

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

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

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

3 May 2013

Dear Vaughan

Social Services and Well-being (Wales) Bill

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

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

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

Overarching issues

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

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

Bae Caerdydd
Cardiff Bay
CF99 1NA

E-bost /Email: CYPCommittee@wales.gov.uk

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

Removing the reasonable punishment defence

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

Access to Services

Preventative Services

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

Assessment

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

Eligibility

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

Meeting Needs

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

Charging for 16 and 17 year olds

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

Partnership Working

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

User Voice and Control

Advocacy

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

Safeguarding Children

Local Safeguarding Boards

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

Services for Looked After and Accommodated Children

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

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

Fostering to Adoption

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

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

Adoption

Joint Working Arrangements

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

Post-adoption Support

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

Disabled Children

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

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

Finance

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

Subordinate Legislation

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

Yours sincerely

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

Ann Jones
Chair

Background information

1. On 28 January 2013, the Deputy Minister for Children and Social Services, Gwenda Thomas AM (“the Deputy Minister”), introduced the Social Services and Well-being (Wales) Bill¹ (“the Bill”) and the then Minister for Health and Social Services, Lesley Griffiths AM, made a statement in plenary the following day².
2. At its meeting on 29 January 2013, the Assembly’s Business Committee agreed to refer the Bill to the Health and Social Care Committee for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9, but asked the Chair of that Committee to work with the Chair of the Children and Young People (CYP) Committee to ensure maximum involvement of CYP and its Members during scrutiny of the Bill.
3. The Chair of the Health and Social Care Committee, Mark Drakeford AM, wrote to the CYP Committee on 4 February 2013 inviting it to scrutinise the provisions of the Bill relating to adoption and looked after and accommodated children and report its findings back to the Health and Social Committee.
4. In a private meeting on 21 February, Members of the CYP Committee agreed to scrutinise the Bill as it affects children and young people and provide information by 2 May 2013 to the Stage 1 scrutiny of the Health and Social Care Committee.
5. The Committee held two evidence sessions on Wednesday 17 April and Thursday 25 April, and details of those who gave oral evidence can be found at Annex A.
6. Since the Committee began its scrutiny of the Bill, the Chairs of both the Health and Social Care Committee and Children and Young People Committee have changed. Vaughan Gething AM replaced Mark Drakeford AM as Chair of the Health and Social Care Committee on 16 April and Ann Jones AM replaced Christine Chapman AM as Chair of the Children and Young People Committee on 24 April 2013.

¹ Social Services and Well-being (Wales) Bill, available at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=5664>

² RoP, 29 January 2013, available at:

http://assemblywales.org/docs/RoP_XML/130129_Plenary_Bilingual.xml#58272

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

Overarching issues

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

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

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

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

Is there 'due regard' to the UNCRC?

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

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

Removing the reasonable punishment defence

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

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

Delaying the Bill?

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

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

Access to services

Preventative services

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

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

Assessment

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

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

Refusal of a needs assessment: sections 13 and 14

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

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

Eligibility

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

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

Meeting needs

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

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

Charging for 16 and 17 year olds

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

28. The Deputy Minister stated that this was not a new power³. The Deputy Minister went on to say she could not envisage any circumstances where 16 and 17 year olds were charged for services and that she did not want charging to restrict access to services. The Committee consider that the rationale which led to the creation of the original powers to charge young people aged 16 and 17 is no longer relevant. The Deputy Minister stated she is prepared to consider removing the power. The Committee welcomed this and suggests that the Health and Social Care Committee give consideration as to whether this power should be removed from the Bill. The Committee also noted the broader concerns raised in respect of powers to charge adults, for example the potential to charge families for information services.

Partnership working

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

³ Powers currently contained in the *Children Act 1989*

Transitions

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

User voice and control

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

Advocacy

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

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

Safeguarding children

Local Safeguarding Boards

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

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

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

Services for looked after and accommodated children

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

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

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

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

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

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

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

Fostering to adoption

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

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

Adoption

Joint working arrangements

43. The EM states that joint working provisions in section 151 of the Bill would facilitate the reform of adoption services. The Committee notes that provisions in the Children and Families Bill (currently at Committee stage in Westminster) appear to have similar intentions to the Social Services and Well-Being (Wales) Bill in reforming adoption services but appear to provide stronger powers of intervention⁵.

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

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

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

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

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

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

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

Post-adoption support

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

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

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

Disabled children

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

Definition

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

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

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

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

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

Finance

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

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

Subordinate legislation

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

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

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

Annex A: List of witnesses who gave oral evidence

17 April 2013

Children are Unbeatable Alliance

NSPCC Cymru

Barnardo's Cymru

25 April 2013

Children's Commissioner for Wales

BAAF Cymru

Adoption UK

Barnardo's Cymru

St David's Children Society

Welsh Local Government Association

Association of Directors of Social Services Cymru

Deputy Minister for Social Services

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

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

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

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

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

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

Removal of the reasonable punishment defence

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

Adoption UK

Alliance

Archbishop of Wales

Barnardo's Cymru

Children are Unbeatable

Children in Wales

Children's Commissioner for Wales

Global Initiative to End all Corporal Punishment of Children

National Child-minding Association Cymru

National Youth Advocacy Service Cymru

NSPCC Cymru

Refuge

Respect.

Royal College of Psychiatrists

Churches Network for Non-violence

SNAP Cymru

St John's Ambulance

UNICEF UK

Victim Support

Wales Observatory on Human Rights

Zero Tolerance