of detail in the Explanatory Memorandum, as currently drafted, and would advocate this is reviewed in light of evidence provided to the Committee before the Stage 1 debate.

27. Evidence from transformation already underway in Wales and from similar changes to the social care infrastructure introduced elsewhere in the UK provides a compelling case that change costs money, and that efficiency savings achieved through change are realised in the longer term and cannot be relied upon to drive the initial change. In subsequent sections of this response we look at some particular examples of this. However our general call is for an honest and open debate about

the resources needed to drive the envisaged change, and what is ultimately achievable.

28. The recent study undertaken by the Institute of Fiscal Studies for the WLGA, entitled 'Local Government Expenditure in Wales: Recent trends and future pressures' suggests that whilst spending on social services in Wales has been relatively protected, '*the expected cuts over the coming years will be increasingly hard to deliver against a backdrop of new statutory duties, and growing demand'*. In particular, demand is expected to grow as a result of imminent changes to welfare, and the report states '*groups impacted most by the benefit and tax credit cuts ….may come to rely more on local Government services (housing, social services)'*.

29. We refer you to recommendation 5 of the Health and Social Services, Stage 1 Committee report recommendations of the Recovery of the medical costs of Asbestos Bill, who state 'We *recommend that the financial estimates on which the Bill is based, are updated as quickly as possible, ideally before the Stage 1 debate, and in any event before detailed consideration of the Bill at Stage 2'.*

Prevention & Early Intervention

30. The Bill focuses on the need to increase early intervention as the way to rebalance the system and improve the wellbeing of people with care and support needs. Welsh Government describe the vision behind the Bill as responding to the fact that '*Current arrangements are not sustainable, therefore we must invest in prevention and early intervention to create sustainability, savings will be made through rebalancing the system, to ensure the masses rather than the few can receive services' .*

31. Whilst we absolutely support the need to rebalance the system to provide responsive services, there is little evidence to suggest that a focus on early intervention and prevention alone, will achieved the desired rebalance, or the long term savings the Government envisage. Indeed the Explanatory Memorandum, which accompanies the Bill, itself acknowledges that this approach will not completely remove the need for ongoing care and support, and in some cases will only delay it.

32. This view is supported by ADSS Cymru, and Professor John Bolton, who determined from work undertaken in Coventry Council that '*Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential*

future cost pressures rather than in existing budgets'. Similar messages emerged from the work undertaken by Professor Bolton in Wales during 2010-11, in his report entitled 'Delivering better services at a lower cost for older people' as such we join with ADSS Cymru and other colleagues from across the third sector in calling for, an approach which recognises the need for additional investment from the outset, for example in information, and advice prevention services and generally in developing new and more integrated models of care. The Government's view that the Bill is cost neutral, and that realignment of services can be delivered without additional resource is absolutely unviable.

33. We therefore advocate that a proportionate approach is needed; one which recognises the importance of early intervention, alongside an acceptance that more acute services will always be required. A key outcome of the Bill must be the creation of new powers for local authorities to develop new ways of delivering services, through vibrant multi sector provision, recognising in Wales the specific role of the third sector.

34. To this end we welcome the inclusion of a duty to promote new models of delivery, which include social enterprises and cooperatives. However we believe it should not be limited to such models, enabling real innovation to take place in partnership with providers in the independent and voluntary sectors alike.

Wellbeing

35. The WLGA recognise the role of public services, in improving the wellbeing of the population. In defining the contribution of social services, the WLGA has previously advocated a defined corporate leadership role for Directors and Cabinet Members, around the 'coordination and promotion' of wellbeing to be included in the Bill.

36. As currently drafted the definition of wellbeing is too broad, and relates to a general duty across the whole public sector, for example paragraph (g) refers to social and economic wellbeing which is extremely broad and vague. The Bill states that the definition relates to '*Any persons exercising functions under this Act'* yet the definition of any persons is not provided. The Bill therefore must clarify the role and duties of social services, in improving the wellbeing of those with care and support needs.

37. The WLGA believes as a minimum the Welsh Government should provide additional information or guidance as to the practical application of the duty, related to the paragraphs (a) to (g) of section 2(2). As drafted the current definition, spans the public sector, and is aligned with the wider policy aspiration of improved population wellbeing, rather than the statutory contribution of social services.

38. Given that we know now the Sustainable Development Bill, Domestic Violence Bill, and proposed Public Health Bill, will also include definitions of wellbeing, and place new duties on public services, we ask the committee to consider the value, of the inclusion of wellbeing in this Bill. Whilst we advocated for its conclusion at the consultation Stage, we were not aware at that time, of the Governments intention to include wellbeing duties in up to three other pieces of legislation. As such we ask the committee to consider the utility of its remaining inclusion in this Bill, or opportunities to ensure it is reframed in the context of the contribution of social services.

39. We would welcome additional information on this provision to be included in the Explanatory Memorandum, around the definition of wellbeing, what the duties mean more explicitly, and on whom they are conferred. In addition we would welcome clarification as to how these provisions will relate to or interface with those proposed in the three Bills referenced in paragraph 38.

Integration

40. Unless enhanced legislative powers are to health and social care, enabling integration across services with a shared population, it is suggested by organisations such as ADSS Cymru that the cost of providing social care will increase by up to 84% over the period 2010-2030. As such the WLGA welcomes the recognition that enhanced statutory powers and duties, are necessary to unblock existing organisational and performance-related barriers, enhancing integration with relevant health services.

41. We strongly believe that the NHS must be full and equal partners, mandated by legislation, in the development of truly integrated models of care if the vision set out in the programme of Government is to be achieved, where it is stated the Government will *'Support service modernisation in the NHS including better integration with Social Care to ensure all services are safe and sustainable in urban and rural areas'*

42. Any new partnership duties must be supported by appropriate arrangements to ensure shared planning, delivery and accountability. Good practice is already in existence across Wales, through county level, health and social care 'boards' (e.g. Hywel Dda) together with detailed evidence presented in a number of studies on integrated care undertaken by organisations such as the Kings Fund.

43. Certainly we believe that the inclusion in the Bill of greater powers to require integration with health is fundamental. There is a real and genuine opportunity to demarcate a Welsh approach to integration, where it is of added value to do so. However as currently drafted, the Bill does not present a clear vision around the integration agenda, nor provide a stronger mandate than already exists to take integration forward.

44. In framing such provisions, we would advocate that the evidence from use of existing legislation is considered (NHS Act 2006) and used to inform requirements. At present, a duty to promote cooperation, is helpful, but is not meaningful.

Unintended Consequences

45. As already set out in this document the WLGA believe that as currently drafted the Bill will result in the unintended consequences of producing a system unable to manage increased expectation and demand, and placing increased pressure on already diminishing and overstretched budgets. We see value in discussing how best to mitigate these consequences, alongside provision of resources appropriate to the new duties outlined in the Bill.

46. Such discussions must be take place in the context of work commissioned by the WLGA from the Institute of Fiscal Studies, which projected that local government may potentially lose up to a fifth of its spending power between now and the end of the decade. The next Spending Review is likely to be extremely tight, and authorities are struggling to balance budgets in line with existing statutory duties.

47. The WLGA recognises the current constraints on Government finances, and we are keen that this does not stymie innovation and reform. It is important that we work together to ensure a realistic resource base is secured, to enable local government to uphold the new statutory duties the Act will confer. This will also ensure local government is able to effectively manage the increased expectations and demand on

services which we expect to result from the Act. As such we have called for an open and honest debate about the level of additional resources required, and a more detailed financial assessment within the Explanatory Memorandum. To support the debate, the WLGA working with ADSS Cymru and the Society of Welsh Treasurers have developed an interim report detailing likely resource implications, and this will be further developed by a commission of independent experts to consider the financial implications of the Bill as currently drafted.

48. The WLGA believes there is value in consolidating legislation into a coherent framework for Wales, and endorses the Law Commission view on this. However our membership does not feel that this has been effectively communicated in the Bill, and we would welcome clarity on what provisions will be repealed and replaced within the Bill, so that our Members are clear of the parameters of the new legal framework. This will avoid any unintended consequence of local authorities being in breach of legislation.

49. In relation to wellbeing we are concerned that there are currently up to three potential pieces of legislation which create new duties around wellbeing, these being this Bill, the Sustainable Development Bill, Domestic Violence Bill, and Public Health Bill. This may lead to confusion and a disjointed approach to achieving improved wellbeing across the population. We ask the Committee to consider carefully the provisions included in the Bill, alongside the other legislation highlighted and advocate a consolidation of wellbeing duties in one Bill.

50. The Social Services and Wellbeing (Wales) Bill is both an enabling and consolidating piece of legislation, and many of the proposed provisions are generally welcomed by our membership. However in drafting the Act we would expect to see a balanced approach to legislation where function, rather than form is prescribed. At present the Bill presents a mixed picture, which risks an overly prescriptive approach in areas such as assessment, adoption, safeguarding and the provision of information and advice. We believe that this risks to affect the flexibility of local authorities as sovereign bodies to plan and design services around evidenced local need, and which is able to respect cultures, traditions and local sensitivities.

Balance

51. With a Bill as wide in scope as this, ensuring an appropriate balance between what is on the face of the Bill, and regulations is crucial. We recognise and welcome the role

of the National Assembly in being part of the transformation of social services and as a strong legislature. This function is fundamental with a Bill the size and scope of the Social Services and Wellbeing (Wales) Bill. However along with a number of other partners have concerns that there is a considerable imbalance between the use of the negative procedure and of the affirmative procedure for agreeing regulations to result from the Act.

52. We refer you to the Stage 1 report of the Constitutional and Legislative Affairs committee regarding the Mobile Homes Bill. Conclusion number 3 states '*While we agree in principle that technical and administrative changes should be left to the negative resolution procedure, as a general rule we would like to see more significant issues subject to the greater level of scrutiny that is provided for by the affirmative procedure'*

53. In particular we would advocate the table setting out the power to make subordinate legislation is revisited by officials prior to the commencement of Stage 2, in accordance with the above conclusion number 3.

Views of Stakeholders

54. As the representative body for local government in Wales, we reflect the views of our members, through network groups such as the Social Services Policy Group, and Bi Lateral meetings with the Deputy Minister. We ensure close alignment with key professional organisations such as ADSS Cymru, and the Society of Welsh Treasurers, and work effectively with key external partners such as the NHS Confederation and a wide range of voluntary organisations. Specifically in drafting this evidence we have worked with ADSS Cymru and the third sector advisory group on Health and Social Care.

55. The Local Government Implementation plan provides an enduring commitment to improving the voice and control of the citizen to shape services, and as such has a significant number of work programmes designed to this effect. We hope that through programmes such as our service user surveys for looked after children, and vulnerable adults, and work led by the SSIA on Citizen Directed Support, through their Learning and Improvement Network, and Getting Engaged programme, our evidence reflects a strong representation from those in receipt of social services throughout our evidence.

Conclusion

56. The WLGA welcomes the introduction of the Social Services and Wellbeing (Wales) Bill, to the National Assembly for Wales. Our evidence sets out our broad views related only to the principles of the Bill, as required by the committee.

57. The Deputy Minister welcomed the commitment within the local government Implementation Plan to empower citizens, to shape locally delivered, responsive services. The plan is aligned to the common goals shared by national and local Government, of providing citizens with a stronger voice, establishing a strong and professional delivery team, driving forward collaboration and service integration, and improving the safeguarding and protection of those at risk within our communities. We believe that it is therefore appropriate to have legislation that supports local government and partners to deliver these policy aspirations in a way that respects the need for flexible models of delivery, aligned to local need, and we will be focusing on ensuring the Bill is able to enable local government, working with partners to deliver these policy objectives.

58. In our evidence we have set out those aspects which we welcome, areas we believe would benefit from amendment, and also areas of specific concern. We believe our response to be pragmatic, recognising the value of the legislation, whilst focusing on what must be deemed priority areas on which to legislate, and what is realistic to achieve within the existing resource base.

59. In particular we welcome the focus on providing greater information and advice to citizens, empowering the development of new models of service by unblocking existing statutory obstacles, and demarcating a Welsh approach to the delivery of services. However we remain concerned about placing wellbeing duties on a statutory footing, whilst the definition remains so broad, and the costs of a move to a social care service with increased statutory duties.

60. We look forward to continuing to work constructively with our professional partners in the ADSS Cymru, NHS and across the third sector via the Health and Social services advisory group, and to participating in the debate to improve the Social Services and Wellbeing (Wales) Bill.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 52 – Victim Support

Social Services and Wellbeing (Wales) Bill

Consultation by the National Assembly for Wales

A response by Victim Support

March 2013

Victim Support is the national charity for people affected by crime. Staff and volunteers offer free and confidential information and support for victims of any crime, whether or not it has been reported and regardless of when it happened. Victim Support works to increase awareness of the effects of crime and to achieve greater recognition of victims' and witnesses' rights. The organisation also operates the Witness Service and the Victim Supportline (0845 30 30 900).

Victim Support's response to Stage 1 of the Social Services and Wellbeing Bill

Victim Support, the national charity for victims and witnesses of crime, welcomes the opportunity to respond to the consultation on Stage 1 of the Social Services and Wellbeing Bill.

Although the bulk of its provisions are beyond our area of expertise, we would like to highlight our support for a relevant policy change that has not as yet been included within legislation, which is the removal of the "reasonable punishment" defence set out in s.58 of the Children Act 2004. In common with other voluntary and community organisations, Victim Support believes that, for the protection of children and the general prevention of violent crime, it is necessary that the law should be changed.

We therefore ask that the Health and Social Care Committee include in its Stage 1 report a recommendation to add to the Bill a clause removing the defence of "reasonable punishment" from the criminal law as applicable in Wales.

We confine our responses below to this issue.

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.**

   Victim Support is a nationwide charity with a commitment to both devolution and localism. We believe that successive Welsh governments have shown the will to lead the rest of the UK in challenging the practice of physical punishment of children, and that a new Act explicitly concerned with wellbeing should not pass up the opportunity to put this commitment into action.

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.**

   Victim Support understands that the original purpose of the Bill was to provide unified legislation behind the provision of social services and social care in Wales. As its scope has subsequently developed to emphasise the promotion of wellbeing, however, it must now address the broader considerations that follow from this, including the criminal law. The Bill has been written using the accepted definition of wellbeing as including physical health and protection from abuse; significant research from organisations such as the NSPCC points to the link between cultural acceptance of physical punishment and incidence of clear abuse[1]. In this context, it seems appropriate that a straightforward, overdue and

---

[1] Laing, Vivienne (2012), *The child protection argument for a ban on smacking*, NSPCC: http://www.nspcc.org.uk/Inform/policyandpublicaffairs/wales/briefings/cp-smacking_wdf93341.pdf

evidence-based reform of the law allowing physical punishment of children should be included.

This is particularly relevant given the explicit reference in Paragraph 188 to a “rights-based approach”, since, under the UN Convention on the Rights of the Child (as recognised in the Rights of Children and Young People Measure 2011) children have an existing right to be protected from violence and abuse. A Bill that explicitly aims to promote the wellbeing and rights of children surely therefore represents an important opportunity to enshrine this protection in law.

Furthermore, Paragraph 15 makes specific reference to preventative services, an area significantly explored within the Bill itself. In our view, a change to the law on physical punishment of children would be a major step towards the prevention of child abuse and wider violence, by providing a clearer legal position in specific cases and by indicating a social consensus on the unacceptability of violence as a means of controlling others.

For these reasons, we believe that the stated objectives of the Bill would be better reflected if a provision were included to remove the “reasonable punishment” defence.

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.**

Victim Support believes that a change to the law on child punishment could alleviate the challenge faced by social services in preventing child abuse. This early intervention before cases escalate stands to reduce the number of more serious cases encountered, thus helping to make social services both more sustainable and more effective.

As the law currently stands, parents and those acting in a parental capacity may invoke the “reasonable punishment” defence against any act that would currently constitute common assault under s.39 of the Criminal Justice Act 1988. This position means that not only children, guardians and concerned witnesses, but also those charged with child protection, must be sufficiently well-versed in the law to appreciate the difference between common assault and assault occasioning actual bodily harm – a distinction not always clear even to practising lawyers. This makes reporting of illegal punishment, and consequent interventions by social services, far less likely to occur until after a case escalates into clearer-cut, more serious forms of abuse.

In addition, there is no current provision in law as to what is meant by “reasonable”, for example in relation to the severity of the behaviour for which the child is punished, the regularity with which physical punishment is used, or the existence of additional factors intended to hurt and humiliate the child, such as being punished in public. A law that defines acceptable violence merely by the degree of injury sustained is manifestly too blunt to protect children adequately: it does not, for example, rule out the use of kicking, elbowing or even the extremely painful twisting of the skin on the wrist known as a Chinese burn, though many would consider such acts both cruel and unnecessary. In this context, the removal of the "reasonable punishment" defence would provide far greater clarity over the legal position, as well as providing social services with a more concrete platform from which to advocate alternatives to physical discipline.

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

   We have no more detailed comment to make on this point than the point made in Question 3, that removing the "reasonable punishment" defence would allow earlier intervention by social services before cases escalate, hence reducing the number of more serious cases encountered.

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

   If the Bill were to go forward with a new clause removing the "reasonable punishment" defence, a potential barrier would be the perception that many parents would stand to be criminalised, impacting not only on the stability and security of families but also on the capacity of the criminal justice system.

   Victim Support believes that this is not a serious risk given the existence of the public interest test for all criminal prosecutions. For example, it is surely right that one-off, spontaneous, regretted incidents motivated by parental concern should be less likely to pass the test than deliberate acts that form part of a pattern, or are disproportionate to the child's behaviour, or which are designed to humiliate. Alongside our recommendation that a clause should be added to the Bill removing the defence, we suggest that the Assembly should enter into dialogue with the CPS about how charges of common assault would be considered in such circumstances.

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.**

   Victim Support has no comment to make on this aspect of the Bill. We would point out that the removal of the "reasonable punishment" defence would of course have to be enacted on the face of the Bill.

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)?**

   Victim Support has no comment to make on this aspect of the Bill.

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

Victim Support has no comment to make on this aspect of the Bill.

Prof Mark Drakeford AM
Chair of the Health and Social Care Committee,
Cardiff Bay
Cardiff
CF99 1NA

Dear Prof. Drakeford,

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

The Vale of Glamorgan Council has been engaged actively in helping ADSS Cymru and the WLGA to prepare written evidence for submission to the Committee. We are pleased to see that the responses have been produced collaboratively, to reflect different but complementary professional and political perspectives.

This Council has been keen to place itself in the forefront of the work to deliver the ten-year strategy for social services in Wales and we welcome the potential contribution of a new statutory framework to the transformation agenda, if the resources needed for delivery are made available.

We wish to endorse the contents of the submissions from both ADSS Cymru and the WLGA.

Yours sincerely

SCEgan.

pp. Councillor Stuart Egan
Deputy Leader and Cabinet Member for Adult Services

cc Cabinet member for Children Services
cc Claire Griffiths, Deputy Clerk, Legislation Office

National Assembly for Wales

Health and Social Care Committee

Consultation – Social Services and Well-being (Wales) Bill

Date: 15th March 2013

Response from: Linc Care

Organisation background

Since 2003, Linc has had a dedicated team that specialise in meeting the housing, care and support needs of primarily older people and other service user groups. More recently, we have been able to significantly advance the services we provide and have received national recognition for the progressive community housing and care options we offer older people.

Within the legal entity of Linc-Cymru Housing Association, Linc Care now has its own strong customer base and a reputation for quality and innovation. With a rapidly ageing population, there is great demand for high quality accommodation, care and support and we are in a strong position to meet the opportunities and challenges this will present.

Linc Care Provides:

- Independent Living Schemes
- Mixed Communities
- Day Care Services
- Nursing Care
- Sheltered Housing and Tenancy Support
- Dementia Awareness

For further information please refer to our website:

http://www.linc-cymru.co.uk/

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 relations to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

As the number of older people and the impact of their complex needs rises, the challenge for commissioners and providers to deliver seamless services designed around the individual is often compromised when budgets are being defended. Effective partnership working can be more effective and financially efficient if budgets are pooled for a common good. Too much resource is often spent deciding on whether needs are classified as health or social which can compromise effective partnership working and result in multiple agency involvement in the day to day care and support of people in most need.

Research tells us that people who require support want quality and consistency. Receiving care from someone known to them and knows them is a key part of that care being personal and has a direct impact on their feeling of well-being. To the person receiving support, the funding stream is not important. Models using combined health and social care teams have demonstrated considerable efficiencies and improved customer satisfaction.

Greater collaboration between social service and health to deliver more integrated models of services provision would make it easier for providers to plan and develop services that span both health and social care.

New Legislation that provides for collaborative working and encompasses the governance arrangements to make this work would be welcomed by people who receive care and providers alike. Personal budgets that meet both health and social care needs will further empower those receiving services to control and design them to meet their personal needs and, through the improved well-being improve outcomes and value for money. The central theme that the new Bill needs to address is how trust can be increased in the partnership between those who receive care and services, commissioners and providers. True partnership with the individual and their family in the centre will re-shape services and focus attention firmly on those who receive them.

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.

We welcome the clear intention to work more closely with 3rd Sector (not for profit) providers. We believe that the shared value base between not for profit organisations such as Linc Care and public sector services make us a natural partner in the design and delivery of services focussed on the health, wellbeing and dignity of the person receiving the care and their family.

A clear definition and description of eligibility that allows for transportable care and support plans is welcomed. Some further emphasis on advocacy for all concerned would add value to the principle of making processes simpler for those trying to navigate the system. Some more emphasis needs to be placed on the combined needs of couples living and aging together. Individual assessments ignore the existence of a shared dependency that marriage and partnership brings. The current process of assessment can prevent people seeking help and support as the language becomes impersonal and dehumanising. Once a person has been identified has having a carer, rather than a partner, they have no identity in their own right except that of a 'service user'. The husband and wife partnership is not recognised in the language of assessment and delivery of care. Some people are discouraged from admitting they need care and support because of this process. Well-being is intrinsically linked to personal identity and self-worth. Processes for assessing needs must refocus language and approach in acknowledging the interdependency of ageing couples and provide support holistically retaining personal identity and maximising wellbeing.

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.

The Bill will not, in itself change the approach to delivering services. It will provide a formal framework for delivery. True partnership which encompasses trust with regards to providing flexible person-centred services is essential to the success of the intention of the Bill. Those responsible for commissioning and delivering services will have to be open to trying new approaches and having realistic expectations of what quality services cost to deliver. Emphasis should be placed on putting the people who receive the services in the centre of planning and commissioning to ensure timely and effective intervention to prevent deterioration and crisis. Windows of opportunity to make a difference are often short-lived and must not be delayed through bureaucratic process. The opportunity and role of primary care to prevent crisis and ensure early referral needs explicit emphasis. Many of the catalysts for emergency admission to hospital are social in origin and easily prevented. Primary care has access to information on predictors that can trigger preventative actions, reduce crisis and improve well-being.

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

The current financial climate has, in some instances, encouraged radical change in service delivery. The key will be cultural change in staff groups and between organisations. The bill will not independently deliver the cultural change that is required. A structured approach will need to be taken to deliver the change and embed new practice and staff will need support and freedom to make this happen. A consensus on eligibility criteria and measurable outcomes will ensure that priorities are shared and portable care plans not compromised by discretionary services or variance in interpretation of eligibility.

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

The wide number of organisations involved and the level of trust that will be required to deliver care differently will provide barriers. The Bill provides a legal framework for delivery but does not address the challenges of such a wide range of changes. An incremental approach may help. In addition, a clear definition of what partnership working is will help to define the value of each partner and the value they bring the shared vision.

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.

It will be important the regulatory bodies adapt their regulation approach to that which is enables the delivery of the aims and objectives of the new Bill. Flexible service delivery will need to allow for invention and imagination which must not be held back by older regulation regimens. Regulation must be designed to ensure that services delivered meet the standards and form appropriate for those receiving them and not as a barrier to change and innovation.

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)?

It is integral to the success of the Bill that Welsh Ministers have the legislative power to implement change and hold organisations to account.

Contact Details:

Anne Thomas
Executive Director Linc Care
Tel: 029 2047 4028
Mob: 07703 885426
E-mail: anne.thomas@linc-cymru.co.uk

Heather Davies
Head of Clinical Services
Tel: 029 2047 4747
Mob: 07966 239881
E-mail: heather.davies@linc-cymru.co.uk

Victoria Crisp
PA to Executive Director Linc Care
Tel: 029 2047 4048
E-mail: victoria.crisp@linc-cymru.co.uk

Postal address:
387 Newport Road
Cardiff
CF24 1GG

Website: http://www.linc-cymru.co.uk

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.

Social Services and Well-Being (Wales) Bill
Stage 1 consideration- Submission of Evidence

Your Name:	Neil Ayling, Director of Community Services
Organisation (If applicable):	Flintshire County Council
Email address:	neil.j.ayling@flintshire.gov.uk
Telephone number:	01352 702500
Your address:	Flintshire County Council, County Hall, Mold. CH7 6NN.

Flintshire County Council (FCC) welcomes the opportunity to provide contributory evidence to the Stage 1 consideration of the Social Services and Well-being (Wales) Bill.

This response has been formulated by the FCC Community Services Directorate. Information focusing on areas of importance from the Flintshire perspective has been collated from various departments within the Directorate.

FCC is aware the evidence contributed may be made available for public scrutiny, published in a report or published as supplementary evidence to a report and may also be seen and discussed by Assembly Members at Committee meetings. FCC is supportive of these processes and would also be agreeable to providing oral evidence to the Committee if required.

FCC can clarify all evidence provided and comments made are suitable for public disclosure.

We would like to thank the Health and Social Care Committee for the opportunity to contribute to the consultation of this Bill, recognising its significance to social care, if the royal assent is obtained.

Question 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?

Response:

FCC acknowledges there is a need for a Single Act for Wales. The Bill's integration and simplification of the existing law is welcomed by FCC. The inclusion of a legal framework for the protection of 'adults at risk' and the increased recognition there is a requirement to strengthen support for carers are acknowledged by FCC as positive developments.

FCC feels stronger collaboration and integration of key services in principle will contribute to improving the well-being of people who need care and support and carers who need support. However we are concerned the Bill in its current form appears to provide little clarity of how such collaborations will come to fruition. The Ministerial Regulations provided for by the Bill are yet to be outlined, as a result FCC feels greater clarity with regard to these regulations is required in order to decipher the potential impact and successes of the Bill.

FCC would like to further highlight its concerns regarding the apparent disproportionate emphasis of duties placed on local authorities to coordinate these collaborations and integrations on the face of the Bill. FCC feels in order to ensure the success of such collaborative provisions, local authority partners should be placed under similar duties and accountability, to further encourage and promote partnership and cooperation. (Part 9, Chapter 2, Section 143 – 151)

Question 2

Do you think the bill delivers the stated objectives as set out in Chapter 3 of the explanatory memorandum?

Response:

FCC welcomes the specified clarification of the core legislative framework for social services and social care in Wales. FCC would in fact encourage greater clarification on the wider legal implications of the Bill and the possible impact in areas of legislation beyond the statutory realms of social care law.

FCC would again highlight the difficulty in ascertaining whether the Bill has or is able to achieve its specified objectives, without further clarification on the many ministerial regulations the Bill makes reference to.

FCC supports the Bill's intention to reduce the needs for long term care and support for people, via the introduction of enhanced duties afforded to local authorities and partners to provide preventative services. FCC recognises the benefits of such provision in preventing the deterioration of wellbeing and preventing/delaying the need for more costly intensive services.

FCC would request further clarity regarding preventative service initiatives and their capacity to link to the wider Public Health Agenda. Specifically we feel clarity is required on local authorities' duties towards the whole population and those who will be deemed eligible for care and support.

FCC does have concerns regarding the financial repercussions of such preventative provisions, feeling the Welsh Government needs to take account of budgetary implications when broadening provisions for preventative services.

FCC feels the Bill's introduction of a statutory framework for the protection of 'Adults at Risk' is a favourable progression, which provides greater legal clarity. FCC would advise there is a requirement to identify resources to support the implementation of this framework.

The simplification of Safeguarding Board arrangements are supported by FCC. However again FCC is concerned, the development and ability to sustain such boards may present significant financial challenges to local authorities. FCC is perturbed by the Bill's emphasis on local authorities to incur the financial cost of such boards, with no such emphasis being placed on non-devolved partners such as the Police, Probation Service and Health Board's. FCC would urge the creation of a national funding formula, in order to clarify how such boards will be sustained.

Whilst the Bill's intention to strengthen support for carers is welcomed by FCC, significant concerns have been raised that providing carers with equal rights to service users may lead to carers being subject to service charges, in the same manner as other service users. FCC feels this would be a negative development, as carers already face a substantial financial disadvantage, often having to give up work or reduce hours to care, which can lead to further penalties with regard to pensions. Carers are also valued partners of the local authority, assisting in the delivery of care. Charging carers could lead to a reduction in the number of carers, resulting in the loss of a vital social and economic resource. FCC would urge Welsh Ministers to consider these issues when they are devising their regulations.

As previously discussed FCC is supportive of the Bill's intention to strengthen collaboration and integration between local authorities and key partners, such as the NHS and private and voluntary sector organisations. However, FCC maintains without further clarification of the proposed ministerial regulations it is difficult to identify how such provisions will be developed. Consideration must be given to the practicalities, financial implications and impact on resources involved in integrating organisations which possess extensive differences in their operational and cultural working systems.

FCC has further concerns regarding the disproportionate emphasis placed on local authorities to coordinate these collaborations and integrations. As previously mentioned FCC feels local authority partners should be placed under similar duties and accountabilities.

There are also fears the Bill does not place a strong enough duty on key partners to cooperate and assist the local authority. FCC would advise the reconsideration of Part 9, Section 145 (1) (a) and (b) of the Bill.

The adoption of an outcome focussed approach will help local authorities to deliver better outcomes for service users. Using the concept of Results Based Accountability could be successful, but it requires clarity about what outcomes local authorities want to achieve and further plans on how these will be measured. There is also a need for further clarity on how such changes will impact at a national level, there may be a requirement to review performance indicators and CSSIW inspection areas. As a local authority, FCC has responded to National Outcomes Framework Consultation and can confirm our position remains consistent with that response.

Question 3

Do you feel that the bill will enable the delivery of social services that are sustainable?

Response:

Whilst supportive and pleased the Social Services and Well-being (Wales) Bill is being developed, FCC would again highlight the difficulty in assessing if the Bill will enable the delivery of sustainable services, without further clarification of the Ministerial Regulations.

FCC considers a foreseeable draw back with regard to the sustainability of services, will be the lack of financial resources available for implementation and maintenance. A current decrease to Welsh Government funding has lead to a contagion effect for local authorities, which is further compounded by recent welfare reforms. These financial cuts mean local authorities are currently working with reduced resources and burdened with increased financial pressures. With these factors in mind it is difficult to comprehend how local authorities will be able to enforce the proposed changes of the Bill as they are intended, without any further funding or long term financial provision.

The Bill makes provisions for charging for social services, preventative services and information and advice. FCC would like to assert our concerns regarding these provisions. We feel provisions for charging will only assist with the sustainability of services if enough revenue is generated to cover costs. We must therefore consider if given the small number of people who will incur such charges, will these charges realistically provide sufficient income to sustain services.

FCC has further concerns regarding the Bill’s provisions to charge for information and advice. We feel this is an unrealistic expectation on services users and carers within Flintshire, considering the need for people to be well informed as part of an enabling approach that also encourages self responsibility. The impact welfare reforms will have on our population should also be considered, we feel expecting payment for information seems naïve and may prevent people from becoming aware of care and support available to them, which appears to contradict the preventative ethos of this Bill and the ethos provided for in ‘The Refreshed Carers Strategy for Wales’.

Workforce training is another essential component of creating sustainable services. FCC welcomes budgetary provisions for workforce grant funding, however we do feel there is a need for clarification with regard to how such funding will be allocated and utilised. Further clarity is also required with regard to longer term funding provisions.

FCC would also take this opportunity to raise, the Bill makes no reference to Social Services functions within the wider public health agenda. We feel further provisions in this area would be useful considering current political and legislative aims to establish collaborative approaches between local authorities, the NHS and health boards to tackle health inequalities.

In order to assist with sustainability FCC would advise local authorities be given flexibility in how we deliver the Bill, in order to be responsive to local need. FCC feel this is something Welsh Ministers should keep in mind when formulating proposed regulations.

Question 4

How will the Bill change existing social services provisions and what impact will such changes have?

Response:

Whilst it will probably not be felt that the Bill immediately makes matters clearer, once in practice FCC feels that it will make a difference to certain areas for example leaving care provisions by making them more "user friendly", as it will hopefully provide a "one stop shop" point of reference. It also seems that it will clarify the duties local authorities are under in relation to looked after children by taking a more holistic view of their well-being and drawing together elements of the existing provisions. To this end the Bill is likely provide a more convenient legal document than we have at present, where provisions are scattered between regulations and legislation. In FCC’s view, the Bill does not necessarily make the law clearer or simpler, but does allow a more convenient way of accessing it.

FCC supports the view that information, advice and assistance is fundamental for existing and potential service users. Although Flintshire has been praised by inspectors for good practice in provision of public information on Social Services we recognise that there is always room for improvement. FCC also supports the Welsh Governments commitment to providing bilingual formats and languages (as is provided for by ‘More than Just Words’).

FCC feels it is appropriate for the Welsh Government to state what is needed. However, each area, jointly with health and other partners should be in a position to identify how to do this in order to address local needs. Also the Welsh Government need to keep in mind to deliver a high standard public information service and to publicise / market the availability of services requires adequate funding, as it is FCC's view these services should be free to the public.

Again FCC is keen the Legislation should specify more clearly how the NHS will work more closely with local government. We feel there is a need for regulations to specify in practical terms what actions will be required of the NHS.

FCC supports the view carers in need should have the right to an assessment. It is our view there is little evidence to suggest that those in need cannot access an assessment currently. We would highlight there could be risks in the proposed widening of eligibility, as this may divert resources from services, into providing an assessment. FCC welcomes proposals to avoid bureaucracy and provide an assessment appropriate to the need.

There are further concerns regarding the assessment process being too prescriptive. It is difficult to ascertain whether this will be the case without further clarity on ministerial regulations. However if the assessment process does emerge as being overly prescriptive, we feel it will be unrealistic in operational terms, divert resources and cause delays if the assessment process is overly complex.

There is also a risk if too prescriptive in terms of who should be involved and what has to be covered within assessments, it could lead to increases in waiting times. Further more empirical evidence and professional best practice will change over time, if an assessment process is too prescriptive there is a risk it may become outdated. Allowing some flexibility will enable Local Authorities to make any appropriate changes in service response over time.

As previously stated FCC does support the development of assessments, which reduce levels of bureaucracy and are outcome focused for service users. However it is also recognised developing assessments which successfully do so is a difficult task, as is evidenced by 'Unified Assessments', which increased levels of bureaucracy and work demands for social services staff.

The Welsh Government will also need to consider that any new process will require a review of UAP and IT systems which support the assessment. Hence, there is likely to be a significant cost to this proposal.

FCC would suggest people developing these new assessment processes should have systems thinking and front line operational knowledge across the range of assessments.

Whilst portable assessments may reduce the 'postcode lottery' of services, Local Authorities must be able to retain sufficient flexibility and autonomy over the planning and delivery of services. FCC does recognise portable assessments would benefit some groups such as travellers, migrant workers and those who move for personal reasons.

FCC supports the expansion of Direct Payments to promote independence and further promote the personalisation agenda. However there are concerns regarding the additional cost, particularly with reference to the expansions to meet the needs of carers through this model.

We support the Bill's provisions, which assist the creation of a national adoption service for Wales. However we share the Welsh Local Government Association's concerns that these provisions may require local authorities to collaborate at a national level. FCC feels local authorities are currently working collaboratively to deliver strong regional adoption services. We would therefore suggest an appropriate way forward would be to build on the current strengths of these services and allow for the continuation of the planning and delivery of adoption services to be a function retained by local authorities.

Question 5

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

Response:

FCC concludes there are a number of potential barriers to the implementation of the provisions of this Bill. In addition to concerns raised in prior sections, FCC would also like to draw attention to the potential costs to IT infrastructure for new assessments and information services.

Concerns are also present within FCC that the Bill refers to the duties placed on Social Services a great deal, which appears disproportionate in relation to the duties placed on key partners and other local authority services, such as housing etc. FCC strongly contends the Bill should demonstrate recognition of what should be joint responsibilities and of the limited jurisdiction Social Services possesses to realistically carryout the prescribed duties. If we are in deed working on the premise of the Bill's stated definition of 'welfare,' then it is clear the Bill is not just Social Services' responsibility.

FCC would further recommend Welsh Ministers consider in their creation of regulations, local authorities require autonomy to plan and deliver local services that meet local needs.

Question 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?

Response:

FCC considers the powers conferred by regulations to be positive, as Welsh Government Ministers are afforded the flexibility to ensure the provisions are implemented in a manner which is appropriate to Wales/Welsh Government legislation. However it is difficult to establish whether the balance of powers will result in successful outcomes, as the ministerial regulations are yet to be outlined.

Question 7

What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation?

Response:

Powers afforded to Welsh Ministers to make subordinate legislation allow for flexibility with regard to the implementation of the Bill in Wales. This should ease the process of implementation and ensure the Bill's provisions can be interpreted in line with current Welsh Government Legislation. However, FCC does advise that such legislation should not be overly prescriptive and should allow local authorities the autonomy to plan and deliver local services, which meet local needs.

FCC also feels further clarification is required regarding Section 138 of the Bill. This section provides ministers with seemingly broad powers, which are open to wide interpretation. FCC would advise that guidance be issued regarding this section to prevent misinterpretation.

Question 8

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

Response:

The financial implications of the Bill are discussed throughout this response, as FCC has major concerns regarding this issue. In addition to these previous discussions FCC would like to add its concerns regarding the Bill's lack of reference to long term financial provision and also its lack of clarity with regard to the redirection of grant funding (will other areas of service be affected?). FCC feels the ambiguity surrounding these matters makes it difficult to establish the true financial implications of the Bill. We feel further explanation and guidance is required as to how local authorities will be able to fund the extensive costs of implementation etc.

Question 9

Any other comments?

Response:

FCC would also like to add the following comments:

The bill and explanatory memorandum does not however provide clarity in relation to:

- The added valued or additional responsibilities placed on a local authority beyond those already in place.
- Links with the wider Public Health agenda and responsibilities for such held by them.
- The requirements on the local authority (beyond those held by Social Services).
- The financial implications of the preventative agenda. Linked to this point is a general question concerning the intended population group for this Bill; many of the people to whom this Bill refers (from a well being/preventative perspective) are unlikely to meet the criteria for Social Services

Health and Social Services Committee consultation on the Social Services and Well-Being (Wales) Bill

Response from Mind Cymru

Introduction

Mind is the leading mental health charity in England and Wales. Mind Cymru is Mind's presence in Wales.

Mind Cymru welcomes the opportunity to contribute to this consultation process. The views expressed within this response are the views of Mind Cymru and are informed by people with direct experience of mental distress.

Mind Cymru is experienced in matters of legislation affecting people with experience of mental health problems, living in Wales. Example of this are the facilitation of 13 events across Wales, in community settings, hospitals, secure units and prisons, to inform the Mental Health Act Code of Practice for Wales 2007, the consultation on Regulations for the Mental Health (Wales) Measure 2010 and the Welsh Government Consultation on this Bill 2012.

Mind Cymru's key messages are that:

- People with experience of mental health problems inform all that we do.
- Because people with mental health problems inform all that we do, we know what the real issues are.
- We are determined to improve society's recognition, understanding and acceptance of people with mental health problems.
- We value diversity and ensure inclusion is at the heart of our work.

General Comments

Mind Cymru welcomes the introduction of the Social Services and Wellbeing (Wales) Bill (the Bill) as it will enable a number of positive developments. We particularly welcome the emphasis on prevention and wellbeing and that of cooperative approaches. However there are still shortcomings which need to be addressed at this stage to enable the Bill to match the aspirations of *Sustainable Social Services: A Framework for Action.*

Mind Cymru is a signatory to the joint response by 25 third sector and citizen organisations, representing the interests of thousands of people with diverse backgrounds across Wales. A summary of this response is contained in Appendix 1, page 8 below.

Our individual response has focussed on some additional aspects of the Bill, highlighting key issues affecting the lives of people with mental health problems.

Overarching Principles

1.Definition of Disability

Mind Cymru supports the need to base the Bill on the principles of the Social Model of Disability (see Appendix 1 point 1).

Mental health problems are often fluctuating, with different individuals experiencing different cycles of good and poor mental health and wellbeing.

They often “fall out” of definitions of disability on the grounds of long-term adverse effect, due to this being given a fixed time interpretation.

1 in 4 people will experience a mental health problem in any one year, however of the number of people in Wales aged 18-64 in receipt of social services on 31 March 2012 those identified as having mental health problems comprised only 6.96%, compared to 39% for those with a learning disability[1].

Building the Bill around the Social Model of Disability will support people with mental health problems access the support they need to break down the barriers they face to maintaining their health and wellbeing.

---

[1] https://statswales.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Adult-Services/Service-Provision/AdultsReceivingServices-by-LocalAuthority-ClientCategory-Age downloaded 2 March 2013

2. Synergy with Existing Legislation and Practice

There is recently introduced new legislation[2] and strategy[3] which support people in Wales with mental health problems. It is vitally important that the Bill complements and enhances opportunities and services for people with mental health problems and is not counter intuitive or counter productive. Currently there is insufficient evidence that these major developments have been taken into account when drafting the Bill.

Mind Cymru asks the Committee to seek evidence based assurance that both The Mental Health (Wales) Measure 2010 and Together for Mental Health have been fully considered and have informed the Bill, and will inform the Code of Practice and Regulations.

2. Wellbeing

Mind Cymru sees the Bill as an ideal opportunity to give direction to wider social and community partnership working both across local authority functions and in meaningful partnerships with Health Boards, third sector organisations, community initiatives and individuals, to promote and develop resilience. It is vital to ensure a sound practical application of wellbeing approaches across health, social care and the wider determinants of health and wellbeing.

The New Economics Foundation's Five Ways to Wellbeing[4] gives an effective model on which to base such partnerships.

Mind Cymru asks the Committee to consider embodying the Five Ways to Wellbeing on the face of the Bill, or at the very least in the Code of Practice.

4. Co-production

The Bill is an opportunity to transform health, social care and wellbeing in Wales and as such must adopt a genuine co-production approach across assessment, care and support and care planning with the citizen at the centre, (see Appendix 1 point 3).

Wales has a diverse population across urban, semi rural and rural settings. It is vital that co-production includes genuine participation of marginalised individuals and groups, including the seldom heard, or "hard to engage".

---

[2] Mental Health (Wales) Measure 2010

[3] Together for Mental Health 2012

[4] http://www.neweconomics.org/projects/five-ways-well-being

In developing a co-produced model Mind Cymru asks the Committee to consider current examples of co-production such as Together for Mental Health building outcomes 'through the service user lens'.

5. Reablement

Currently reablement is not addressed in the Bill.
Research has shown that reablement services **enable people to live at home longer and reduce care costs.** As Welsh services face potentially greater demand alongside increased financial pressures, there is a compelling moral and financial argument to ensure these services are consistently available across Wales. The Social Care Institute for Excellence (SCIE) identifies that "*Reablement is key because it appears to be welcomed by people receiving the service, and represents an investment that may produce savings*"[5].

Mind Cymru asks the Committee to consider seeking an amendment to include reablement on the face of the Bill.

6. Code of Practice and Regulations

The Bill refers to a Code of Practice and Regulations. Evidence from both the Mental Health Act Code of Practice for Wales 2007 and the Mental Health Measure Code of Practice 2010 demonstrate the need for an effective, robust and accessible Code of Practice, co-produced with individuals and a range of organisations, which is available from the point of implementation of law.

Mind Cymru asks the Committee to consider seeking an amendment to include the need for the Code of Practice to be co-produced and published concurrently with the Bill.

7. Direct Payments

Mind Cymru welcomes commitments to extending the availability of Direct Payments (see Appendix 1 points 4a and 4b). People with mental health problems have the lowest take up of direct payments in Wales. Building co-operative models of support, with citizens at the centre, which take into account the particular barriers faced by people with mental health problems and seek to find solutions to enable people to break down those barriers is vital.

There needs to be put in place simple systems of support and brokerage, which are accessible to people, including those with mental health problems. The role of care co-ordinators and other supporters is key to meaningful participation in this. Adopting a joined up approach to assessment and care

---

[5] Social Care Institute for Excellence (SCIE) (2011) *At a glance 46: Reablement: A key role for occupational therapists* London: SCIE

planning across health and social care should assist in this regard, (see also point 10 below).

People should have access to visionary, person centred support and care, encompassing a wide range of provision beyond traditional narrowly focused 'care packages', whether they choose to take up direct payments or choose not to so do. It will be important to ensure that people can access real opportunities to do things differently and these are not narrowed, or eroded by cost constraints. For example riding, or cycling activities for disabled people can make a big positive difference to wellbeing.

Mind Cymru seeks assurances that those who do not wish to take up Direct Payments are not 'left behind', or offered poorer quality services and support.

Mind Cymru has heard of inconsistent approaches to provision of similar services through Local Authority commissioned services. For example one person being advised not to use a Direct Payment approach as they would have to make a financial contribution, whereas if the person accessed the same services through a Spot Contract they would not. These confusions form particularly challenging barriers for people with mental health problems and there must be access to good quality advice, support and advocacy to assist disabled people navigate through life.

8. Part 1 Key Terms 2 Meaning of "well-being"

(4) (b) participation in work.

Mind Cymru fully appreciates the positive impact that work can have on mental health and wellbeing. However it is good work that is good for your wellbeing, not any work. For work to impact positively it must be appropriate to the person's needs, skill match and capacity.

Often people with mental health problems have low self esteem and others have low expectations of them:

"*When I finished my MSC in Electronic Engineering, the person at the job centre could not understand that I did not want a job stacking shelves".*

In addition, people with mental health problems are often furthest away from the workplace. The definition of wellbeing should include access to meaningful activities.

Mind Cymru asks the Committee to consider seeking an amendment to the Bill to include (4) (b) participation in appropriate work and (4) (c) meaningful activity.

9. Part 2 General Functions

6 Preventative services

6 (6) (c) disproportionate expenditure

Mind Cymru welcomes the emphasis on early intervention and prevention services, which can support the development of resilience, both at individual and family level and in whole communities. We are concerned that the inclusion of 6 (6) (c) is likely to lead to services being considered in isolation, and cost driven, which is unhelpful at least and counterintuitive. It is widely recognised that investing in early intervention and prevention saves money. However some of these are evident over time.

"In some cases the pay-offs are spread over many years. Most obviously this is the case for programmes dealing with childhood mental health problems, which in the absence of intervention have a strong tendency to persist throughout childhood and adolescence into adult life. However, the overall scale of economic pay-offs from these interventions is generally such that their costs are fully recovered within a relatively short period of time".[6].

Mind Cymru asks the Committee to consider an amendment to remove Part 2 6 (6) (c) from the Bill.

10. Part 3 Assessing the Needs of Individuals

38 Care and support plans and support plans

In order for people facing barriers to maintaining their health and wellbeing, including people with mental health problems, accurate and holistic care plans should be produced and maintained with regular review in partnership with the person facing such barriers.

Many people in such positions will have a range of agencies involved in their assessment and planning. The Bill needs to ensure a joined up approach to planning and assessment in order to maximise engagement and minimise duplication.

---

[6] Mental Health Promotion and Prevention: the Economic Case Martin Knapp, David McDaid and Michael Parsonage (editors) Personal Social Services Research Unit, London School of Economics and Political Science January 2011, p43

The 8 measures based on areas of life used in mental health Care and Treatment Plans should be considered as part of the mix to ensure greater joined up support in overcoming barriers faced by people in all aspects of their lives.

The 8 areas are
- Accommodation
- Education and Training
- Finance and Money
- Medical treatment including psychological interventions
- Parenting or caring relationships
- Personal care and physical wellbeing
- Social, cultural and spiritual
- Work and occupation

For those people in secondary mental health services, who have an existing care and treatment plan enshrined by law in the Mental Health (Wales) Measure 2010, there should be one joined up plan, not different plans for health and social care. This also allows for greater portability of plans.

Mind Cymru asks the Committee to consider an amendment to enshrine the eight areas of life in care planning on the face of the Bill.

11. Part 7 Safeguarding

Vulnerable people including adults with mental health problems and young carers of adults with mental health problems must at all times be treated with respect and dignity, without fear of violence, mistrust or neglect.

Scope, definitions and duties around safeguarding must not focus on how practitioners can assess and make decisions about an individual's level of risk and fail to take account of service users' own perceptions of their vulnerability.

An appropriate definition of vulnerability can only be reached by taking the views of those deemed to be at risk as its starting point. In Mind's consultation, in 2008, 35 per cent of respondents considered themselves to be 'vulnerable' or 'at risk' of abuse all of the time, whilst 49 per cent felt vulnerable or at risk sometimes. Only 16 per cent of respondents (13 out of 83) said they did not feel vulnerable.

Many respondents explicitly stated they felt vulnerable because of their mental health. However, a strong message that came out of focus group discussions was that people's sense of vulnerability is not constant, but may fluctuate in line with their condition. There was a firm resistance to being defined as 'vulnerable' automatically by virtue of a diagnosis. Respondents agreed that your level of vulnerability will vary depending on the severity of your problem at any one time, as well as a number of other factors, such as who is providing your care, what other people you come into contact with regularly, whether you are on medication, and so on.

Some people with mental health problems have told Mind about not being referred to adult protection teams, because the current definition is often interpreted as those who meet the high levels of need required for access to local authority social care services. (Mind (2008) *Health Select Committee Inquiry into Patient Safety: Response from Mind).* Our research shows that people may not meet social care eligibility criteria but may still feel vulnerable because of their mental health problems. The definition of vulnerable adult must clearly include people with mental health problems. However, Mind is concerned that any duties and their interpretation are sensitive to the fluctuating needs of people with experience of mental distress and do not prejudge their circumstances.

It is important that this is not interpreted as a need to sustain the current risk averse culture in Social Services (see Appendix 1 point 8).

Contact
Ruth Coombs
Manager for Influence and Change
Mind Cymru

r.coombs@mind.org.uk
029 20346575   07779727886

3rd Floor
Quebec House
Castlebridge
Cowbridge Road East
Cardiff CF11 9AB

Appendix 1

Introduction and Executive Summary of a joint response to the Health and Social Care Committee Consultation on the Social Services and Well-being (Wales) Bill

Introduction

We are a partnership of 25 third sector and citizen organisations, representing the interests of thousands of people with diverse backgrounds across Wales (see Annex).

We ask the Health and Social Care Committee to consider this paper, which identifies some key concerns with the Social Services and Well-being (Wales) Bill.

Although circulation of the paper has been limited mainly to the Wales Alliance for Citizen Directed Support, the Direct Payment Support Schemes Network and Wales Disability Reference Group, and not (because of time constraints) via wider networks such as WCVA, the position that it represents has received considerable support.

The partner organisations, whilst not necessarily supporting all aspects of this paper, do endorse the general principles and proposed direction that it outlines and recommend it to the Health and Social Care Committee for consideration. Some of the partner organisations will submit additional evidence to the Committee.

The paper has been co-ordinated by Disability Wales, in discussion with the partner organisations, and was drafted mainly from the perspective of disabled people. We recognise that there are specific issues for older people, for children and young people, and for carers, although the proposals that are outlined in the paper should be broadly applicable to all groups.

The consensus of the partner organisations is that introduction of the Social Services and Well-being (Wales) Bill (the SSW Bill) is welcome and will both simplify legislation and enable a number of positive developments, such as a focus on well-being and outcomes, national eligibility criteria, portable assessments, integration of children, adults and carers services, social enterprise and co-operative approaches to service delivery, and promotion of the role of third sector.

However, there is also a consensus that in its present form the legislative framework which the SSW Bill would establish falls short of achieving the radical transformation of Social Services aspired to in *Sustainable Social Services: A Framework for Action*.

The partner organisations ask the Committee to consider the following key points, which we believe to be fundamental if the SSW Bill is to be strengthened sufficiently to achieve a real transformation of Social Services.

Executive Summary

The partner organisations call upon the Committee to:

1. recommend an amendment to the SSW Bill to replace the current Medical Model definition of disability with a Social Model definition.
2. recommend an amendment to the SSW Bill to incorporate enjoyment of the right to Independent Living into the meaning of well-being.

3. obtain assurance from WG that the Code of Practice will clarify its commitment to transforming Social Services by supporting development of a co-produced model of Citizen Directed Support.

4a. consider how the Social Care (Self-directed Support) (Scotland) Act 2013 may be drawn upon to inform further development of the SSW Bill, e.g. by making Direct Payments the default method of administering care and support services.

4b. recommend to Welsh Government that new models of support should be actively developed which place control with citizens, including within collective approaches to support provision.

5. recommend an amendment to the SSW Bill to require local authorities to ensure access to Independent Advocacy and peer support, as well as information, advice and assistance.

6. clarify whether an Equality Impact Assessment has been carried out on Section 54 of the SSW Bill, and to seek an amendment to the SSW Bill to prevent local authorities "charging for preventative services and information, advice and assistance."

7. obtain confirmation that the £50 per week cap on charges for domiciliary care and support will be retained under new regulations.

8. recommend an amendment to the SSW Bill to acknowledge the right of individuals to take risks, to take full account of the positive use of the Mental Capacity Act requirements, and to ensure that risk is managed on an individual basis.
9. bring the Talking Points Personal Outcomes Approach, as developed by the I Matter, We Matter campaign, to the attention of WG, with a view to incorporating its principles and practice into development of the National Outcomes Framework.
10. obtain an assurance from WG that the Code of Practice will establish Co-production as the preferred method of delivering a genuinely transformed Social Services across Wales.

Comisiynydd Plant Cymru
Children's Commissioner for Wales
Keith Towler

Health and Social Care Committee - Scrutiny of Social Services and Well-being (Wales) Bill: Response to consultation.

15 March 2013

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.[1] In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).[2] The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and they may also make representations to the Welsh Ministers about any matter affecting the rights and welfare of children in Wales.[3]

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.[4]

Contact details

Organisation	Children's Commissioner for Wales
Name:	Keith Towler
Title	Children's Commissioner for Wales
Address:	Oystermouth House, Charter Court, Phoenix Way, Llansamlet, Swansea
Post code:	SA7 9FS
Tel:	01792 765600
e-mail:	commissioner@childcomwales.org.uk

This response is not confidential

---

[1] Section 72A Care Standards Act 2000
[2] Regulation 22 Children's Commissioner for Wales Regulations 2001
[3] Section 75A (1) Care Standards Act 2000
[4] http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasuresrightsofchildren.

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.**

As Children's Commissioner for Wales I have concerns related to provision that brings together duties and functions in relation to the well-being of people who need care and support and carers who need support into a single Act whether they are a child or an adult.

The Declaration of the Rights of the Child, states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly in 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children.

The Children and Young Persons (Wales) Measure 2011 seeks to implement an approach to law and policy-making in Wales which focuses on the rights guaranteed by the UNCRC. Welsh Ministers must, when exercising their functions, have 'due regard' to Part 1 of the UNCRC. The Explanatory Memorandum that been issued in relation to the Social Services and Well-being (Wales) Bill clearly states that the intended effect of the legislation is to 'as far as is possible, integrate and align arrangements so that there is a common set of processes, ***for people***' (2013:7). This statement of intent suggests that the proposed changes are introduced for the purpose of aligning procedural arrangements for adults and children and not on the basis of an approach which focuses on the rights guaranteed by the UNCRC.

The introduction of legislative change designed to introduce a 'common set of processes' across ages is contrary to article 3 of the UNCRC that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. There is no supporting text to explain the ways in which the proposed change to a single Act across children and adults provision and the replacement or restatement of parts of existing legislation relating to children will promote the best interests of the child in compliance with article 3 of the UNCRC.

A clear example of failure to demonstrate the application of the due regard duty and compliance with the Convention is contained within Section 144 of the Bill. This section makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). The Explanatory Memorandum accompanying the Bill states that 'these amendments are made to ensure that the existing duty in the 2004 (Children) Act to make arrangements to promote co-operation to improve the well-being of children **is aligned with** the new duty in section 146 of this Bill (arrangements to promote co-operation – adults with needs for care and support and carers)' (2013:137). The decision to amend the existing duty towards children contained in the 2004 Act should be based on a consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. In this case an assessment should be made of the impact of such a change in relation to compliance with:

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all legislative and administrative measures.

The intent set out in the Bill here does not relate to an application of consideration of the due regard duty with particular reference to article 3 of the UNCRC. One example of non-compliance in relation to the need for special care for children in promoting the best interest principles is the introduction through the Bill of a National Independent Safeguarding Board to consider safeguarding arrangements for both children and adults. In the annual report I published in 2011, I set out my vision for an independently chaired national safeguarding board to set the remit for local safeguarding children boards and child protection issues. I remain convinced that there are strong arguments for the establishment of a separate National Independent Safeguarding Board for children and I am concerned that the proposed joint Board will be consumed with issues related to the new statutory framework for vulnerable adults. I have made my support for appointment of an independent chair clear in the past and this position has not changed.

The clearest breach of the ‘best interests’ principle is contained in Section 13 of the Bill in relation to refusal by a child of a needs assessment. In my response to the White Paper I set out the issue of parental consent to assessment of need as the single most important issue that needed to be addressed. Provision under the Children Act 1989 sets out that a child in need referral under section 17 can only be made where parental consent is sought and granted. I stated my concerns that children and young people can be denied the right to an assessment on the basis of identified need if their parents refuse consent for such an assessment to take place. The system through which referral without consent can only be achieved in relation to child protection concerns runs counter to central principles of the Bill - early intervention, prevention and the promotion of wellbeing. I called for the Bill to be used as an opportunity to address this and to provide for the referral for assessment of any child or young person identified as in need as of right and without the need to secure parental consent in line with the best interests principle. However not only does the Bill provide that the duty on the local authority to assess does not apply if anyone with parental responsibility for a child under 16 refuses an assessment (section 14), it also introduces provision that the local authority is not obliged to carry out an assessment if a child refuses. The Explanatory Memorandum states that this provision is introduced as this ‘recognises the importance of ensuring children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs’ (2013:98). While article 12 of the UNCRC provides that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them this right to be heard should support rather than undermine the application of article 3 (best interests) and article 19 (protection) of the UNCRC. I have already referred to the international instruments that set out the need to extend particular care to the child. The introduction of provision through which a child can refuse the assessment of their own need does not take account of the requirements of article 3 of the UNCRC. In practical terms the proposals contained in section 13 also ignore the potential impact of normalization of detrimental experiences, anxiety related to state intervention in family life and processes of control on the capacity for children to recognize their own need for support.

The Bill also contains proposals related to the conditions that must be met for a local authority to be under a duty to meet the care and support needs of a child in its area (Section 23). This section is derived from but in effect replaces the duties contained under section 17 and Schedule 2 of the Children Act 1989. For the purposes of section 17 of the Children Act 1989 a child shall be taken to be 'in need' subject to a number of criteria including *C) he is disabled.* However section 23 of the Bill provides for a duty to meet care and support needs of a child where:

> *(1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met.*
>
> *(2) Condition 1 is that the child is within the local authority's area.*
>
> *(3) Condition 2 is that—*
> *(a) the needs meet the eligibility criteria, or*
> *(b) the local authority considers it necessary to meet the needs in order to protect the child from—*
> *(i) abuse or neglect or a risk of abuse or neglect, or*
> *(ii) other harm or a risk of such harm.*

The Bill removes the status of 'child in need' and the associated support connected to that status as afforded to disabled children under the Children Act 1989. Information on what will constitute 'eligible need' under the Bill has yet to be developed and will be the subject of regulation.

> Article 23 Paragraph 2 of the UNCRC states that:
>
> States Parties recognize the right of the disabled child to special care and shall encourage and ensure extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

The changes contained in the Bill in relation to those children to be included as subject to the duties imposed upon local authorities represent retrogression in relation to compliance with article 23 of the UNCRC. The United Nations Committee on the Rights of the Child issued General Comment No. 9 on the rights of children with disabilities in 2006. The General Comment states that in the application of paragraph 2 of article 23 States Parties should 'effectively implement a comprehensive policy by means of a plan of action …. Which ensures that a child with disability and her or his parents/or others caring for the child do receive the special care and assistance they are entitled to under the Convention' (2006:4). The inclusion of a disabled child under criteria to qualify as a 'child in need' under section 17 and Schedule 2 of the Children Act 1989 affords protection in relation to the right to 'special care and assistance'. The changes introduced on the face of the Bill in relation to which children are entitled to support for their care and needs omit specific reference to disabled children and weaken regard to article 23 of the UNCRC as described in the General Comment No. 9 on the rights of children with disabilities. The omission of such a fundamental provision 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.

When the First Minister made a statement on the legislative programme on July 17th 2012 he stated that the planned introduction of a Children and Young Persons Bill to build upon the introduction of the Rights of Children and Young Persons (Wales) Measure 2011 was to be lost from the legislative programme. Further the First Minister in his statement said that the Social Services Bill would provide the vehicle to 'strengthen our approach to supporting looked-after children' as well as other issues.

However the Bill actually does very little to alter the existing legislation in relation to looked after children in Wales. The Explanatory Memorandum accompanying the Bill states that ‘the obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act have been included in this Part (6). The provisions have been updates and clarified but do not in essence change the obligations and duties towards these groups of children and young people’ (2013:13). The Explanatory Memorandum also states that ‘the Bill simplifies (but does not change the effect of) the complex provisions within Part 3 of the Children Act 1989 which describe the different categories of young persons who constitute ‘care leavers’ and seeks to clarify the local authority’s often different obligations and duties towards each category of young person’ (2013: 13,14). While the intention to clarity duties in relation to care leavers may lead to improvements the Bill has not been used as a vehicle to strengthen the approach to supporting looked-after children in Wales or to promote a rights-based approach to policy relating to looked-after children in-line with the spirit of the duty of due regard to the UNCRC on Welsh Ministers. The Bill could have been utilised as a legislative tool to strengthen arrangements in relation to looked after children with regard to article 20 of the UNCRC (entitlement to special protection and assistance for a child temporarily or permanently deprived of his or her family environment) , the application of the other articles of the UNCRC in line with the principle of non-discrimination under article 2 and the United Nations framework: Guidelines for the Alternative Care of Children(2009).

The Bill does include some additional considerations in relation to children. The definition of well-being as it applies to a child includes: (a) physical, intellectual, emotional, social and behavioural development and (b) welfare (as interpreted in the 1989 Children Act) in addition to the 7 domains included in the definition for all ‘people’. The duty to assess the needs of carers for support (section 15) includes direction on the consideration by the local authority in carrying out a carers assessment of whether a child carer is actually a child with care and support needs in their own right who should be assessed under section 12. While I welcome the recognition of the need for additional considerations in relation to the well-being of children and in relation to child carers these in themselves are not sufficient to address the concerns I have raised.

There is clear danger that the paramountcy principle (which reflects the article 3 duty) may be diluted by the introduction of a single Act and I regard this change as potentially contrary to the best interests of children in Wales.

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.

2.1 <u>Improve the well-being outcomes for people who need care and support and carers who need support</u>

I welcome the intention to build on the definition of wellbeing introduced in the 2004 Children Act through the addition of item *(e) securing their rights*. I am aware that this reflects the definition of wellbeing set out in the Government of Wales Act 2006. However in meeting the intention (p90:7.9) that the legislation should build upon the Rights of Children and Young Persons (Wales) Measure 2011 a more detailed statement on securing rights is needed. I would like to see an amendment to the definition of well-being to include a direct reference to the United Nations Convention on the Rights of the Child in relation to securing the rights of children and young people. This will provide clarity for those subject to the duty to promote wellbeing. There is evidence that the duty to promote the welfare of children and young people as contained in the 2004 Children Act has had limited impact on the lived experiences of children and young people. Robust measures are needed to ensure that there is accountability in relation to the implementation of this general duty. I have already stated my concerns about the decision to amend the existing duty towards children contained in the 2004 Act on the basis of the need to ‘align’ procedures with new duties related to adults and about a failure to demonstrate a consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. The Bill does not set out the Code of Practice or National Eligibility Framework and it therefore not possible to assess if those charged with the delivery of social services will be clear in relation to their specific statutory duties towards children and young people.

The White Paper appeared to suggest that the introduction of the general 'well-being' duty for local authorities and their partners would ensure earlier and easier access to support for children in relation to their well-being support needs. Children and young people deserve the support they need to enjoy the levels of well-being experienced by their peers and in order that their rights under the UNCRC are realised. The case for identifying problems in families early and intervening to prevent their occurrence or escalation has been strongly presented at the UK and Wales levels over the last decade. Analysis shows that early intervention can be highly cost effective as well as meeting the primary objective of securing better outcomes for children.

However the contents of the Bill suggest additional gate-keeping in relation to the provision of statutory services to children. The omission of disabled children in section 23 of the Bill as compared to section 17 of the Children Act 1989 that I have set out above is one example of this. Section 19 of the Bill provides that an assessment will be needed to conclude if there are care and support needs or support needs to be met, once it is concluded that there are needs to be met the local authority must then determine whether the needs meet the eligibility criteria. Section 23 states that the application of the eligibility criteria will be the principle means of determining the child's needs for care and support (condition 2). The eligibility criteria is not provided on the face of the Bill, this makes any assessment of the likely impact of the Bill on the well-being of children in need of care and support impossible. Section 23 also provides that the duty to meet the care and support needs of a child exists where a child does not meet the eligibility criteria but where the:

> *(b) the local authority considers it necessary to meet the needs in order to protect the child from—*
> *(i) abuse or neglect or a risk of abuse or neglect, or*
> *(ii) other harm or a risk of such harm.*

The duty to investigate children at risk is already contained in section 47 of the Children Act 1989 (and restated in section 108 of the Bill). The Bill does not however address the processes that will be in place to meet the needs of those children who have an assessment that identifies that they have care and support needs, are not considered at risk and do not meet the eligibility criteria.

In the absence of information about eligibility criteria and procedures for meeting the needs of those assessed as having needs but not meeting eligibility criteria within the Bill, it is difficult to assess if the intentions to improve well-being outcomes are likely to be met. More information is also needed in order to assess the degree to which the Bill introduces additional gate-keeping to statutory services or can be said to be compliant with promoting Article 19 Paragraph 2 of the UNCRC:

> Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The potential for the Bill to deliver on the intention to improve the well-being of children and young people in Wales would be considerably strengthened if the issue of equal protection was addressed on the face of the Bill. The proposed Children and Young Persons Bill provided a statutory vehicle to provide for equal protection for children in Wales, however this Bill has now been lost from the legislative programme. Welsh Government must take action on the issue of equal protection for children and young people if it is to provide a clear message to children and young people that they have the right to be safe. In England and Wales, Section 58 of the Children Act 2004 removed the defence of 'reasonable chastisement' for those with parental responsibility but replaced it with one of 'reasonable punishment'. While section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family. Where a parent hits a child, they are able to claim a justifying defence – one that would not be available were the victim over the age of 16. As such, children are denied the equal protection of the law. It is lawful for parents to use 'reasonable punishment' as long as it does not leave more than a 'transitory mark' on the child.

The current lack of equality of protection with adults cannot be justified because:

- even the mildest smack sends children the message that hitting people is acceptable behaviour;
- research shows that escalation from mild smacking to serious assaults is an inherent (albeit not inevitable) feature of physical punishment;
- physical punishment invades children's physical integrity, making it a potential pathway to sexual abuse;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children do not complain about something they are told is permitted and justified;
- those witnessing violence to children have no confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- Section 58 of the Children Act 2004 fails to protect children from painful, dangerous, humiliating or frequent assaults;
- It is a human rights obligations to respect the physical integrity and human dignity of children.

To fulfil those obligations properly, children must be given the protection of the law against assault. The Bill offers a means of providing equal protection to children in Wales in support of the intentions to improve well-being and safeguard children.

2.2. Simplifying the web of legislation that currently regulates social care in Wales

I do not believe that the Bill assists in simplifying the web of legislation that currently regulates social care for children in Wales. The Bill includes sections which restate existing legislation from the Children Act 1989 and the Children Act 2004 and other relevant legislation, sections which alter parts of the provision already contained in those Acts and introduces changes in relation to provisions contained in those Acts as they apply to children. As I have already stated many of these changes appear to be 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 in line with the duty of due regard to the UNCRC.

The Committee may wish to consider the approach that has been adopted by the Scottish Government in their Children and Young People Bill. The Scottish Bill is intended to bring together earlier plans for separate legislation on children's services and children's rights into a single, comprehensive framework that will underpin work to realize the Scottish Government's ambitions towards children. Their proposals seek to embed the rights of children and young people across the public sector in line with the UNCRC into one piece of legislation. The approach of introducing changes to align adult and children's social care and well-being services in the Welsh Bill does not afford the same level of protection to the distinct needs and rights of children.

2.3. Providing people with a stronger voice and greater control over services they receive

Section 8 of the Bill places a duty on local authorities to secure the provision of an information, advice and assistance service. The purpose of the service is set out as to provide people with information and advice relating to care and support and to provide assistance to them in accessing it. The Bill does not address the need for such a service to meet the needs of children in terms of age appropriate and fit for purpose information and assistance for 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.

Article 13 of the UNCRC provides that:

> The child shall have their right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

I have drawn attention in the past to evidence contained in reports and reviews undertaken by my office such as 'Telling Concerns' (2003), Lost After care (2011) and Missing Voices (2012) that demonstrates the particular barriers for children and young people using social care services in accessing information and advice on their statutory entitlements. The Bill does not currently address this issue, promote article 13 or offer the potential for children to be involved in choices about the care and support they receive in an informed way.

My review of independent professional advocacy services (2012) for children and young people with a statutory entitlement has highlighted the considerable improvements that are needed in supporting access to assistance for children and young people.

Advocacy plays a critical role in enabling children and young people to safeguard themselves by exercising their rights as outlined in the UNCRC and specifically in relation to having their voices heard in line with article 12. Section 159 of the Bill replicates the provision in section 26A of the Children Act 1989 in relation to assistance for persons making representations but does not refer to independent professional advocacy services specifically.

The Scottish Government is seeking to put in place legislation that ensures:

- all children and young people from birth up to leaving school have access to a Named Person;
- all relevant services cooperate with the Named Person in ensuring that a child's and young person's wellbeing is at the forefront of their actions.

The approach proposed in Scotland, in conjunction with the provision of independent professional advocacy services for children making representations would provide a much stronger offer in relation to the exercise of a stronger voice and real control for children in line with the promotion of rights based policy. The Bill as it is currently drafted does not deliver on the intention to provide a stronger voice and real control for children in need of care or support.

2.4 Ensuring people receive the help they need to live fulfilled lives.

In my opinion providing children with the help they need to live fulfilled lives requires the provision of a Bill that brings together proposals to embed the rights of children and young people across the public sector in line with the UNCRC. The Bill as it is drafted does not provide for this and does not sufficiently demonstrate the application of the duty to have due regard to the UNCRC contained in the Children and Young Persons (Wales) Measure 2011.

2.5 Stronger national direction with clear local accountability for delivery.

The Bill is weighted towards enabling the provision of regulation and at this time it is not clear if this regulation will provide stronger national direction with clear local accountability for delivery. The Bill in itself does not currently provide stronger national direction in relation to provision for children supported by policy which focuses on the rights guaranteed by the UNCRC. Furthermore the Bill does not specify the provision that local authorities may or must provide (section 20). This is intended to 'provide flexibility and encourage innovation' (2013:101, Explanatory Memorandum). While I understand the need for innovative services that can respond flexibly to local needs I do have concerns that this may lead to further inconsistencies in relation to the ways in which the care and support needs of children are met, dependent on where they live.

The Bill provides that the Welsh Minister must issue and from time to time revise a statement relating to the well-being of people who need care and support and carers who need support. I have already welcomed the proposal to create a coherent and transparent framework of outcomes and standards across social services and social care agencies. The proposed duty on Welsh Ministers to encourage improvement in social services and social care services and to publish and review statements of national outcomes are important mechanisms for supporting on-going improvements in services. I would hope that such an approach would help to reduce incidents where standards at the local authority level slip to a point where there are concerns about the ability of services to promote the welfare of and safeguard children and young people. The usefulness of a National Outcomes and Standards Framework as a means of securing implementation and holding services to account should be informed by the lessons learnt through the process for delivery of the NSF for Children, Young People and Maternity Services (2005). The fact that duties to scrutinise delivery on the standards was left to those responsible for delivery has arguably had an impact in relation to weak implementation of NSF Standards. The development of wellbeing outcome statements which focus on the individual is important and I welcome the intention to look at the distinct ways in which wellbeing can be said to have been achieved for children in different circumstances. The outcomes statements and measures will also need to be informed by the UNCRC. I understand that at this time the issue of agreeing a set of high level outcome statements for 'people' irrespective of age is problematic in terms of ensuring that regard to the UNCRC is reflected in the way these outcome statements relate to children. There is a need to be more specific within the Bill about the processes that will be introduced in relation to monitoring implementation and progress against the outcomes frameworks, without this it is difficult to assess if the proposed changes will support a process of robust accountability in the best interests of the child.

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.

There is some evidence that at the point of service delivery integrated services can deliver better outcomes for children. The language of joint working, pooled resources and integrated services has been with us for some time however implementation is inconsistent. My Investigation and Advice team are often involved with cases where children and young people are let down while agencies argue over responsibility and funding to meet the needs of the child or young person.

However in defining regulations and guidance for the development of formal partnerships attention must be given to stronger drivers towards shared national population outcomes across delivery partners. The use of two separate definitions of 'wellbeing' in the Bill and the Mental Health Strategy for example demonstrates the barriers to integrated working and shared outcomes for local services. Welsh Government will need to develop integrated strategic guidance that is informed by duties and priorities across policy areas in order to provide local partners with the regulations and guidance they need to deliver integrated services. These developments are likely to be seriously hindered where the strategic drivers for different agencies do not 'talk' to each other. All agencies must have a common understanding of their role in addressing need, whether it is statutory or non statutory support. Having ascertained the relevant information, all agencies should discuss what their contribution will be to address the needs of this cohort of the population which, provided with appropriate early intervention and support, may not reach a stage so grave as to require a statutory social service or health assessment.

Article 18, paragraph 2 of the UNCRC provides that:

> For the purposes of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Services for children who need care and support must be delivered on the basis of need and in compliance with the provisions of article 18 of the UNCRC and not on the basis of policy that aims to reduce demand.

4. How will the Bill change existing social services provision and what impact will such changes have, if any?
AND
5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Addressing questions related to the impact of the changes proposed in the Bill and the potential barriers to implementing the provision of the Bill is challenging in the absence key pieces of information that will impact directly on the implementation of the Bill, such as the eligibility framework, code of practice and outcomes statement. However the responses I have provided to earlier questions above illustrate the fact that I have a number of concerns related to the implementation of the Bill. Central to these concerns is the need for changes to the Bill to better reflect the Welsh Government commitment to implement an approach to law and policy-making for children in Wales which focuses on the rights guaranteed by the UNCRC.

I am also concerned about the lack of detail in relation to key issues, for example in relation to new safeguarding arrangements on the face of Bill. The National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards (LSCBs) was undertaken in 2010. The Committee recommendations focus on the need for greater direction in requirements related to collaborative partnership working across agencies and better accountability in relation to safeguarding responsibilities of agencies beyond social service departments. The Committee also recommended the development of a national funding formula for LSCBs and consideration of the need for an amendment to current guidance to specify that agencies 'will contribute' rather than 'may contribute'. The Committee also recommended that guidance should be issued to meaningfully involved children and young people as relevant to the work of the LSCB.
I believe that the Bill provides an appropriate vehicle for the implementation of the recommendations made by the Committee in line with promotion of article 19 paragraph 1 of the UNCRC through which:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The requirements set out on the face of the Bill (section 111) in relation to Safeguarding Children Boards provides for regulation to be made specifying the areas in Wales where there are to be Safeguarding Children Boards. While the Bill provides that each of the following is a partner of a Board: a local authority, a chief officer for a police area, a LHB and NHS Trust, the lead partner who will have responsibility for establishing each Board is to be provided for in regulation. The Bill provides that Boards 'must' publish annual plans and reports (section 113). However the Bill provides only that a Board 'may' ask a person to body to provide information. Similarly section 115 of the Bill states that a Board partner 'may' make payments towards expenditure incurred by the Safeguarding Board. The face of the Bill does not therefore address the recommendations made as a result of the National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards or provide strong national leadership on the effective provision of Boards to deliver on the article 19 of the UNCRC and other relevant articles. I am also concerned that the Bill does provide for Welsh Minister to amend this part of the Bill (section 117) to require that a Safeguarding Children board and a Safeguarding Adult Board combine creating a single Board. Should this provision within the Bill be applied it will be contrary to a commitment to policy that focuses on the rights guaranteed by the UNCRC.

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.

Whilst overall there appears to be a reasonable balance on the face of the Bill and powers conferred by regulations I have significant concerns regarding two specific elements of the Bill. Left undefined there is a danger that the stated intentions of the Bill will not be met. Eligibility criteria under section 23 of the Bill is not defined on the face of the Bill and requirements in relation to Safeguarding Boards are not set out in the Bill. These are fundamental issues that undermine the intention to provide leadership, coherence and clarity through the Bill.

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.

Regardless of whether the affirmative or negative procedures are undertaken it is essential given the level of potential impact on individuals lives that robust and extensive consultation processes are in put in place. Whilst I note that major areas of the Bill's implementation from children's perspectives appear to be appropriately the subject of the affirmative procedures, I would not wish to fully commit to that position in the absence of further examination.

7. 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.

Article 4 of the UNCRC provides that States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources. I would expect that in order to exercise their duty of due regard to the UNCRC Welsh Ministers will ensure that a child's rights impact assessment is conducted to evaluate how the allocation of budget is proportionate to eth realization of the legislation introduced through the Bill.

Submission by:

Keith Towler

Keith Towler
Children's Commissioner for Wales

Submission of Evidence to the National Assembly Health and Social Services Committee on the Social Services and Wellbeing Bill by Learning Disability Wales

1. Learning Disability Wales: Our role

We are the umbrella body for all voluntary organisations active in the field of learning disability in Wales.Our mission is to 'create a Wales that values and includes every child and adult with a learning disability.'

We have 104 voluntary sector organisations that are members and have voting rights. We also have 42 individuals, 19 statutory organisations and 7 commercial organisations that receive our services as members, but do not have voting rights.

Our members are active in all aspects of the lives of children, young people and adults with learning disability, from birth through to old age. They include self advocacy and advocacy organisations, children and adult service providers, parent and carer organisations, social service departments, statutory agencies and generic organisations.

2. Recent Policy Activity

In recent years we have contributed to many Welsh Government policy groups. These have included:

- the Rights into Action Taskforce on services for disabled children
- the Learning Disability Implementation Advisory Group
- the Protection of Vulnerable Adults Project Board
- the Virtual Safeguarding Advisory Group
- the A.S.D. Task and Finish Group
- the Fulfilled Lives Supportive Communities Commissioning Forum
- the Independent Commission on Socail Services in Wales
- the External Reference Group on transition policy for young people with additional learning needs
- the Framework for Independent Living Steering Group and sub groups on

accommodation and person centred technology
- the National Partnership Forum for Older People
- the Paying for Care Advisory Group.

3. Response to the Bill

We fully support the broad messages conveyed to the Committee in a separate submission made by Disability Wales and twenty five third sector organisations, including Learning Disability Wales.(We shall describe it as Submission 1 in this document.) We also fully support the concerns expressed by the Coalition on Charging, of which Learning Disability Wales is a member, about Part 5 of the Bill. (We shall describe it as Submission 2)

In the following sections we highlight those issues that are particularly important for our members in the learning disability field.

4. Part 1: Introduction and meanings

We fully support the detailed case made in submission 1 about the definition of disability. We would like to see the current medical model definition of disability replaced by a social model definition.

We also note that the definition of wellbeing for adults does not include education and development. This is discriminatory, particularly towards adults with learning disabilities, and runs counter to the Welsh Governments avowed intent to have one inclusive definition for all ages.

5. Part 2: General Functions

We welcome:

- the duties on local authorities and health boards to gaina better understanding of the needs of their populations
- clearly linking this assessment into the development of local health,social care and well-being strategies.

We strongly support :

- the duty on local authorities to promote the development of social enterprises, co-ops and user –led and third sector organisations.
- the duty on local authorities to promote the availability of preventative services in the third sector

- the duty on local authorities, with health boards to provide information,advice and assistance to people understand what services and assistance they may be able to get.

We are very disappointed by the lack of any reference to the provision of advocacy in this section. Access to independent advocacy, though variable and fragile across Wales, has been invaluable in assisting people witha learning disability to gain access to services and to ensure that that their rights are respected.

It is all the more disappointing given that the Welsh Government has funded a grant scheme to assist local advocacy organisations for some eight years.

6. Part 3: Assessing the needs of individuals

We welcome:

- the new single right to assessment. However, we note that while the responsibility for doing this rightly rests with local authorities, current constructive working relationships and collaboration in multi –disciplinary teams will be obstructed if there are not powers provided to ensure that some assessment can be undertaken by agreement by healthcare professionals, i.e. learning disability nurses, occupational therapists, speech and language therapists.
- the single duty for local authorities to undertake a carers assessment, and the previous limitations on this.
- the powers to combine assessments formerly undertaken by a range of agencies and services.

7. Part 4: Meeting needs

We welcome:

- the creation of a national eligibility framework.
- the overiding duty to meet needs to protect an adult from abuse or neglect.
- the overiding duty to meet needs to protect a child from abuse and neglect.
- the simplifying and centralising of the law relating to carers
- the intention to create an eligibility framework for carers.

We are disappointed at the limited nature of the provisions relating to direct payments, in that their is no requirement placed upon local authorities to further promote and encourage and assist their greater take –up.

We fully support the detailed points made in Submission 1 about the absence of any paving powers regarding independent budgets and any reference or support for a co-production approach to meeting social care and wellbeing needs.

These omissions substantially detract from any expectation of the Bill fulfilling one of the 4 explicit objectives for the legislation: “ providing people with a stronger voice and greater control over the services they receive.”

We welcome:

- the duty on local authorities to provide and keep under review care and support plans for people
- the duty for local authorities to provide and keep under review support plans for carers
- the duty to carry out further assessments and revise the plan if there has been a change in the individuals circumstances.
- the powers for the local authority to coordinate the preparation and review of plans where another body is also preparing a plan at the same time.
- The portability of plans

8. Part 5: Charging and financial assessment

We fully support the detailed points made in Submission 2 about whether local authorities should be able to levy any charges for the provision of, say day services.

We fully support the detailed points made in Submission 1 expressing concern about this power. It is difficult to understand why a citizen may be charged to help them gain access to a service that is already funded by taxation and which they will very often have a right to receive.

9. Part 6: Looked after and accommodated children

We welcome the updating and clarification of the duties on local authorities regarding looked after children and accommodated children.

10. Part 7: Safeguarding

We welcome :

- the introduction of a statutory framework to protect adults.
- the requirement for local authorities to make enquiries if they suspect that an adult is at risk of abuse or neglect.
- the duty on partners to report to the local authority any suspicions that a person may be at risk
- the duty on partners, including health to cooperate and provide informationwhen requested by a local authority.
- the creation of a National Independent Safeguarding Board to ensure an effective all-Wales approach
- the creation of Safeguarding Children Boards and Safeguarding Adults Boards.

11. Part 8: Social Services Functions

We welcome the continued requirement for local authorities to have a Director of Social Services and the new definition of required competencies.

We welcome the commitment to consult on the content of the Code of Practice.

12. Part 9: Well being outcomes, co-operation and partnership

We welcome:

- the commitment to publish a statement of outcomes that are sought for individuals who use social care.
- that the outcomes statements wil apply to care and support provided by others.
- the scope for the Code to impose requirements on local authorities.
- the requirement that local authorities must make arrangements to promote co-operation with parner bodies.

- the requirement for local authorities to promote integration of care and support with health and health related provision.

We particularly welcome:

- the powers to prescribe partnership arrangements, including the pooling of budgets. We believe that pooling of budgets represents the only way of ensuring that there is a seamless service supporting children, young people and adults with more complex or multiple disabilities, or those individuals who challenge services. It is key to avoiding instances of ill treatment and abuse as occurred for people with a learning disability who were living in Winterbourne View.

We welcome the powers to allow the development of a national adoption agency.

We are disappointed that in seeking to address some issues about partnership working, the Bill does not make any provisions regarding continuing health care. A significant number of people with a learning disability and/or their carers are required to take part in an arcane game to decide which agency, whether health board or social services, will meet the cost of their care and support. Essentially individuals are required to adopt the language of the medical model,to emphasize what they cannot do, to gain support. Not only can this process be emotionally draining for the individuals at the centre of it, but it is extremely wasteful of professionals time as they engage in arguments that are all about cost-shunting, and not about meeting needs.

This issue, if tackled, is exactly the sort of example of creating a more streamlined approach to meeting the needs of individual that the Bill is intended to address. Two objectives from the Welsh Governments Strategic Equality Plan are particularly relevant:

Obj 5: Tackle barriers and support disabled people so that they can live independently and exercise choice and control in their daily lives.

Obj 6: Put the needs of service users at the heart of delivery in key public services, in particular health,

13. Part 10: Complaints and representations

We welcome the additional powers being provided to the Public Services Ombudsman for Wales.

Learning Disability Wales
March 13th, 2013

Credwch mewn plant
Believe in children

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
Development Officer

Date: March 2013

E-mail: tim.ruscoe@barnardos.org.uk

Tel: 01639 620945

Address: Barnardo's Cymru
Policy and Research Unit
South West Wales Office
1st Floor
4a Queen Street
Neath SA11 1DL

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

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 recipiency. 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

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 61 – The National Autistic Society Cymru (NAS Cymru)

The National Autistic Society Cymru
Cymdeithas Genedlaethol Awtistiaeth Cymru

Response to the Social Services and Well-being [Wales] Bill

About Us

The National Autistic Society Cymru [NAS Cymru] is Wales' only member-led charity for people affected by autism[1]. The National Autistic Society was founded in 1962 by a group of parents who were passionate about ensuring a better future for their children. In Wales, since 1994, we have been providing local support, services and actively campaigning so that people with autism get to lead the life they choose.

Across Wales we have over 900 members, 11 local branches and provide:

- Information, advice, advocacy, training and support for individuals and their families;
- Information and training for health, education and other professionals working with people with autism and their families;
- A telephone helpline, free to use;
- Specialist residential, supported living, outreach and day services for adults;
- Out-of-school services for children and young people; and
- Employment training support and social programmes for adults with autism.

NAS Cymru believes that the right support at the right time makes an enormous difference to the lives of those affected by autism and we are committed to ensuring that their voices are heard.

About autism

Autism is a lifelong developmental disability that affects the way a person communicates with, and relates to, other people. It also affects how they make sense of the world around them. It is a spectrum condition, which means that, while all people with autism share three main areas of difficulty, their condition will affect them in different ways. The three main areas of difficulty are:

- Difficulty with social interaction. This includes recognising and understanding other people's feelings and managing their own. Not understanding how to interact with other people can make it hard to form friendships;
- Difficulty with social communication. This includes using and understanding verbal and non-verbal language, such as gestures, facial expressions and tone of voice; and

---

[1] The term autism is used throughout this document to refer to all people on the autism spectrum including Kanner autism, Asperger Syndrome and high-functioning autism.

- Difficulty with social imagination. This includes the ability to understand and predict other people's intentions and behaviour and to imagine situations outside of their own routine. This can be accompanied by a narrow repetitive range of activities.

Some people with autism are able to live relatively independent lives but others may need a lifetime of specialist support. People with autism may also experience some form of sensory sensitivity or under-sensitivity, for example to sounds touch, tastes, smells, light or colours. Asperger syndrome is a form of autism.

Research has shown that 1 in 100 people have autism[2]. By applying the 1 in 100 figure we estimate that over 30,000 people in Wales have autism. Together with their families, they make up over 100,000 people whose lives are touched by autism every single day.

General Comments

NAS Cymru is pleased to be given the opportunity to respond to this consultation. We welcome the broad aims and overarching principles outlined in the Social Services and Well-being [Wales] Bill. In our view, the Bill offers a clear opportunity to improve support for both children and adults with autism in Wales, their families and their carers. We also believe that the Bill will help clarify the duties and responsibilities around social care in order to better meet the needs of people in Wales now and in future.

We are very pleased that the Bill includes an obligation on local authorities to promote the well-being of children and adults. We believe that the definitions included in the Bill encompass an individual's wider health, social, educational and economic needs to the extent that they may enjoy an independent and fulfilled life.

For people with autism, who, because of the nature of their condition can find dealing with change difficult moving from childhood into adulthood can be a period of great uncertainty and can be particularly challenging. We hope that including children and adults in the Bill will mean that local services are able to work more closely together to ensure that transition, especially into adult services, is more effective and efficient.

Our response considers issues that specifically relate to people with autism, their families and carers. In developing our response, we drew on research from two NAS surveys: *I Exist: The Message from Adults with Autism in Wales and The Life We Choose: Shaping Autism Services in Wales.* We also consulted with NAS branch members and staff.

---

[2] Brugha, T et al (2009) *Autism Spectrum Disorders in adults living in households throughout England*: *Report from the Adult Psychiatric Morbidity Survey 2007* London: The NHS Information Centre for Health and Social Care

Assessing, Understanding and Meeting Needs

In 2011 we published the results of the largest ever survey of experiences of people with autism and their families in Wales. The report ‘The Life We Choose’ shows that of the people with autism who took part in our research, more than half [54 per cent] felt that their needs were not being met.

We therefore welcome the duty placed on local authorities and health boards to assess and meet the care and support needs of the general population in their geographical area. This assessment will aim to give each local authority and health board a top-level indication of the current and future requirements of people and how they may meet those needs.

In order to do this effectively for people with autism, additional focus will be needed on ensuring that local authorities and the NHS have accurate data on the local needs of people with autism.

From our work with local authorities, we are aware that there is currently a lack of consistent and clear data collected on the needs of people with autism in social care. Local areas find it particularly challenging to develop a clear picture of need for adults on the spectrum. As a result people with autism are often ‘hidden’ in our social care system. Many areas have no idea how many people with autism use services in their area and, because of this, they fail to plan for their needs. This leads to people either failing to receive support until they fall into crisis, or receiving support that does not meet their needs.

Because of this challenge, mapping prevalence and collecting information about the individual needs of children and adults with autism was one of the key objectives outlined in the Welsh Government’s Autistic Spectrum Disorder Strategic Action Plan, published in April 2008. A review of progress on the Strategic Action Plan[3] identified data collection and information on local need as a key area that required further attention. The report stated:

> *There is a need for greater consistency in the methodology of data collection within and between Local Authorities and LHBs. This will require guidance and support facilitated by the Welsh Assembly Government. The outcome will provide more accurate evidence of numbers, needs and services which can be used to tailor on-going implementation of the ASD Strategic Action Plan. The gathering of such information on ASD from local to national level will be unique within the United Kingdom.*

We believe that the Welsh Government should take forward this recommendation. In addition to help further the implementation of the Strategic Action Plan, the Bill should also be strengthened to include a statutory duty on local authorities and health boards to:

- Accurately record the number of children and adults with autism in their area and that they be provided with a level of guidance, as recommended by the Welsh Government[4], to enable them to do carry out this requirement; and
- Maintain a mandatory register to include all people with disabilities, including autism

---

[3] OBE Morgan, H (2011) *The ASD Strategic Action Plan for Wales (2008): Evaluating the Foundation Phase* Welsh Government

[4] Ibid

We believe that amending the Bill in this way would allow for a more accurate picture of the local need, encourage the sharing of information between different bodies and improve the delivery of services. It would also put Wales in a unique position in the way that it looks after the social care needs of all disabled people in Wales, in comparison to the other nations of the UK

Eligibility Criteria

NAS Cymru believes that the development of new eligibility criteria are a crucial part of this Bill, as they will be used to establish who can qualify for services and what type of provision they can expect.

We welcome the establishment of national eligibility criteria as we believe that it will go some way in helping ensure parity of provision regardless of where people may live.

We are however concerned that the detail surrounding the new regulations is not currently available for comment.

The current eligibility criteria have posed a particular problem for people with autism. Too often, because of a lack of understanding of the needs of people with autism by community care assessors and a misunderstanding of the importance of social participation within the current eligibility framework, many people with autism (especially those with high functioning autism and Asperger syndrome) are not eligible for social care support.

Adults with autism have told us that they thought the lack of understanding of autism among professionals prevented them for accessing support. Local authorities and local health boards have also told us that they thought that training for staff could be improved[5].

Training for community care assessors is particularly important, as without a clear understanding of the condition, they cannot assess people with the condition fairly and accurately. This means people with autism will not qualify for the support they need. Difficulties with communication are a defining feature of autism, meaning people with the condition often struggle to understand and respond to questions about the support they need.

Some people with autism may also lack the self awareness to understand the support they require, so may, unintentionally, misrepresent their needs to assessors. People with autism may also answer questions too literally. If they were asked by a care assessor whether they can make a meal, for example, they may say yes, but omit to mention that this is only with prompting and support from their carer.

In England, statutory guidance puts a duty on local authorities to ensure that there is specialist training for specific groups of people, including community care assessors. We believe a duty is also needed in Wales.

Where people with autism are not assessed as eligible for social care support, we know that they may become eligible for support later on when, as a result of a lack of support their needs become

---

[5] Withers, L (2008) *I Exist: The message from adults with autism in Wales.* The National Autistic Society

particularly acute, and they require more intensive, high level interventions and crisis management. Nearly half (49 per cent) of adults with autism responding to our *I Exist* survey said that they had developed serious mental health problems as a result of a lack of support.[6] As the National Audit Office (NAO) in England found in their report into the cost of support adults with autism: *"Beside the negative impact of such crises on a person's life, acute services are also expensive, with inpatient mental health care costing between £200 and £300 per day."*[7] It is therefore vital that not only is there a greater investment in low level preventative services [see next section], but also that the criteria includes the specific needs of adults with autism, including in particular support with social participation. If adults with autism are given this type of support, it can prevent them from needing crisis support.

In addition, a clear challenge in accessing services for adults with autism is that they quite often fall between mental health and learning disability teams in local authorities. Autism is a developmental disorder, not a learning disability or a mental health issue, so people with autism do not fall easily under either of those teams. Although the Welsh Government has made is clear to local authorities that they must not base access to health and social care services for adults on their IQ, more than a third [38 per cent] of adults told us that not meeting the criteria for a learning disability team has stopped them from getting support[8].

We do not know how the new criteria will differ from the current guidance. While questions remain unanswered around the regulations it is difficult to respond to the consultation as it stands.

We would therefore seek assurances from Welsh Government that:

- Sufficient time and opportunity is given for scrutiny of the draft regulations by stakeholders, including third sector organisations and Assembly Members;
- Measures are put in place to ensure local authorities provide services for people with autism, and that there is closer cooperation between Learning Disability Services and Mental Health Teams to ensure continuity of service;
- Eligibility assessments can be transferred from one Local Authority to another authority; and
- Include in the regulations an obligation for people undertaking a needs assessment to be fully trained in identifying autism in children and adults

Preventative Services

For people with autism, providing the right service at the right time can lead to them living more fulfilling and independent lives.

NAS Cymru fully supports the inclusion in the Bill for local authorities and health boards to provide a 'range and level' of preventative services, centred on the needs of the individual, that will prevent people with disabilities, like autism, from developing more complex needs. Providing preventative services can

---

[6] Ibid

[7] NAO (2009) *Supporting people with autism through adulthood*, The National Audit Office.

[8] Evans, R (2011) *The Life We Choose: Shaping autism services in Wales:* The National Autistic Society

benefit people with autism, their carers and families and reduce the pressures on them. In turn, this can mean that further trauma can be avoided, crisis points averted and costs reduced.

While demand for preventative services for people with autism in Wales is huge, current provision is low and there is also a discrepancy between the types of services available to people with autism and what they actually want.

NAS Cymru would expect preventative services to include a number of low-level services which are be relatively light to administer but have significant impact. Examples would include social skills support, developing life skills, advocacy, befriending and respite; but this is by no means an exhaustive description of what is meant by preventative services.

NAS Cymru would seek to ensure that the Bill includes:

- Guidance on what is meant by preventative services and the types of provision it includes;
- A duty on Local Authorities and Health Boards to allocate adequate resources to preventative services; and
- Clarity in the regulations around the charging for preventative services

Direct Payments

NAS Cymru supports the right of individuals and parents to take up a Direct Payment if they choose. Direct Payments can offer flexibility and choice for individuals, but it is important to recognise that some people may need additional support to use a Direct Payment effectively. Local authorities should consider setting up brokerage schemes to help people to manage their Direct Payment.

It is also important that Direct Payments are flexible enough so that additional funding can be applied for if the service an individual chooses is initially more costly as, for example, it may require a higher skill level or expertise. Providing the right service may actually reduce the level of support and cost over time.

We would therefore seek assurances from the Welsh Government that:

- Consideration is given to introduce Personal Budgets to give people with autism independence and real choice and control over services;
- Any payment model is designed to meet the person needs; and
- The regulations contain specific quality guarantees for support and care purchased

Care plans

Preparing, maintaining and reviewing a care plan for individuals who need access to health and social care should be the minimum action taken by authorities to support vulnerable people in their area. Taken together, these three stages should ensure that a person’s needs are identified and they are provided with the appropriate services and support, now and in future.

We strongly support the duty on Local Authorities to design a care plan, as outlined in the Bill, and the continued benefits this will bring to people with autism in Wales.

While the Bill does not currently contain specific regulation in this area, NAS Cymru would press Welsh Government to ensure that:

- The individual is consulted with, their views listened and acted upon and their needs fully considered as the plan is prepared, maintained and reviewed; and
- Mechanisms are in place to ensure that a person's care and support plans are transferred easily and in good time should that person moves to a different authority, so that continuity of care is sustained.

For further information please contact:
Meleri Thomas
External Affairs Manager, Wales
029 2062 9316
Meleri.thomas@nas.org.uk

Royal College of Psychiatrists

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

DATE: 15 March 2013

RESPONSE OF: The Royal College of Psychiatrists in Wales

RESPONSE TO: Health & Social Care Committee

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry. The Royal College of Psychiatrists in Wales represents over 500 Members, Fellows and Inceptors of the College in Wales.

For further information please contact:

Ms Manel Tippett
Policy Administrator
Royal College of Psychiatrists in Wales
Baltic House
Mount Stuart Square
Cardif CF10 5FH
029 2048 9006
mtippett@rcpsych.ac.uk

The Royal College of Psychiatrists in Wales
Baltic House
Mount Stuart Square
Cardiff CF10 5FH
Tel. 029 2048 9006
www.rcpsych.ac.uk

Legislation Office
National Assembly for Wales
Cardiff Bay CF99 1NA

HSCCommittee@wales.gov.uk

15 March 2013

Dear Sir or Madam,

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

The College welcomes the opportunity to respond to the above Consultation and current scrutiny of this Bill on whether it meets its objectives for children and other vulnerable people, with particular regard to their well-being and human rights, equality and dignity. We agree with the core principles of the Bill, in particular the requirement that Local Authorities promote the integration of care and support with health services. We believe that legislation can facilitate the improvement of structures and partnership arrangements and provide for both clarity and consistency.

We would like to call the Committee at this stage to consider that the Bill include a measure prohibiting the use of physical punishment on children. This is an opportunity for Wales to realise a long-standing commitment of the Welsh Government and one that many Assembly Members support.

For a more detailed response, our comments on the specific questions laid out in the Committee's Consultation letter can be found overleaf. If you have any queries, please do not hesitate to contact the College.

Kind Regards,

Professor Rob Poole
Chair, The Royal College of Psychiatrists in Wales

Q1. 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?

A Bill providing for a single Act for Wales that integrates local authority support for people of all ages, including children is welcome. It is vital however that the needs of children and young people remain paramount and that work with and for children is not lost in the greater role of the important work required in safeguarding the higher numbers of vulnerable adults.

Q2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum?

The Bill does deliver on most of the stated objectives in Chapter 3 of the Explanatory Memorandum. It refers to the enhanced duties of Local Authorities and Local Health Boards to prevent and reduce the need for social care. However, there is no reference to the benefits of integrating this approach with that of recent Mental Healthcare legislation in Wales such as the Mental Health (Wales) Measure (2010), and the lifespan, integrated Together for Mental Health Strategy for Wales (2012), both of which make strong reference to early intervention and prevention. We think consideration should be given to linking the proposed National Outcomes Framework for Social Care with the current work on national outcomes in mental health.

In line with equality and safeguarding for all ages, the College urges the Committee to recommend the Bill includes a measure to prohibit the physical punishment of children, a long-standing commitment of the Welsh Government. We think this is within the remit of the Bill's objectives and that this Bill provides an opportunity for the Welsh Government to enact this reform. A delay in taking this step would be contrary to Welsh children's well-being. There is now widespread agreement that physical punishment carries no benefits to children and carries multiple risks to child safety, to child development and for adverse effects on behavior and mental health in childhood and adulthood. Hence prohibition of physical punishment also has a role in early intervention and prevention.

Q3. 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?

The College agrees that the integration of agencies can result in sustainable social services if the mechanisms for integration are robust, both through shared budgets and common legislation and goals. In addition, there needs to be realistic funding for the development of workforce capacity and skills. Financial pressures that result in the reduction of third sector provision will impact negatively on the ability of the Bill to enable social services that are sustainable.

Q4. How will the Bill change existing social services provision and what impact will such changes have, if any?

The development of new services like Families First and Integrated Family Support Services (IFSS) offer a more holistic approach for Local Authorities and their partners. We would hope that the Bill would further strengthen these services, particularly as the outcomes of these services are expected to be cost effective in the long term.

The establishment of the new Safeguarding Children Boards, which will be geographically based, will enable smoother working with other agencies and avoid duplication. We would also hope that the Bill would strengthen the Boards' position.

Q5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

The biggest barrier to implementation is that financial pressures will result in reduction in effective multi-agency partnerships at a local level.

Q6. 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.

Q7. 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)?

Q8. Other Comments

In general, the introduction of effective early intervention and prevention is costly in the short term. This fact is not clearly acknowledged. There is no explicit mention of the financial benefits of better integrated early intervention and prevention across social care and health (for example, primary mental health support services as defined in Mental Health (Wales) Measure). We would like to see reference to integration across social & health care of the elderly whether in the community, residential home or hospital.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 63 – Scope Cymru

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:

Caroline Hawkings
Senior Public Policy Advisor
Scope
Email: caroline.hawkings@scope.org.uk
Telephone: 020 7619 7245

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 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

---

[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.

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.

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.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 64 – Action for Children

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.

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.

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

Swyddog Ymgyrchoedd a Materion Cyhoeddus (Cymru) / Campaigns and Public Affairs Officer (Wales)
Gweithredu dros Blant / Action for Children
rhea.stevens@actionforchildren.org.uk
07889 603962
029 2022 2127

RESPONSE TO THE CONSULTATION – SOCIAL SERVICES AND WELL-BEING (WALES) BILL

Care Forum Wales is the leading professional association for independent sector social care providers in Wales.

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.

Care Forum Wales is broadly supportive of the Bill as drafted. We feel that a consolidation of the legislation in this area as Wales seeks to modernise its provision of social services is welcome. We also support the direction of travel and focus on individual well-being. However, we are concerned that since we assume the National Assistance Act 1948 and other underlying legislation still applies, there may be some confusion.

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.

Because of the entirely reasonable desire to ensure this legislation stands the test of time, much of the detail of the implementation will be left to regulation and we would expect to be consulted on these in due course. We are particularly pleased to see the commitments to portability of assessments for individuals and joint working between local authorities and health boards. We understand the desire to develop new models of delivery through social enterprises etc., but would also emphasise the importance of that quality provision that already exists in Wales. We would see this as a move towards a balanced ecology of provision including third and private sector providers and commissioners, where there is recognition of what each can bring to the table.

This is a large Bill (even before the regulations which will follow) which appears to overlay an existing and longstanding legislative framework. Whilst CFW supports the general objectives, it is not possible at this stage, without significant legal analysis, to comment on whether the Bill 'works'.

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.

We feel the Bill offers an appropriate framework. However, we remain concerned about commissioning capacity within both the NHS and local government and need to see an understanding and commitment from every commissioning organisation that responsible commissioning does not always mean the lowest cost provision and recognition that there is a link between cost and quality. The recognised increase in numbers in the very elderly dependent population is likely to mean an increase in overall costs even if the cost per individual decreases. We do not wish to see this lead to a weakening of the quality of services commissioned.

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

As we said above much of the detail of the implementation of the changes is dependent on secondary legislation and we look forward to being consulted on that. However, we think the broad framework should move social services provision in the right direction.

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

We would like to see more partnership working in terms of planning the provision of such services in line with the Welsh Government's Memorandum of Understanding *Securing Strong Partnerships in Care* and the Commissioning Guidance *Fulfilled Lives, Supportive Communities.* We believe the structure outlined in the Memorandum is essential to engendering a partnership approach between commissioners and providers, which is needed to deliver this step change in purpose.

There is an overall lack of long term strategic planning for frail and dependent older people across all agencies in Wales. This is leading to a fragmented service in each local authority area and an increase in dependency for those who have not had their care needs addressed at a lower level thereby preventing them reaching 'critical'. Similar concerns apply to children's services where 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. We would welcome a direction from Welsh Government to ensure all partners including the independent sector are engaged with all future planning strategies.

It is also very noticeable that whilst the Welsh Government have advised, recommended and even informed Health and Local Authorities that they must work together, in some areas this has not been the case. We believe it is time for these agencies to be forced to work together (maybe even as one statutory agency) to commission and provide community services and that they should work with the independent sector to deliver a seamless care and support service.

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 feel the balance is not unreasonable PROVIDED the Welsh Government and any future government continues to consult widely before making regulations, guidance or Codes of Practice.

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.
There are large numbers of decisions left to regulation the vast majority of which will be made by the negative procedure. Again this does not seem unreasonable provided we continue to see appropriate consultation. However, we do have a specific concern about the regulation of direct payments. We support direct payments being used to give services users a stronger choice and control over their services. However, unfortunately, we too often see cases where direct payments are used not for this purpose but to cut

costs. Domiciliary care agencies regularly report clients approaching them to provide a service identical to that commissioned by the local authority but at a lower hourly rate. This is not sustainable.

At the moment there is no proper framework for clients who want to spend their direct payment on a mixture of personal purchases and agency provision. This particularly comes to ahead where the local authority has contracted with an agent or broker to manage purchasing care on behalf of services users and the agency or broker contract does not satisfy the needs of the agency contract. In some instances this has been used to deny direct payment recipients their choice of care.

Domiciliary care agencies are, quite reasonably, heavily regulated. Currently we are seriously concerned that Personal Assistants are unregulated and outside safeguarding arrangements.

The focus in all cases should be on those needing and receiving care, how to ensure the best outcomes for them and making the monitoring of that a key part of the process.

Financial Implications

7. 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.

We are pleased to see recognition in the consultation that there will be some additional costs, but are concerned that the assumption of savings is heavily reliant on there being a compression of morbidity, on which the evidence is mixed. The recognised increase in numbers in the very elderly dependent population is likely to mean an increase in overall costs even if the cost per individual decreases.

We also understand that part of the cost is to be met by a re-direction of the Social Care Workforce Development Partnership grant, which may have an impact on the current level of support offered for training and qualifications.

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

Whilst there is rightly an emphasis on keeping looked after children close to their homes we must recognise that there are circumstances where this is not the most appropriate solution. We would also like to see 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.

We are absolutely committed to the importance of safeguarding. However we are also concerned that sometimes safeguarding allegations against care workers can be false, or even malicious. Obviously the allegations need to be investigated in order to establish this but the time taken to do so can often be excessive. This can lead to members of staff being suspended for long periods of time, causing pressure on them, on other staff, who need to cover, and the provider who need to pay them. We would like to see a reasonable deadline introduced for the agencies investigating establishing whether there is a case to answer. We know of too many cases where social care workers have left the profession following the pressure from allegations which were later found to be false. All investigations should be proportionate.

We would also seek clarification about the intention of clause 34R in Schedule 3 of the Bill:
Action is also to be treated as action taken by a care home provider if —
(a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

We are not entirely clear what this means and what it is meant to achieve.

Consultation Response

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

March 2013

Introduction

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the Committee's consultation on the Social Services and Well-being (Wales) Bill. We are active members of the Social Services and Well-being Bill Advisory Group, the Welsh Reablement Alliance and the Wales Carers Alliance, and endorse the joint responses produced by these groups.

Summary

In order to achieve the positive ambitions of the Bill and deliver real benefits to the people in Wales, we believe:

- Access to independent advocacy support must be included in the Bill to deliver voice and control – this is particularly crucial for adults at risk of abuse
- The 'adults at risk' definition should be revised, and care and support needs must not be a pre-requisite in the definition
- Clarity is needed in a number of areas, particularly how assessment, preventative services, eligibility and charging will work together
- Further detail is needed on the intentions for the eligibility threshold – this will have one of the biggest impacts on sustainability and individual outcomes
- General principles should be added to the face of the Bill, a crucial principle being to actively involve the person and their carer throughout the process

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.

Yes. We believe there is a clear need to simplify, consolidate and in some cases modernise existing legislation into one statute, and we welcome the focus on improving wellbeing, both of people who need care and support and their carers.

However we do have reservations that these positive intentions may not be achieved with the current drafting of the Bill.

There is a lack of clarity in several sections which need to be resolved in order for the Bill to meet its stated aims. For example, it is not clear who would have access to preventative services, i.e. at what point a person will be deemed to have ‘care and support’ needs and how this will promote real prevention and early intervention.

The Bill needs to identify more clearly the steps that are envisaged to provide proportionate support to people, and the relationship between preventative services, assessment and the eligibility framework. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences. We note that the proposals for preventative services will not bring benefits if the threshold for accessing them is set too high.

The Bill contains a list of purposes for preventative services which are very process-driven rather than person centred; the focus should be improving wellbeing and quality of life for individuals. As members of the Welsh Reablement Alliance, we would like to see a reference to promoting enablement on the face of the Bill to ensure that preventative services are outcome focused. We welcome the powers to prescribe partnership arrangements between social services and health boards; (part 9, chapter 2), but we would suggest that such partnerships should also incorporate housing departments given the clear link between built environment and personal health.

Despite positive intentions, the wording is not strong enough on the need for a person centred approach. We believe the Bill must include provisions that require local authorities to actively involve the person throughout their experience of care and support services - please see our response to Question 2 for more detail.

We share the advisory group’s concerns about whether all appropriate existing statutes have been properly considered for repeal and consolidation, given that the list of repeals is currently incomplete. For example, there is particular concern and uncertainty around the Chronically Sick and Disabled Persons Act 1970.

We note that it is important to have a standard definition of wellbeing across the Welsh Government, and for the Bill to reference other relevant policy and legislation such as the Framework for Independent Living, and the development of the Strategy for Older People.

We also note the White Paper for the Sustainable Development Bill aims to enhance: ‘economic, social and environmental wellbeing of people and communities’, but contains no reference to this Bill. We would hope that there was cross-government working to ensure these, and all, pieces of legislation complement each other and work together in practice.

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.**

No. Whilst we welcome the positive objectives as laid out in the Explanatory Memorandum, we do not feel that the Bill as currently drafted will deliver the stated objectives.

It states that the Welsh Government intends, “to improve the well-being outcomes for people who need care and support and carers who need support and to reform social services law” through, “providing people with stronger voice and greater control over services they receive…”

We very much welcome these principles; however, we are concerned that important sections of the Bill will not provide real voice and control as currently drafted. The language of some sections still maintain a traditional service led model (matching people to available services) rather than focusing on individual outcomes and finding ways to meet those needs.

The wording of the Bill needs to be stronger on a commitment to a person centred approach. We believe the Bill must include provisions that require local authorities to actively involve the person in the whole assessment and care planning process; to co-produce their care plans and outcomes, and to promote the options that are available for people to exercise voice and control. The outcome we wish to see is people being able to take informed decisions about their care and support.

We believe that the Bill needs to focus on individual outcomes, and feel that general principles on the face of the Bill would help to achieve this. We endorse the Law Commission’s recommendation[1] that the statute should set out a checklist of factors that must be considered before a decision is made in relation to an individual. Thus the decision maker would be required to:

- Assume that the person is the best judge of their own well-being, except in cases where they lack capacity to make the relevant decision;
- Follow the individual’s views, wishes and feelings wherever practicable and appropriate;
- Ensure that decisions are based upon the individual circumstances of the person and not merely on the person’s age or appearance, or a condition or aspect of their behaviour which might lead others to make unjustified assumptions;
- Give individuals the opportunity to be involved, as far as is practicable in the circumstances, in assessments, planning, developing and reviewing their care and support;
- Achieve a balance with the well-being of others, if this is relevant and practicable;
- Safeguard adults wherever practicable from abuse and neglect; and
- Use the least restrictive solution where it is necessary to interfere with the individual’s rights and freedom of action wherever that is practicable.

Advocacy

We maintain that in order to give people real voice and control, the Bill must make provisions to improve access to independent advocacy support services. We are disappointed that the

---

[1] Adult Social Care, Law Commission, 2011

new information and advice duties refer to “information, advice and assistance” rather than advocacy.

Independent advocates empower people by giving them voice, choice and control and helping to navigate through the complicated social care system. Welsh Government has acknowledged that advocacy services, particularly for older people, are patchy across Wales, but as yet has not committed to improving this.

Nevertheless, the Welsh Government is currently working with the Commissioner for Older People on a business case for a comprehensive independent advocacy service for older people in Wales, and we will be feeding into this process through the task and finish group led by the Commissioner. We note that time is of the essence on this matter; we believe that advocacy is a significant omission in the Bill and that it is important to rectify this at Stage 1 of the scrutiny process.

The first objective of Welsh Government’s own Strategic Equality Plan is to ‘Strengthen advice, information and advocacy services’, and we’d argue that in order to comply with this, the legislation should include wider access to independent advocacy.

We stress that access to independent advocacy is particularly crucial for adults at risk of abuse, and strongly believe it must be included in the Bill in regard to safeguarding.

Adults at risk of harm are amongst the most vulnerable people in our communities, and we must ensure that they have a voice and are safeguarded from abuse. Independent advocacy can help to redress the power imbalance that occurs in abuse and can enable the person to take back some control.

The Welsh Institute for Health and Social Care’s Review of ‘In Safe Hands’[2] recommended that, “Legislation should include a duty to consider advocacy support”, and the Scottish legislation includes a similar duty.

When the Bill was introduced in Plenary, the Health Minister stated:

“It is important that people, whatever their age, have a strong voice, and that is why we intend to put advocacy for the most at risk on the same footing as it is for children and young people with care and support needs”

We were encouraged to hear this statement, but in its current form, the Bill does not provide for this. We urge the Committee to seek clarification on this matter.

The Bill provides an excellent opportunity to reaffirm the Welsh Government’s commitment to access to independent advocacy, particularly in terms of safeguarding, and strengthen the national direction and provision across Wales.

Charging

---

[2] A review of the Welsh Assembly Government’s guidance on the Protection on Vulnerable Adults in Wales, Welsh Institute for Health and Social Care, 2010

Age Cymru, along with other members of the advisory group and the third sector are concerned about the powers to allow charging for services; particularly for information, advice and assistance and preventative services. We have concerns that this could potentially work against the intended aims of the Bill. We maintain that information and advice should be free, independent and accessible as a basic principle, and would welcome clarification on this.

Carers

The ‘purpose’ section of the Explanatory Memorandum states that, “The Bill will also, with the exception of provisions for portability, provide equivalent rights for carers, putting them on a similar legal footing as the people they care for”.

We and other members of the Wales Carers Alliance welcome the move towards equality for carers but strongly feel that there is no sufficient justification for excluding them from the right to a portable assessment and support plan. This move will undermine the policy intention to extend the same entitlements to carers as the people for whom they care. We believe this must be rectified.

We believe that the Bill should also make carers assessments portable, and linked to service users’ assessments to give them the same rights and facilitate a streamlined process. This was recommended by the Dilnot Commission[3].

Partnership working and integration

The Explanatory Memorandum lists another purpose of the Bill as to, “Strengthen collaboration, provide a framework for integration of key services”.

We do not feel this will be achieved with the current drafting. We and other members of the advisory group are concerned that the role of partners (such as Local Health Boards) remains unclear. We are unsure how the Bill extends the role of partners beyond that which is already in place.

We would also highlight that without a meaningful relationship between local authorities and the health service there could be potential conflicts about charging. Although the Bill provides for local authorities to be able to charge, LHBs will be unable to do this. This could cause conflict in terms of joint working between health and social care rather than encourage cooperation.

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.**

It is extremely important that the Bill enables the delivery of sustainable social services. We believe that further clarification is needed on a number of areas in order to accurately assess

---

[3] Fairer Care Funding, The Report of the Commission on Funding of Care and Support, 2011

the sustainability; without this there is the possibility that the Bill will not be sustainable long-term.

Potential threats to sustainability include:

Eligibility threshold

We welcome in principle the proposed introduction of a national eligibility framework, but the crucial issue, and one of the biggest implications of the Bill, will be the level at which the bar or eligibility threshold is set.

A national eligibility framework will be a huge change for local authorities and it is vital that clear and consistent definitions are produced for category levels. It is important to note that a national framework will only promote prevention and early intervention if the level of eligibility to receive services is reasonable, and is not set so high that it would exclude a significant number of people. The Welsh Government must also ensure that no one is worse off as a result of the reforms.

It is impossible to envisage how the proposals outlined in the Bill will work in practice without knowing the plans for eligibility criteria. We need to know the Welsh Government’s vision and intentions around eligibility, so we can best understand whether the proposals will meet the needs of individuals for care and support services.

We are also concerned that without knowing the current numbers of people currently within each level of ‘need’ in the current system then it is impossible to estimate the financial (and other) implications for individuals and local authorities of any proposed changes.

We are also concerned about a potential three stage process – assessment of needs, eligibility tests and financial tests – and how this will work in relation to promoting well-being, prevention and managing needs. We are particularly concerned that some people might not receive the right amount of support due to potential charges applied. We would like to see more clarity about this.

Provisions for charging for services

Provisions in the Bill will allow local authorities to charge for information, advice and assistance and preventative services. While we acknowledge that the provisions are powers and not necessarily intentions, they do raise some strong concerns and we and would welcome indication from the Welsh Government about its policy intentions.

If charges have the effect of deterring people from receiving the information, advice and preventative services they need to prevent their needs from escalating, then the Bill will not make social services more sustainable.

Lack of clarity around preventative services

We welcome the inclusion of preventative services in the Bill but believe the current drafting raises issues for implementation. Preventative services are important to both making social services financially sustainable and in promoting wellbeing and positive outcomes.

There are issues around establishing a clear picture of the care and support needs of a person, so that these can be managed and reduced. The current drafting implies that a person will receive a needs assessment to establish what their care and support needs are and how they might be reduced through preventative services.

We would welcome an indicative definition of preventative services on the face of the Bill to ensure that local authorities provide both general, universal prevention and more targeted, individual-level prevention. We cannot see how the Bill will incentivise early intervention. Our concern is that prevention work will not bring benefits if the threshold for accessing them is set too high or prohibitive charges are applied.

The Bill suggests that the application of preventative services will be discretionary, that is not subject to an eligibility framework. However, we would like to see a transparent and fair framework for deciding individual entitlement to prevention services.

Incomplete costs analysis

We have concerns about the Regulatory Impact Assessment. These are dealt with in responses to Question 5 and 7 b).

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

It is clear that access to good quality information and advice needs major improvement; Age Cymru know that many older people and their families currently find the care system complicated and daunting, and do not know where they can access information, or what their rights and entitlements are. Current provision of information and advice is patchy across Wales, largely as a result of unequal funding and support in different areas.

The new provisions in the Bill around information and advice, and preventative services have the potential to deliver a positive impact, both in terms of individual's wellbeing and a long-term reduction of pressure on social services, providing they are clarified and implemented correctly.

We stress that information and advice must be free, independent, and provided in accessible formats at the earliest opportunity, as a basic principle. We would like the Bill to clarify that the provisions will also proactively apply for self-funders, as many self-funders do not go through social services when arranging care provision, and often do not have access to information or advice services.

As members of Age Alliance Wales, we would like to see the introduction of a duty to ensure that the NHS and social services provide relevant information on the support available for older people who are being discharged from hospital or who begin receiving social care support. This is currently not happening consistently and we believe it should be built into this section of the Bill to ensure people can access support at the right time whilst recovering, and to avoid preventable readmissions to hospital.

We note that the Chronically Sick and Disabled Persons Act 1970 contains a duty to provide aids and adaptations, so there is the potential for people to lose this right if this duty is not explicitly included in the Bill.

Safeguarding

Our Rule Out Abuse campaign called for legislation to safeguard adults at risk and strengthen adult protection processes, so that tackling adult abuse is given the priority it deserves. We are pleased the Welsh Government has committed to do so and has accepted many of the campaign's recommendations with new duties on public bodies to investigate, report, cooperate and provide information.

We welcome the new legislative framework on safeguarding and improved powers with regards to adults at risk of abuse; this has great potential for positive impacts on older people and reducing and tackling elder abuse. However, we have some concerns which we believe must be addressed in order to achieve these outcomes for older people in Wales:

Adults at risk definition

We do not agree with the current definition of adults at risk:

To qualify as an adult at risk, a person must have care and support needs and be unable to protect themselves **as a result of those needs**. However it can often be the case that a person may not have identified care and support needs, but they are being abused and are consequently unable to protect themselves as **a result of the abuse**; such cases would be excluded from legislative support under the current drafting. Therefore we strongly believe that care and support needs should not be a pre-requisite in the definition for an adult at risk.

We also feel that issues such as coercive control and breach of trust are important factors in abuse which must be considered, but aren't sufficiently addressed in the section.

For the previous consultation, Age Cymru worked with other experts in the field including the Older People's Commissioner and Professor John Williams from Aberystwyth to propose an alternative definition of an adult at risk, and will continue this partnership working to suggest amendments to improve the current definition.

We note that there is no definition for “abuse or neglect” in the Bill. We believe it would be beneficial if a broad definition were included, and would like clarification as to why this is not the case.

It is important to note that safeguarding as a concept includes protection but is wider and more proactive. To safeguard adults, the powers should include support and protection as equal priorities for practitioners. We believe that support and prevention must have a stronger emphasis in this section of the Bill, which currently reads as very ‘protection’ focused.

As previously mentioned we believe that access to independent advocacy support for adults at risk of abuse is vital to achieving positive outcomes, and giving voice and control. We strongly believe it should be included in the Bill.

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

There are significant potential barriers to implementation of the provisions of the Bill which are not sufficiently addressed.

As discussed in previous answers, the lack of clarity and ambiguity in the current drafting of key areas of the Bill is a potential barrier to effective implementation, as certain provisions may be open to interpretation by local authorities, for example the preventative services section. Thus the current postcode lottery in access to services could be maintained across Wales.

Another potential barrier is the amount of detail that is being left to regulations and the code of practice – these will not be subject to the same level of scrutiny as the Bill and could result in unintended negative consequences.

Costs

We see the main barrier as the incomplete cost projections as we do not feel that the Explanatory Memorandum sufficiently covers all the costs that will be incurred. We are also concerned that, as currently drafted, the Bill will not produce the savings predicted through lawyers' fees, because we believe some areas of the Bill are unclear and may lead to challenge. We have major concerns about the Regulatory Impact Assessment, please refer to our response to question 7 b) for further details.

There is wide agreement in the advisory group and the wider third sector that a more thorough cost analysis is required.

Lack of joint working

We are concerned by the lack of explicit duties on the health service, and believe there the Bill currently misses the opportunity to advance and enforce better joint working. We feel that what is drafted could maintain the status quo, and the tendency to work in silos rather than improve joint working.

Charges may also cause difficulties in NHS and social services collaboration. A person who is already in receipt of care and support from social services and then develops a need for prevention may have charges applied. However, a person unknown to social services who develops a need for prevention services after a stay at hospital may have their services covered by the NHS (i.e. without charges). The risk is that this may lead to 'cost shifting' between NHS and social services

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.

No. We do not believe there is an adequate balance between the powers on the face of the Bill and details that will be left to regulation. We would like to see a series of additions on the face of the Bill.

We are concerned that there are some key definitions which seem to have been overlooked in the drafting of the Bill. For example, “assistance”, “abuse of neglect”, and “people who need care and support” are not defined.

As previously discussed, more clarification is also needed around preventative services, and how they will interact with assessment, eligibility and charging for services.

We believe there should be a reference to promoting enablement on the face of the Bill, as well as general principles which set out factors to be considered before making a decision (as recommended by the Law Commission) – please see our response to Question 2 for further details.

We would also like to see a statement on the Welsh Government’s commitment to a Human Rights based approach and to the UN Principles for Older Persons on the face of the Bill.

The Scottish Adult Support and Protection Act 2007 has positive, person centred general principles on the face of the Act[4] which we feel would also be beneficial to include in the safeguarding section of the Bill.

Regulations

We and the advisory group believe that in places the Bill could be more prescriptive about what ‘must’ be detailed, rather than what ‘may’ be detailed in regulations. The advisory group’s joint response gives an example of this in relation to funding of Safeguarding Boards.

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)?

We recognise the need for some issues to be left to regulation. However, we have concerns that the balance is inappropriate. We are particularly concerned that much of the detail of regulations is yet to be drafted and would like assurances that this is published before Assembly Members are required to vote on the Bill’s general principles at the end of Stage 1.

We are particularly concerned with the level of subordinate legislation that is left to negative rather than affirmative procedure. For example regulations on “carrying out financial assessments” (Section 48 in the table in the Explanatory Memorandum) should be subject to ‘affirmative’ procedure to ensure the regulations are given proper scrutiny, due to the significant impact these regulations will have on individuals. We would like to see this table looked at again, with the needs of those who use social care and support services taken into account.

Adult protection and support orders

---

[4] http://www.legislation.gov.uk/asp/2007/10/section/2

We have some concerns regarding the proposed adult protection and support orders.

We do agree that in order to adequately protect those adult most at risk and affected by abuse, legislation should include powers of intervention, but would like further clarification on these orders.

There was consensus amongst our focus group with older people for the previous consultation that powers of intervention were required so that experts could “step in” to protect adults at risk, albeit “to be used in extreme circumstances”. Evidence from colleagues in Scotland is that similar powers contained within the Adult Support and Protection (Scotland) Act 2007 are invoked only in extreme situations but act as a significant deterrent

However the danger is that if handled inappropriately, such powers can actually increase an individual’s risk of being abused. As we understand it, the orders will give powers of entry and assessment but the Bill does not clarify what will happen next, which is the crucial issue. If you enter a home, identify a person is a risk, what is the next step?

Without robust powers, the legal duties would increase practitioners’ opportunities to identify issues, but do little to increase opportunities to tackle abuse, particularly in the most extreme circumstances where an adult, who has capacity, is suspected to be coercively controlled and at risk of harm.

We urge the Committee to seek clarification and further information on these orders. We believe that powers of intervention should include a power of access and assessment and an injunction order: the aim of which would be to reduce the risk posed to the adult at risk by the perpetrator in the most supportive and least restrictive means possible

The “General principle on intervention in an adult’s affairs” in the Adult Support and Protection (Scotland) Act 2007 enshrines this principle in legislation, and we consider this principle valuable for the Welsh Government to adopt within the Social Services (Wales) Bill. These principles can provide checks and balances for professional judgement.

The Welsh Government should consider how these orders will sit with other legislation, covering areas such as domestic violence, to ensure a consistent approach to interventions.

Consent from the adult at risk should always be sought before proceeding with any intervention, however intervention should not rely explicitly on consent in situations where there is evidence to suggest coercive control. It is important to ensure that the person at risk of harm has the right to an independent advocate to assist them to navigate through this process and help them weigh up their situation.

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

We have major concerns about the Regulatory Impact Assessment, which we do not feel provides a full cost analysis of the Bill. For example, the only cost listed in regards to implementation of the Bill is the cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services. We note that there will be additional costs that are not included such as for the establishment of new national safeguarding boards, and the provision of information, advice and assistance, as well as preventative services.

We also believe it is critical to understand the cost implications if Welsh Government were to continue the current FACS four-level eligibility levels in the new system. We are concerned that the Government is unaware of the number of people currently receiving care at each level[5], therefore making it difficult to predict whether any new model will have cost implications.

The Welsh Government recently published research[6] on the cumulative impacts of welfare reform, which indicates the proposed changes by the UK Government through the welfare reform agenda could increase spending on social care and support services. We would like to see these costs accounted for in the Regulatory Impact Assessment.

We would like to see a fully drafted regulatory impact assessment which takes into account the full costs of implementing the proposed changes in the Bill, as set against the proposed costs of maintaining the status quo.

We believe publication of a more detailed cost analysis is needed before the end of Stage 1, which takes into account the full cost of the Bill, including preventative services.

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

Paying for care

We are concerned that there is no detail about paying for care in the Bill, i.e. the cost to individuals for paying for the care and support that they need. The Dilnot Commission report Fairer Care Funding was published in July 2011 and the UK Government have recently announced their plans for reform. We would welcome the Welsh Government publishing their proposals for the cost of care as soon as possible, and would have liked to have seen them alongside this Bill.

Safeguarding (see previous responses)

Please see our earlier comments on the safeguarding section, particularly on the need to include a duty to consider independent advocacy support for adults at risk of abuse, and our concerns regarding the adult at risk definition and adult protection and support orders.

Conclusion

We hope this response is useful to the Committee. Please do not hesitate to contact us for any further information. We would be very pleased to give oral evidence to the Committee on this vital legislation for older people in Wales.

---

[5] Written Assembly Question 61983 and WAQ61984, answered on 25 January 2013

[6] http://wales.gov.uk/topics/educationandskills/publications/reports/analysingreforms/?lang=en

15 March 2013

SOCIAL SERVICES AND WELL-BEING (WALES) BILL: CALL FOR EVIDENCE

EVIDENCE FROM CARE ON VICTIMS OF HUMAN TRAFFICKING

Summary

We thank the Health and Social Care Committee for the opportunity to have input to the Committee's scrutiny of the Social Services and Well-Being (Wales) Bill. Our comments focus primarily on the care that human trafficking victims will receive in Wales under the new proposals put forward by this Bill. Our response focuses on Question 8 in Annex 1 of the Committee's letter dated 1 February.

General

Q2. Do you think the Bill, as drafted, delivers the stated objectives as set out in chapter 3 of the Explanatory Memorandum?

The Bill aims to make sweeping changes to the care that all people in Wales will receive. However, the significant number of regulatory powers in the Bill **makes it difficult for there to be informed debate and transparency to the electorate as to the full implications of this Bill**. For instance, a key determination of whether a person will receive services is the definition of the "eligibility criteria" in clause 19 (Determination of eligibility and consideration of what to do you to meet needs) but the criteria are to be set out in regulations (clause 19(5)).

Q6. In your view does the Bill contains a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations?

No. Please see our answer above to question 2.

Powers to make subordinate legislation

Q7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation?

Please see our answer above to question 2.

Financial implications

Q7 (there are two questions marked 7). What are your views on the financial implications of the Bill?

Given the uncertainty about who would be eligible under this Bill, it is impossible to make a judgement on the financial implications. However we are concerned that discretionary services, e.g. to trafficking victims since they are not currently not defined in law, could be cut if the budget was under pressure.[1]

Other Comments

Q8. Are there any other comments you wish to make about specific sections of the Bill?

Human Trafficking

We wish to ensure that sufficient consideration is given by the Committee to meeting the international obligations under the Europe Convention on Action against Trafficking in Human Beings and the European Directive on Human Trafficking. We note that in 2011, 2.5% of trafficking victims were referred to the National Referral Mechanism (NRM) from Wales, a total of 24 individuals, 5 of whom were children.[2] CARE is concerned that without placing the Directive's Article 11 obligations to provide assistance and support to victims on a statutory footing, there is a risk of non-compliance, should any programmes be withdrawn. GRETA (the monitoring body of the Convention) also made recommendations on the need for clear standards for care and assistance for victims of trafficking.[3]

We commend Wales for the appointment of an Anti-Human Trafficking Co-ordinator[4].

Adult Victims

In June 2011, the Home Office appointed the Salvation Army to take over the responsibility for delivering support services for adult victims of human trafficking identified through the

---

[1] See Explanatory Memorandum, January 2013, Part 1, paragraph 105 , page 22

[2] First Annual Report of the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking, October 2012, Cm 8421, para 2.9 and Table 1, page 9 and para 2.22, page 12

[3] Greta (Group of Experts on Action Against Trafficking in Human Beings), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2012)6, 12 September 2012, recommendation 26.

[4] GRETA, *Op Cit,* para 54, page 21 and pages 98, 99 and IDMG Report, *Op Cit,* para 4.26-7, page 36

NRM.[5] We seek clarification of whether the governance of this care is going to be transferred to Welsh authorities once this Bill comes into effect.

We also seek clarification as to whether it is the intention of the Bill that local authorities will take preventative measures for suspected adult victims of trafficking either from sexual exportation or forced labour under clauses 104(2) (Adults at risk) and 105(2) (Adult protection and support orders).

Child Victims

CARE is also concerned about the care of trafficked children who would fall under this Bill under the category of "looked after children" (Part 6 of the Bill). Wales does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive).[6]

We would like to see a specific reference to children who are trafficked in clause 60 (Accommodation for children without parents or who are lost or abandoned etc), either as an addition to 60(1)(b)[7] or as a separate subsection.

We note that clause 20(2)(e) (How to meet needs) refers to the provision of "counselling and advocacy" under "How to meet needs". Exactly what this would mean for a trafficked child is not clear, but we urge the Committee to recommend the inclusion of a **Guardian or Representative for Trafficked Children** within the Bill to meet the requirements of Article 14(2) & 16(3) of the European Directive. In England, the Government has argued that there is no need for this new role and that current provision is sufficient because of the presence of the various statutory individuals within the Children Act 1989 set out in the table below.[8] While the Bill incorporates these roles, the evidence of a large number of missing trafficked children raises significant questions about the effectiveness of current arrangements;[9] nor do any of these roles meet internationally recognized best practice for trafficked children, as defined by bodies such as UNICEF.[10]

Role	Children Act 1989	Social Services and Well-Being (Wales) Bill
Independent visitors	Section 23ZB	Clause 82 (Independent visitors for children looked after by a local authority)
Advocate for child who	Section	Clause 86 (Review of cases and inquiries into representations)

---

[5] http://www.salvationarmy.org.uk/uki/Trafficking. GRETA reported that one of the Salvation Army's sub-contractors is based in Wales, see para 259, page 60. See also IDMG, paras 5.16-5.25, pages 41-43

[6] There is a policy on child trafficking victims. GRETA, *Op Cit,* para 237, page 55 and page 106 and IDMG Report, *Op Cit,* para 6.6, page 60

[7] 60(1)(b) "the child being lost or having been abandoned"

[8] Including Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children, 2010

[9] CEOP (2007) A Scoping Project on Child Trafficking in the UK, page 48; CEOP(2009) Strategic Threat Assessment, Child Trafficking in the UK, page 62; CEOP (2010) Strategic Threat Assessment, Child Trafficking in the UK, page 21

[10] For instance: *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF, 2006, p117-8 and *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF technical notes, September 2006, section 4.2, page 17

Role	Children Act 1989	Social Services and Well-Being (Wales) Bill
wishes to make representations to a local authority	26A	mirrors Section 26 of Children Act providing for case review. Section 26A of the Children Act allows a child to have advocacy services. Clause 159 (Assistance for persons making representations) provides for assistance for children if they wish to make representations under Clause 155 (Representations relating to certain children) which covers care plans among other areas.
Independent reporting officer (IRO)	Section 25A, 25B[11]	Clause 83 (Appointment of independent reviewing officer) and clause 84 (Functions of the independent reviewing officer). Clause 84(4) allows the IRO to be independent of a local authority, but in practice it appears that the IRO is generally a local authority employee

We note that the GRETA report raised concerns about the number of children that go missing, stated that "*a system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing*" and urged action to "*ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian*".[12]

The UN is encouraging governments "*to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child's interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions.*"[13]

Wales has an opportunity to implement a more robust scheme and lead the way in the UK in adopting the UN/UNICEF[14] model. The fact that the numbers of rescued trafficked children in Wales is low is not relevant inasmuch as we should put in place the very best care even if there was just one child. It should not be about numbers. The fact that numbers are fairly low, however, does mean that Wales can lead the way on this issue in the UK at very little cost. There are several places in the Bill where the input of a legal advocate/guardian would be invaluable for a trafficked child:

- Clause 12(5)(3) – Duty to assess the needs of a child for care and support. A legal advocate could be listed in regulations to have input to the outcomes for a child.
- Clause 62(3) - an additional sub-clause (c) to take into consideration the views of the child legal advocate/guardian.

---

[11] Introduced by Section 10 of the Children and Young Person's Act 2008

[12] Greta Report, *Op Cit,* pages 56-58, paragraphs 240, 245, 247, page 86, recommendations 22 and 23.

[13] Prevent. Combat. Protect. Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach. See pages 76-7.

[14] For instance: *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF, 2006, p117-8 and *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF technical notes, September 2006, section 4.2, page 17

Other matters

1. The definition of well-being for children.

   We note that well-being in relation to a child includes "physical, intellectual, emotional, social and behavioural development" (clause 2(3)(a)) as well as "physical and mental health and emotional well-being" (clause 2(2)(a)). We advocate amending this definition for children so that it covers "the spiritual, moral, cultural, mental and physical development" of children, in line with the requirements of the school curriculum for Welsh children (section 99(1)(a), Education Act 2002).

2. Supporting Families in Raising Children.

   We support clause 6(2)(c) which requires local authorities to provide services "promoting the upbringing of children by their families, where that is consistent with the well-being of children", in line with Article 18(2) of the UN Convention on the Rights of the Child (UNCRC), *"…shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*". However we would like to see:

   - A presumption that upbringing of children should be a role for parents, in line with Article 18(1) of the UNCRC, "*recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child*"; and
   - A presumption that being brought up with their parents is in the child's best interests, since this clause applies to **all** families within a local authority area and a child has a right to have parents (Articles 7, 9 and 10 of the UNCRC):
     - "*the right to know and be cared for by his or her parents*" (Article 7(1));
     - "*States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests*" (Article 9(3));
     - "*A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents*." (Article 10(2))

   We recognise that children may not be able to live with both parents because of divorce/parental separation; and that there are cases, especially those where children become looked after, where abuse or neglect could mean that it would not be in the child's best interests to be with their parents, but other family members might be appropriate carers.

We suggest rewording clause 6(2)(c) so it reads, "promo*ting the upbringing of children by their parents, except for when it is not consistent with the well-being of a particular child*".

Yours sincerely

Dr Dan Boucher

CARE's National Assembly for Wales Policy Officer
53 Romney Street
London
SW1P 3RF
07768165543
02072274738
dan.boucher@care.org.uk
www.care.org.uk

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

A consultation response from Cymorth Cymru

15/03/2013

Cymorth Cymru is the umbrella body for organisations working with vulnerable people in Wales. Our members work to assist people who are vulnerable, isolated or experiencing housing crisis, including:

- people who are homeless, or at risk of homelessness
- families fleeing domestic abuse
- people dealing with mental or physical health problems, or learning disabilities
- people with alcohol or drug problems
- refugees and people seeking asylum
- care leavers and other vulnerable young people, and
- older people in need of support
- offenders and those at risk of offending

This list isn't exhaustive, and individuals may often face a range of challenges that make it difficult for them to find or maintain a stable home and build the sort of lives we all aspire to.

Cymorth Cymru's members help people address these issues, supporting them to fulfil their potential and build happy and fulfilling lives. Our members work across policy areas – including Community Justice, Social Services and Health etc – with the shared recognition of the key role that housing plays in promoting wellbeing.

We have three overarching objectives:

- To improve the links between policy and practice by ensuring that those working in frontline service delivery understand and are influenced by the wider policy context, and those working in policy development understand and are influenced by the experiences and knowledge of those working on the ground.
- To ensure that the sector maximises its contribution to the lives of citizens and the communities in which they live by helping to build and develop the sector's capacity and professionalism.
- To increase public understanding and support for the sector and the work it does in helping people build the lives they aspire to within the community.

Introduction

Cymorth Cymru welcomes this opportunity to respond to this important consultation on setting out the new legislative framework to deliver sustainable social services in Wales. As the representative body for organisations working with vulnerable people, our members deliver support and care services to a wide range of client groups across Wales – helping them to achieve their full potential and lead the kind of lives that we all aspire to. Our members span a number of policy areas – work across housing, health, social services and community justice for example to effectively support vulnerable people. They are uniquely positioned, in many respects, as they interact with the majority of the partners that this Bill anticipates bringing closer together. Given this, we hope that Cymorth Cymru and our members will be able to offer advice and assistant in the shaping and delivery of this Bill going forward.

The Social Services and Well-being (Wales) Bill will put prevention at the core of service delivery, creating transformational change to the way in which people are enabled to access support and care services. The Supporting People Programme is a driving force behind prevention services and coupled with its new delivery structure which has collaboration and co design at its core, it should be seen as a real ally in delivering the transformational change sought by the implementation of this Bill.

Our members are often required to work with both social services and supporting people departments when delivering a service to an individual, so there would seem to be a natural alignment between the two policy areas. However, in reality this is often not the case. Ensuring true partnership working would be greatly welcomed and it has the potential to deliver real change. This will require a cultural change from all stakeholders but Welsh Government has a vital role to play through ensuring join up in Government policies. This is no more evident than in the development of the Supporting People Outcomes Framework and the Social Services Outcomes Framework. It is important to ensure that both frameworks are compatible as it would be counterproductive for support and care provider to be required to report on two different outcomes frameworks for one individual. We also need to ensure that this Bill enables the delivery of the vision set out in the Welsh Government's *Framework for Action on Independent Living*.

Our members deliver services that enable people to maximise their independence and contribute positively towards their community however it is currently the case that information about the range of service available is often not communicated to people, resulting in individuals receiving a service that does not meet their needs. Given that this Bill will revolutionise the way in which individuals are given information, advice and assistance, we hope that people will be offered a wide range of services that are appropriate for them that fully meet their needs.

Ensuring a holistic approach to maintaining and enhancing wellbeing is a key element of this Bill and one which we fully endorse. Suitable accommodation provides a foundation for building the kind of life that we all aspire to and without it, it is near impossible for an individual to achieve the definition of wellbeing as set out in this consultation document. As such, we need to continue to ensure that this Bill complement the proposals made in *Home for Wales: A White Paper for Better Lives and Communities* and the subsequent Housing (Wales) Bill. It is key that all partners take a shared responsibility and understand their role in achieving the vision set out in this Bill will take a great deal of effort as changing culture will not happen overnight. However, it is a goal worth tenaciously perusing as it has the potential to deliver greater consistency and better quality services for the people of Wales.

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.***

We are pleased to see the Welsh Government's vision as set out in *Sustainable Social Services for Wales: A Framework for Action* of creating a more sustainable way of meeting the challenges faced by Social Services in Wales come to fruition in this Bill. We know that we have growing demand for services and that need is changing with an increasing number of people with complex care and support needs, making the need for a transformation of social services irrefutable.

Given that the not-for-profit sector has always worked across health and social care, better integration between social services and local authorities and the NHS proposed by the Bill is welcomed. It is vital that this legislation ensures that resources are used in a more joined up way in order to make better use of existing capacity.

There is currently a number of different regional agendas being promoted by various parts of Welsh Government, including the regional mental health schemes (which involve local authorities within the same health board region), the regions set out by the Supporting People Programme, the education consortia and the city regions being developed for economic development purposes. Given this overlap in regional approaches, we see a real need for the Bill to bring together partners, duties and functions but also a cross Government approach to regionalism.

We have already made significant headway towards imbedding collaboration and coproduction through the new governance structure of the Supporting People Programme. The Programme brings together the key partners such as housing, health, social services and community justice to ensure the effective delivery of the Supporting People Programme. Although still in the early stages of working in this new way, we are already being to see real progress in term of cross-sector working.

It is clear that in order to produce the required shift, there is a need for closer collaboration on multiple levels. It is encouraging to note that the Bill seeks to firm up how duties and functions that already exist between local authorities and their partners can further complement each other to provide greater outcomes for the wellbeing of individuals.

Cymorth Cymru would be happy to work with the Welsh Government to highlight the benefits associated with making closer links between housing, health and social care at both a strategic and operational level.

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.

This Bill will place new duties on local authorities to promote social enterprises, cooperatives and third sector delivery of care as new models of service delivery. Whilst this is a move to be welcomed, we are already seeing throughout our membership a greater prevalence of care services delivered by not for profit care providers in Wales, who will ensure services are high quality, cost effective and user led delivery. To support this, Cymorth Cymru is taking forward work to provide a representative voice for not for profit care providers in Wales and we aim to press ahead with this throughout the year. For more details on this area of work, please contact Mike Vigar at Cymorth Cymru on 02920 553 687.

We are encouraged to see the commitment to better information, advice and assistance made in the White Paper reflected in this Bill. However, we feel that the Bill need to go further in relation to assistance and that stating that local authorities must assist people in accessing/securing care and support information in certain case is not robust enough. Ensuring the consistency and quality of information and advice is an area of great importance for our members and the vulnerable people. Yet advice and information are only ever of value when a person is able to act on it. As such, we fear that more vulnerable people may not benefit from efforts to improve consistency and quality of advice. We suggest that this Bill takes a similar approach the Housing White Paper which proposed that a support needs assessment is routinely carried out to ensure that the needs of people needing support are met.

This assessment of support needs at the first point of contact is different to the assessment detailed in the Bill under ‘Individual right to assessment’ and should be seen as an addition to this. As with any assessment of support needs, it is essential that it is conducted by a person skilled in support needs assessments. We feel that it is important to also include ‘advocacy’ within the drive to establish better advice, information and assistance as it is an important but independent element which complements information and advice. However, it is currently missing from this Bill.

It is encouraging to note that LAs will have the power to meet care and support needs without referring to the eligibility criteria. We believe that this will ensure that those who are in crisis and require care and support services as a matter of urgency will not be delayed by a need to receive an assessment relating to their suitability in accordance with the eligibility criteria. We also support the move to create portable care and support plans and feel that it will help ensure greater flexibility for those in receipt of care services. We would question why this is not the case for the care and support plans relating to carers also as we fear that this could cause unintended complications or delays when a person wishes to move to another LA area.

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.***

Given that the driver behind the creation of the Social Services (Wales) Bill is the need to respond to the changing demography and with in increasing complexity of need, it is paramount that this Bill delivers a sustainable change to the delivery of social services in Wales. In order to do this, it is essential that Welsh Government and local authorities become more sophisticated at predicting future need and trends. As such, we need to better understand the characteristics of the current population in order to more accurately forecast and plan for future services.

We feel that this point is vital if this Bill is to deliver the long lasting change that is needed in Wales.

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

No comments.

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

We endorse the comments made by Disability Wales and the networks and organisation represented their response.

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.***

No comments.

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)?***

No comments.

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

As previously stated, we welcome the duty placed on local authorities to promote cooperative, social enterprise and third sector delivery of care services. Given the current market domination by private sector care delivers, we feel that this duty will help ensure a more mixed market of care provision, with a greater proportion of not-for-profit providers who ensure services are based on quality, cost-effectiveness and that surplus is reinvested back into supporting the individuals that need it. Further details on the added benefits of not-for-profit care delivery can be found in our response to the Health and Social Care Committee's inquiry into residential care[1]. As previously stated, we are leading on work to represent, inform and support not for profit care providers in Wales.

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

No further comments.

Nicola Evans – Policy & Information Manager
Cymorth Cymru
Norbury House
Norbury Road
Fairwater
Cardiff
CF5 3AS
Tel (029) 2055 3687
nicolaevans@cymorthcymru.org.uk

---

[1] http://www.senedd.assemblywales.org/documents/s4560/Consultation%20response%20RC%2065%20-%20Cymorth%20Cymru.pdf

Consultation – Social Services and Well-being (Wales) Bill. The response of Cardiff Council.

The following response is that of Cardiff Council .

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**.

   Response:
   The principles and intentions of the Bill are a positive move towards meeting the challenges of the changing demographics and societal expectations of a modern social services. The Bill will challenge Local Authorities to look at different ways of service provision that will enable outcomes for people in a person centred approach so it will no longer be about making people fit services.

   The Bill calls for Care and Support Services to be made available within the community as part of a spectrum of universal provision for well-being.

   We have significant concerns re the practicality and affordability of this provision. More detail is provided in the Point 9 of this pro forma. However, Local Authorities are struggling to sustain services given the budget pressures and increased demand, the introduction of a potentially open ended commitment to well-being is not sustainable. The Bill does go onto to reference prevention which is currently being used as a way of increasing independence whilst reducing the need for care. This extension beyond strict eligibility has been carefully piloted and evaluated, and consideration of well-being needs to be similarly robust. In **Section 3, point 15** of the **Explanatory Memorandum** there is reference to the potential Well-being population being 3 million people.

   It is welcomed that the Bill recognises that responsibility for well-being doesn't rest with social services and places duties on Local Authorities generally and partner agencies.

   It is considered that by providing a single Act that brings together the Local Authorities and their Partners' duties, this should lead to clarification on issues that previously caused disagreements. This can only enhance the outcomes of joint initiatives between organisations.

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.**

Response:

Part 1 – Introduction and Part 2 - General Functions

Well-being

We welcome inclusion of improving Well-being as an objective but there is a lack of clarity as to how the legislation will enable this and we have identified that this is unsustainable in its current form.

Part 3 – Assessing the needs of individuals

The Bill's provision for single right to assessment for children and adults where it appears that they have a need for care or support is positive. It is good that assessments will be required to focus on outcomes and the streamlining of assessments for carers and people with care needs is positive, but it isn't clear how this will work in practice.

There is concern that there might be an over-emphasis on assessment which could take vital resources away from direct service provision so it will be important to get the balance right. The assessments themselves should be proportionate and focussed on what is needed.

Part 4 – Meeting needs

Eligibility

Without the clear understanding of what will be developed through Regulations, it is difficult to comment further as to whether this objective can be achieved through the Bill or not.

Portability of prescribed care and support plans

The portability of support plans is a good idea but again it is difficult to see how this will work in practice when every Local Authority area will have different structures and different resources that are available to meet needs. It will be important that there is some flexibility built into the portability to reflect different service structures. Whilst the introduction of a higher level of consistency into proceedings is welcomed, there is a risk that the local democratic function which more closely customises services to local need and culture is eroded. It may also erode local political accountability.

There is also a lack of clarity regarding whether this also covers portability of equipment between LA areas to support home care support.

Part 7 – Safeguarding

Safeguarding and Protection Boards

The ADSS Cymru has already raised concerns about the proposed creation of regional safeguarding boards – and it has commissioned work to review the benefits and risks and we would wish to await the outcome of this before passing comment on this element of the Bill.

There is a more detailed consideration of the Safeguarding of Adults contained in Section 9 of this pro forma.

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 stainable? Please explain your answer.**

Response:

As described in 1. above the extension of those who might be eligible for assistance with Well-being is absolutely unsustainable.

There is a need for more clarity and explanation within the Memorandum.

It is important that the Bill seeks to address the “post code lottery” of eligibility for services but it will be important that Local Authorities can retain responsibility to determine how services are provided in order that they continue to reflect local need, priorities etc.

There will also be a need for additional resources to facilitate the Partnership working, so there is a question mark over sustainability.

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

Response:

Part 1 – Introduction

Social enterprises

The Bill will give opportunities to change existing social service provision, especially in relation the way that social care is externally secured. This is really positive and welcomed. In Cardiff there are current considerations, in the light of the forthcoming Bill, to make recommendations for the most appropriate way for the Council to modernise and reshape Adult social care. The promotion of new models of delivery is welcomed and will be developed alongside other successful approaches already in practice, such as the use of direct payments. This will inevitably lead to the exploration of new sources of funding e.g. social impact bonds. Without the legislation this creative exploration of service models would occur at a much slower pace.

Part 3 – Assessing the needs of individuals and Part 4 – Meeting need
Individual right to assessment, Duties to meet needs – carers, and *Right to a care and support plan and review of plans*

The Bill will have positive impacts on carers which will also accelerate the development of enhanced service provision from Local Authorities. However, there needs to be a consideration of the NHS responsibility to resource carers services.

Part 9 – Well-being outcomes, co-operation and Partnership
Adoption
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.

Cardiff is also exploring the opportunities of developing a voluntary sector Partnership for adoption and would welcome the opportunity to discus this further with the deputy minister given that it currently sits outside of the model that ADSS Cymru has put forward – although does not necessarily mean that it cannot be considered as part of a regional approach.

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

Response:
The main barrier will be in terms of finance. It is unclear what level of resource will be required to fund the universal provision for Well-being and it is likely to require transformational change that will result in a remodelling of existing services. It will be a significant challenge to undertake this remodelling alongside continuing to meet the needs of the most vulnerable people at a time when the demand for social services is increasing.

Another barrier will be if the effect of the Bill is to prevent a Local Authority from planning its services in a local context. A one size fits all approach is not always the right approach.

Financial Implications

6. **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.

   Response:
   It is considered that the duties imposed to meet Well-being will inevitably put considerable financial pressures on other services at a time when councils are generally reducing investment on services that do not have a statutory requirement. We also consider that the implications of the Adult Safeguarding approach as described in the Bill will have a significant cost as the responsibilities are all concentrated in the Local Authority.

7. **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.**

   Response: It is very difficult to answer this question as a lot of the elements that might be specified in the regulations are not clear in the Bill. There needs to be a bridging document that draws all the elements together.

Powers to make subordinate legislation

8. **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 regulation, etc.

   Response:

   Our response to 7 also applies here. The Explanatory Memorandum indicates the impact of the provision, to indicate that it can be safely devolved to subordinate legislation, there is no detail of what might be covered by that legislation.

Other Comments

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

Response:

Section 7 (Part 2)

We very much support the promotion of social enterprise, co-operative, user led services and the third sector.

Section 26 (Part 4) – **Duty to meet support needs of an adult carer**

The rationalisation of responses to carers is in the Bill is very much welcomed.

Whilst under the carers measure the NHS also have a responsibility to identify carers. There is no responsibility on the NHS to meet carer's needs or provide resources to assist in meeting needs.

In 1987, a survey undertaken by Carers UK identified that the carers saved the NHS £87bn per year and whilst this figure may apply to health and social care it is clear that the health services significant benefit from carer's contribution.

Part 9 (Section 137) – Outcomes.

Giving the criticality of outcomes to the entire process and content of the Bill, the specification of outcomes should be more explicit.

Experience in health & social care indicates that to achieve the citizen outcomes requires a joined up approach between Local Authorities and the health service.

This further requires a joined up policy and performance framework across the Partners.

Explanatory Memorandum - Section 113.

Sustainable Social Services for Wales Framework for Action is referenced in point 113 and it is absolutely critical that the precise wording around Well-being is recognised.

"3.22…..The answer is not a return to the "prevention role" for social services, but recognition that the whole Local Authority has a responsibility for leading community services and promoting community Well-being and that it should galvanize the communities' own commitment to enable its citizens to play a full part."

Ref: Page 17, Sustainable Social Services

It is clear that Well-being should not be a social services responsibility it should be the Local Authority and wider coalition.

In the Bill and Explanation Memorandum the Well-being agenda is linked to the social services budget e.g. In the **Explanatory Memorandum on page 77 point 165**. The Well-being agenda can “prevent or delay the need far more costly interventions”. The Bill appears to confuse Well-being with its potentially open ended context with preventative services which need to be very clearly targeted.

The risk of becoming open ended is exemplified by the inclusion of ‘economic Well-being’ in the definition.

Does this effectively mean that the Local Authority has to take steps to guarantee the income of individuals? This would be a significant extension of responsibilities.

In addition it is not sufficiently clear within the Bill whether the over arching Well-being duty definition of people who need care and support is the same as the definition in **Section 19 of the Bill – Determination of eligibility.**

This needs to be absolutely clear because one can read the Bill in one of two ways:

1. That the Well-being duty applies only to people who are eligible for care services

2. That there is a wider group of people who need care and support as a result of being at risk through the Well-being criteria and a smaller group who are eligible for social care.

Social Services and Well-being Bill –

Section 31 Exception for provision of health services

This section of the Bill highlights the need for joined up outcome measures across health and social care. This section specifies that Local Authorities may not secure health services.

We know from many examples as a result of continuing health care determination, there is a significant change in the type, content and outcomes of service purely as a result of a change of organisation arranging those services. This has led to differing outcomes for service users at that point of transition.

The solution is that there needs to be the outcomes for care that need to have common purchase across health and social care organisations to ensure that just because someone transfers from the care of an organisation to another these outcomes are not compromised.

Another potential solution would be to amend **Section 31** to enable pooled budget arrangements to allow the lead purchase of continuing health care and related services as a Partnership between health and social services.

Section 54 – Charging for preventative services and information advice and assistance.

This section could do with some clarification. Does the wording mean that someone receiving care and who is being charged for that can not be charged for additional preventative services.

If care and preventative services are separate issues what is the rationale for only being able to charge for one?

Section 104 (Part 7) – Adults at risk.

The introduction of adult protection and support orders is welcomed as is the formal duty to report adults at risk. However the proposals in the Bill make no reference to the incorporation of the wide and well established Wales wide policy and practice framework into the legislation framework.

Considerable work and development has gone on across Wales between a number of organisations establishing a robust workable adult protection framework which does not rely purely on Local Authorities for its discharge and does recognise the essential contribution of the health services particularly in investigating concerns in clinically related areas.

There is further a significant resource implication because if the Local Authority were to be the lead organisation in all adult protection matters, work undertaken by the NHS and other bodies would fall on the Local Authority with significant additional costs.

We support the duty to investigate as detailed in **Section 104 (2),** however we also note that in **Section 38**, there is no reciprocal cross reference or statement that reflects the need to consider adults at risk in terms of care and support plans.

We are also concerned that the duty of report **Section 106** does not reflect the increase and expansive number of provider agencies in commissioned services. In the code of practice for social workers is applicable to these services this and also the health care support workers need to be registered and have a duty of the code of practice we need to ensure that both are unable to report as a matter of duty and not personal decision.

Section 137 & 138 (Part 9) – Outcomes.

If we are to become outcome driven then service arrangements should reflect those outcomes and should apply across the whole public sector. If we do not flag outcomes as the principal driver the capacity to deliver these outcomes could become constrained and compromised. This will be exacerbated by the creation of separate expectations by different legislation and performance frameworks across the public sector agencies.

Section 152 – Complaints about Social Services.

The amendments to the complaints process to recognise the need to integrate health & social care processes for complaints about both is very much welcomed.

Point 160 – Investigations into complaints about privately arranged or funded social and palliative care system.

We recognise the importance of a structure to investigate complaints into privately arranged or funded social care and the appropriacy of the role of the Ombudsman in investigating these matters. There also needs to be references within the Bill to the need to link the investigations undertaken by the Ombudsman to adult protection and safe guarding procedures. In Local Authorities complaints information is one of the key components of managing poor performance in providers.

Comisiwn Cydraddoldeb a Hawliau Dynol | Equality and Human Rights Commission

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

14 March 2013

Dear Chair,

The Equality and Human Rights Commission is pleased to respond to the Health and Social Care Committee's consultation on the Social Services and Well-being (Wales) Bill.

You will have noted the Bill's Equality Impact Assessment states that the proposals take forward the Welsh Government's equality objectives, which were set under the Public Sector Equality Duty Wales. The Welsh Government's equality objectives are based on the challenges identified in the EHRC's How Fair is Wales? report.

To assist you in your scrutiny of the Bill, please find enclosed a copy of How Fair is Wales? Particularly important in terms of the Social Services and Well-being (Wales) Bill is the legal and physical security challenge to reduce the incidence of domestic and sexual violence and reduce disability-related hate-crime (p.9).

The EHRC's recent Disability-related Harassment Inquiry highlighted issues regarding reporting, data-sharing, and a human rights-based approach to safeguarding that we felt could be usefully explored during the Bill's development.

The Communities, Equality and Local Government Committee conducted its own Inquiry to explore how best our disability-related harassment recommendations could be taken forward. This resulted in a recommendation that the Deputy Minister for Social Services meet with

3rd Floor
3 Callaghan Square
Cardiff CF10 5BT

3ydd Llawr
3 Sgwâr Callaghan
Caerdydd CF10 5BT

Tel/Ffôn: 029 2044 7710
Fax/Ffacs: 029 2044 7712
wales@equalityhumanrights.com

the Equalities Minister to discuss how human rights could be built into the Social Services and Well-being (Wales) Bill.

Our specific proposals

A section of our DHI Report specifically focuses on issues around improving adult safeguarding (p.20). We would like to draw this to the attention of the Health and Social Care Committee (as Part 7 of the Bill is focused on Safeguarding). We advised the Welsh Government of our DHI report's recommendations during the Bill's consultation phase.

We note Part 3 10 (4) of the Bill states that 'in carrying out a needs assessment…the local authority must seek to identify the outcomes that the adult wishes to achieve in day-to-day life'. We hope to see this as an underpinning principle of any guidance resulting from the Bill to ensure that people's human rights are protected.

Yours sincerely,

Kate Bennett.

Kate Bennett
EHRC National Director for Wales

www.dap-wales.org.uk

Mark Drakeford AM
Health and Social Services Committee
National Assembly
Cardiff
CF99 1NA

March 6th 2013

Consultation on the Social Services and Well-Being Bill 2013.

Response from the Disability Advice Project

The Disability Advice Project (DAP) welcomes the opportunity to respond to the National Assembly's proposed Bill to reform social services and improve the well-being of people who need care and support, and carers who need support.

1. Introduction

The Disability Advice Project (DAP) provides accurate, relevant and appropriate advice and information to disabled people, their families and carers in relation to welfare rights across (but not limited to) the south east. This service is delivered face to face and includes assistance with form filling, support to appeal decisions and accompanying individuals to Benefit Tribunals.

DAP currently also provides life skills coaching to carers and ex-carers in the 4 southern "EU Competitiveness Area" counties.

DAP is based in Cwmbran and looking to develop outreach services within Torfaen, and beyond to neighbouring counties. In an average 12 month period the project advises and supports in excess of 800 people. It anticipates a period of growth in welfare rights work as a result of significant changes emanating from the UK government.

2. Comments and responses to the consultation questions.

Question 1: DAP generally welcomes the principles and ambitions of the Bill, in particular the emphasis on partnership working within the statutory sector. DAP believes that the well-being of people in need (as proposed by the Bill) should be seen as the responsibility of all public agencies charged with health, social care, well-being and that consideration needs to be given to extending to those agencies providing related services, such as housing. The Bill has an ambition to end the "siloing" of services, and care needs to be taken to ensure that particular agencies are not, by default, excluded from the requirement to work in partnership.

Question 8: Any other comments.

DAP welcomes the requirement upon Local Authorities to promote social enterprises, user led services and the third sector in the delivery of services under Part 2 (General Duties), Section 7 of the Bill. However, DAP believes that the range of services included in this section should be expanded from "to provide care and support and preventative services" to also include the provision of services that offer information and advice as defined in Section 8 of the Bill. It is fundamental that any service offering advice and support to individuals in relation to care services is not only independent of social services or local health boards, but also be seen to be independent. This is not, In DAP's view, a service that can, or should, be provided "in house" by local authorities either individually or in consortia.

In relation to Part 2 (General Duties), Section 8 of the Bill. DAP is concerned that paragraph 3 describes a minimum service that must be offered. Firstly, this is in direct contradiction to other aspects of the Bill which refer to the need to abandon the use of the term "National Minimum Standards" and replace these with "National Standards". While DAP understands that the Government feels it needs to define/regulate what should be available, DAP believes that the Government should include a description of the type of service available. DAP would suggest that National Standards be applied to advice services and these would cover matters such accessibility and suitability of service provision. DAP suggests that the National Standard for advice services would, at least, include

- Provision of face to face advice
- No restrictive limits on time and activities

- In accessible premises
- Available at a local level
- Delivered at no cost to the person seeking advice
- Independently delivered

Secondly, the level of service as currently described in Section 8 (3) does not amount to a meaningful service. As it stands Local Authorities could discharge their responsibilities under the Bill by producing a range of leaflets and adding another page to their website. DAP firmly believes that advice services should be available face to face, at a local level and offered by an independent organisation (see above for proposed National Standards).

DAP would also like to see the Bill include advocacy in Sections 7 and 8 of the legislation and that there is an agreed definition and clear eligibility rules, and management of advocacy services. Again it is essential that advocacy services are delivered by independent third party individuals or organisations.

Consultation amongst DAP volunteers , who are also service users, has revealed that there are aspects of the Direct Payment system that need to be addressed if take up of Direct Payments provision is to improve across the country. In particular, Part 4, Section 37 (1) (g) support provided by local authorities should extend to the provision (by themselves or a contracted third party) of services that include a pool of trained support workers that are able to provide

a) Services to more than one individual where each individuals allocated support hours are insufficient to provide an adequate living for the support worker. Our consultation cohort felt strongly that this should be available without the need to contract with a commercial agency AND that the service should be able to offer a high degree of continuity as to choice of support worker. One of the most often heard complaints from our cohort was that commercial agencies are not able to provide sufficient levels of continuity, and as a result users of Direct Payments using care agencies are still being put in the position of having care and support provided by virtual strangers.

b) cover for sickness or annual leave of Support Workers is difficult to obtain.

b) cover for sickness or annual leave of Support Workers is difficult to obtain.

In relation to Part 3 (10) and Part 4 of the Bill, the consultation amongst DAP volunteers also revealed frustration with the model employed by local authorities to "assess need" and then "meeting the need". Examples were provided where the person carrying out an assessment was simultaneously advising service users that services would not be available as a particular allocation of funds was fully committed e.g. disabled parking spaces. The danger here is that some needs may not be assessed. Our consultation cohort felt that by separating the processes all needs would be assessed even if there some of those assessed needs were unmet. This would then provide information to help determine the level of unmet need in the community. There was a sense that the needs assessment procedure should be separated from the service allocation aspect so that assessments were "clean" and that once the assessment had determined the level of need that it should be passed to another individual to source and allocate services.

Disability Advice Project

March 2013 2013

Contact Chris Hoyle

c.hoyle.dap@gmail.com

or

Pauline Jones

Pjones.dap@gmail.com

DISABILITY ADVICE PROJECT

Unit 9A Ground Floor
1 Caldicot Way
Avondale Business Park
Avondale Road
Cwmbran
NP44 1UG

Disability
Advice
Project

E-mail: info@dap-wales.org.uk Tel: 01633 485865
Website: www.dap-wales.org.uk Fax: 01633 485866

We provide the following services:

For individuals:

- Free information and advice on all disability issues to disabled people, family and carers
- Free form filling
- Free representation at benefits tribunals
- Life coaching for individuals and groups

For anyone providing goods and services

- Access auditing
- Access awareness training
- Disability awareness training
- Website auditing for disabled accessibility

All donations are gratefully received and ensure the survival of the project

INVESTOR IN PEOPLE

Community Legal Service

Member of DIAL UK

Charity No: 500000

ARIENNIR GAN Y LOTERI
LOTTERY FUNDED

Churches' Network for Non-violence (CNNV)
Charity No: 1115528

Response to Stage 1 Consultation on the Social Services and Well-Being (Wales) Bill

From: Churches' Network for Non-violence
chris@churchesfornon-violence.org
www.churchesfornon-violence.org

The Churches' Network for Non-violence (CNNV) was formed to broaden religious support for the prohibition and elimination of corporal punishment of children and to challenge faith-based justification for it. Physical punishment of children is incompatible with universal values professed by all the major religions including: respect for human dignity, compassion, equality, justice and non-violence.

Since the United Nations Global Study on Violence against Children, growing numbers of religious leaders and their communities have taken decisive action towards ending corporal punishment of children, and regard prohibition as a religious and moral imperative. In support of the UN Study, Religions for Peace – the largest coalition of the world's religious communities – adopted a "Multi-Religious Commitment to Confront Violence against Children" (The Kyoto Declaration 2006). Support for law reform is explicit in the Declaration:

"We call on Governments to adopt legislation to prohibit all forms of violence against children including corporal punishment and to ensure the full rights of children, consistent with the Convention on the Rights of the Child and other international and regional agreements."[1]

In Wales, Christian and Muslim leaders have signed statements of support calling for the prohibition and elimination of physical punishment of children.

"We believe that legislation to remove the defence of "reasonable punishment" is crucial because it reflects the compassionate, non-violent society we want for all children.

"Physical punishment of children has for too long been a common part of our culture. But physical punishment as a form of discipline is incompatible with the core religious values of respect for children's human dignity, justice and non-violence. There are no circumstances under which this painful and humiliating practice can be justified."

---

[1] *A Multi-Religious Commitment to Confront Violence against Children* (The Kyoto Declaration), Eighth World assembly, Religions for Peace, Kyoto, Japan, August 2006.

Given the overall context and aims of the Bill, CNNV urges the Health and Social Welfare Committee to include a recommendation in the stage 1 Report that a clause be added to remove the “reasonable punishment” defence in relation to assaults on children in Wales.

Inclusive policy-making – focus on human rights, equality and dignity The Explanatory Memorandum refers to the Inclusive Policy Making Model developed by the Welsh Government. This requires development of policy and legislation which meets “the identified needs of individuals and communities” based on the principles of human rights; fairness, respect, equality and dignity.

A climate which respects and protects human rights is fundamental to the promotion of health. Children have the right to respect for their physical and emotional integrity and are entitled to equal protection under the law. Removal of the “reasonable punishment” defence is a vital measure for children’s health and well-being. Without this reform the principles and aims of the Bill and children’s safeguarding cannot be fully realised.

Does the Bill as drafted, deliver the stated objectives as set out in Chapter 3 of the Explanatory Memorandum?

We do not consider that the Bill as drafted delivers the objectives as set out in Chapter 3 of the Explanatory Memorandum. Successive Welsh Assemblies have undertaken to protect children from all forms of physical violence by removing the defence of “reasonable punishment” under section 58 of the Children Act 2004.

There is a clear human rights obligation to remove the defence. Successive Welsh Governments have been committed to achieving a complete ban on physical punishment. The First Minister confirmed in October 2011, that the National Assembly now has the power to legislate to remove the defence and enact this overdue reform for children.

The principle of well-being

A state of well-being is dependent on policies which protect people and create conditions in society that allow the attainment of health by all people within the settings of their everyday life. The Bill defines “well-being” in relation to key determinants of health. The experience of physical punishment in childhood is a risk factor for mental health problems both in childhood and in adulthood. A recent US study (2012) on mental health in childhood concluded that corporal punishment is associated with poor mental health in children, including behaviour disorders, anxiety disorders and depression. The study found an association between physical punishment and poorer mental health.[2]

---

[2] Afifi, T.O.et al(2012), “Physical punishment and Mental Disorders: Results from a Nationally Representative US Sample”, Pediatrics, 2 July 2012

Physical punishment can have serious negative effects on a child's emotional and physical health and development. There is evidence to suggest that exposure to violence in early childhood alters the developing brain by interfering with normal neuro-developmental processes.[3]

Physical punishment can be psychologically damaging and may induce a sense of low self-worth, sadness, fear, shame, anger, an inability to trust, anxiety, despair, depression and withdrawal.

Studies have repeatedly demonstrated that both girls and boys who have been physically punished before the age of five have been found to be aggressive and have experienced difficulty with managing their behaviour and forming peer relationships in later childhood and into adolescence, even when physical punishment has ceased.[4]

Domestic, family and personal relationships

Corporal punishment may legitimise violence for children in their interpersonal relationships because they tend to internalise the relationships they experience in childhood. Social learning theory also suggests that physical punishment enables children to learn aggressive behaviour from the example of adults around them.

The use of physical punishment can have an adverse effect on the quality of parent-child relationships. Children's secure attachment is fostered by warm, positive parent-child interactions and negatively associated with punitive interactions. Research reveals that attachment is known to have an important influence on a wide variety of child development outcomes and social competence. [5] Attachment security is vital for children's sense of well-being and their feelings of safety within and outside the family boundary.[6]

Children have a right to the highest standard of physical, emotional and spiritual health but this cannot be attained for all children while the law allows children to be physically punished.

The legality of physical punishment means that some Christian parents, including religious groups who believe in biblical inerrancy, will continue to ignore children's right to physical integrity and disregard the benefits of positive non-violent parenting. Those who consider it to be a duty will continue to physically punish their children,

---

[3] Perry, B.D.(2001), "The Neurodevelopmental Impact of Violence in Childhood", in D. Schetky & E.P. Benedek (eds) (2001), *Textbook of Child and Adolescent Forensic Psychiatry*, Washington DC: American Psychiatric Press, Inc., 221-238

[4] See Glaser, D.. (2007), The Link, The Official Newsletter of the International Society for the Prevention of Child Abuse and Neglect, (ISPCAN), 16(2)

[5] Coyl, D.D., L.A. Roggman and L.A. Newland (2002) "Stress, maternal depression, and negative mother–infant interactions in relation to infant attachment" Infant Mental Health Journal, 23(1–2):145–163.

[6] Laible, D.J. and R.A. Thompson (2000) "Mother–child discourse, attachment security, shared positive" Child Development, 71(5):1424–1440.

using texts from the Old Testament to justify their actions. They argue that “ordinary” physical punishment in the context of a loving home is part of “normal” parental discipline.

Contribution made to society

Mental health and well-being in childhood has an impact across the life course. Physical punishment is also negatively associated with mental health. Research involving adults has shown that having been physically punished in childhood is associated with later antisocial behaviour. The consequences and costs for society in both the short and long-term include those associated with childcare, welfare and mental health.[7]

Children should not have to wait any longer for the legal protection from assault which adults take for granted. The existence of a special exception of “reasonable punishment” of children breaches the principle of equal protection under the law. The preamble of the UN Convention on the Rights of the Child affirms that because of their “physical and mental immaturity”, children need special safeguards and care, including appropriate legal protection”. The assumption that adults have a right to hit children indicates their lowly status in society.

Wales has led the way towards transforming the lives of children in the UK. Wales was the first to appoint a Children’s Commissioner; first to incorporate the UN Convention on the Rights of the Child into legislation and the first to ban smacking in childcare settings. Wales should now be the first to ban smacking.

Chris Dodd
Coordinator, Churches’ Network for Non-violence (CNNV)
March 2013

chris@churchesfornon-violence.org
www.churchesfornon-violence.org

---

[7] Gershoff, E.T. (2008), *Report on Physical Punishment in the United States: What research tells us about its effects on children*, Colombus UH; Centre for Effective Discipline

Nursing Directorate
Direct Line/Llinell Uniongyrchol: 01874 712708
Fax/Ffacs: 01874 712554
E-mail/e bost:
carol.shillabeer2@wales.nhs.uk

15th March 2013

Chair
Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Dear Sir

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

Thank you for inviting evidence on the above. I am pleased to respond on behalf of Powys teaching Health Board. I respond to each of the questions in turn.

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?*

Whilst partnership working and to some extent integration of public sector services should not require legislation in order to protect the most vulnerable and to improve the well-being of people who are in need of care and support, the passing of a legal framework that compels authorities to work together to achieve these outcomes is welcome. It will be essential however for the Bill to clearly state the authorities and the respective functions within such authorities that will be required under the legal framework to work together. The definition of 'well-being' for example is so broad as to require functions such as leisure, education and skills, police, and regeneration amongst others to work together. The name of the Bill infers an emphasis on the 'social services' provision rather than the broader approach that will in essence influence wellbeing and therefore it is suggested that an amended title of the Bill to 'Well-being' is likely to be more clearly inclusive.

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

In relation to Part 6, and indeed more generally, cognisance needs to be paid to linkages and alignment with other legal frameworks such as for example the Mental Health (Wales) Measure where there is a requirement for children (and indeed adults) who access secondary care to have a Care and Treatment Plan. The development of plans for example for 'Looked After

Children' should be viewed in collaboration with MH Measure Care and Treatment plans.

In relation to Part 7 – Safeguarding, the Bill introduces welcome legislation for the protection of vulnerable adults. More generally however the development within a legal framework of the National Independent Safeguarding Board that includes a remit to 'advise Ministers on the adequacy and effectiveness of safeguarding arrangements' does call into question the role that regulators/inspectors such as HIW and CSSIW will have in relation to review and assurance.

Also in relation to Part 7 - Safeguarding and Protection Boards, it is recognised that the Bill itself does not give sufficient detail to deal adequately with the governance mechanisms and the Regulations may provide this level of detail. It is important for the Committee however to recognise that the pace with which the current safeguarding arrangements are being steered to change in line with the general principles of the Bill does incur some risk regarding effective governance and scrutiny arrangements. Further information on how this affects Powys teaching Health Board can be provided.

It is important that the role of the Lead Director for Children is retained and reference to amendments to Section 25 of the Childrens Act appear to maintain this focus and this is welcome.

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?*

It would be perhaps more helpful to frame the question that needs answering more broadly in terms of public service sustainability. The demand for health *and* social care is increasing and given the demographic trends will continue to do so. The core question therefore is whether public services will be sustainable in light of the key issues facing Wales including welfare reform, the increasing rates of older people; the numbers of people in vulnerable groups and the continued economic challenges. This reinforces the need to ensure that the breadth of the Bill reflects 'wellbeing' more generally. Indeed the development of a joint outcomes framework or single outcomes framework that focuses on outcomes for people rather than functions of public bodies is more likely to stimulate a more joined up approach to improving care services (including prevention).

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

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

The Bill indicates some real benefit in terms of proportionate assessment, portability of assessment and a fresh look at eligibility. It is difficult to see however that given the demographics and other demands and pressures upon the care (health and social care) system that demand for such support will be achieved without consideration of further funding (or resource prioritisation) in this sector.

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?

There are considerable numbers of references to the development of Regulations within the Bill as it currently stands. Whilst flexibility and ‘future-proofing’ is required, it is sometimes difficult to understand the practical implications of the Bill and thus give a clear view on its efficacy.

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)?*

There are considerable numbers of references in the Bill to Welsh Ministers making sub-ordinate legislation. Whilst flexibility and ‘future-proofing’ is required there also needs to remain an opportunity to enable challenge and scrutiny in any further developments in order to ensure the best development of the legal framework into practice.

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

Given that the full impact of the Bill and sub-ordinate legislation is not fully known, it is difficult to give a view on the financial implications of the Bill at this stage. Clearly the challenging financial situation across the public sector requires a clear commitment to partnership working to protect the vulnerable and those at risk to ensure the public can achieve the best value for money.

I hope these comments have been helpful in your inquiry. Please do not hesitate to contact me if any further information is required.

Yours faithfully

Carol Shillabeer
Nurse Director

NSPCC Cymru/Wales

Response to:

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

Date: March 2013

NSPCC Cymru/Wales, Diane Englehardt House, Treglown Court, Dowlais Road, Cardiff, CF24 5LQ
Tel: 0844 892 0290 Email: Vivienne.laing@nspcc.org.uk

ChildLine 0800 1111

NSPCC
Dim mwy o greulondeb i blant. DIM.
Cruelty to children must stop. FULL STOP.

Registered charity number: 216401 and SC037717

About us:

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK’s leading children's charity specialising in child protection. Our vision is to end cruelty to children in the UK and we make a difference for all children by standing up for their rights, listening to them, helping them when they need us and by making them safe.

The NSPCC runs projects and services across the United Kingdom and Channel Islands to help vulnerable children. We also provide ChildLine, the UK’s free, confidential 24-hour helpline and online service for children and young people and a helpline for adults who are worried about a child or want advice.

NSPCC Cymru/ Wales welcomes this opportunity to provide evidence and please find below our response to the questions posed by the Health and Social Care Committee as part of their Stage 1 Scrutiny of the Social Services and Well-being Bill. The NSPCC would be pleased to provide oral evidence to the Committee:

- To share the wealth of knowledge and expertise as the UK's leading children's charity specialising in child protection
- And as a named LSCB board member (in Safeguarding Children: Working Together Under the Children Act 2004)

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.**

NSPCC Cymru/Wales welcomes Welsh Government's aim to bring together local authorities and partners' duties and functions into one legal framework and supports a coherent and strategic approach to improving the well-being of people in Wales.

The Bill provides an opportunity to clearly define Social Services provision in Wales and, more crucially, it also provides an opportunity to place a duty on the wider local authority and its partners to assess need and deliver universal preventative services through to targeted early intervention services which prevent an individual or family's circumstances from worsening to the extent that they need a Social Services intervention.

However, NSPCC Cymru/Wales believes the Bill must be further strengthened to achieve this.
NSPCC Cymru/Wales' response to the White Paper consultation welcomed the link between adults' and children's social care as there is much research[1] that finds the needs of dependent children get lost by professionals who are focused on adults' needs.

The 'people' approach also has the potential to benefit young people during the often difficult transition from children's services to adult services.

However, whilst we support the creation of more integration, we have very serious concerns about the needs of children and young people becoming downgraded because of the pressure caused by an aging population. Safeguards must be built into the legislation to ensure that the needs of children and young people are prioritised. We urge the committee to consider:

- Whether the 'people' approach can ensure that the needs and rights of children are not lost when services are being provided to adults and children in the same family?
- How do we ensure this approach will benefit young people moving from children's services to adult services?

---

[1] Cleaver et al 1999, Cleaver et al 2007, Cleaver et al 2011 and Taylor and Kroll 2004.

- Will the now separate duties to assess the needs of an adult for care and support (section 10) and the duty to assess children (section 12) diminish the benefits from the 'people' approach?

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.

NSPCC Cymru/Wales applauds the intentions and aspirations of the Welsh Government. In particular we welcome the focus on well-being and the objectives 'providing people with a stronger voice and greater control over the services they receive' and 'ensuring people receive the help they need to live fulfilled lives'.

Inconsistency between policy objectives and contents of Bill

We welcome the shift in focus implied by the change in title from Social Services Bill to Social Services and Well-being Bill. However we feel that there is a tension and inconsistency between the policy objectives ('reforming social services law' and 'improve the well-being outcomes for people who need care and support and carers who need support') and the content of the Bill itself which is focused on well-being. We are also concerned that the reference to 'social services' in the title may lead to the over-focus on social services departments as the delivery agency when responsibility should be spread among a broader range of partners through the Local Service Boards and other collaborative partnership arrangements.

Social Services provision currently focuses on protecting the most vulnerable people with significant need for care and support but the content of the Bill appears to shift social services provision to preventative services and work with people with lower levels of need. The crucial question that is not clearly asked is should the skills of social workers and Social Services be focused on those with significant and complex needs or should they work with more people with lower levels of need.

Clearly there is a need for services that focus on both. Prevention and early intervention is crucial to reducing the demand on social services.

But there is a 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 Memorandum lists some sources of funding that should be used to smooth the changes and we would wish to see clarification on how the money will be used and the arrangements to ensure that those children and young people with these current complex needs will be protected during the changes.

If the work of Social Services is to be focused on a smaller group of people with significant and complex needs, should the duty to promote well-being and provide preventative services be placed on the wider local authority and its partners?

Section 6.1 states that a local authority must provide or arrange provision of preventative services, but we believe this should be a responsibility on all partners and that wider early support services are often better delivered by departments and partners outside Social Services, leaving social workers the time and resource to work intensively with families (albeit in a multi-agency approach).

The over focus on Social Services may limit or constrain the efforts of other organisations on improving the well-being of those who need support. We know that Social Services Departments are already under pressure, with increased demand and dwindling budgets, and are concerned there will be further pressure and expectation on Social Services' budgets to fund the preventative services as well as the intensive services they already provide to our most vulnerable people. We feel that there needs to be a local partnership structure that acts as the fulcrum for joint working which draws all partners together to improve well-being and recommend that Local Service Boards, already established in each local authority area, could play this key role.

Ensuring people receive the help they need/ Preventative Services

All across Wales the third sector plays a crucial role in supporting vulnerable people and NSPCC Cymru/ Wales welcomes the duty placed on local authorities to develop and promote social enterprises, co-operatives and the services provided by third sector organisations. NSPCC Cymru/ Wales itself provides a range of free preventative services for vulnerable children and a range of services to enable children overcome the abuse they have suffered.

We are concerned that the duty in Section 5 to assess the population needs for care and support is placed on local authorities **and** LHBs but the duty to provide the preventative services in Section 6 is placed on local authorities alone. Linked to our earlier point about inconsistency, NSPCC Cymru/Wales recommends that the Committee carefully scrutinises the 'shared responsibility to promote the well-being of people' (Page 7 of the memorandum, paragraph 14) and whether the Bill, as drafted, effectively draws in health and other departments/ partners.

NSPCC Cymru/Wales is also keen to see close scrutiny of Section 6; subsection (2) (a) + (b) to establish whether this will deliver a spectrum of services as previously described. We are concerned that the explanatory memorandum on page 8 talks about a "spectrum of **universal** provision for wellbeing so as to reduce prevent or delay the development of eligible needs". It talks on page 7 about services potentially being available to a population of three million. Whilst we welcome improved universal services, this is not a spectrum and without further clarification is potentially unrealistic, particularly if the unintended focus is on Social Services due to the title of the Bill. We believe this could create an unintentional gap between universal provision and those assessed as in need and with an eligible need , leaving children suffering from low level, long term neglect who may never reach thresholds, without the help and support they need to access their right to be safe.

Services to prevent sexual abuse

The percentage of children subject to a child protection plan because of sexual abuse in Wales in 2010/11 was just 7%. However the NSPCC research[2] 'Child abuse and neglect in the UK today' found that 16.5% of 11-17 year olds reported sexual abuse by an adult or a peer. It is clear that most child sexual abuse remains hidden, unrecognised and unreported, though in recent months, the uncovering of Jimmy Savile as a predatory sex offender, has led to an unprecedented number of victims who suffered and do suffer child sexual abuse in the past and present to come forward.

We know that online safety, child sexual exploitation and child sexual abuse are not discrete issues and that preventative services have a crucial role to play in tackling child sexual abuse. To prevent child sexual abuse, NSPCC Cymru/ Wales recommends a public health approach based on the primary, secondary and tertiary prevention approaches:

1. Primary prevention – universal interventions aimed at the general population to prevent a problem before it starts
2. Secondary prevention- selected interventions to those with a heightened risk of being a perpetrator or victim
3. Tertiary prevention- prevention activity aimed at those who already committing the behavior and treatment programmes for those harmed and affected by sexual abuse.

The NSPCC Cymru/ Wales recommends that this primary, secondary and tertiary approach to prevention is adopted by the Welsh Government when developing regulations and guidance for preventative service provision.

More effective response to child neglect

NSPCC research into child maltreatment in the UK[3] found that 1 in 10 young adults had experienced serious neglect during their childhood and neglect accounts for almost half of children in Wales subject to a child protection plan. However an online survey that NSPCC[4] and Community care undertook in 2012 found that only 7% of social work professionals were confident that timely action is taken in response to neglect, whereas 76% and 75%, respectively, were confident that timely action was taken in response to physical and sexual abuse.

---

[2] *Radford, Lorraine, Corral, Susana, Bradley, Christine, Fisher, Helen, Bassett, Claire, Howat, Nick and Collishaw, Stephan (2011)* ***Child abuse and neglect in the UK today****. London: NSPCC.*

[3] *Ibid.*

[4] http://www.communitycare.co.uk/articles/27/09/2013/118548/social-workers-unlikely-to-act-quickly-on-neglect-cases.htm

It is increasingly evident that the law and guidance are not providing a solid framework to protect children from neglect and often the response to neglect fails to take into account the current understanding relating to the cumulative and harmful effect of neglect. The chronic and cumulative nature of neglect does not lend itself well to the current thresholds of significant harm, which makes it difficult for professionals to know when to intervene. This implies that children are being left in situations which seriously impair their development and negatively impact on their life chances for an unacceptable length of time.

Neglect can also be life threatening and it is our contention that it needs to be treated with as much urgency as other categories of maltreatment. Our most recent research[5] analyses neglect in serious case reviews in England between 2003-11 found that neglect is much more prevalent in serious case reviews than had previously been understood (neglect was present in 60% of the 139 reviews from 2009-2011).

NSPCC Cymru/ Wales recommends that changes are made to guidance and practice as this Bill is implemented to ensure children experiencing neglect get the help they need. Two key recommendations are:

- A revision to the wording of the definition of neglect in the current guidance as the term ‘persistent failure’ is problematic because neglectful behaviour is not always consistent.
- Improved training, awareness and understanding of neglect and its impacts together with a strengthened service response which includes primary, secondary and tertiary preventative services

Other recommendations will emerge through the Wales Neglect Project that NSPCC is developing with Action for Children and the Welsh Government and these will be shared and need to be taken into account in the implementation of this Bill

Stronger voice and control

The NSPCC is concerned that despite the objective ‘people having a stronger voice and greater control over the services they receive’ and this aim being included in ‘Description’ on page 4, it is not mentioned elsewhere in the Chapter 3 of the Explanatory memorandum or in the Bill itself.

We welcome close scrutiny of the intentions in relation to stronger voice as we are concerned that this is not simply implemented through provision of direct payments or the ability to refuse an assessment. Stronger voice must be enacted through advocacy and co-production of services.

We are particularly concerned that the voice of children and the rights of children are not explicitly stated, despite the Welsh Government’s announcement that this Bill would incorporate the proposed Children and Young Persons’ Bill which had been planned for later this Assembly Term.

The provisions of this Bill should have been examined against the UNCRC as a consequence of the due regard duty placed on Welsh Government by the Rights of Children and Young Persons Measure. However this Bill as drafted does not strengthen children’s rights in its current form and we recommend that children’s

---

[5] http://www.nspcc.org.uk/Inform/resourcesforprofessionals/neglect/neglect-scrs_wda94688.html

rights are better embedded and more clearly evident on the face of the Bill if children's rights to protection are to be fully realised within the child protection system. We recommend that the 'due regard' to the UNCRC analysis should be an area for scrutiny

We are also concerned that the opportunity to clarify the responsibility of agencies in relation to provision of advocacy has also been missed.

Clarity about repeals

If this is to be a single act for Wales, we would urge clarification about what previous legislation is repealed and where this act fits with existing legislation which remains relevant in Wales. Without details about repeals or more clarity about how this Bill fits with current legislation it does not provide a core legislative framework for social services in Wales. It also risks creating confusion about the core provision for people in need and the responsibility of all agencies to work together to provide a spectrum of support.

There are some examples in the draft Bill where this is clear, such as Section 144 where the amendments to Section 25 of the Children Act 2004 are clear. However, there are many more examples where it is unclear. Two examples are:

- In Part 4 of the draft Bill, Meeting Needs, it is unclear how these duties interface with or if they amend Section 17 of the Children Act 1989, which puts a duty on local authorities to safeguard and promote the welfare of children within their area who are in need by providing a range and level of services appropriate to those children's needs.

- In Part 1, there is a definition of a person who is disabled, but it is unclear how this definition 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 then provided with services appropriate to their needs. We would be very concerned if Section 17 responsibilities for disabled children are reduced.

The definition of disability is that contained within the Equality Act 2010 that is a person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This appropriately updates the definition contained in the Children Act 1989 and since it has been tested in law and provides the basis on which local authorities and other statutory agencies base their equality impact assessments and equality plans it should be an appropriate definition. However it remains to be seen whether this much looser definition of disability genuinely meets the needs of disabled children.

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.

NSPCC Cymru/ Wales believes that partners, rather than just social services, should provide:

- universal preventative services
- early help and support to children and families
- services to ‘children in need’ as defined by Section 17 of the Children Act.

This should reduce, though not eradicate, the need for higher tier and crisis interventions later and would ensure the gap potentially created by people not having ‘an eligible need’ is closed. As mentioned in Question 2 above, NSPCC Cymru/ Wales urges the Committee to closely scrutinise the ‘shared responsibility to promote the well-being of people’.

NSPCC Cymru/Wales is concerned that Chapter 8 of the Explanatory Memorandum states that there are no additional costs for providing preventative services and believes that additional transitional costs will be required for Social Services to provide its current services as well as enhanced preventative services. (See answer to Question 8). It is important to ensure that there are sufficient resources for providing universal preventative services, early help and services to children in need as well as services to those with existing complex and acute needs.

The Flying Start and Families First services are two of the Welsh Government programmes providing early intervention but we know that these are not available in every community and where they are provided, some have waiting lists. To ensure preventative services and early help become more widely available and can be accessed when needed, it will be essential to build on the services provided by the third sector, statutory partners and programmes such as Flying Start and Families First in all communities and additional transitional funding will be needed.

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

Whilst the Children Act 1989 introduced major improvements for child protection, there is still much to be done in relation to improving outcomes for children in need.

NSPCC Cymru/Wales believes there must be close scrutiny as to exactly how this legislation will change existing social services provision and deliver improvements for children in Wales.

Without information around the intentions with regard to thresholds and the details of implementation behind the National Eligibility Framework, it is hard to know exactly how provision will change. Any shift in thresholds will have massive implications either way. If early intervention and universal prevention services are properly implemented by all partners then this should have a major positive impact in changing the way in which social services is delivered to children and families. However, there is currently a risk of people falling out of services if thresholds are pushed up or, for example, as a result of services such as Families First creating new unintentional thresholds due to under-capacity and resourcing. For this reason, we continue to stress the need to close the gap between universal services and being assessed as “in need”.

NSPCC Cymru/ Wales welcomes the whole-family approach but this cannot be at the expense of children and feel it is essential not to lose the voice of the child and their rights to protection, provision and participation. We would like the ‘people’ approach to result in professionals who work with adults to ‘think family’ and be aware of those cared for by their service-user and refer accordingly to ensure the needs of children present are met.

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

The most obvious barrier to successful implementation is that of resource and funding. As previously stated we believe significant upfront investment will be required to enable the rebalancing of services which needs to take place.

Again, a more detailed table of derivation as to which legislation now takes primacy in Wales will also be important.

Robust regulations and clear guidance for agencies and practitioners will also be crucial as will monitoring and oversight of implementation and outcomes.

The National Outcomes Framework is an essential element of the legislation but we believe this must be a framework against which all departments and agencies can be held to account, not just social services.

Major changes have taken place to the partnership structures in Wales in recent years and careful consideration must be given to this whilst scrutinising the duties to co-operate and to share information.

Authorities and partner agencies appear to still be grappling with the reconfiguration and it is important to properly understand the impact for regional and local partners as well as frontline services in order to fully understand the barriers to successful implementation. Are the structures there to deliver a partnership approach to improving well-being?

Section 9 retains the duty to co-operate and to share information found in the Children Act 2004 and lists the partners to whom this applies.

Section 146 requires local authorities to exercise its social services functions with a view to ensuring the integration of care and support provision with health provision where it considers that this would promote the well-being of children within the authority’s area or contribute to the prevention or delay of the development by children, or improve the quality of care and support for children.

We welcome this potentially powerful duty which reflects the desire of Welsh Government to see closer integration of services to facilitate best outcomes for the population.

Partnership arrangements state that specified partnerships *may* be required by regulation across regional or regional and agency (local authority and LHBs) boundaries. This places on statute the ability of Welsh Government to force regional partnership arrangements where authorities may be resistant. It should be remembered, however, that whilst regional arrangements may well be cost effective and appropriate in certain circumstances, careful consideration will need to be given as to how these are implemented and how partners are successfully engaged.

The arrangements for partnerships are permissive rather than prescriptive in that they allow Welsh Government to do this, they do not state that Welsh Government will do this. In this sense this departs from the Children Act 2004 which required local authorities to set up similar partnership arrangements, although this has been subsequently replaced by later guidance.

Requirements for resourcing partnerships are permissive, in that the bill states that a local authority and LHB *may* pay towards the expense but does not state they must, although it does go on to state that it may compel a local authority or LHB to pool resources, contribute a specific amount or issue further regulation regarding expenditure for posts, administration or other expenditure for the purposes of partnership arrangements. It therefore goes further than the Children Act 2004 which contained encouragement to pool resources, but did not include the ability to mandate this.

The bill does not include the requirement to have lead directors for children and similar leads in health which was contained in Section 27 of the Children Act 2004, and it is not clear if this requirement is to be repealed. If this were to be repealed, we believe it would be a retrograde step, which together with the removal of requirements for Children and Young People's Partnerships and the integration of the Children and Young People's Plans into high-level single plans, creates a risk that the needs of children (particularly those in need) become secondary within an age-inclusive agenda.

Whilst welcoming a whole family-approach within social services and wider partners, the age-inclusive approach to partnerships risks undermining services for children rather than strengthening partnership arrangements to enhance outcomes for children.

This is not to say that an age-inclusive partnership approach cannot meet the needs of children, and clearly the need for close collaboration and strong partnership has never been more necessary. There is considerable existing legislation with respect to children's services which is intended to drive closer partnership working; however the overly bureaucratic structure created by earlier legislation and guidance and the subsequent removal of any requirement to have any separate arrangements for children and young people has led to a wide variation in planning and partnership arrangements across Wales.

This is not necessarily problematic as the flexibility this affords local authorities to make suitable arrangements at a local level is potentially helpful. However there is a risk children will lose out in an age inclusive agenda where adults are a more powerful majority. Maintaining the requirement for a lead director and comparable leads in health would be a useful protective measure in this respect and there is also an opportunity to clarify arrangements and requirements for collaboration and formal partnerships.

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.**

NSPCC Cymru/ Wales feels that Welsh Ministers have, in this draft Bill, allowed themselves many powers to make subordinate legislation and because of this it is difficult to evaluate the impact of the Bill itself other than as statements of general principle.

This is because there is a significant chance that the practical impact of its provisions may be significantly altered in future by subordinate legislation and because a lot of the subordinate legislation will provide the detail about how provisions and duties will be implemented.

For example, the definition of "disabled" set out in section 3 of the Bill may be acceptable as currently drafted, but the categories of persons defined as "disabled" may change in future if subordinate legislation is passed altering this definition. To take another example, section 35 of the Bill states that Regulations may "require or allow a local authority to make payments to a person towards the cost of meeting a child's needs for care and support".

Section 35(3)-(6) sets out four conditions which must be met before payments can be made, but until the Regulations are made, it is unclear whether there will be any legal obligation at all on local authorities to make such payments even when all four conditions are met. As such it is difficult to evaluate whether section 35 will have any bite at all until the Regulations come into force and any evaluation of the provisions of the Bill as it currently stands are therefore limited to discussions of general principle rather than practical impact.

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.**

We understand from Paragraph 118 on page 24 of the Explanatory Memorandum that the "accompanying subordinate legislation" is to be made during 2014-15. We are concerned however that the bulk of provisions in the Bill are discretionary which we interpret as meaning they may be implemented after 2015 or even not implemented at all.

Some provisions in the Bill for subordinate legislation impose a positive obligation on ministers to introduce subordinate legislation – for instance, section 38(4) states "Regulations **must** make provision about [how care and support plans are to be prepared]" and section 48(1) states "Regulations **must** make provision for…financial assessments" .

However the bulk of the provisions in the Bill which make provision for the introduction of subordinate legislation state merely that Ministers "**may** provide for" further detail, rather than placing a positive obligation on Ministers to introduce such subordinate legislation containing this further detail, and this is why we are concerned that the majority of provisions are discretionary. In some cases, we feel that subordinate legislation may not be required because, for example, the definition of "disabled" in section 3 may not need amending – but in other cases it could lead to a limbo situation where it is never clarified whether local authorities are required to make payments under section 35 or whether such payments are discretionary, and the result might be that such payments are never made at all.

NSPCC Cymru/ Wales is particularly concerned that Part 7 Sections 110(1) and 115(3) state that “Regulations **may**” and these should be changed to “Regulations **must**”. This is because:

- Section 110, the National Safeguarding Board, has a key role to play in improving safeguarding and providing a clear national direction and leadership for all stakeholders, and
- Section 115, Funding of Safeguarding Boards, is crucial to the effective working of Safeguarding Boards. The Inquiry into Local Safeguarding Children Boards in Wales undertaken by the Health, Wellbeing and Local Government Committee in 2010 recommended that as a matter of urgency, the Welsh Government should consult on a national funding formula for LSCBs based on percentage contributions, but despite the Deputy Minister accepting this recommendation this has not yet been taken forward.

A further concern of NSPCC Cymru/ Wales is that the majority of the subordinate legislation is subject to the negative procedure and will, therefore, not be subject to further scrutiny. This is the case for the discretionary powers we mention above and we feel that it is unbalanced and should be redressed.

8. Financial Implications

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.

NSPCC Cymru/ Wales has considered the financial implications in Chapter 8 of the Explanatory memorandum and feels that the estimates used for training social work staff is reasonable, though there is no mention of training the wider social care workforce. However our main areas of concern are that the financial implications for funding preventative services and establishing a National Safeguarding Board are unrealistic or have been omitted:

- Preventative services: it states that there are no additional costs forecasted for providing preventative services. This we feel is unrealistic as Social Services departments are facing increased demand with budgets spent on intensive crisis interventions. We do not believe that the need for these services will lessen in the short term and that transition funding will be required for Social Services to continue to provide these services as well as the newer preventative services.

- Establishing a National Safeguarding Board: Establishing a new national board will require a funding base and this has been omitted from the regulatory impact assessment.

9. Other Comments

Safeguarding

1. National Independent Safeguarding Board

NSPCC Cymru/ Wales supports the ambition behind the proposal to establish a National Safeguarding Board for Wales so that safeguarding is a high priority for all agencies. This would help to provide a clear national direction and to provide leadership for all stakeholders, although there are issues around the breadth of the Board’s agenda and the danger of the needs of children and young people becoming obscured. However:

- The role of the Board needs to be clear and the relationship between the board and government needs to be clearly defined and understood by members, Ministers and civil servants.
- Reporting arrangements need to be clear and the board needs an effective chair who is independent and clear about their role
- Governance arrangements need careful consideration. It is important that it is independent but it is important not to impose additional burden of corporate governance picked up already in the structures of the different agencies
- Such a board needs adequate resourcing and substantial additional funding will be required.

We remain concerned by the proposal to set up a common National Safeguarding Board for adults and children in Wales. We understand the benefits that an integrated structure presents, particularly in relation to young people in transition and children with substance misusing parents for example, but feel that the agenda for both children and adults is huge, that in the main the issues are different and that a joint Board could potentially not deliver on either agenda. As the adult protection framework is under-developed we are concerned that the improvements needed to children’s safeguarding will be marginalised, or, even worse, progress in children’s safeguarding could be reversed. We recommend that there are strong guarantees in place to ensure that children’s issues are not sidelined while the adult protection framework is developed and that consideration is given to

- Establishing separate sub committees for adults and children

- Children's organisations such as NSPCC, who is named in the Working Together guidance as an LSCB member, are members of the board
- The operation of the Board is thoroughly reviewed after 1 year and if integration of the adults and children agenda is hampering progress, that it is separated

2. Safeguarding Children Boards and Safeguarding Adult Boards

The establishment of 6 Safeguarding Children Boards running in parallel with Adult Safeguarding Boards is a potentially effective model and allows for the potential for learning, knowledge and expertise to be shared. In addition running Safeguarding Boards on a regional footprint allows for sharing of resources and best practice, promotes collaboration and learning across boundaries and effective use of resources.

However NSPCC Cymru/ Wales strongly recommends that the Safeguarding Children Boards and Safeguarding Adult Boards remain separate.

We also feel that the current functions of LSCBs as laid out in the Local Safeguarding Children Board Regulations 2006 should form a starting point for the functions of both the new APB and SCBs, but that they need to be reviewed and strengthened.

The view of NSPCC Cymru/Wales is that all local agencies should be held to account for exercising their safeguarding duties appropriately and effectively and so this function should be strengthened.

NSPCC Cymru/ Wales feels that independent chairing of the Safeguarding and Protection Boards is highly desirable because challenge and scrutiny is important to ensure effectiveness and we feel that Independent Chairs can better hold other agencies to account and provide independent challenge to board members. This will become more important as the current LSCBs reconfigure to a regional SCB; choosing a chair from one agency will create an imbalance of power.

A further challenge for SCBs and SABs is how accountability is going to be achieved and the relationship managed between safeguarding boards with a regional footprint and local authorities.

NSPCC Cymru/ Wales believes that Section 115 of the draft Bill is not strong enough and that instead of a 'A Safeguarding Board partner may make payments towards expenditure incurred' it should read 'A Safeguarding Board partner **must** make payments towards expenditure incurred'.

As LSCBs are reconfiguring at present we would urge Welsh Government to urgently commission work to develop a funding formula for partners to contribute to the expenditure of Safeguarding Boards. Based on our work with LSCBs in England and Wales and Child Protection Panels in Northern Ireland, we would recommend that each SCB needs as a minimum a Business Manager, a Training Manager, administration support and funding for an Independent Chair for a minimum of 3 days per month, more when the SCB covers more than two local authorities. As all LSCBs in England are now independently chaired we would strongly recommend that evidence is taken from the Association of Independent Chairs (http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/protection/b00219380/lscb/chairs) who will soon have a website of their own.

Removal of the defence of 'reasonable punishment'

Children's right to respect for their human dignity and physical integrity under the law requires the removal of the "reasonable punishment" defence: the issue is fundamental to children's status in society as well as to their well-being, safety and protection.

Through this Bill, the Welsh Government's primary policy objective is to improve the well-being outcomes for people who need care and support. The Bill defines well-being through seven different elements, which includes 'securing rights and entitlements'. Not providing children with equal protection under the law on assault is a violation of children's rights under Article 19. This violation has been highlighted by the UN Committee on the Rights of the Child to the UK government three times when they have asked the UK Government to take urgent action to ban corporal punishment in the home. NSPCC Cymru/ Wales believes the Rights of Children and Young People Measure places an obligation on the Welsh Government to close this rights violation at the earliest opportunity.

In NSPCC's experience, most physical abuse is done in the name of discipline or punishment and at worst, some children die from physical assaults. The deaths of both Victoria Climbie and Peter Connelly involved harsh physical punishment. The current law (Section 58 of the Children Act 2004) is confusing, inhibits effective action to protect children from physical abuse and undermines the work that professionals are doing with families on positive parenting. Even where physical punishment is not harsh, evidence demonstrates it is associated with harmful behaviours in childhood such as aggression, anti-social behaviour, anxiety, self-harm and depression and so removing the defence of reasonable punishment, which will effectively 'ban smacking', will help improve the well-being of children and families.

NSPCC Cymru/Wales therefore urges the Committee to recommend provision to provide children with equal protection under the law on assault in its Stage 1 report for this Bill in order to protect children from harm and improve their well-being.

The Voice of the Child, Children's Rights and Advocacy

The NSPCC Cymru/Wales wishes to highlight the importance of renewing the focus on the rights of children as policy and practice increasingly moves towards an integrated-family approach.

We would urge the committee to look closely at the provisions for the proposed outcomes framework. NSPCC Cymru/Wales believes this must specifically consider outcomes and standards for children and young people based on their rights.

Advocacy is about helping children and young people to access their right under article 12 of the UNCRC to have their say when adults are making decisions that affect them and to have their opinions taken into account. Children rely on others to help them be heard. The NSPCC recommends close scrutiny of how the legislation will deliver quality, accessible advocacy services to children in Wales.

Legislation must support the policy position that advocacy is about more than supporting children on the rare occasion that they feel able to make a complaint and so NSPCC Cymru/Wales believes the bill should be strengthened to place a duty on partners to provide easily accessible independent advocacy services.

Looked After Children

Given the statement that this Bill will not stand in isolation of other statutes, NSPCC Cymru/Wales believes greater clarity is needed as to which parts of existing legislation relating to looked after children and care leavers will remain relevant to Wales.

Without this clarification the Bill will not achieve its stated aim of specifying the core legislative framework.

We are concerned that certain sections do not “simplify” the legislation but could alter interpretation.

Whilst we welcome tightening of legislation, the main purpose of which is to make clear the duties and expectations of responsible bodies, there are a number of instances where a change in wording may have consequences and clarity is needed.

For example, section 59 “simply” says accommodation must be within the authority’s area, however in reality this could result in children being placed up to 100 miles away from their communities and support.

Section 62 requires further examination to see whether this could result in Looked After Children losing their Child In Need status and available services. Currently looked after children retain this status and we believe this is the preferred position.

NSPCC Cymru/Wales would also like to see close scrutiny of section 88 which claims to “simplify” the current descriptions of care leavers. We do not believe the categories are any simpler and it is worth noting that the use of language, similar to that used by the prison services, is likely to result in new labels for young people e.g. CAT 1 LAC.

We do not oppose the changes but believe close scrutiny is needed to test out whether they will deliver the improvements to care leavers which politicians in Wales have recently committed to.

Greater support for children returning home from care

NSPCC Cymru/Wales believes more must be done to prepare and support children returning home. Consequently some children who come into care because of abuse or neglect suffer further abuse when they return home causing significant long-term harm. [6]Research shows that two thirds (62 per cent) of children who returned home remained with a suspected abuser even after concerns had been identified, with 16 per cent of children even remaining at home after confirmed incidents of abuse or neglect.

The NSPCC believes that reunification should only take place where there has been a comprehensive assessment of the child's needs and effective support is provided for children and their parents.

There is a need to improve the support available to children, young people and their families prior to and following a return home, to tackle problems such as drug or alcohol dependency, domestic violence, mental health conditions and poor parenting.

The Social Services and Wellbeing Bill offers an opportunity to deliver this for young people in Wales. NSPCC Cymru/Wales believes there should be a requirement to better assess, prepare, support and monitor the child's welfare when they return home from care.

Provisions to improve support for mental health and wellbeing of children in care

Children in care have significantly higher rates of emotional and behavioural disorders and difficulties than their counterparts in the general child population (as a result of abuse and neglect prior to entry to care). However the mental health needs of looked after children frequently remain unmet which puts them at risk of further harm.

Around three-quarters of looked after children in England and Wales are in foster placements and foster carers frequently report that the most common difficulty for the children or young people in their care is their mental health. Yet foster carers are all too frequently unsupported to address this need.

The Bill misses an opportunity to support children to access their right to good health, to achieve stability of placement and to ensure their wellbeing if it does not specifically address the need to place a requirement to assess and provide services to children as they enter care to support their emotional wellbeing.

---

[6] http://www.dji.de/pkh/expertise_dji_thoburn_reunification.pdf

Voice, Choice and Control for Older People

A Joint Response to the Health and Social Services Committee Consultation on the Social Services and Well-Being (Wales) Bill By Welsh Progressive Co-operators and Age Connect Wales

Scope of the Bill

Welsh Progressive Co-operators (WPC) and Age Connect Wales welcome the opportunity to comment on the draft Bill and welcome many of its provisions. In view of the huge demographic changes taking place in the population and the increasingly large cohort of frail elderly people it is vital that any framework set out in legislation is sufficiently robust to meet the challenges we are facing but also sufficiently flexible to be able to respond quickly to developments which cannot necessarily be foreseen. Whilst certain basic principles should be enshrined in legislation, we believe it desirable to include many practical issues in Regulations under the Act which can more readily respond to changing circumstances.

Financial Implications

2. We consider it would be foolhardy to suppose that any sustainable development of service delivery models can be introduced quickly or on a cost neutral basis. John Restakis at the 2012 Conference of the Association of Directors of Social Services reinforced this point. The increasing size of the cohort of people requiring support will inevitably entail rising expenditure http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-unitary-authorities-in-wales/stb-2011-census-key-statistics-for-wales.html. Indeed policy experts anticipate that an extra 5% or 6% of GDP will need to be spent on health and social care by 2030. The challenge will be to contain any cost increase whilst at the same time ensuring the availability of sensitive services that meet people’s needs. Meanwhile, experts say that delayed transfers of care are estimated to cost Welsh Government in excess of £20m pa.

Language & Definitions

3. We consider it vital that great care is taken to ensure that the language used is precise and unambiguous – for example in differentiating between descriptions such as “social enterprises”, “co-production”, “mutuals” and “co-operatives”. As advocates of the co-operative model, we take as our starting point the Co-operatives UK definition of co-operatives as: “Businesses owned and run by and for their members, whether they are customers/service users, employees or residents. As well as giving members an equal say and share of the profits, co-operatives act together to build a better world through co-operation” http://www.uk.coop/what-co-operative. From a public perspective a much better shorthand description is that a co-operative is a Member Controlled Enterprise (MCE) and we strongly endorse this approach www.M-cEnterprise.org.

Service Delivery Models

4. The first duty of private companies is to maximize profits for their shareholders rather than respond to the needs of their clients. We are glad to see that the Bill does not envisage wholesale privatization of services as an acceptable model. Some charitable organizations provide excellent services, but the bigger ones often tend to become as bureaucratic as statutory services and can prove inflexible in adapting to changing circumstances. It is all too easy for bureaucratic imperatives to trump the wishes of services users.

Member Controlled Enterprises

5. Our belief that Member Controlled Enterprises are the best vehicle for the provision of quality, cost-effective social support services is backed up by international experience in countries such as Canada and Italy - respectively www.senedd.cynulliadcymru.org/documents/s5381/Papur%202a%20Saesneg%20yn%20unig.html?CT=2 and http://www.newsociety.com/Books/H/Humanizing-the-Economy. We believe this is especially true where the enterprise has 3 membership categories – the service users/informal carers, the workers or service providers and supportive community interests. A 'community of interests' ensures a balance between ensuring high quality services and affordable costs and that the enterprise is developed in a way likely to meet future community needs. Such enterprises can also include service users who are able to pay for services as well as those requiring some form of statutory support and can attract local social investment – either in terms of capital investment or 'time banking' investment by members with specific areas of expertise. MCEs are also better placed than other service providing agencies to work in collaboration with Local Authorities, ensuring that the services they provide are complementary to those provided by the Authorities themselves rather than competing against them.

Promotion of MCEs

6. We believe the draft Bill is correct to refer to the need to “promote” such developments and other social enterprises as, by their very nature, they cannot be established by statutory authorities. MCEs must of necessity be established by people coming together of their own free will and must be responsive to the needs they themselves identify. Statutory Authorities can, however, help to provide the right climate in which MCEs can flourish – eg by providing the kind of Council Tax relief afforded to Charities and authorising Local Authorities to give preference to local organisations providing a quality service which can also help to improve the local economy rather than necessarily award contracts to the lowest bidder.

Direct Payments

7. We approve of the desire to encourage the uptake of Direct Payments by service users – but with a significant proviso: Local Authorities must satisfy themselves that there is a reasonable choice of provider from which the recipient of Direct Payments can choose and that support is available to enable recipients, if required, to enable them to make a rational choice in their own best interests. Many frail elderly people, or those with mental health or learning difficulty issues,

may well find themselves open to exploitation without such support. MCEs are well-placed to provide services for people in receipt of Direct Payments because they provide the supportive and participatory environment so necessary to ensure the arrangements are liberating rather than exploitative. Based on international experience, shared services such as screening of service providers and carers, training of carers, scheduling of services, provision of transport, advice on budgeting and financial matters, etc., are all key to helping a direct payment system to work for those dependent on these services.

Advocacy

8. We support the need to establish a firm business case for determining priorities and the scale of investment required for an Independent Advocacy Service. We believe many frail elderly people are particularly vulnerable in terms of timeliness of service provision, access to quality services, affordability and real choice and control over how services are provided. An effective, independent advocacy service is vital to prevent the abuse of vulnerable older people.

Maintenance of Quality Standards

9. Quality Standards must, of course, be enhanced and ensured whatever the mode of service delivery. MCEs are better placed than other organisations to ensure acceptable standards because the service users themselves participate as equals in the governance of the organisation. That may not be sufficient, however, to ensure the services provided meet growing expectations. As we reported in our letter to the Deputy Minister last July, consideration is currently being given in Canada to a 'National Co-op Elder Care Initiative', which will pilot co-op elder care projects for replication using a franchising model. This could be especially relevant to us in Wales and potentially a significant aspect of Welsh Governments approach to helping local groups establish their own MCE. We trust the Welsh Government will keep a close eye on these developments and consider promoting a similar development in Wales. Once a number of social service MCEs are up and running, we envisage that they would wish to form some kind of federation to provide mutual support and promote good practice and governance. We stress, that unless co-ops, and other forms of MCE's, are truly member-controlled and are focused upon delivering upon their purpose, then there is no reason to expect that they will deliver any better services than any other form of organisation. We shall be providing the Welsh Co-operative and Mutual Commission with complementary evidence and this can be made available on request.

No "Quick Fix"

10. It must be recognised that the proposals we have outlined do not represent any kind of "quick fix" – indeed, it would be foolhardy to believe that any form of quick fix is possible. The development of social service MCEs depends on like-minded people in a locality coming together to give practical effect to these ideas. This is beginning to happen – eg in Newport – and we firmly believe that once the

model has been proved successful, others will follow. Welsh Statutory Authorities cannot decree that such developments should take place, but they can actively promote the concept and provide an environment in which such groups can flourish. Member education and lay leadership development will be fundamental to getting active citizens as active players in the co-operative.

……………………

Footnotes

1. Welsh Progressive Co-operators (WPC)

WPC are the Welsh branch of the UK National Federation of Co-operators, which was established in 1975. In 2011, we set out to stimulate co-operative innovation and support Welsh grass roots co-operative development. We are a self-financed organisation with wide ranging expertise related to co-operative development with a commitment to public engagement in the policy development process. We arranged two international tours by Canadian social services experts in 2012 UN Year of Co-operatives, involving Ministers, Officials, AM's, educators, third sector organisations and 14 events with 750 people. This enabled the co-operative option to become a visible alternative in the transformation of social services. We are now consulting with Directors of Social Service, Older People's organisations and others in preparing evidence for submission to the Welsh Co-operative and Mutual Commission http://progressive-cooperators.org.uk/elder-action-mces.

***2.* Age Connects Wales** is made up of 6 independently constituted organisations whose areas of benefit are:

- Age Concern Cardiff and the Vale of Glamorgan
- Age Concern Morgannwg (Rhondda Cynon Taff, Bridgend and Merthyr Tydfil)
- Age Concern Torfaen
- Age Concern Neath Port Talbot
- Age Concern North Wales Central (Conwy and Denbighshire)
- Age Concern North East Wales (Wrexham and Flintshire)

The priorities for **Age Connects Wales** http://www.ageconnectwales.org.uk are to help and support older people, especially those who are vulnerable, isolated and in poverty. We want to make sure the voices of older isolated, and vulnerable people who live in poverty are being heard at Welsh Government and Local government levels.

March 2013

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 76 – Caerphilly County Borough Council

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

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.*

The Bill may prove helpful however the content does not appear to be all encompassing; there are other Acts / legislation that local authorities (and Social Services Directorates) must adhere to, e.g. mental health measures, DOLs,

- The Bill refers to Social Services however the responsibilities for delivering services rest also with the local authority and it's partners, not solely Social Services
- The Bill should be accompanied by clear guidance; local authority partners' duty is not explicit enough and needs to be highlighted in greater detail or the stated objectives will not be met
- It would be useful to have related matters clarified in one place; the Bill grasps at a handful of nettles but not the whole bush and should combine the duties of the local authority and it's partners more clearly
- The reference to the duties to those who need care and support and carers who need support is accepted but there is no acknowledgement of impact on resources
- The Bill should indicate the links/interface with other relevant legislation for it to become a single Act and one reference point
- The police are not yet referenced as partner agencies – their omission from such a significant new single framework is a considerable omission and will affect the ability of the Bill to deliver its stated objectives.

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.*

In principle, we agree that the draft Bill delivers the stated objectives. However, there is insufficient detail provided to respond to this question. The delivery of what is required should be evidenced in detailed guidance.

It is the view that future published guidance and regulations should include greater detail about local authority partners' responsibilities. Some issues to consider:

- Will all local authorities have capacity to implement the duty to promote and develop social care enterprises?
- Will there be reference to partner agencies responsibilities?
- Would eligibility of services apply to social services only or for all partners?

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.*

Due to the lack of detail provided, we feel that the Bill will not enable the delivery of sustainable social services. The Bill is not directed solely at social services. It is also aimed at the local authority, it's partners and communities at large to all play their role. Future agreed eligibility criteria might also determine whether social services will be sustainable. A consequence of the Bill may be a resurgence in the changing role of traditional social work and therapy to meet the well-being and preventative agenda.

Whilst the agenda of considering actions of prevention, proactivity and potentiality is welcomed, signposting to universal community services will only be possible if other partners play their part in the development of such services. There is a significant underestimation of the impact of demographics on the ability of the Bill to enable the delivery of social services that are sustainable, the prevention will delay an inevitable demand for more frequent and intensively provided services for our population.

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

There is a view that more universal services will be required and a consequence of this is likely to be an impact on social service's budgets. Local authorities will need to trust the information provided by those seeking support / services rather than validating requests through evidenced assessments.

There is an assumption that a third sector will be available to deliver services however this is limited and is also funded through local authority contracts.

There will be a greater level of input to ensure that residents can access information about services. Successful implementation of this activity may result in an increased number of requests for services. Individuals may be signposted to "self help" themselves but this will only be effective if other services have been developed by local service boards. There is no reference to the responsibilities of the local service board in the Bill. Signposting is likely to assist those only with low level needs.

It is acknowledged the Bill will change and not only social services provision; the local authority and its partners will also require change.

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

There is insufficient information / guidance in terms of local authorities and their partner's roles and responsibilities to respond to this question. Not including police as a key partner would be a barrier.

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.*

There is no information available on the proposed Regulations and any code of practice to respond to this question.

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.

Implementing a proper consultation process on the regulations and any code of practice should enable comprehensive documents to be available for all partners involved in delivering the content of the Bill. This would also negate the need for the creation of some additional orders and directions. However it is acknowledged that in years to come there may be a need to add.

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.

We believe the financial implications of the Bill are underestimated and for the reasons set out in responses to previous questions, our future views are dependent on the publication of clear guidance and regulations.

Other comments

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

None.

Children in Wales response to Stage 1
of the
Social Services and Well-being (Wales) Bill

15.03.13

Introduction

Children in Wales is the national umbrella children's charity, bringing organisations and individuals from all disciplines and sectors together. Its activity is based on the principles of the United Nations Convention on the Rights of the Child and aims to make it a reality in Wales. Children in Wales also fights for sustainable quality services for all children and young people, and special attention for children in need, as well as ensuring children and young people have a voice in issues that affect them. Its primary activity is supporting the children and families workforce to improve outcomes for children and young people.

Children in Wales has around 200 organisations in membership, including the major third sector children's agencies, professional associations, local authorities and health bodies, as well as many smaller community groups. Children in Wales facilitates as variety of forums and networks across Wales and works in partnership with the National Children's Bureau in England and Children in Scotland, and internationally is active in Eurochild and the International Forum for Child welfare. Children in Wales has representation on numerous Welsh Government and other working groups in Wales.

Response prepared by

Catriona Williams
Chief Executive

This response is not confidential

Consultation questions

1 Is there a need for a Bill to provide 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?

a) Children in Wales strongly supports the rights based approach of this legislation as well as the principle of bringing together the duties and functions of local authorities and partners in relation to improving the well-being of children and young people. Indeed the requirements of Section 25 of the Children Act 2004 did just that and the Social Services and Well-being (Wales) Bill, (the Bill) will primarily achieve the same for adults as already exists for children. The critical issue for children and young people is their connection to non social services and health services such as education and leisure. Implementation would be more successful if the requirement to collaborate is simultaneously re-iterated in legislation/and or guidance issued to other agencies such as Police, Education and Health. Those agencies inevitably prioritise the statutory duties emanating from the government departments to whom they are directly accountable. This Bill had its origins primarily in adult social services and Children in Wales would have preferred a ***consolidated Children Act for Wales*** bringing together the Children Acts of 1989 and 2004 and other existing legislation and incorporating the Welsh policies that have systematically been developed based upon the United Nations Convention on the Rights of the Child (UNCRC) and including the Children and Young Persons (Wales) Measure 2011. We regret that the Welsh Government did not carry out its original plan to introduce a Children and Young Persons Bill building on the Children and Young Persons (Wales) Measure 2011. This would have been a significantly better way forward even if it had not been possible to achieve during this particular Assembly term.

b) In line with this we would also like to have seen the **UN Convention on the Rights of the Child** on the face of the Bill as it would give a clear message about the importance of the UNCRC in conjunction with the Children and Young Persons (Wales) Measure 2011. (NB this was nearly achieved in the passage of the Children Act 2004 in the section on Wales).

c) We believe that amendments proposed to the Children Act 2004 to align them with the Bill are unfortunately an erosion of the current 'best interests' of the Child under Article 3 of the UNCRC.

d) We do however fully recognise the need to have a holistic approach to working with complex families, but would advocate that it is still essential that there is an understanding of the particular needs of children in terms of working with families. In its most simplistic form, knowledge of child development and how to communicate with children are essential components of working with children in order to assess their needs wherever they are – in families or outside of families. We are also acutely aware of the important issues around transition from children and young people services to adult services. However the radical shift to 'people in need' as opposed to 'children in need' appears to have been a case of family issues and transition issues dictating the design of all the other core services for children and young people. In the views of our members there is both a place for a focus on family support and also on children and young people themselves.

e) If however the cradle to grave approach continues to be the direction of travel, we fully support the introduction of a duty on local authorities and their partners to maintain and enhance the wellbeing of people in need through identification of persons in need (needs can't be met if they are not identified) and encouraging the provision of a suitable range of services. We anticipate however that there is a real cause for concern in that identified need may inevitably outweigh the resources available to meet those needs and expectations may be raised. We feel that there should be further consideration of managing this aspect.

f) **Well-being** The concept of well-being is well known in the children's sphere following the 2004 Children Act as well as all the work done at EU level in relation to child well-being indicators, (which we campaigned for through Eurochild, rather than child poverty indicators to measure the impact of the EU programme to address child poverty and social exclusion). The Welsh Government's (WG) Child Well-being Monitor for Wales has been a good tool in beginning to address the collection of data to give a picture of the well-being of children in Wales but needs to be developed further. The Monitor is a means of comparative opportunities to see how Wales is doing on a UK and European basis. It enables data to be disaggregated, needs identified and resources deployed appropriately. The Child Well-Being monitor work has also begun to gather data that has a direct bearing on how children themselves feel through some subjective data gathering to a separate statutory Children's Plan.

g) Measuring well-being should be linked to agreed outcomes with service users and this will inevitably require gathering extra data that is not routinely collected at present. The Monitor also ensures effective reporting to the UN Committee on the

Rights of the Child which is the main independent monitoring mechanism along with the Office of the Commissioner for Children, of the effectiveness of government's actions. There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

h) Whilst we are extremely positive about the concept of well-being as we know it for children, we would urge the Welsh Government to not confuse matters by having the concept of well-being using a variety of definitions placed in other pieces of legislation - eg Sustainable Development Bill, proposed Public Health Bill and the Domestic Violence Bill.

i) **People in Need** By attempting to bring the adult legislation to where children's legislation is now, we fear all the attention will focus on adults at a cost to the children's rights agenda and the progress made over recent years. We believe we need to be building on the 1989 and 2004 Acts as there is still a huge amount to be done. There are many outstanding issues relating to the delivery of the key duties as described in the 1989 Children Act which are not being met. There is also increasing pressure on services to meet growing response in relation to Children in Need and Looked After Children. A shift to 'People in Need' will inevitably lead to increased demand.

j) The definition of 'people in need' is based on the definition of 'children in need' used in the Children Act 1989 and is comprehensive. It is rather outdated though in that it does not completely reflect a rights based approach but more of a welfare model. Some young disabled adults have expressed concern about this term being applied to them as it has some negative connotations with disabled people being known as handicapped (from "cap in hand") and disabled people being seen as objects of charity and in need rather than having rights. They also wonder why a disabled child is covered by the definition but disabled adults aren't. It is important that there is also adequate cross referencing to existing legislation such as the Chronically Sick and Disabled Persons Act and als the UN Convention on the Rights of Persons with Disabilities.

k) The move towards the concept of 'people in need' is also of concern to our members because unless children, young people and families are specifically mentioned, policies have historically developed on an adult model, primarily because of two reasons – the significantly larger numbers of adults and their workforce plus - the fact that adults have influence, they have the vote whereas children do not. An example of resources following an adult based needs assessment was where the original Communities First resources allocation were based on socio economic geographical population data, but this was not the same as the needs of the child population because the distribution of need for children is quite a different geographical profile to that of adults which is affected by the profile of the elderly population.

l) Our networks have expressed concern that the focus on ‘people’ will compromise the future children’s agenda. This is compounded by the changes relating to multi agency planning processes such as the demise of Children and Young People’s Partnerships and development of the Local Authority single plan in some areas as opposed to a separate statutory Children’s Plan.

m) There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

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.

a) The concept of well-being is effective in broadening the scope of the Bill and provides a continuum of social care involving partners that Children in Wales welcomes. It is not however as yet clear how engaged or committed other partners are to this legislation and how it cross references with legislation already affecting them directly. It actually broadens social services beyond its traditional remit into universal prevention and early intervention services.

b) Well-being encourages focussing on what really matters to service users and not just to service providers! We do however urge Welsh Government to consider other areas of activity eg mental health, where outcomes and collaboration also feature in recent legislation. It is essential that there is coherence between the various Assembly Measures to avoid duplication or contradiction.

c) The Bill creates an opportunity to develop a seismic cultural shift in that it is much more of a rights based approach than the existing welfare model. However whilst the rhetoric is stronger voice and control, we fear that children’s voices will be lost for example in families where the adults have significant needs as well as the child. Whose voice will be heard?

d) There needs to be a coherence between what are nationally directed services and the voice and control of service users.

e) The emphasis on prevention and early intervention is extremely welcome and is an important step forward, especially because it addresses both access to and provision of services. Our concern however is that in the current economic climate demand will exceed supply and thresholds will inevitably rise. As previously stated we are also concerned about the impact of the extra demand on children and families. There is also inconsistency in terminology in what 'spectrum' of services is provided and also who provides them. Emphasis on the role of the third sector is important as is the concept of co-production. Third sector organisations are invariably close to the people who use services and so are well placed to promote the design of services for them.

f) There is a considerable amount of existing children's legislation and case law has set many precedents. Indeed there is legislation currently going through Westminster at present. There are inevitably many issues of transition and repeal. For instance 'a child in need' versus 'people in need'. How will the most appropriate definition be decided upon. For Children in Wales we are unable to comment sufficiently until we have seen the detail and we understand that this may not be for some time.

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.

a) There is no doubt that early intervention and prevention are both effective and economic in the longer term. However it does mean that the culture of putting the service user and carer at the centre of service design and delivery has to become key and this requires a considerable culture shift.

b) Sustainability will depend very much on the engagement of partner agencies and sectors in the delivery of integrated services for the cohort of people involved with social services – usually the most vulnerable in society. It will also depend on the empowerment of service users and carers and their active involvement in the design of services and identification of meaningful outcomes.

c) Transformation of social services will require a seamless connection between universal and targeted services from all agencies involved and particularly the involvement of the third sector in co-production in relation to services in which they have particular expertise. It appears to us that partner agencies have had little involvement in the development of the Bill and this would need to be implemented in practice to avoid the legislation becoming purely aspirational. It is also critical that there is clarity about where the responsibility of social services lies and where the responsibility of the wider local authority or health boards lie in relation to the early intervention and prevention agenda. Social Services do not have the capacity to deliver this vast agenda alone.

d) Accurate correlation to other UK legislation and Welsh Measures such as the Mental Health Measure are essential for sustainability. As previously stated we are concerned that the 'people in need' definition may water down the rights of children, such as disabled children who are entitled to services under section 17 of the Children Act 1989. Similarly children 'looked after may be adversely affected.

e) We welcome the concept of a stronger voice but are not convinced that this applies to children and young people and we wonder if the Bill has in fact been examined against the UNCRC in line with the due regard duty in the Children and Young Persons Measure.

f) Finally, the issue of charging for services must be dealt with carefully as not all services, eg safeguarding, may lend themselves to charging.

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

a) The Bill will increase the scope of social services considerably and this will require much more joined up working across agencies if duplication and confusion are to be avoided and integration achieved.

b) It will also refocus the priorities towards outcomes for people which they have been involved in developing. There will be significant transformation required of the workforce in terms of cultural shift from a welfare to a rights based model of practice.

c) As yet it is unclear how a national eligibility framework will affect thresholds and thus affect delivery.

d) The changes for children and families will largely depend on subordinate legislation

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

a) Lack of accurate information about care and support needs both nationally and locally.

b) Demand outstripping supply because of assessments

c) Overall increased volume of demand due to external factors such as welfare reform, family justice reform etc

d) Charging policies – more consideration needs to be given to this in relation to children's services

e) Contraction of many third sector services through reduced funding

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?

a) We believe that there is too much left to regulation- especially in the children's field. We would also like to see more 'must' than 'may' in the regulation. This for instance would be significant in relation to funding safeguarding boards.

b) There is a critical balance between what is in statute and what is in a statutory code of practice. Recognition of the fact that authorities under financial pressure will primarily deliver statutory requirements should be considered even though case law can use guidance regarding judgments on thresholds for instance as in the Gloucester case. By widening the range of people within the 'people in need' group there will inevitably be increased demand especially if there is more access to assessment.

c) We support a code of practice providing it is realistic and based on evidence with a view to continuous monitoring and updating according to the realities in practice. This would assist in getting consistency in implementation.

6 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)?

a) This is an extremely interesting area which we do as yet not have a clear position on. There are clearly issues of failing services to be addressed, but there are also existing methods of Welsh Government intervention.

b) It is clearly a risk for Ministers to have potential to issue subordinate legislation too freely without parliamentary process. It is also not generally our view that Welsh Government should become an operational body. CAFCASS Cymru was taken into

Welsh Government and is under the Deputy Minister, but this is an exception. Without more information on this area we are unable to comment further at this time.

7 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 9the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

a) Children in Wales fundamentally questions the assumption in the Explanatory Memorandum that the Bill will be cost neutral. Many times in the past there have been attempts to move from crisis services to preventive services and this has required management of change processes including detailed costs.

b) Whilst we are totally committed to the preventative agenda, this, combined with the likely increase in demand due to the assessments will inevitably incur costs as the transformation takes place in the initial stages.

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

a) Children in Wales is a leading member of Sdim Curo Plant/ Children are Unbeatable Cymru and as such fully supports the abolition of the physical chastisement of children and we wish to ensure equal protection for children in the law on assault. We fully endorse the evidence submitted by Sdim Curo Plant/ Children are Unbeatable Cymru and believe that the Assembly has opportunity of showing its total commitment to children's human rights.

b) The importance of the National Outcomes Framework is fundamental to the success of improving children's lives. This needs close scrutiny and there can't be more than one outcomes framework for all agencies to work towards without causing confusion.

c) As the trend towards 'family' continues we wish to point out that Looked After Children are a significant group who are not in 'families' as such. Existing legislation is strong for them as children 'in need'. This should not be diluted. We also are concerned that advocacy doesn't feature on the face of the Bill as this is a key service for vulnerable children and funds follow statutory requirements.

Alzheimer's Society Leading the fight against dementia

Alzheimer's Society

Alzheimer's Society response to the Health and Social Care Committee's call for evidence on the Social Services and Wellbeing (Wales) Bill

March 2013

Consultation Response

Alzheimer's Society
Leading the fight against dementia

Tuesday, 19 March 2013

To Whom It May Concern:

Alzheimer's Society welcomes the introduction of the draft Social Services and Wellbeing (Wales) Bill. In particular, we welcome the emphasis on preventative services, the development of a National Eligibility Framework, the portability of care plans, and the entitlement of carers to their own needs assessments. The aims and objectives of the Bill are ambitious and have the potential to improve quality of life for people with dementia in Wales. However, there are some areas where we believe that the current draft of the Bill lacks either the clarity or the strength to deliver its stated purpose. This includes provision of information, advice and guidance, preventative services and integration of health and social care services.

1. Alzheimer's Society

Alzheimer's Society is the UK's leading support and research charity for people with dementia, their families and carers. We provide information and support to people with any form of dementia and their carers through our publications National Dementia Helpline, website and more than 2,000 local services. We campaign for better quality of life for people with dementia and greater understanding of dementia. We also fund an innovative programme of medical and social research into the cause, cure and prevention of dementia and the care people receive.

2. Dementia in Wales

There are currently estimated to be over 17,000 people with dementia in Wales, of whom only 38.5% have received a diagnosis. Over the next 20 years it is predicted that there will be a 31% increase in the numbers of people with dementia and in some parts of Wales such as Powys and Ceredigion that increase will be as much as 44%.

Dementia is a complex condition and people with dementia have specialist care needs. People with dementia aspire for the support and care they receive to enable them to remain independent, active and socially engaged. Assumptions should not be made that people with dementia cannot enjoy a good quality of life or express needs and preferences.

Providing care to people with dementia is a core business of the social care sector. It is therefore essential that the provisions of the Social Services and Wellbeing Bill work well for people with dementia.

Alzheimer's Society looks forward to continuing to work closely with Welsh Government to improve the lives of people with dementia in Wales.

3. Consultation questions

3.1. 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?

Alzheimer's Society welcomes the Social Services and Wellbeing Bill and the opportunity that it provides to consolidate the patchwork of legislation that has built up over the previous decades. It is important that the relationship between the new Bill and previous legislation is made explicit. There are some areas of the Bill which would benefit from being strengthened or clarified in order to fulfil the central aim of improving the wellbeing of people who need care and support and of carers who need support. These concerns are outlined in more detail in responses to the subsequent questions.

3.2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum?

Alzheimer's Society supports the aims and objectives of the Bill as set out in the Explanatory Memorandum. Paragraph 24 of the Memorandum emphasises the importance of promoting an individual’s voice and control in relation to access, assessment and eligibility for services. However, Alzheimer's Society does not believe that proposals in this area are sufficiently robust to ensure that they are made accessible to people with dementia. In particular, we are worried that the proposals for ‘information, advice and assistance’ do not include advocacy.

Alzheimer's Society has recently established an all Wales specialist dementia advocacy service called ‘Voice and Choice.’ However, access to independent advocacy is currently quite limited. We would like to see access to advocacy services for people with dementia increased and information about using advocates made more widely available to individuals using NHS or social care services.

People with dementia have specific needs that arise from having a condition that is not only progressive and degenerative, but which in the latter stages can result in people losing the capacity to understand others, communicate their wishes, and give or withhold consent. Advocacy services for people with dementia help them to make key decisions in their lives and support them to make the choices that are right for them. Trained professionals work with people with dementia to help them to express their wishes to key professionals, organisations and carers, standing by their side every step of the way. The need for advocacy for people with dementia who face complex issues around social exclusion and deteriorating cognitive function may be much broader than access to statutory services and treatment.

The Mental Capacity Act 2005 (England and Wales) supports the recognition that people with impaired capacity have the right of choice, protection and validation of their wishes and needs. However, the Mental Capacity Act remains significantly under-used and misunderstood. We would encourage Welsh Government to take the opportunity presented by the Social Services and Wellbeing Bill to embed best practice in Wales.

In order to make the provisions of the Bill more accessible to people with dementia, the sections covering the provision of information, advice and assistance need to be significantly strengthened and amended to include specific mention of advocacy.

3.3. 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?

In order to deliver social services that are sustainable, the Bill needs to do more to tackle the barriers that currently exist to greater integration between health and social care services.

Section 146 of the Bill outlines the circumstances under which a local authority must exercise its social services functions with a view to ensuring the integration of care and support provision with health provision and health-related provision. Moves towards greater integration are very welcome, but in order for services to meet the needs of people with dementia, integration needs to be more fully embedded throughout the Bill. There are currently many barriers to greater co-ordination between health and social services and these are not sufficiently addressed in this draft of the Bill.

Dementia is a complex condition combining features of chronic neurological disease, mental illness, physical frailty and communication problems. This complexity and the fact that people with dementia often move between care settings means that people with dementia often receive formal care from a range of health and social care services. Effective coordination is therefore essential if formal care services are to meet the needs of people with dementia.

Only a quarter of respondents to Alzheimer's Society's 'Support. Stay. Save.' report said the services the person with dementia received worked well together, with over a fifth responding that they did not work well together.[1] Poor coordination is a significant barrier to people with dementia getting the support and care they need. It can inhibit people with dementia's access to care and support, limiting their choices in care and resulting in crisis admissions to hospitals and care homes. Lack of coordination of care contributes to people with dementia remaining in hospital for longer than expected. Counting the Cost found people with dementia stay in hospital far longer than other people admitted for the same reason, partly as a result of lack of coordination of care in the community and also within hospitals themselves.[2]

An important step towards a more integrated experience for people with dementia would be creating care plans that were more holistic, covering health and social care services, and based on involvement of the person with

---

[1] Alzheimer's Society, Support. Stay. Save, (2011)
[2] Alzheimer's Society, Counting the Cost (2009)

dementia, their carer and family and professionals. Care services should be based around this care plan, rather than organisational or services boundaries. Commissioning should also be a joint and collaborative exercise between health and social care, based on local needs assessment and focused on quality. Co-production is another important element of an integrated experience of care: People with dementia and their carers should be involved in the commissioning process and in informing the design and delivery of services.

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

Alzheimer's Society welcomes both the preventative approach and the development of a National Eligibility Framework. A preventative approach may ensure that people get support early on, when we know that it can be most beneficial and cost-effective. A National Eligibility Framework may bring greater clarity to decisions about who qualifies for care and help end the postcode lottery in access to services. However, there are important ways in which we believe that both of these proposals could be strengthened. Criteria for eligibility need to be set at a level that supports the emphasis on prevention and early intervention. Services, including preventative ones, need to take due account of individual service-users aspirations.

We are concerned that we have not received any indication of how the eligibility criteria will be determined. As described in the Care and Social Services Inspectorate Wales and Healthcare Inspectorate Wales review report, there is an inherent tension between the preventative approach emphasised in the Bill and an eligibility framework which prioritises the highest need.[3] The Bill will only be able to promote early intervention and preventative services if the bar for eligibility is set at a fair and reasonable level. The National Eligibility Framework must have the effect of improving consistency of support across Wales rather than further rationing the support which people are able to receive. We support the position taken by the Wales Carers Alliance that if eligibility criteria are set too high then this will have a negative impact on the aspirations for prevention and wellbeing that are contained within the Bill. It is also essential that there is sufficient monitoring of adherence to the Framework.

In addition to suggesting that aspects of the Bill need to be strengthened in order overcome this potential tension and to meet the Bill’s aspirations around preventative services, Alzheimer's Society would also suggest that the definition of prevention could be broadened to also take account of the individual’s own aspirations. Such an approach would be in line with Welsh Government’s recent consultation on introducing a national outcomes framework for social services in Wales and supportive of the emphasis on improving wellbeing.

However, specific attention would be required to ensure that people with dementia were able to fully benefit from this emphasis on individual

---

[3] CSSIW and HIW, Growing old my way: a review of the impact of the National Service Framework for Older People in Wales (2012)

aspirations. Too often it is assumed that people with dementia cannot enjoy a good quality of life or express needs and preferences. In order to counteract this, it is essential that all relevant staff have training in how to support people to live well with dementia.

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

Alzheimer's Society believes that the main barrier to implementing the provisions of the Bill will be financial. At present, social care is significantly underfunded. We are concerned that in the absence of a sustainable funding settlement, costs may increasingly be transferred to service users. The Bill contains provisions for charging for several services, including preventative services and the provision of information, advice and assistance. Welsh Government needs to do more to demonstrate that the Bill will not create additional costs that will be transferred to service users.

Charging for care affects people with dementia and carers more than older people with other medical conditions. Despite dementia being a physical disease of the brain, most of the essential care required as a result of the disease comes from social services. Dementia can last for many years and this and mean significant bills for care. The Society has campaigned for many years to end the 'dementia tax' - where every year tens of thousands of families are left to pay all their care costs whilst other diseases are paid for by the NHS. In addition, people with dementia and carers are paying for services that often do not deliver good quality care. Westminster’s response to the Dilnot Commission’s proposals will need to be enacted in Wales, but more money above and beyond this will be necessary to meet the gap in social care funding.

The Social Services and Wellbeing Bill is a landmark opportunity to improve social services in Wales. However, it is essential that financial concerns are not allowed to undermine the ambitious aims and objectives of the Bill. We would urge Welsh Government to ensure that the Bill has been thoroughly and adequately costed.

Alzheimer's Society looks forward to continuing to work with the Health and Social Care Committee as the Social Care and Wellbeing Bill progresses. We would welcome the opportunity to comment on this legislation further and in particular to give oral evidence to the Committee.

Yours faithfully,

Alice Southern
Policy Officer, Alzheimer’s Society
alice.southern@alzheimers.org.uk

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 79 – Most Revd Dr Barry Morgan
Archbishop of Wales

The Church in Wales

CONSULTATION ON STAGE 1:

SOCIAL SERVICES AND WELL-BEING (WALES) BILL

The Archbishop of Wales has requested that a response be submitted on the Social Services and Well-Being (Wales) Bill, to particularly highlight the importance of including in any such legislation, provision to protect children from physical punishment in the form of common assault (often referred to as 'smacking').

There has been a long-term public commitment by successive Welsh Governments to do this, and a commitment was also made to the UN Committee on the Rights of the Child. The Committee on the Rights of the Child has consistently interpreted Article 19 as requiring the prohibition and elimination of all physical punishment of children, including in the detailed guidance provided in its General Comment No. 8.

The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to abolish the physical punishment of children by removing the anomalous defence of "reasonable punishment". The October 2011 debate and vote in the Assembly showed a strong cross-party majority of AMs encouraging the Government to introduce the necessary legislation.

Given the overall context and aims of the Bill, there is now every opportunity and justification for a clause to be added that will abolish the physical punishment of children by removing the "reasonable punishment" justification for assault on children in Wales. The issue is fundamental to children's status in society as well as to their well-being, safety and protection. Children's right to respect for their human dignity and physical integrity, and to have equal protection under the law with other members of society, requires the removal of the "reasonable punishment" defence.

The use of physical punishment on children teaches them that violence is a useful and acceptable solution to situations of conflict or tension, especially where there is a power imbalance between people who disagree. The WG's White Paper on Domestic Violence highlights the risk of harm for children who witness violence between adults, and there is strong evidence of linkage between the experience of violence through physical punishment in childhood, and the incidence of domestic violence in adult life.[1] Continuing to allow the physical punishment of children is at odds with the belief that domestic or partner violence is never acceptable, and with other efforts to promote children's health and wellbeing.

The Bill focuses on 'well-being' because those concerned about the care of the most vulnerable members of society believe that promoting their interests must be about more than simply providing services. The Bill recognises, in particular, the importance of the following elements[2]:

a) physical and mental health and emotional well-being;

---

[1] The Archbishop of Wales included reference to the need to outlaw the physical punishment of children in his response to the Domestic Violence White Paper.

[2] para. 190 and clause 2 of the Bill

b) protection from abuse and neglect;
c) education, training and recreation;
d) domestic, family and personal relationships;
e) the contribution made to society;
f) securing rights and entitlements; and
g) social and economic well-being;

In relation to a child, ‘well-being’ also includes:

(a) physical, intellectual, emotional, social and behavioural development
(b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.

Futhermore, as cited in the the Explanatory Memorandum (para. 191): *“The Rights of Children and Young People Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy”*. In Article 19, the Convention notes that: *“Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them”.* The Memorandum goes on to note a number of provisions in the Bill relevant to observance of children’s Article 19 rights. It is incompatible with this intention to omit from the Bill any the prohibition of physical punishment of children, through the removal of the “reasonable punishment” defence.

It is therefore extremely surprising that the draft Bill contains no provision to remove the “reasonable punishment” defence and thus provide children with equal legal protection from common assault. There are many ways to discipline a child and teach them how to behave which do not involve using physical violence, and which instil positive values, and efforts should be made to educate parents in these techniques and so promote family well-being and appropriate conflict resolution which cannot but benefit all areas of society.

This response urges the Health and Social Care Committee and the Children and Young People Committee to recommend in the Stage 1 Report inclusion in the Bill of the necessary provision to remove the unique and anomalous “reasonable punishment” defence and so end the use of physical punishment of children in Wales.

The Church in Wales would be pleased to send a representative to give evidence to committee in furtherance of its engagement with this consultation.

On behalf of:

Most Revd Dr Barry Morgan
Archbishop of Wales

Llys Esgob, The Cathedral Green, Llandaff, CARDIFF CF5 2YE

archbishop@churchinwales.org.uk

Tros Gynnal Plant’s response to the Health and Social Care Committee call for evidence (Stage 1)

We welcome this opportunity to respond to the call for evidence.

As Wales’ leading advocacy provider for children and young people we welcome the Bill’s aim to bring together duties and functions in relation to well-being of people and children who need care and support and carers who need support.

We do, however, have the following concerns.

In light of recent events and given the widely held recognition within Welsh Government that -

- advocacy has a core function in empowering and ensuring that children and young people’s rights are supported and protected
- advocacy also has a significant role to play in Safeguarding children and young people

we find the absence of reference to the child or young person’s rights to be supported by an advocate to be a worrying weakness throughout the Bill.

We are particularly concerned that no mention is made of advocacy in **Part 2.6** under **Preventative Services** or **2.8** under **Provision of information, advice and assistance** (particularly in relation to children and young people).

We are also concerned that no clear reference is made to the local authority’s duty to provide and facilitate access to advocacy in **Part 6** under **Looked after and Accommodated Children –** reference is made to the role of an Independent Visitor, often confused with that of an advocate. Currently Independent Visitors end their contact when the young person becomes 18; the Committee might want to consider pre-empting changes currently being considered around extending after care services age limits.

We believe that the failure to embed the local authority’s statutory responsibility to make advocacy available and to actively facilitate access to the service severely weakens the Bill.

Further, we believe that succinct reference should be made to advocacy in **Part 10** under **Complaints and Representation** rather than the current general reference to ‘assistance’.

Jackie Murphy
Exec.Director
Tros Gynnal Plant
12 North Rd
Cardiff CF10 3DY
Email Jackie.muprhy@trosgynal.org.uk

RESPONSE to Social Services and Well-Being (Wales) Bill from Save Park Avenue Day Centre group, Aberystwyth

Save Park Avenue Day Centre (SPADC) group is a single issue pressure group set up to fight the closure and demolition of a 30 year old, purpose built Day Centre in Aberystwyth providing services for older and older disabled people, in order to make way for a Tesco store and multi-storey car park.

Our response is short and confined to the issue of Day Care Centres for older people and older disabled people.

We are concerned that centres providing day care for older people are not underpinned by a statutory requirement for their consistent provision across Wales, in line with the demographic profile of each area. This makes them vulnerable to closure, or to severe restriction of access and provision, in a time of budgetary austerity.

The benefits of day care centres for older, and older disabled people, are several and can significantly add to the well-being of those who use them and to that of their carers. By providing care throughout the day and a variety of services under one roof, they can help to prolong independent living and delay the need for full-time residential care. By giving users an opportunity to meet and socialise with others, they can reduce social isolation and increase social integration. By giving carers respite for part of the day and the opportunity to work, socialise and pursue their own interests, day care centres help prolong their ability to provide long-term care.

We feel that the issue we have confronted in Aberystwyth illustrates one of the major weaknesses of this Bill. If local authorities are simply required to meet needs without specifying in any concrete way what provision might be required to meet these needs, then individual choice is likely to be limited to the priorities set by those authorities. These priorities will not necessarily take the needs and choices of the most vulnerable into account. This has certainly been our experience in Aberystwyth.

We are, therefore, asking for consideration to be given to making the provision of standardised, regulated Day Care Centres for older and older disabled people, in accordance with the demographic profile of each area, a statutory requirement across Wales. We do not think that the Bill will lead to a wide enough range of adequate, affordable choices for older people without this.

NB We have launched an e-petition this month asking for the provision of Day care centres to be made statutory across Wales and this has been accepted by the Petitions Committee.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 82 – Pamela Hughes

Dear Gwenda Thomas.

I am a member of the committee "Save Park Avenue Day Centre" Aberystwyth, and also lead name of e-Petition "Day Centre for the elderly in Wales to be made statutory". (Welsh Assembly Petitions). Start date 07/03/2013. I am writing as an individual.

Could it be ensuring that the vulnerable elderly have cooked hot meals and able to escape the 4 walls?. Many people are now missing out on these services since the criteria to enable the elderly to attend Day Centres has risen to "critical" and "substantial".

Could there be an Independent Inspector to monitor Day Centres throughout Wales?

Could the money, set aside for respite care by Councils, meant for unpaid Carers, be ring-fenced? (preferably electrified)!

Could Day Centres for the elderly be open for longer hours? 9.30a.m - 4.30; this would enable the unpaid Carers to seek employment, and the older unpaid Carer to rest.

Could Palliative care be provided closer to home? Could Cottage Hospitals be used? (Tregaron Hospital is due to close). (Beacon of Hope is closed)

Could assessment of needs of the elderly patient take place earlier ensuring their needs are met immediately?. (not put on long waiting lists).

Could County Council Homes be extended so as to accommodate these elderly patients, on early release from Hospital, giving them time to recuperate before returning home.

Could Dementia patients be treated nearer to home? - some Aberystwyth patients are in a Home at Cardigan.

Could there be a Geriatric Ward? at all Hospitals (Rheidol Ward at Bronglais) has closed.

Dementia (Enlli Ward) has closed.
Dementia (Afallon Ward) has closed.

Thank you for reading this, and Good Luck with the Bill,
Pamela Hughes.

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 83 – Conwy County Borough Council

αβχδε

Consultation: Social Services and Well-being (Wales) Bill

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.**

   Yes if it will simplify the law and clarify roles and responsibilities and aid consistency. There needs to be clarity, however, about which legislation it supersedes and the responsibilities of partner agencies. At present, local authorities are experiencing difficulties with Health colleagues around services and responsibilities. Roles and responsibilities need to be enshrined within legislation. There also needs to be community ownership and an understanding of the changing role of Social Services.

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.**

   It would appear so. There needs to be some more clarity around the single duty to meet eligible needs and what this will mean and how applying an eligibility criteria fits in with preventative services. There needs to be clarity about what is a preventative service as opposed to a care and support service in light of proposed regulations giving authorities the provision to charge for them. The regulations, backed up by a code of practice, should clarify much of what is stated in the Bill. The National Outcomes Framework is to be welcomed.

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.**

   At the moment partnerships are voluntary and this often hinders their chance of success. If they were imposed by WG then they would have to work. However, the driver mustn't be just to cut costs, it must be to also provide a better service. Across North Wales there are many successful collaboratives that have developed in a strive to improve services. The Bill places an emphasis on local authorities to co-operate in improving the well being of individuals. Equal emphasis should be placed on other statutory bodies to do likewise.
   The Bill emphasises preventative services. This will reduce the number of people coming through the front door of social services. This should help in the sustainability of social services but the community need to be well aware of the role that the local authority will play and what role they must also play in supporting each other.

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

   By concentrating on preventative services it will mean only the most vulnerable people and the most complex cases will receive input from social services. There will be a need for people to re train within the service. People have been entrenched within either adult or children services and will need updating on the part of the service they may not have worked in for many years. Many social services will have to transform and put more of an emphasis on the front door to redirect services away from social services. The private and not for profit companies/agencies will need nurturing/supporting to ensure capacity and capability to provide support for those people who will be directed to them for services. Social serves will have to consider how they will ensure the service user voice is heard and is able to contribute to service provision.

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

   There is an assumption within the bill that partner agencies will work with social services to implement the bill. Already other agencies refer to it as the social services bill and see it as an obligation upon social services and not themselves. In renaming the bill it would have been helpful not to have called it the social services and well being bill.

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.**

   There are many powers to be conferred by regulations. This will allow for flexibility in the future. There is some concern that the scope of the powers within regulations could fundamentally change how a social services department works e.g. sections 19(3), (4) and (5) and section 119. There is only so much change a service can take.

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 above.

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

   Training social work staff to adopt the new law: - the planned redirection of the SCWDP grant to retrain social workers does not take in to account the need to maintain mandatory training such as child protection and safeguarding adults and manual handling, health and safety etc.

   The provision of preventative and early intervention services: - does not take in to account the cost to transform service provision in order to do this.

   The provision of information for individuals, carers and families: - this will require an additional cost in relation to published material to update and inform members of the public.

Create a more nationally consistent system for assessments and eligibility criteria for both users and carers: - a cost will be incurred if present assessment systems change. Computer systems are built around our existing assessment processes and so would have to be rebuilt.

Reduction in the administrative burden on social workers: - this a laudable but does not take account of the fact that social workers will then have time to ‘do’ social work and so isn’t a saving in real terms.

Reduction in the number of complaints to local authorities and reduction in the level of litigation local authorities will face: - the savings are speculative.

It is expected that a preventative service and a more community based service will, in the long term, be cost effective and save money. However, the transition could be costly when taking in to account training, updating computer systems, restructuring and informing the community at large.

Social Services and Well-being (Wales) Bill Consultation

Introduction

- The Welsh NHS Confederation, on behalf of its members, welcomes the opportunity to respond to the Health and Social Care Committee's call for evidence on the Social Services and Well-being (Wales) Bill.
- By representing the seven Health Boards and three NHS Trusts in Wales, the Welsh NHS Confederation brings together the full range of organisations that make up the modern NHS in Wales. Our aim is to reflect the different perspectives as well as the common views of the organisations we represent.
- The Welsh NHS Confederation acts as an independent voice in the drive for better health and healthcare through our policy and influencing work and by supporting members with events, information and training. Member involvement underpins all of our various activities and we are pleased to have all Local Health Boards and NHS Trusts in Wales as our members.
- The Welsh NHS Confederation and its members are committed to working with the Welsh Government and its partners to ensure there is a strong NHS which delivers high quality services to the people of Wales.

Overview

- The Welsh NHS Confederation, on behalf of its members, welcomes the publication of the Social Services and Well-being (Wales) Bill and the opportunity of increased alignment of national strategy and policy aimed at supporting seamless integrated provision of assessment and delivery of care.
- The Welsh NHS Confederation and its members welcome a number of the Bill's requirements:
    - The duty to provide or arrange for preventative services. This complements the strengthening role of Public Health and establishes a robust platform for joint working.
    - The intention to drive person centred services and give citizens real voice and control. People can only be supported in managing their own health conditions in the context of accessing person centred services.
    - The promotion of integration, as this underpins locality working arrangements underway in a number of Health Boards.
    - Partnership with third sector services, as partnership working is a growing area which provides exciting opportunities to provide community support in a more flexible, creative way.
    - The clear recognition of the role and value of carers in delivering effective community care.

Consultation Questions

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.

- The principles behind the Bill are to give the people who use social services, including carers, a strong voice and real control over the services they may receive by focusing on the personal outcomes that people wish to achieve. It will also enable earlier intervention and prevention for people who need care and support in order to improve their well-being, and for their carers.
- The current legislation in relation to local authorities' duties and functions has been built up over time through a range of legislation. Whilst partnership working and to some extent integration of public sector services should not require legislation in order to protect the most vulnerable and to improve the well-being of people who are in need of care and support, it can be complex

and challenging for organisations working in partnership to combine responsibilities and deliver cohesive integrated services.

- In addition, whilst the importance of improving well-being is increasingly being recognised by both local authorities and partners, it is still a relatively new concept in terms of service priority and delivery. We therefore welcome the intention to provide for a single Act for Wales that brings together local authorities' duties and frames partnership responsibilities in relation to improving well-being of people who need care and support and carers who need support.
- We do believe that it would be helpful if some aspects were considered in greater detail in order to ensure reliable interpretation.
- The fact that recognition, support, voice and equity for carers are central to the proposed Bill is encouraging. It has been argued consistently that carers need to be identified at an early stage in their caring journey so that they are better equipped to deal with the complexities and difficulties they are likely to face. Services need to be reconfigured towards earlier preventative support so that carers, and the people they look after, are able to maintain their health, well-being and sustain lives of their own.

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 Bill, as drafted, does address the objectives of addressing well-being, prevention and early intervention, promoting a stronger voice and control for people in need, and simplifying and clarifying duties alongside the development of nationally consistent systems.
- However, given that there is still much detailed work to be done through the drafting of Regulations, including the development of the national eligibility framework, the outcomes framework, Codes of Practice etc. it is difficult to assess at this stage whether the Bill will deliver its intended objectives.
- Whilst legislation can provide the statutory framework for further integration, it must be recognised that success will nevertheless depend on local leadership and drive to deliver, as well as the scale of the changes required and the complexities of addressing barriers, including financial risks.
- The development of integrated services does not necessarily depend on the existence of formal partnerships and pooled budgets. Rather they are dependent on a shared vision, agreed priorities, trust, and open and accountable partnership working. Formally imposed partnerships could undermine locally developed joint solutions and meeting the needs of local citizens through effective collaboration with the right partners. It is important to remember that pooled budgets and formal partnerships are tools to support the effective governance of joint working, rather than the route to delivering better integrated services.
- All public services in Wales are facing a number of challenges and going forward it will be essential for all public services to work together effectively. The delivery of effective integrated services and collaborative arrangements will be key to ensuring our public services are fit for purpose in the future. Although integration is particularly important for health and social care, this is not exclusively the case, and wider partners and other local authority services, such as housing and education, will also have a key role to play.
- Whilst health promotion and ill-health prevention are quite rightly a key focus for the NHS in Wales, local government also has a critical role in supporting and sustaining a healthy population and preventing escalating ill-health. Going forward, it will be crucial for local authority colleagues to recognise this role they play whilst also responding to all levels of need with their communities.
- In addition, the definition of 'well-being' for example is extremely broad and with regard to the duty to maintain and enhance the well-being of people in need, it will not be possible for any one agency alone, either in the statutory or third sector to achieve this. Contributions from

many organisations as well as communities themselves will be needed, which is not currently reflected in the drafting of the Bill.

- The Welsh NHS Confederation and its members welcome the focus on empowering people that is highlighted in the Bill, as being enabled to have a stronger voice and greater control over their lives are core factors in improving well-being in everyone.
- It is important to note the significant contribution of providing independent advocacy in improving well-being and control. Although this is mentioned in relation to some aspects of the provision (i.e. in reference to complaints), this could be considerably strengthened as part of core service provision.
- In relation to the sections of the Bill giving Ministers powers to make regulations specifying partnership and integration arrangements (sections 147-150), we would welcome further clarity as to under what circumstances such action might be taken and to which service areas they might relate.
- In addition, it must be recognised that there is a need to avoid a nationally prescribed approach and that there will still be flexibility to meet local needs that will differ across Wales. From an LHB perspective, a diversity of local approaches amongst many local authority partners is not without challenge. As variations in approach may indeed be helpful at a local level, we do not think there should be conformity across the range of delivery methods. We do however think that common principles, as adopted through the Gwent Frailty Programme for example, would help.
- It is also important to recognise that partnership working in general is currently in a phase of change and consolidation. The Bill provides a useful direction for the unique contribution of social services for meeting the needs of vulnerable individuals, but also for the wider well-being of the population. However, it would be useful to be more explicit in defining social services' leadership role and accountability in relation to well-being, considering the contribution of other local authority services, and the wider health and third sector. For example, this could be described in the context of the remit of Local Service Boards, and the significant opportunities for more joint planning and commissioning which will exist as LSBs mature.
- There are many lessons which can be learned from innovative and sustainable models of social services provision. This is especially important for meeting the wider well-being needs of the population in general and vulnerable groups in particular, such as individuals whose needs don't meet eligibility criteria for accessing core services. There are numerous examples of such services delivered across Wales, often in partnership with third sector providers, linking with areas/themes such as ageing well, lifelong learning, volunteering, supporting access to the labour market, and social enterprises. It must be noted that social services would need to strengthen links with other local authority departments in order to access and maximise the available expertise and opportunities, such as European funding, which are available across the whole system.
- Throughout the Bill, but particularly in relation to Part 6, consideration needs to be given to linkages and alignment with other legal frameworks and legislation. The development of plans for 'Looked After Children', for example, should be viewed in collaboration with the Mental Health (Wales) Measure which has a requirement for children and adults who access secondary care to have a Care and Treatment Plan. In addition, there is also a need to ensure alignment with the proposed Sustainable Development Bill with regard to its proposals for LSBs.
- In relation to Part 7 of the Bill (Safeguarding), there is welcome legislation for the protection of vulnerable adults. More generally, however, the development within a legal framework of the National Independent Safeguarding Board that includes a remit to 'advise Ministers on the adequacy and effectiveness of safeguarding arrangements' does call into question the role that regulators/inspectors such as HIW and CSSIW will have in relation to review and assurance.
- Also in relation to Part 7 (Safeguarding and Protection Boards), the Bill does not give sufficient detail to deal adequately with governance mechanisms and the Regulations may provide this

level of detail. It is however important to recognise that the pace with which the current safeguarding arrangements are being steered to change in line with the general principles of the Bill does incur some risk regarding effective governance and scrutiny arrangements.

- The proposed National Outcomes Framework is a key provision in the Bill, and has the potential not only to provide robust assessment of the effectiveness of the provisions within the Bill, but also has the potential to be a powerful driver in its own right. Of particular importance is the opportunity for the development and implementation of Performance Indicators shared by all the partners who have a contribution to make to population well-being, along with social services providers themselves. Shared accountability for the achievement of shared Performance Indicators will be a powerful catalyst to partnership working.

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.

- The Welsh NHS Confederation and its Members welcome the intention to deliver sustainable social services. In addition, we agree with the general proposals to base the legislation on the concept of promoting the well-being of people in need which builds on the work already underway.
- We believe that consideration should also be given to a requirement for delivering reliable services. In rural areas there are ongoing difficulties in recruiting care staff to private agencies as well as social care. This continues to impact on the viability of people remaining in their own homes. A requirement to confirm reliable access to services may lead to more creative and proactive solutions.
- Delivering preventative services in the context of eligibility and means testing may be challenging and we believe consideration may need to be given to the infrastructure for this area of responsibility. Free preventative services may lead to greater savings in the delivery of care costs than a preventative service with charges, which has a more limited uptake.

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

- Given the scope of the Bill and the number of proposed changes, there will be a range of implications for social services, for example the number of people who potentially will need to be supported to improve their well-being compared with the much smaller number of people with higher levels of assessed need.
- Local authority colleagues will be able to provide a more detailed response of how the Bill will change their existing provision, the impact and how far changes will assist in sustainability. Resource implications in terms of workforce and finance will remain key factors and the Explanatory Memorandum makes it clear that it is not yet possible to fully assess all of these issues.
- There are a number of areas that are open to interpretation and may risk causing tensions in providing joint agency services. For example, there is a lack of clarity in relation to equipment provision which is currently described for social services in the Chronically Sick and Disabled Persons Act 1970. Responsibilities relating to equipment are not described explicitly in the Social Services and Well-being (Wales) Bill.
- Both access to equipment and home adaptation impact on the capacity of vulnerable adults to remain in their own homes and function independently with dignity. Should these services be restricted further than the constraints of current provision, then the health and well-being of those people needing to access this type of support risk being compromised. Hospital services have historically been used as a safety net for the frail elderly who have breakdown of social

support. As LHBs look to modernise their services and provide strengthened health and social care community services, the provision of community equipment and home adaptation is part of this network of care.
- For integrated services, even minor changes in social services eligibility criteria can have a significant impact on the balance of care available. We believe guidance regarding eligibility should be developed in partnership with the NHS to support the establishment of reciprocal/integrated community support systems.

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

- As outlined above, evidence of successful health and social care integration schemes to date shows that whilst legislation can provide the statutory framework for further integration, successful integration depends on local leadership and drive to deliver. In addition, financial, legal, governance and employment regulations can be key barriers to integration which will not be addressed by the proposed legislation.
- The additional clarity and action of simplifying and streamlining arrangements including a single set of powers will be helpful to ensure consistency and a national standard. However, national guidance and parameters must not stifle local initiatives and flexibility where appropriate but rather provide a constructive framework. The overall objective of strengthening partnership working and keeping the citizen at the centre of service delivery must guide the arrangements, keeping them less onerous and bureaucratic.
- In the current economic climate, costs continue to be a challenge. This challenge is particularly acute for the health service in Wales in the context of limited financial flexibility and when service change is required, which may require up front capital investment and double running of services.
- We also have concerns about the lack of clarity regarding some responsibilities between local authorities and their partners which is likely to generate dispute between agencies and could delay effective implementation.
- The Explanatory Memorandum gives considerable consideration to the financial implications and training requirements for social services. However, no consideration seems to have been given to the training and resources needs of the health service and other partners, and we would urge urgent consideration to be given to these areas.
- Impact assessment methodologies may be useful in informing elements of the legislation, and its implementation, going forward. This is especially true in engaging all stakeholders around the wider issues that impact on health, well-being, and equity.

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.

- Whilst recognising that flexibility and ‘future-proofing’ of the legislation is required, clearly a significant amount of detail will be defined by Regulations. This makes it difficult to analyse the practical implications of the Bill and give a clear view on its efficacy and the extent to which it will deliver the intended vision and impact.
- Clearly the successful implementation of the Bill will be heavily dependent on the drafting of the Regulations, a key element of which will be to ensure that there is rationalisation of other existing arrangements which contribute to both population health and well-being and the provision of service to those most in need, whether these are provided by social services or other service providers.
- Key to delivering the improvement and expected outcomes is the extent to which the Regulations are:
    - Clear and accessible to service users and the wider community
    - Understood and owned by social services and partners

  - Clear in terms of accountability and fit with the wider strategic well-being landscape
- Building on the development of the Regulations will require continued engagement with all stakeholders, including the workforce and, first and foremost, those who need and experience services.
- We also have concerns that a significant proportion of the Regulations will be subject to the negative resolution in the National Assembly which raises concern about the amount of scrutiny and debate which will be afforded to these important pieces of secondary legislation. We believe further consideration should be given to whether the affirmative resolution would be a more appropriate mechanism to ensure there is an opportunity to enable challenge and scrutiny in any further developments to ensure the best development of the legal framework into practice.

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)?

Please see above.

Financial Implications
7. What are your views on the financial implications of the Bill?

- We welcome the opportunity of the Bill to simplify the legislative and regulatory framework. However concern remains about the financial implications of the Bill on all partners and we have concerns as to whether the proposed approach will be cost neutral. Clearly the challenging financial situation across the public sector requires a clear commitment to partnership working to protect the vulnerable and those at risk to ensure the public can achieve the best value for money.
- Due to changing demographics, local evidence shows that there is increasing demand for social care services. In addition, as a result of the Bill's proposed requirements to undertake a local needs assessment, encourage integrated provision of services and provide information and advice etc., it is likely that demands for social care services will increase.
- There will be a need for a clear lead partner and recognition that it could take some time before additional costs are mitigated. Costs saved for some agencies, for example preventative measures resulting in fewer intensive services being needed, can lead to additional cost pressures on another service. Whilst recognising the importance of investment in the preventative agenda to reduce costs in targeted services, resources may need to be invested differently within and between agencies to avoid additional pressures being felt disproportionately.
- The ability to develop and provide early intervention and preventative services, in a context of increasing demand and reducing resources, provides a particular challenge. This will require political and professional leadership, at a national and local level, to divert resources from traditional health and social care services to develop new models of care.
- In relation to the integration of health and social care services, evidence from schemes already in place shows that different organisational arrangements and different approaches to commissioning, purchasing and providing services can make working together and the flexible use of resources more difficult, and can be key barriers to further integration. It seems unlikely that the Bill, as drafted, will offer any mechanisms to address these important areas of concern and we would like to see further consideration given to this area.

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

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 87 – The Law Society Observations

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

's' denotes the section of the Bill throughout

s4(4) this section fails to have regard for the views of the child aged 16-18 especially one that is "Gillick" competent

s11(5) appears to give too much latitude to the local authority ("LA") to act unilaterally

s12(6) ditto

s12 the clear duty imposed on LAs to assess the needs of children and equating it to the duty to assess adults and carers is welcomed

s18 it is essential that timescales for the completion of assessments are provided for in the Bill and set in the regulations.

s19 it is essential that national eligibility criteria are set at a level that ensures that service users do receive at least an adequate level of support which actually delivers on the wellbeing principles and which will also prevent too much uncertainty about what level of need leads to service provision.

s20(2) "adaptations" are not included in the list here. "Facilities" would not be adequate to cover this item. Also, the Bill has no reference to Disabled Facilities Grants and how these will operate under the new regime.

s21 Neither of these sections clearly provides for action in urgent cases
s22 (see also s104 et seq on safeguarding)

s24 ditto in the case of a child

s29 ditto for carers

s37 there is no detail regarding the setting of the rates which is a crucial element here. A national rate with provision for increases would welcomed.

s38(4) timescales should to be set for assessments. Delays in assessment impact on the outcome particularly because of subsequent delays in the delivery of care.

s41(3)(b) there needs to be very clear provision for how the "usual cost" is calculated and there must be accommodation available at the "usual cost" relied upon because LAs have been known to charge top ups where in fact no accommodation was available at the "usual rate".

s43(3) it should be clear that LAs cannot charge people for emergency support services. Some LAs have made charges for emergency support services even where the recipient has subsequently been found to be financially eligible for support without charge.

s48 time limits should be considered here. There can be significant delays before the provision of services.

s50 there is no provision for how the main residence will be treated for capital purposes when a joint owner or dependant remains resident.

s53 there needs to be provision for someone acting on behalf of the services user to enter into such arrangement eg as attorney or Court of Protection deputy.

s97(6) references to the Legal Services Commission etc should be updated to reflect recent changes in legal aid provisions.

s104 et seq Safeguarding

There doesn't appear to be a specific power to act to address urgent concerns ie in place of the s47 National Assistance Act 1948 power to remove to a place of safety. The adult protection and support order merely gives access to assess the situation eg similar to a s135 Mental Health Act 1983 warrant. What powers do the LA then have to address urgent concerns? Are the emergency powers under s22 and s24 adequate? For someone who lacks capacity the Mental Capacity Act 2005 may assist although LAs may be reluctant to take a major step like removal to a place of safety without having a specific statutory power to do so. Why has s47 National Assistance Act 1948 been abolished? In certain very serious cases it remains a useful tool.

The Bill provides for safeguarding at a strategic level but it falls short in relation to empowering the LA to act where there are really serious concerns about actual abuse/ safety.

s119 should the Chronically Sick and Disabled Persons Act 1969 and the National Assistance Act 1948 be included in the Schedule?

s147 the clear provision here for joint working is welcomed

s152 the effect of this is to lose the second stage of independent investigator report which has been a useful and relatively swift means of obtaining a positive outcome re complaints.

s164 It is not clear who will determine disputes as between Wales and England in future: will a body be responsible as now?

May 2013