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# Health and Social Care Committee

Meeting Venue:
**Committee Room 1 - Senedd**

Meeting date:
**6 June 2013**

Meeting time:
**09:30**

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

For further information please contact:

**Policy: Llinos Dafydd / Legislation: Fay Buckle**
Committee Clerk
029 2089 8403/8032/8041/8242
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## Agenda

**Private session**

### 1 Introductions, apologies and substitutions

### 2 Inquiry into the implementation of the National Service Framework for diabetes in Wales and its future direction - Consideration of draft report (09:30 - 10:30) (Pages 1 - 43)

### 3 Access to medical technologies in Wales - Consideration of terms of reference (10:30 - 11:00) (Pages 44 - 52)

HSC(4)-18-13 paper 1

### 4 Preparation for the general and in-year financial scrutiny sessions on 18 July (11:00 - 11:30) (Pages 53 - 56)

HSC(4)-18-13 paper 2

**(Break 11:30 - 13:00)**

**Public session**

### 5 Social Services and Well-being (Wales) Bill: Evidence Session 5 (13:00 - 15:00)

**Deputy Minister for Social Services**

Gwenda Thomas AM

Albert Heaney - Director of Social Services
Julie Rogers - Deputy Director Social Services Legislation & Policy Division
Mike Lubienski - Senior Lawyer Social Care Team

**(Break 15:00 - 15:10)**

## 6 Social Services and Well-being (Wales) Bill: Evidence Session 5 (15:10 - 16:00) (Pages 57 - 63)

HSC(4)-18-13 paper 3

Dame June Clark

Professor Ceri Phillips

## 7 Papers to note (Pages 64 - 73)

**Social Services and Well-being (Wales) Bill: Disability Wales - Additional Information** (Pages 74 - 81)

**Disability Wales - Additional Information: WLGA & ADSS - State of the Nation** (Pages 82 - 90)

**Social Services and Well-being (Wales) Bill: WLGA - Regional Safeguarding Boards** (Pages 91 - 98)

**Social Services and Well-being (Wales) Bill: Letter from the Deputy Minister dated 8 May 2013** (Pages 99 - 128)

**Social Services and Well-being (Wales) Bill: WLGA - Additional Information** (Pages 129 - 146)

**Social Services and Well-being (Wales) Bill: NSPCC - Additional Information (10 May 2013)** (Pages 147 - 150)

**Social Services and Well-being (Wales) Bill: Letter from the Deputy Minister dated 14 May 2013 'When I'm Ready'** (Page 151)

**Social Services and Well-being (Wales) Bill: Carers Wales - Additional**

**Information** (Page 152)

**Social Services and Well-being (Wales) Bill: Children's Commissioner for Wales - Child Rights Impact Assessment** (Pages 153 - 162)

**Social Services and Well-being (Wales) Bill: Care Leavers Denbighshire - Additional Information** (Pages 163 - 164)

**Social Services and Well-being (Wales) Bill: Older People's Commissioner - Additional Information** (Pages 165 - 179)

**Social Services and Well-being (Wales) Bill: NAW Outreach work on engagement with focus groups** (Pages 180 - 214)

**Social Services and Well-being (Wales) Bill: Letter from the Deputy Minister dated 20 May 2013** (Pages 215 - 267)

**Social Services and Well-being (Wales) Bill: NSPCC - Additional Information (22 May 2013)** (Pages 268 - 269)

**Social Services and Well-being (Wales) Bill: Care Forum Wales - Additional Evidence** (Pages 270 - 271)

**Social Services and Well-being (Wales) Bill: Alice (Barnardo's Group 16 May) - Additional Evidence** (Page 272)

**Social Services and Well-being (Wales) Bill: Hywel Dda Local Health Board - Additional Information** (Pages 273 - 274)

**Social Services and Well-being (Wales) Bill: Care Council for Wales - Additional Information** (Pages 275 - 307)

**Social Services and Well-being (Wales) Bill: WLGA/ADSS - Definition of adults at risk** (Page 308)

**Social Services and Well-being (Wales) Bill: Advisory Group Paper** (Pages 309 - 337)

**Social Services and Well-being (Wales) Bill: WLGA, ADSS Cymru, Welsh NHS Confederation - letter to the Chair (3 June 2013)** (Pages 338 - 339)

**The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012 - Letter from the Minister for Health and Social Services** (Page 340)

**The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012 - Letter from the Chairs of the Sub Committees** (Page 341)

## 8 Motion under Standing Order 17.42 to resolve to exclude the public from the meetings on 12, 20 and 26 June

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# Agenda Item 4

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**Health and Social Care Committee: 6 June 2013**
**Social Services and Wellbeing Bill**
**Submission by Professor Dame June Clark**

This paper summarises and draws together the content of my three earlier papers which were prepared for discussion at the Roundtable meeting held on 6 March which I was unable to attend. My comments are limited to services for older people (I have no special expertise about services for children), and focus mainly on specific issues in which I have a special interest. These are:

- The integration of health and social services
- The integration of health and social care
- The assessment of older people's needs
- Continuing health care
- The registration of care homes

## 1. The integration of health and social services

In its June 2011 summary report, the NHS Future Forum stated: "We need to move beyond arguing for integration to making it happen". There appears to be universal agreement with this statement, and we have had requirements to "collaborate" and permissive legislation about pooled budgets for 25 years. Something more is required to "make the horse drink". It is shameful that organisations, politicians, managers and care professionals always look at integration from the perspective of their own organisation and vested interests, and not (in spite of what they repeatedly say) from the perspective of the service user.

Every division/interface (eg between health and social services, health and social care, social care and continuing health care, personal care and nursing, residential homes and nursing homes) involves:

- defining the interface
- devising a bureaucratic system/protocols for managing the interface
- scope for cost shunting
- scope for appeals and litigation
- additional assessment (often inadequately performed)
- extra staff to do the additional assessments
- training for these staff
-

The result is:

For service users:

- Struggling to understand and use the complex procedures
- Falling into cracks between the different sectors

For service providers:

- Huge costs – staff time spent on developing procedures, employing and training specialist staff to manage the process, appeals and litigation

We have ample evidence in Wales of all these disadvantages. Much of the cost is hidden (eg salary costs of officials who devise the procedures, and the time of district nurses spent (wasted) on implementing them.

Wales should adopt the model contained in the forthcoming **Scotland Integration of Adult Health and Social Care (Integration) Bill** (note the title) in which local authorities and Health Boards are **required** to establish Health and Social Care Partnership organisations with a **pooled budget, a single CEO accountable to both authorities and the right to employ the full range of staff to deliver integrated care.** In Wales we have several such pilot schemes; they should now be extended over the whole of Wales and be made mandatory. The key concepts are: **required, pooled budget, a single CEO accountable to both authorities,** and **the right to employ the full range of staff** to deliver integrated care**.** However, while the Scottish bill uses the words **"requires to integrate….",** Clause 143 of the welsh bill says only "make arrangements to **promote co-operation"** and "Regulations **may** require…". This is not enough.

In addition to achieving the goal of seamless care for the individual, the Scottish model would automatically get rid of some of the other problems of the present situation eg:

- The pooled budget would get rid of the "not-off-my-budget" orientation of current assessments eg.for eligibility for continuing health care (see below) and provision of nursing care ;
- The multiple assessments currently required would be replaced by a single (regularly reviewed) assessment of the person's needs;
- It would enable employment within one organisation of the full range of professional skills.

## 2. The integration of health and social care

Please note the distinction between health and social **services** and health and social **care.** It is important to be aware of the wide range of definitions used interchangeably to describe different concepts, and it is important that we are clear what we are talking about and what we want to achieve. For example, Robertson (2011) describes "integrated care" as being used to refer to:

- "Health and social services delivered by a single organisation
- Joint delivery of health and social care by more than one organisation
- Links between primary and secondary health care
- Joining care at different levels within a single sector e.g. mental health services
- Joining prevention and treatment services"

The point is that whoever is providing the services, the service user should experience their care as a seamless process – the right kind of care, in the right place, at the right time, by the right kind of people.

A particular problem is the confusion between the terms "personal care" which is seen as the responsibility of social services, and "nursing care" which is seen as the responsibility of the NHS, and the idea that personal care is not nursing. Personal care **IS** nursing: it falls within the internationally recognised definition of nursing:

> *"The unique function of the nurse is to assist the individual, sick or well, in the performance of those activities contributing to health or its recovery (or to peaceful death) that the person would perform unaided given the necessary strength will or knowledge. And to do this in such a way as to help the individual gain independence as rapidly as possible"* (International Council of Nurses 1960).

and outside the international definition of social work:

> *"The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance wellbeing. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work"* (International Federation of Social Workers and International Association of Schools of Social Work 2000)

This shows that social work is very different from nursing and it has a completely different knowledge base. Social workers have expert knowledge about other things, but not about personal care, yet are currently responsible for assessing and prescribing the personal care to be delivered to people who need it. Inadequate assessment and organisation of personal care, and in particular the financial consequences of this false distinction, currently causes major problems both for service providers and for service users in both residential and domiciliary settings.
It is a tragedy that the definitions and distinctions between "personal care" and "indirect care"
developed by the Royal Commission on Long Term Care in 1999 were misinterpreted and ignored. I believe that it was a mistake that in 1990 local authorities took over responsibility for "personal care", in which they had no knowledge or skills, and in order to do so gave up many of the "indirect care" services that they were good at.

However, service users should not have to worry about the definitional niceties of who delivers their care: what matters is that their needs are properly assessed, their care is properly planned (the present definition of a care plan contained in the UAP is "the list of services for which a person is deemed eligible"!), and is provided by people who have the appropriate knowledge and skills.

**Barriers to integration**

There are several barriers to integration:

1. Legislative (which need to be removed by this bill)
2. Financial
3. Local government configuration
4. Organisational culture and professional "turf wars"

There are several things that can be done short of organisational integration that are well documented in the literature and in use in Wales as "projects/pilots"

**1.Legislative**

Three problems need to be tackled:

a) **Sloppy language and definitions** – which should be put right in Part 1 of the bill where there is a clause specifically about definitions. In addition to the definitions already listed, we need definitions for:

- Social care: (There is no satisfactory definition – see discussion by the Select Committee 14th report 2012)
- Personal care (use the one developed by the Royal Commission)
- Integrated care (distinguish between integrated care and integrated services)
- Nursing (replace the English definition (used in the Welsh bill) and substitute the Scottish definition)
- Care plan (replace the UAP definition by the Care Quality Commission definition)

b) **The exclusive dividing line between NHS care and LA care**

This is set out in the Bill in Part 4, Section 31. This section should be removed or entirely rewritten.

This is just a hang-over from the 1973 legislation which first established health authorities and social services departments, and appears to have been mindlessly repeated in all subsequent legislation. Forty years on the world has changed – the lines between health and social care are now much more blurred (hence our current problem). Both types of authority are responsible for providing "care and support" (the phrase used in the Bill). The type of care which frail older people receive in hospital (known as "basic nursing care") is exactly the same as that delivered in care homes and by social services care assistants to people in their own homes where it is described as "personal care". The reality is that local authorities **are already providing services that are also provided by the NHS.** In reality it does not matter which agency provides the care – maybe that could vary according to local circumstances – but the point is that whoever provides it should have the right knowledge and skills, and therefore employ the right people who have those skills, to provide it. Which brings me to point (c)

c) **The inability of local authorities to employ nurses**

Clause 31 sections 4 and 5 specifically forbid "providing or arranging for the provision of nursing care by a registered nurse"

I have detailed the difference between nursing and social work. There is nothing in social work training which provides the underlying knowledge base and skills required for personal care – those knowledge and skills are part of nursing. The paradox is therefore that social services have the responsibility for providing personal care, but are denied the resources (knowledge and skills) required to do so. The NHS trains and employs specialist nurses with advanced knowledge and skills in both gerontological nursing nursing and dementia care – much needed for the care of frail older people in their own homes and in care homes as well as in hospital – but people receiving social care via social services  have no access. I discuss the position in care homes later, where I argue that not only should the distinction between residential care homes and nursing homes be abolished, but that every care home should have on its staff at least one nurse specifically trained in gerontological nursing, who could as a minimum act as an expert resource to non-nurse care assistants – hopefully avoiding the incidents we hear where a “health” problem was not recognised or recognised too late, resulting in delayed treatment and/or unnecessary admission to hospital.

I recognise that subsequent clauses do allow exceptions to these restrictions – more scope for variable interpretation, necessity for procedures and protocols for dealing with disputes etc. It is far simpler to remove the restrictions than to try to spell them out in detail along with the exceptions.

**2. Financial Barriers**

As documented in my earlier papers, at present a huge amount of time. effort, and money is expended on the activity of “not off my budget”. This barrier could be removed, or at least mitigated, by the (mandated and universal) use of pooled budgets.

**3. Local government configuration**

We just have too many local authorities in Wales. That is a problem in its own right (eg costs!) but the barrier for integrated care is the lack of co-terminosity between health and social services organisations. Somehow politicians have to knock a few heads together. It is sad that LAs put their desire to protect their own power and autonomy before the needs of the people they serve. Meanwhile the Scottish model of creating Partnership Organisations for the **delivery** of integrated care (as opposed to just talking about it) could get over this barrier, even though in Wales the multiplicity of partners will make it more difficult than in Scotland where they do have co-terminosity. If the Gwent Frailty Project can do it (and I recognise that it has not been easy) why can’t the rest of Wales do it?

**4.Organisational culture and professional “turf wars”**

My experience (eg of the attempts to develop the Unified Assessment) is that the division is strongest not among the workers on the ground but among the officials in the Welsh Government. In my experience, officials with a social work background do not understand and therefore do not respect or value the perspective of those with a nursing background. This failure to understand the nature of nursing is what lies behind the (non-existent) distinction between nursing and personal care (as described earlier). It is time that the myth that nursing is a subdivision of medicine and uses “the medical model” as opposed to “the social model” that social workers use, was killed; some branches of nursing (eg mental health, health visiting) have used a social model for years before social services departments were even invented; in any case there are not only two models – nurses generally use a “health” model, and the model for integrated care for older people, as specified in all recent documents, is a “wellbeing model” which is shared across several disciplines.

## 3. The assessment of older people’s needs

The section of the Bill on assessment is thin; most is delegated to the provision of Regulations. The history of the assessment of older people in Wales is not good. For example, the Unified Assessment Process is almost universally loathed, especially by district nurses who are the main group required to use it. The principles I want to be assured on are:
The principles I want to be reassured on are:

- Assessment of need is completely separate from and undertaken **before** financial assessment
- Assessment always includes professional judgement based on an appropriate knowledge base (ie is not just a tick-box exercise)
- Assessment is always multidisciplinary
- Assessment tools are standardised, validated, and have been tested for reliability; this requires a single All-Wales tool
- Assessment must be regularly repeated
- Assessments must not be duplicated, and the number of assessments should be minimised

## 4. Continuing health care

I have already submitted a paper on Continuing Health Care which I do not duplicate here. The Bill makes no reference to this form of care, presumably because the Bill is limited to the “social care” provided by local authorities. However it is the best (ie worst) example of the effects of the lack of integration of health and social care. A Report on Adult Social Care published by the Law Commission in May 2011 (No. 326) and presented to Parliament noted that:

“*The overwhelming message from consultation was that the arrangements for NHS continuing healthcare is an area that continues to be contentious between health and social care authorities and lacks transparency for service users. The unfortunate consequence for both parties is that funds which might otherwise be spent on providing services are instead channelled into litigation.*

Similarly, Lord Justice May in St Helens BC v Manchester PCT2 expressed the concern of the court by stating:
“*It is not satisfactory when two publicly funded public authorities engage in expensive litigation to decide which of them for pay for the care in her home of a woman whose mental and psychological conditions require constant and expensive case.* ***In the end, the money for the care and the money for the litigation is all coming out of the same purse.”***

It is therefore relevant for this issue to be included in discussions of the Bill The system in Wales for determining eligibility for Continuing Health Care, and therefore for determining whether the costs of an individual’s care should be borne by the NHS or by the local authority is nothing short of a national disgrace. In the context of this discussion I do not consider the well documented suffering of those who have experienced the process, nor on the costs of the care provided; I focus only on the costs of the process of determining who should pay for the care provided. These costs, which run to millions of pounds, should be used instead to fund the care.

It has become clear that the system has little to do with assessing and meeting people's needs: it is all about "not off my budget". By defining applicants as ineligible the NHS shifts the costs of care to local authorities. It is therefore in the interests of the NHS (who are responsible for the assessments as well as for the provision of care) to minimise the number of assessments and to set the thresholds for eligibility as high as possible. There is evidence that the thresholds are set at a higher level in Wales than in England. The result for local authorities is that they are required to provide "social care" for people with highly complex needs.

## 5. The registration of care homes

I am aware that separate legislation is planned to revise the system for the registration of care homes. However this issue also overlaps issues to be included in the Bill, in particular the distinction that is made between "social care" or "personal care" and nursing care, and therefore the distinction between residential care homes and nursing homes.

I read with great interest the report on residential care. It is excellent and I would agree with all its recommendations. The only problem is that its terms of reference precluded it from looking at nursing homes – yet another dysfunctional consequence of the false distinction discussed above. The key point is that the evidence on the increasing age of residents at the point of admission, with the concomitant increase in health problems (eg. co-morbidities, complex medication regimes etc), shows that more and more residents will have health problems and will need nursing care. The arguments that were (rightly) put forward for the abandonment of the distinction between homes registered for dementia care and homes not so registered apply in exactly the same way for the abandonment of the distinction between nursing and residential care homes. There should be only one category – **care homes.**

I believe that the barrier to employing nurses in social care services and in particular in residential care homes should be removed, and that **every** home should have on its staff a nurse with specialist training and experience in gerontological nursing to be used as a consultant in the same way as homes currently use GPs (small homes could share)

# Agenda Item 7

## Health and Social Care Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Meeting Venue: Committee Room 3 – Senedd

Meeting date: Thursday, 16 May 2013

Meeting time: 09:30 – 15:50

This meeting can be viewed on Senedd TV at:
http://www.senedd.tv/archiveplayer.jsf?v=en_400000_16_05_2013&t=0&l=en
http://www.senedd.tv/archiveplayer.jsf?v=en_700000_16_05_2013&t=0&l=en

## Concise Minutes:

| Assembly Members: | Vaughan Gething (Chair)<br>Rebecca Evans<br>William Graham<br>Elin Jones<br>Lynne Neagle<br>Gwyn R Price<br>Ken Skates<br>Lindsay Whittle<br>Kirsty Williams |
|---|---|
| Witnesses: | Gerry Evans, Care Council for Wales<br>Urtha Felda, North citizen panel<br>Rhian Huws Williams, Care Council for Wales<br>Jennie Lewis, North citizen panel<br>Carol Lamyman-Davies, Director, Board of Community Health Councils in Wales<br>Eirian Rees, South West citizen panels<br>Carol Shillabeer, Powys Teaching Health Board<br>Helen Birtwhistle, Director, Welsh NHS Confederation<br>Graham Williams, South East citizen panel<br>Sandra Morgan, College of Occupational Therapists Wales |

| Committee Staff: | Fay Buckle (Clerk)<br>Claire Griffiths (Deputy Clerk)<br>Stephen Boyce (Researcher)<br>Lisa Salkeld (Legal Advisor) |
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TRANSCRIPT
View the meeting transcript.

## 1. Introductions, apologies and substitutions

1.1 Apologies were received from Darren Millar. There was no substitute.

## 2. Social Services and Well-being (Wales) Bill: Evidence Session 4

2.1 The Committee took evidence from Welsh NHS Confederation, Local Health Boards and the Board of Community Health Councils in Wales.

## 3. Social Services and Well-being (Wales) Bill: Evidence Session 4

3.1 The Committee took evidence from the Care Council for Wales.

## 4. Social Services and Well-being (Wales) Bill: Evidence Session 4

4.1 The Committee took evidence from Citizen's Panels for Social Services.

## 5. Social Services and Well-being (Wales) Bill: Evidence Session 4

5.1 The Committee took evidence from young people who have experienced transition services.

## 6. Social Services and Well-being (Wales) Bill: Evidence Session 4

6.1 The Committee took evidence from disabled young people who have experienced transition services.

## 7. Papers to note

7.1 The papers were noted.

7.1 Human Transplantation (Wales) Bill: Stage 2 - letter from the Minister for Health and Social Services - Evaluation Strategy

7.2 Minutes from the meetings held on 2 and 8 May

## 8. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

8.1 The motion was agreed.

## 9. Social Services and Well-being (Wales) Bill: Discussion of Outreach work

9.1 The Committee discussed the report from the Assembly's Outreach team on the Social Services and Well-being (Wales) Bill.

## 10. Social Services and Well-being (Wales) Bill: Key issues and recommendations

10.1 The Committee had an initial discussion on key issues for the Committee's report.

# Health and Social Care Committee

Meeting Venue: **Committee Room 1 – Senedd**

Meeting date: **Wednesday, 22 May 2013**

Meeting time: **09:04 – 12:09**

This meeting can be viewed on Senedd TV at:
http://www.senedd.tv/archiveplayer.jsf?v=en_200000_22_05_2013&t=0&l=en

## Concise Minutes:

Assembly Members:

**Vaughan Gething (Chair)**
**Rebecca Evans**
**William Graham**
**Elin Jones**
**Darren Millar**
**Lynne Neagle**
**Gwyn Price**
**Ken Skates**
**Lindsay Whittle**
**Kirsty Williams**

Witnesses:

**Mark Drakeford**
**Vernon, Welsh Government**
**Wakeling, Welsh Government**

Committee Staff:

**Sarah Beasley (Clerk)**
**Sarah Sargent (Deputy Clerk)**
**Joanest Jackson (Legal Advisor)**

### 1 Introductions, apologies and substitutions

1.1 No apologies were received.

### 2 Human Transplantation (Wales) Bill: Stage 2 – Consideration of amendments

2.1 In accordance with Standing Order 26.21, the Committee disposed of the following amendments to the Bill:

**Section 1:**

No amendments were tabled to this section, therefore Section 1 was deemed agreed.

**Section 2:**

**Amendment 25 (Darren Millar)** was withdrawn.

**Amendment 26 (Darren Millar)** was not moved.

**New section:**

**Amendment 27 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar | Rebecca Evans<br>Vaughan Gething<br>Elin Jones<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Lindsay Whittle<br>Kirsty Williams | 0 |
| 2 | 8 | 0 |
| **Amendment 27 was not agreed.** | | |

**Section 3:**

**Amendment 22 (Elin Jones)** was withdrawn.

**Section 4:**

**Amendment 1 (Mark Drakeford)**

| For | Against | Abstain |
|---|---|---|
| Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Kirsty Williams | William Graham<br>Elin Jones<br>Darren Millar<br>Lindsay Whittle | 0 |
| 6 | 4 | 0 |
| **Amendment 1 was agreed.** | | |

**Amendment 28 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar | Rebecca Evans<br>Vaughan Gething<br>Elin Jones<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Lindsay Whittle<br>Kirsty Williams | 0 |
| 2 | 8 | 0 |
| **Amendment 28 was not agreed.** | | |

**Amendment 29 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 29 fell.

**Amendment 2 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 30 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 30 fell.

**Amendment 3 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 31 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 31 fell.

**Amendment 4 (Mark Drakeford)**

| For | Against | Abstain |
|---|---|---|
| Rebecca Evans<br>Vaughan Gething<br>Elin Jones<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Lindsay Whittle<br>Kirsty Williams | William Graham<br>Darren Millar | 0 |
| 8 | 2 | 0 |
| **Amendment 4 was agreed.** | | |

**Amendment 32 (Darren Millar)**
As Amendment 4 was agreed, Amendment 32 fell.

**Amendment 23 (Elin Jones)** was withdrawn.

**Amendment 33 (Darren Millar)**
As Amendment 4 was agreed, Amendment 33 fell.

**Amendment 34 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar<br>Elin Jones<br>Lindsay Whittle | Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Kirsty Williams | 0 |
| 4 | 6 | 0 |
| **Amendment 34 was not agreed.** | | |

**Amendment 35 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 35 fell.

**Section 5:**

**Amendment 36 (Darren Millar)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 37 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar<br>Elin Jones<br>Lindsay Whittle<br>Kirsty Williams | Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates | 0 |
| 5 | 5 | 0 |
| **As there was a tied vote, the Chairs casting vote was applied in the negative, in accordance with Standing Order 6.20(ii). Therefore, Amendment 37 was not agreed.** | | |

**Amendment 38 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar<br>Lindsay Whittle | Rebecca Evans<br>Vaughan Gething<br>Elin Jones<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Kirsty Williams | 0 |
| 3 | 7 | 0 |
| **Amendment 37 was not agreed.** | | |

**Amendment 39 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Elin Jones<br>Darren Millar<br>Kirsty Williams | Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates | Lindsay Whittle |
| 4 | 5 | 1 |
| **Amendment 37 was not agreed.** | | |

**Amendment 5 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 6 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 7 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 8 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 9 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 10 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Section 6:**
No amendments were tabled to this section, therefore Section 6 was deemed agreed.

**Section 7:**

**Amendment 40 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 40 fell.

**Amendment 41 (Darren Millar)**
As Amendment 28 was not agreed, Amendment 41 fell.

**Amendment 11 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Section 8:**

**Amendment 12 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Section 9:**
No amendments were tabled to this section, therefore Section 9 was deemed agreed.

**Section 10:**
No amendments were tabled to this section, therefore Section 10 was deemed agreed.

**Section 11:**
No amendments were tabled to this section, therefore Section 11 was deemed agreed.

**Section 12:**
No amendments were tabled to this section, therefore Section 12 was deemed agreed.

**Section 13:**
No amendments were tabled to this section, therefore Section 13 was deemed agreed.

**Section 14:**

**Amendment 13 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 14 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 15 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 16 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 17 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 18 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Section 15:**

**Amendment 19 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**New section:**

**Amendment 24 (Elin Jones)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar<br>Elin Jones<br>Lindsay Whittle<br>Kirsty Williams | Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates | 0 |
| 5 | 5 | 0 |
| **As there was a tied vote, the Chairs casting vote was applied in the negative, in accordance with Standing Order 6.20(ii). Therefore, Amendment 24 was not agreed.** | | |

**Section 16:**
No amendments were tabled to this section, therefore Section 16 was deemed agreed.

**Section 17:**

**Amendment 42 (Darren Millar)**

| For | Against | Abstain |
|---|---|---|
| William Graham<br>Darren Millar | Rebecca Evans<br>Vaughan Gething<br>Lynne Neagle<br>Gwyn Price<br>Ken Skates<br>Lindsay Whittle<br>Kirsty Williams | 0 |
| 2 | 7 | 0 |
| **Amendment 42 was not agreed.** | | |

**Section 18:**

**Amendment 20 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Amendment 21 (Mark Drakeford)** was agreed in accordance with Standing Order 17.34(i).

**Section 19:**
No amendments were tabled to this section, therefore Section 19 was deemed agreed.

**Section 20:**
No amendments were tabled to this section, therefore Section 20 was deemed agreed.

2.2 The Chair advised that all sections of the Bill had been agreed by the Committee and, as all amendments had been disposed of, Stage 3 would commence on 23 May 2013.

## 3 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting on 6 June for items 1 and 2

3.1 The motion was agreed.

disability wales
anabledd cymru

# A Paper for the Health and Social Care Committee on The Social Model of Disability as a Basis for Transforming Social Services

## Introduction

This paper is a supplement to Disability Wales (DW) submission in response to the Health and Social Care Committee consultation on the Social Services and Well-being (Wales) Bill (the SSW Bill). The original submission, supported by 36 organisations representing the full spectrum of impairment groups, recommended an amendment to the SSW Bill to replace the Medical Model definition of disability with a Social Model definition.

This paper, which has similarly been drafted in close consultation with key cross sector partners – including citizens and service recipients – will develop the case outlined in the original submission under *1. Definition of Disability*, which the Committee are asked to read in conjunction with this paper. It will explain why the SSW Bill must be founded on a Social Model definition of disability if it is to achieve the Welsh Government (WG)'s aim of fundamentally transforming Social Services and the way they are delivered.

In considering the SSW Bill it may be helpful to question how will it enable disabled people and other citizens to become more independent in their own lives and included as active contributors within their communities?

## Why models matter

Conceptual models are "mental constructs that describe aspects of the physical and social world for the purposes of understanding and communication…They help us to think about and solve problems" [1].

There are numerous ways of conceptualising disability, some of which focus more on the individual, while others are more concerned with the organisational and social aspects of disablement. These include Normalisation (in Learning Difficulties), the Recovery Model (in Mental Health), the Biopsychosocial Model (again in Mental Health, but also more broadly and now adopted by the UK Government as the basis for its welfare reforms), and the Rehabilitation Model, which is designed to "facilitate the process of recovery from injury, illness, or disease to as normal a condition as possible" [2].

The latter has its roots in the Medical Model of disability, "a sociopolitical model by which illness or disability, being the result of a physical condition, and which is intrinsic to the individual (it is part of that individual's own body), may reduce the individual's quality of life, and causes clear disadvantages to the individual" [3].

Thus, the underlying assumption of the Medical Model is that impairments and health conditions are the cause of disability.

Unlike most of the other models, which were developed almost exclusively by academics and medical professionals, the Social Model was developed by disabled people out of their own experience of living in society with impairments and health conditions.

The Social Model makes a clear distinction between impairment and disability.

Impairment is defined as:

> *An injury, illness, or congenital condition that causes or is likely to cause a long-term effect on physical appearance and/or limitation of function within the individual that differs from the commonplace.*

Whereas disability is defined as:

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

Other models, including the Medical Model, tend to view people who have impairments and health conditions as having a "deficit" which causes them to suffer a "personal tragedy" which makes them “abnormal”, in need of a cure, and deserving of charity. This places responsibility for disability very firmly on the individual and leads to a perception of service users as "passive recipients of care".

In contrast, the Social Model identifies the cause of disablement as the systemic barriers, negative attitudes and social exclusion which people experience *on top of* impairments and health conditions.

The Social Model therefore recognises that we have a collective responsibility for addressing the social, environmental, institutional and attitudinal barriers to equality, rights and social inclusion that people with impairments and health conditions face on a daily basis.

When people who have impairments or health conditions become aware of the Social Model, many experience a sense of liberation from the sense of burden which the Medical Model places on them – a similar experience to that of women recognising the oppression of patriarchy. The Social Model may therefore be characterised as empowering for individuals and has major implications for the way that services are assessed and provided.

It should be stressed that the Social Model and the Medical Model serve two different purposes, both of which are important and valid. However, problems arise when one model is used for a purpose that it is not designed for. For instance, someone with a broken leg does not want medical professionals to address this problem from the perspective of the Social Model. They want their body fixed, not society.

Conversely, the Medical Model should not be used as a basis for addressing the social, environmental, organisational and attitudinal barriers which, in the experience of many disabled people, are the real causes of disablement.

**The transformative potential of implementing the Social Model of Disability**

DW's original submission stated:

> *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".*

A system of Social Services based on implementation of the Social Model of Disability has genuine potential for achieving WG's aspirations for fundamentally transforming Social Services and the way they are delivered.

The current system of "care management" has been characterised as "a gate-keeping system in which Social Workers essentially manage access to social care resources by determining the eligibility of those seeking support" [4].

In contrast, a more personalised approach "will create opportunities for the use of social work skills in supporting people using social care support in developing choice and control in their lives" [ibid].

Choice and control is a fundamental concept of Independent Living, which "enables us as disabled people to achieve our own goals and live our own lives in the way that we choose for ourselves" [5]. It refers to individuals' right to determine what, how and when support is provided, and by whom.

DW's original submission to the Committee advocated for enjoyment of the Right to Independent Living to be incorporated into the meaning of well-being set out in the Bill. The Right to Independent Living is enshrined in Article 19 of the UN Convention on the Rights of Persons with Disabilities [6].

The Social Model provides an appropriate framework for making choice and control a reality in Social Services by addressing the social, environmental, organisational and attitudinal barriers to Independent Living.

A system of Social Services based on a Medical Model definition which places responsibility for disability on individuals and their perceived deficits clearly lacks this transformative potential.

## Applying the Social Model of Disability within Social Services in Wales

The Social Model has proved to be a durable and insightful way of understanding the experience of disablement in society. It very effectively highlights the disabling impact of a wide range of social barriers on people who have impairments and health conditions.

In applying a Social Model approach to assessment as well as identifying the unique set of barriers that prevent an individual from enjoying their right to Independent Living, it will also enable individuals to make their unique contributions to their communities.

It requires Social Workers to consider individuals' unique circumstances in a more holistic way, simultaneously addressing both the negative impact that social barriers have on their lives and the positive contributions they can make to their communities if their assets are recognised, valued, developed and deployed.

## How a SMD approach to assessment would work in practice

An SMD approach to Social Services assessments would provide a foundation for implementing Citizen Directed Support (CDS). The CDS model is outlined in DW's original submission under section *3. Citizen Directed Support*.

The entire focus of Social Services departments would switch from care management (i.e. gate-keeping access to available resources) to ***facilitating individuals to achieve Independent Living and participate in their communities***. Independent Living is achieved by removing the social, environmental, institutional and attitudinal barriers that disable people.

In carrying out an assessment Social Workers would start by initiating a conversation with the individual and their circle of support (family, friends, advocate, professionals etc) based on existing Person Centred Planning models of assessment, and the Talking Points Personal Outcomes Approach (see section 9. *National Outcomes Framework*, in the original paper).

This will enable the Social Worker to build a picture of the individual's personal circumstances, their relationships, the practical support they require, their goals and aspirations, and the outcomes they wish to achieve. Consideration will be given to how community based resources can be accessed.

The conversation would then focus on facilitating the individual to identify the barriers to Independent Living that they experience. The Social Worker would work with them to co-produce a plan for eliminating or reducing the impact of these barriers on their lives.

The final part of the assessment would identify the individual's skills, gifts, qualities and experience, and consider how these can be further developed (if necessary) and deployed in their community. This may identify additional barriers to social inclusion to be addressed in the support plan. Consideration will be given to identifying time banking and similar opportunities for community engagement.

The above process may be described as ***Citizen Directed, Outcomes Focused, Supported Self-Assessment.***

It is a universal approach to assessment and support planning which can be applied to all individuals, regardless of their impairments or health conditions.

It enables a personalised approach to social support with the potential to transform not only individuals' relationships with their services, but also with their communities.

## What are the first steps?

Implementation of the Social Model of Disability as the basis for the SSW Bill will require significant culture change within Local Authorities. Whilst some will welcome the challenge of re-conceptualising the way they provide services, others may be more resistant.

Whilst responsibility for initiating culture change lies with the Local Authorities themselves, strong leadership from WG is vital. There appears to be growing acceptance of the principles of Co-production within WG and the National Assembly. However, we suggest that in the context of the vision outlined in *Sustainable Social Services,* there is a need to progress to the next level by putting Co-production into practice.

The Wales Alliance for Citizen Directed Support and the Wales Co-production Practitioners Network have gained some expertise in this and can make a valuable contribution if they are given a more central role in moving the transformation agenda forward. We suggest that a practical first step would be to hold an exploratory conversation about implementing Co-production between these organisations and the Welsh Government.

Several third tier organisations will also have a key role in ensuring that this agenda for transformational change is progressed with consistency across Wales, including ADSS Cymru, WLGA, the Care and Social Services Inspectorate Wales, and the Care Council for Wales.

We would wish to see similar conversations taking place involving senior representatives from these and other public, private and third sector organisations, together with other stakeholders and citizens, with a view to developing the agenda for transformational change on a co-productive basis.

These conversations should include consideration of the potential value of incorporating a Talking Points Personal Outcomes Approach to monitoring and evaluation, as discussed in the original paper under section 9. National Outcomes Framework.

We strongly believe that effective Co-production is the critical success factor in transforming Social Services in line with the Social Model of Disability. By working together co-productively, with due consideration being given to all stakeholders’ voices and expertise – including, importantly, citizens and service recipients – the practical mechanisms for transforming Social Services in line with the principles of Citizen Directed Support, can be expected to emerge. We anticipate that co-productive engagement with citizens will result in consensual support for the systems and processes that stakeholders co-design.

## References

[1] http://en.wikipedia.org/wiki/Conceptual_model

[2] http://medical-dictionary.thefreedictionary.com/Rehabilitation

[3] http://en.wikipedia.org/wiki/Medical_model_of_disability

[4] Personalisation of Social Care & The Future of Care Management: Reflections from a Care Services Improvement Partnership Seminar 19th July 2007
www.dhcarenetworks.org.uk/_library/Personalisation_of_Social_Care.doc

[5] Disability Wales, 2010

[6] UN Convention on the Rights of Persons with Disabilities
http://www.un.org/disabilities/convention/conventionfull.shtml

## Contact

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# WLGA/ADSS Cymru

# Briefing Note for Health & Social Services Committee Members

# State of the Nation: Transforming Social Services in Wales

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**This briefing provides an overview of current work to transform social services within local government, demonstrating the strong political and professional leadership in evidence across local government. Members are asked to consider how far the Social Services and Wellbeing (Wales) Bill will contribute to the key task of delivering new models of services, which are more responsive to need and more sustainable in the face of increasing demand.**

1. Changing demographics and the increasingly complex nature of individual needs has led to a debate about the future of social services in Wales. Service models are being transformed across Wales to deliver more innovative and responsive models of care, which respond to the individual needs of a user and provide a seamless pathway? The Bill needs to provide added value to this, unblocking barriers and providing a modernised legal framework.

2. Improving services for citizens is our collective political and professional commitment, but we recognise social services cannot do this alone. The Bill therefore has a critical role in embedding new service models within a statutory framework which defines eligibility, and clarifies the role of public services in delivering improved wellbeing. The Bill must empower authorities to manage demand for care and support whilst empowering citizens to live more independently, and provide them with better choices and more control.

3. Against a backdrop of growing demand and reduced resources, there isn’t a magic bullet. Social services are facing real and unsustainable increases in demand. The number of looked after children and those on the child protection register is growing. The number of people with a learning disability is increasing, along with greater numbers of older people, often with complex care needs, whose support needs are extensive.

4. Service transformation and the specific requirements of the Bill will not be cost neutral. Political Leaders from across local government have called for a debate, around how we can deliver change within the financial context. There is a strong consensus in Wales, around the principles for change, and we welcome the fact that the Bill endeavours to reflect those principles. Local government has long argued for action around these core principles and we believe they must be the cornerstone of reform, these include:

    - Simplifying legislation
    - Streamlining bureaucracy
    - Clarifying the functions of social services
    - Achieving a balance between national consistency and local autonomy
    - Requiring greater partnership working with key partner such as health
    - Providing social services with a core leadership role around wellbeing
    - Recognising the contribution of the wider public services, and third sector partners in developing and delivering preventative service

5. The report of the Independent Commission on Social Services, the precursor to the White Paper and Bill, stated that we are ‘*building from a position of strength*’. Clearly, we accept that the Bill will require Local Government to make significant further improvements, especially in reducing inconsistency. We are confident that there is strong professional and political leadership at a local level to lead that change, which must be supported by a proportionate and flexible approach.

6. Through our collective commitment to the ten-year strategy, the transformation agenda is already well established in Wales, with collaboration and co-production at its heart. Whilst the Bill will enable greater change, we are not standing still. Ambitious programmes of service redesign and reform have been established and are being driven through, with support from WLGA, ADSS Cymru, and SSIA. Already we have achieved a range of successes, but we must be clear that change is never easy and a number of barriers remain which we are looking to the Bill to unblock.

7. The Welsh Government funded SSIA has supported a range of groundbreaking work, in tandem with a range of UK wide experts, to push the boundaries of change and develop new models of service. Through the WLGA social services policy group for Cabinet Members, there has been strong political leadership, resulting in the establishment of four regional social services improvement collaboratives managed by Directors of Social Services. Annex 1 describes some of that work.

8. Building on the vision set out in 'Sustainable Social Services: A Framework for Action', local government has developed an ambitious implementation plan that the Deputy Minister describes as ' *A landmark document which demonstrates the absolute commitment of local government to transforming social services in Wales'*. The plan combines the delivery of regional programmes alongside national endeavours. The WLGA have established a Local Government Implementation Board to oversee delivery.

9. To help ensure our vision becomes a reality, we are looking to the Bill to provide local government with necessary enabling powers. These powers must be focused on the principles outlined above and support delivery of new models of service, with our partners, minimising the extensive and expensive bureaucracy currently overshadowing social services, and empowering social services, to play a leadership role across the public services in improving wellbeing.

10. This will be achieved only if the Bill is developed in genuine partnership with the sector and grounded in the current reality of increasing demand and extensive pressure on budgets. Provisions in the Bill must be proportionate, to enable flexibility around local service design, but they must also be prescriptive and bold where obstacles remain, such as in integrating services and requiring other public sector bodies to play a significant role in improving the wellbeing of citizens.

# Annexe 1:

## Regional collaboration across Wales

There are four social services regional improvement collaboratives across Wales - South East Wales (ten local authorities), Western Bay (three local authorities), North Wales (seven local authorities) and Mid & West Wales (four local authorities).

The collaboratives have the political support of Cabinet Members, and leadership and oversight is provided via the WLGA's regional Social Services Policy Group, in addition to local mechanisms. They are Director led, and each have significant programme of work in place. Two representative examples are set out below.

### 1. The Western Bay Health and Social Care Programme (Bridgend, Neath Port Talbot and Swansea)

Key Example - **The Older People's Project**

- Currently analysing need and demand for existing and future services using a Whole Systems Model to produce a business case with costed options for change.
- Developing an overarching joint Health and Social Care Western Bay Older Persons Strategy, reflecting the Bill's principles of early intervention and prevention via enhanced integrated health and social care community services.
- Governance arrangements for the Western Bay Programme and the Abertawe Bro Morgannwg University Health Board *'Changing for the Better'* Programme are being monitored and reviewed to achieve integration, collaboration, eliminate duplication and ensure interdependencies between the two programmes is managed effectively. For example closure of acute beds and reinvestment in community based services.
- The delivery / implementation plans will incorporate the principles of the Social Services and Wellbeing (Wales) Bill, and detailed guidance as it becomes available on issues such as eligibility, assessment, wellbeing, safeguarding, and take a citizen centred community based approach delivered via integrated locality based teams.
- Whole Systems Modelling of dementia care pathways will commence in March 2013 and this will inform this crucial area of work.

Other Western Bay collaborative programmes include the Mental Health Project, the Learning Disability Project, the Commissioning Project, the Integrated Family Support Service, establishing Regional Safeguarding Boards, creating a regional Adoption Service, and regional services for children and young people with complex needs, the Youth Offending Service and Supporting People.

## 2. The South East Wales Improvement Collaborative (SEWIC) (Vale of Glamorgan, Bridgend, Cardiff, RCT, Merthyr Tydfil, Blaenau Gwent, Caerphilly, Torfaen, Newport and Monmouthshire)

Key example - **Fostering & Adoption Services Project**

Exploring the potential for collaboration, between local authorities in the recruitment, assessment and training of foster carers.

- A regional approach to marketing which would ensure consistent brand imagery for fostering across the whole of the regional.
- Economies of scale and effort through pooling all existing marketing resource and expertise currently spread across the region.
- A customer friendly efficient recruitment process which would ensure less applicants "dropping out" during the assessment process and assessments being undertaken in a shorter timescale.
- More effective collaboration between local authorities in the recruitment of carers.

Other SEWIC collaborative programmes include Extra Care Housing, Assistive Technology, High Cost Adult Regional Brokerage & Procurement Hub and Review of High Cost Adult Placements, the 4Cs Children's Placements Commissioning Unit, regional adoption services, regional safeguarding boards, the Cardiff and Vale Integrated Health and Social Care Services Programme (the Wyn Campaign for Older People, integrated mental health services; integrated learning disability services, integrated services for children with complex needs because of disability) the Gwent Frailty programme, Integrated Family Support Services, integration of services across Caerphilly and Blaenau Gwent.

## 3. Mid & West Wales Health & Social Care Collaborative (Pembrokeshire, Ceredigion, Carmarthenshire and Powys)

The Collaborative is engaged in a range of transformation projects spanning service areas, working across Councils and with Health to ensure that new service models deliver positive outcomes and achieve optimum efficiency. A particular example relates to Learning Disability, in respect of which all organisations involved are working to:

- Drive through transformational change for developing sustainable Learning Disability Services in the Region
- Develop an incremental approach towards full integration of services through consistent planning, commissioning and procurement

- Movement towards integrated delivery of health and social services for people with a Learning Disability across the Region

## 4. North Wales Health and Social Care Improvement Collaborative (Ynys Mon, Gwynedd, Conwy, Denbighshire, Flintshire, Wrexham)

The North Wales Collaborative is well established with a range of transformational activities. The Collaborative recently launched the North Wales Commissioning Hub, and is aligned with the North Wales Health and Social Services Programme Board established as part of the work led by Chief Executives in the region.

**Key Example- North Wales Commissioning Strategy**

- North Wales Commissioning Hub formally launched
- Improve capacity and quality of placements across the region
- Facilitate more effective commissioning and Procurement of places
- Project initiated to map demand, spend and usage across the 6 local authorities, to provide an options appraisal for the commissioning of IFA's
- Development of a NW strategy for in house fostering underway, looking specifically at recruitment, retention, and support to foster carers
- Development of a regional domically care monitoring framework
- Mental Health and Learning Disability commissioning workshops to support development of regional strategy

## National initiatives

Since its inception in 2006 the Social Services Improvement Agency (SSIA) – funded through a grant from Welsh Government and a partnership venture between Welsh Government, WLGA and ADSS Cymru – has led a number of important national initiatives, working with Councils and partners, to support service redesign, achieve step change in operational practice and further build leadership capacity at all levels to effect the culture change needed for delivery of Sustainable Social Services. It is currently leading the development of a national specification for a Citizen Portal in partnership with Councils and other agencies, and recently facilitated a number of workshops across Wales discussion from which has informed a key report on Access to Social Services and Wellbeing Services. Setting out proposed models for achieving the core ambition of the Bill for improved access for wellbeing services for people in need and citizen-led, outcomes focused assessment, the findings of the report will support wider debate across the sector in the coming period on how current processes and practice are overhauled to achieve a new way of working with users and carers.

Examples of the programmes of SSIA include:

### 1. Transforming Services for Older People

Service transformation for older people remains a key priority for the SSIA. The current and predicted rise in demand for services, increased expectations from users and carers and unprecedented financial constraints make ever more urgent the need to radically rethink how services are delivered to older people across our communities. During 2011 the SSIA with the support of John Bolton carried out an analysis of older people's services across Wales. This work developed a suggested future model where the principles of prevention, independence and reablement are central. The 'John Bolton' model has gained currency as the recognised way forward for older people's services, delivering greater efficiency and improved outcomes for service users and carers, and is referred to within the White Paper on Sustainable Social Services.

Progress on delivering the model is advanced in many parts of Wales. All Councils have reablement services in place, and analysis to be published shortly by the SSIA will provide further information on positive outcomes, often delivered in partnership with Health and other sectors.

In addition the SSIA is taking forward key aspects of this work with a goal to share nationally the learning. The three demonstrators are:

- Carmarthenshire County Council who are focussing on dementia services across the county
- Denbighshire County Council are developing a single point of contact, information and assessment
- Ceredigion County Council in partnership with Powys who are further developing reablement services as part of a wider service remodelling initiative

SSIA continues to work with the three councils as they build on their early initial developments and successes.

### 2. Learning Disability Services in Wales – Opportunity Assessment

The SSIA has supported 5 Councils and their partners in reviewing their current service models and identifying priorities for improvement and service development through a methodology known as 'Opportunity Assessment'. The approach has been used extensively in England to support service transformation in this area and based on a detailed assessment of commissioning and service strategies, performance data and individual case files. Six Demonstrator Sites across Wales have taken this forward (Bridgend, Caerphilly, Gwynedd, Pembrokeshire, Neath Port Talbot and Vale of Glamorgan). Emerging from the work is a 'progression' service model which focuses on promoting and regaining independence, and looks to improve the outcomes both of those currently in care and those who have a potential future need.

Thoughts on this model are being discussed with the Deputy Minister's Learning Disability Advisory Group to inform the debate on how the take forward the transformation of Learning Disability services in Wales. Wider learning from the Demonstrators are being shared at regional learning events across Wales and a further national event is planned in the summer.

### 3. Developing a Social Care and Wellbeing Information Site for the Welsh Citizen

SSIA's work in this area involves a range of partners, users and carers and is focused on developing a specification for Social Care and Wellbeing Portals which will be provide information and advice to people 'in need' – i.e. who need a level of support to maintain their independence and ultimate wellbeing; this might be as a current or potential user of services, someone who cares for or is a friend or colleague of another person. The aim is to help people by providing effective information, with which they can make choices about what that may be available to them. Information on services available at national, regional and local levels will be provided in a dynamic, clear, succinct and interactive way and all in one place. This will form a key point of access to wellbeing services as set out in the Bill and an important example of how services will be adapted to give greater voice and control to citizens.

More information about any of the SSIA programmes can be found at www.ssiacymru.org.uk

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**Our Ref/Ein Cyf:**
**Your Ref/Eich Cyf:**
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**Email/Ebost:** Emily.warren@wlga.gov.uk

Julie Rogers
Deputy Director
Welsh Government
Cathays Park
Cardiff

Dear Julie,

**Re: Regional Safeguarding Children Boards**

I am writing in response to your letter to local authorities dated November 2012, requiring a progress update around LSCB collaboration. This is set out in Annexe A.

As set out in the WLGA and ADSS Cymrur response to the consultation on the Bill, we see the value of enhanced collaboration at a regional level- where there is a business case to do so, through improving outcomes and increasing efficiencies. In many areas across Wales this approach has already been adopted, but we are keen to find a solution that meets the distinct needs of the two largest areas in the public service footprint, Mid & West Wales, and North Wales.

We therefore welcome the pragmatic approach adopted by WG, which enables boards to come together at a regional level, prior to legislation being enacted. This provides a critical opportunity to test different regional approaches, to ensure they are safe, improve outcomes and retain the professional and political accountability of Directors and Cabinet Members in safeguarding vulnerable children.

Steve Thomas
Chief Executive
Prif Weithredwr

Welsh Local Government
Association
Local Government House
Drake Walk

To support this, the WLGA, in partnership with ADSS Cymru have commissioned Professor Jan Howarth, (Sheffield University) to undertake a national piece of work. The objective is to support the Boards to develop an approach, which manages risk and maximises collaborative advantage.

We expect that this work will inform the drafting of the Bill, and subsequent guidance and regulations, to ensure that any prescribed areas are safe, effective and remain locally accountable.  We expect the work to be completed by the summer of 2013, with interim reports available prior to publication.

We do however remain concerned that whilst regional collaboration is progressing, the continued lack of progress around a National Funding Formula, remains a significant risk in the operation of Boards. We would welcome discussions with WG colleagues to determine the potential for a voluntary national formula to be established, as proposed at the WLGA Seminar on Safeguarding in 2008, and supported by key partners in Health and Police.

We would welcome the opportunity to discuss with you the issues raised in this letter, and Professor Howarth's work, and to this end would welcome your attendance at the Safeguarding and Protection Policy group, which will next meet on 28TH March at 3pm.

Kind Regards

E. Warren

Emily Warren
WLGA Policy Lead

Simon Burch
Chair, ADSSC Safeguarding and Protection Policy Group

## Annexe A

## Progress Update on Regional Collaboration

| **Area** | **Progress** |
|---|---|
| Cardiff and the Vale | Discussions underway to establish a joint Board |
| Cwm Taf | Joint Board established and operational |
| Gwent | Shadow Board established, Chair Appointed |
| North Wales | Two tier approach, Shadow Board Established, 3 LSCBs remain underneath |
| Mid and West Wales | Discussions underway and options appraisal in progress |
| Western Bay | Shadow Board established |

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# TRANSFORMING GOVERNANCE INTO COLLECTIVE ACTION TO SAFEGUARD CHILDREN: DEVELOPING A SHARED KNOWLEDGE BASE FOR REGIONAL SAFEGUARDING CHILDREN BOARDS

## BRIEFING PAPER

As outlined in 'safeguarding' (Part 7) of the Social Services and Well-Being (Wales) Bill the 22 Local Safeguarding Children Boards (LSCBs), established in 2007, are to come together as regional boards with a new National Independent Safeguarding Board. Given that the regional boards have to deliver effective strategic-level collaboration, it is important to identify the factors that contribute to, or limit, their ability to do so in a way that improves outcomes for children. The Joint Inspectorate (2011), drawing on the Self-Assessment and Audit Tool (SAIT) developed by Professor Jan Horwath and the late Dr Tony Morrison, identified issues that local boards encountered when attempting to collaborate to safeguard and promote the welfare of children. It is not yet clear, however, what governance arrangements and systems the larger regional boards will need to have in place to ensure they avoid these issues and promote effective practice that safeguards children and promotes their welfare.

With this in mind, Professor Jan Horwath from the University of Sheffield, has been commissioned by WLGA/ADSS Cymru to support the regional boards in their development. More specifically she will work with members of the boards to identify not only how regional boards can conduct their business to achieve effective safeguarding outcomes for children and young people but also what regulations and guidance will facilitate and support the regional boards develop safe systems and safeguard children. In order to achieve this, by working collaboratively with the regional boards, she will attempt to answer the following questions:

- How do regional boards agree on a shared vision and strategic direction?
- How do they establish limited, shared priorities that take account of different local needs and priorities?
- How can members of regional boards hold each other to account and ensure a culture of challenge?
- What governance frameworks, guidance and support are required to assist the achievement of the above?

This project is designed to support the regional boards in their own development as well as providing information to the Welsh Government about guidance and regulation that will enable the boards to operate. With this in mind the following approach will be taken:

*Briefing session for members of the regional boards on 5th June 2013*

A one-day seminar targeted at the Chair, Safeguarding Manager and two other members from each Board. The purpose of the seminar will be to provide an opportunity for participants to:

- Appreciate 'what works' with regard to multidisciplinary strategic partnerships designed to safeguard children
- Consider the implications of 'what works' to the establishment of effective regional boards taking into account the boards functions
- Identify local and national factors that act as promoters and inhibitors to effective transition from local to regional boards
- Explore different models

*A development session for each regional board to be held between June and September 2013*

A one-day development session will be facilitated by Professor Horwath for each regional board. The aim of the session will be to:

- Ensure all board members are aware of 'what works'
- Agree on a shared vision for the board
- Establish priorities in light of this vision that take account of both regional and local needs
- Consider the governance arrangements that need to be in place to ensure members of the board are well placed to hold each other to account and ensure a culture of challenge at both regional and local levels

*Six month follow on survey to be completed in January 2014*

An electronic questionnaire will be circulated to all members of the regional boards via the business manager. The responses will be returned to Professor Horwath for analysis and key themes identified. The questions will be designed to obtain the following information:

- To what extent is the shared vision reflected in the work of the board?

- What work has been undertaken on the agreed priorities?
- To what extent do members of the board feel they are clear about their roles and responsibilities?
- Can they provide an example of when members of the board challenged and held each other to account?
- How do members believe the board have managed the interface between regional and local needs in terms of their work?
- What has worked well and what has not ?
- Do you believe regional boards are well placed to safeguard and promote the well-being of children in the region?

*National seminar to be held in February 2014*

Members from all the regional boards will be invited to a national seminar where Professor Horwath will share the findings from the survey and participants will have an opportunity to consider the implications for regulation and guidance that will support them in their endeavours.

*Final Report for March 2014*

This will provide a comprehensive account of the project, the survey and the findings and will be presented to the commissioners.

**A Stronger Framework for Safeguarding update**

The safeguarding policy group has reviewed its Terms of reference and membership and intends to re launch itself nationally to ensure there is good awareness amongst key stakeholders regarding its role and remit. The group would welcome consultation and engagement on the development of safeguarding policy in Wales.

The group met on the 28th of March and reviewed the actions outlined in the Local government Implementation Plan.

- Outcome measures for safeguarding, the lead for this action is SSIA and work is in progress which links into the national Outcomes Framework.
- The Development of Regional Safeguarding Boards has changed its focus, and is now extended to a national review of the regional boards across Wales which are in the process of being put in place at different stages. The group received updates at the last meeting from North Wales who have a two tiered model which includes 3 sub regional boards and a North Wales strategic board. Terms of reference have been agreed, and key partners are cooperating well with a good commitment to safeguarding children, ensuring process are effective and efficient and avoiding wherever possible any unnecessary waste or duplication. Gwent have adopted a totally regional approach and developed a partnership agreement to ensure clarity on roles and responsibilities of respective partners. It is the intention of the safeguarding policy group to make contact with all regional safeguarding board across Wales to ensure they have a link in. Hot off the press is the appointment of Phil Hodgson to the chair of the new Safeguarding and Protection Expert Development Panel which will be responsible for *taking forward work on the development of regulations and guidance to begin to give legal and operational effect to the safeguarding sections of the Bill.* It is the intention of the ADSSC National Safeguarding Policy group to make contact with Phil and ensure a good dialogue is in place to take the agenda forward together. The regional boards will be evaluated with WG funding, and a researcher form Sheffield University has been negotiated, and work begun on the process. This will be very helpful to consider the best options for regional working in this crucial area and also inform the development of policy and guidance flowing from the Social Services and Wellbeing Bill.
- An Education seminar was convened in Autumn 2012 and CSSIW identified a number of work stream areas to take the agenda forward in relation to clear guidance and policy in relation to Safeguarding in Educational settings. The Department for Education and Skills have already begun looking at restrictive interventions in schools and the group consider this a critical work stream in its forward plan.

- Adult Safeguarding Toolkit.  Feedback on first draft is being sought from the respective professional groups and an implementation plan to be agreed.
- Communication training – IPC and SSIA will put forward models for developing training on communication abilities. These will be sent to LA's in mid May for October delivery.
- Scrutiny guide for elected members - being developed and the LWGA are leading on this.

Agenda Item 7d

**Gwenda Thomas AC / AM**
**Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol**
**Deputy Minister for Social Services**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/GT/0390/13

Vaughan Gething AM
Chair, Health and Social Care Committee
Cardiff Bay
Cardiff
CF99 1NA

3rd May 2013

Dear Vaughan,

**Social Services and Well-being (Wales) Bill**

I am writing to you enclosing two documents for your Committee's attention. These are:

- a copy of my letter dated 24 April to the Chair of the Children and Young People Committee (CYPC); and
- a copy of the *Care and Well-being in Wales* report prepared by the Social Services Improvement Agency (SSIA).

My letter to the Chair of the CYPC sets out my position in relation to the concerns raised by the Children's Commissioner for Wales in his written evidence and which he spoke about in his oral evidence to the CYPC. Following the mention of this evidence during a Plenary debate on the 30 April, I think it is important that you see this letter so that you and your committee members have a clear understanding of my views on this matter.

With regards to the *Care and Well-being in Wales* report which I also enclose, I am well aware that the development of a National Eligibility Framework for sustainable Social Services is one of the major issues of interest for Committee members, Assembly Members and stakeholders alike. In late 2012, I commissioned the SSIA to undertake early work with stakeholders in the co-production of emerging ideas for a new service model for Social Services in Wales. The report provides a frank and rich analysis of the current system, and highlights key features that must underpin a future service model; one that is more flexible and responsive to the changing needs and circumstances of citizens.

I am grateful to the SSIA and those who have contributed to this work. I do not underestimate the challenges in effecting whole system change and in tackling many of the issues set out in the report and I will continue to work with stakeholders across Wales in the co-production of the new service model.

Thank you also for your letter dated 24 April following my appearance at your Committee on 18 April. I will be replying shortly and in doing so will provide further detail on the next steps I plan to take in regards to the SSIA's report.

Yours sincerely

Gwenda.

**Gwenda Thomas AC / AM**
Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol
Deputy Minister for Children and Social Services

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**Gwenda Thomas AC / AM**
**Y Dirprwy Weinidog Gwasanaethau Cymdeithasol**
**Deputy Minister for Social Services**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/GT/0352/13

Christine Chapman AM
Chair,
Children and Young People Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

23 April 2013

Dear Christine,

I am writing to you in relation to the Social Services and Well-being (Wales) Bill. First, I wish to respond to the written evidence provided by the Children's Commissioner for Wales to the Health and Social Care Committee. I understand you are taking oral evidence from him this week and I am keen that you read this letter ahead of that. Second, I attach, at your request, the UNCRC draft Due Regard Analysis conducted by my officials as part of the work to ensure that the Bill is compliant with the requirements of the Rights of Children and Young Persons (Wales) Measure 2011. This supplements the overview published as part of the Explanatory Memorandum to accompany the Bill.

The Children's Commissioner for Wales is of the view that the Bill is in breach of the Articles of the UNCRC. I do not agree with that view. As a member of the Welsh Government, and also until recently the Minister with responsibility for Children, I take very seriously the challenge presented by the Commissioner's evidence. I have taken legal advice which confirms my view that his position would seem to profoundly misunderstand the nature and purpose of the Bill in regard to the matters he raises. The rights of individuals and particularly children are at the heart of this legislation. My Ministerial colleagues and I have worked hard to ensure that children are fully and properly considered in all that we do in line with the Rights of Children Measure. On this basis, I simply would not introduce a Bill that breached in any way legislation that I have wholeheartedly supported from its inception and I am satisfied that this Bill will bring no detriment to the position of children. What the Bill does is provide a broad framework for people of all ages and leaves ample opportunity for the particular needs of children to be recognised.

I would like to draw your attention to five points the Commissioner makes and my response to them:

- While the concept of 'children in need' is not being preserved, the Bill matches what was provided in this regard under the Children Act 1989 and goes beyond it, firstly by making explicit that a child has a right to an assessment and secondly by creating a right to a service for those who are eligible.

- I do not accept that the proposals for a National Safeguarding Board fail to have regard to the needs of children or fail to have regard to Article 3. Bringing the safeguarding needs of all people with a care and support need under the auspices of one Board does not in my view represent any diminution of children's rights. The legal advice I have received on this matter supports my view. The National Board proposals were the subject of recommendations within the final report of the Wales Safeguarding Children Forum, of which the Commissioner was a member.

- While disabled children are not defined in the Bill, they are encompassed within the definition in the Equality Act. In addition, disabled children are recognised as a special category within the wider category of those with needs for care and support. The Bill would also permit disabled children to be singled out in the eligibility criteria as section 19(5) states and allows for special provision to be made in the Code of Practice for anyone who is disabled.

- The paramountcy principle in Section 1 of the Children Act 1989 applies to courts making decisions about individual children. It does not apply to local authorities in the exercise of their duties to children in their area generally. There is no risk that the changes made by the Bill will affect the paramountcy principle as applied by the courts.

- Finally, in relation to the points the Commissioner makes about a parent's refusal of assessment, it needs to be noted that this refusal can be over-ridden by the consent of a competent child. The evidence provided by the Commissioner on this matter also overlooks the fact that the refusal of a competent child itself can be overridden if an authority "suspects that the child is experiencing or as risk of abuse neglect or other kinds of harm" (Section 13(4)).

Copied below is the draft UNCRC Due Regard Analysis prepared by my officials. As you will be aware there is no requirement to publish this analysis but we have shared it with organisations that have asked for it. Please note that it retains its draft status as it is a living document that will change over time and certainly with the passage of the Bill. In this document, you will see a section titled 'potential breaches' I do not agree that a Children's Bill is the right approach. It could be argued that it presents a clearer way forward but in my view it is not better than what I have proposed in the Bill I have introduced. My Bill enables children and young people to be better transitioned through the services and it enables social workers and other social care staff to look at the whole family in a holistic manner. Children cannot be seen in isolation from the families and communities they are part of and my Bill, via the 'People Model' does much to enforce this notion.

I hope you find this information useful for your deliberations. I look forward to my evidence session with you tomorrow.

Yours Sincerely

Gwenda.

**Gwenda Thomas AC / AM**
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

**Social Services and Well-being (Wales) Bill**
**Due Regard to the United Nations Convention on the Rights of the Child**

Step 1 – What's the piece of work?

**The case for change**

Social Services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Many of these services are delivered in partnership with others, including housing, health and education services.

The story of Social Services in Wales is one of success and of progress over the past ten years. However, our society is changing and Social Services must change in response. There has been and will continue to be shifts in the public's expectations of Social Services, as a result of demographic change and changes in our society. Social Services need to alter and respond to all of these.

Furthermore, demand is rising across Social Services, yet the financial outlook for all public services is difficult. Whilst we have protected Social Services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if we are to make Social Services sustainable. Our White Paper *Sustainable Social Services for Wales: A Framework for Action* sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the Assembly and elsewhere since *Sustainable Social Services for Wales: A Framework for Action* was published. These sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission's review of adult social care legislation and our Review of Safeguarding. In particular at the close of 2012, we received responses to *Sustainable Social Services* from the Welsh Local Government Association (WLGA) and the Association of Directors of Social Services Cymru (ADSSC); and from the Care Council for Wales and the Care and Social Services Inspectorate Wales (CSSIW). These concerned the crucial contribution they will make to the agenda of transformation. This dialogue has made a substantial contribution to refining our proposals.

Our implementation of *Sustainable Social Service* will not solely be achieved through legislation. We have made a series of strategic decisions, based on the need to stop doing some things and prioritising new things, not imposing an additional layer of activity. The result is a programme of action that is being led and managed by our National Partnership Forum on Social Services that brings together the senior political figures in Social Services, along with our key partners. The change programme is being delivered through a range of projects. Much of the activity will not require legislation; but for many others, the Social Services and Well-being (Wales) Bill will be central to the transformation we want to see by establishing the core legal framework for Social Services and social care in Wales.

**Our legislative proposals**

The Social Services and Well-being (Wales) Bill will support the delivery of services in an integrated way to people of all ages, not in separate ways to children and to adults. There will of course be different implications for children, who do not have the same autonomy as most adults, and we have been clear about the particular services they need.

Wales has a distinctive and internationally regarded rights based approach to children's social care. We believe in a rights based approach because children are a relatively powerless group in society. We have put on a statutory basis our long standing commitment to the United Nations Convention on the Rights of the Child, as captured by our 'Seven Core Aims' for children.

Children like adults are not a homogenous group. We therefore define Social Services within the Bill in a way that starts with a commitment to 'people', which is designed to be an active not a passive concept. We will expect local authorities and their statutory partners to maintain and enhance the well-being of people in need, and the Bill provides a definition of them. Social Services can not be sustainable without delivering more early intervention. The Bill therefore requires local government to understand the dimensions and shape of the population in need in their areas, to make this public and to have powers to make arrangements to provide a range of services to meet these needs.

Some people will require an intensive and comprehensive range of services. The Bill makes clear that local authorities have a duty to provide, or arrange to provide social care services and will bring forward a definition of these types of services that will draw on the existing definitions and take account of proposals put forward by the Law Commission in its Review of Adult Social Care Law.

The Bill also seeks to provide individuals with a stronger voice and real control. The starting point is enabling individuals to understand fully how care and support may help them. Our proposals give individuals a right of access to an assessment of their needs and will require those assessments to be carried out in a way that focuses on the outcomes that people themselves are seeking.

The Bill will also give people the right to access information, advice, and assistance in finding out about services. It will enable us to introduce a portable assessment of need and will give Welsh Ministers the powers to establish a national eligibility framework. These measures will drive the creation of a more coherent framework for services and will enable us to improve consistency of access to services.

The Bill will extend the range of services for which people have the right to a direct payment, where that is their wish. It will enable the Welsh Government to extend the rights of carers to an assessment more widely when circumstances permit.

It will also strengthen the complaints procedure and extend the Public Services Ombudsman's powers to consider complaints. Alongside this Bill, we are also consulting on ways in which we can improve the complaints system. *Sustainable Social Services for Wales: A Framework for Action* and *Together for Health* make it clear that a step change in integrating services, particularly for frail older people with complex needs, is an urgent necessity. The Social Services and Well-being (Wales) Bill therefore extends the duty on Social Services and the NHS to collaborate in the delivery of integrated services, including the expectation of the use of pooled budgets and other flexibilities.

We have been clear about the need for Social Services to have a stronger national direction. Our Bill includes powers to establish a national outcomes framework and to set standards for Social Services; but we also want to be clear about local accountability. The Bill therefore includes a duty on local authorities to appoint a competent Director of Social Services to lead and manage family-focused Social Services. These provisions will include explicit powers to enable authorities to share Directors of Social Services.

Our legislative proposals on safeguarding and protection include provisions for a statutory basis for adult protection, for stronger national direction and to establish clearer links between child and adult protection. We plan to make strategic changes to the regulatory system for social care, including clarifying the responsibilities of employers and the regulator's role in checking financial viability of providers. We need to strengthen our key professionals and build their confidence by being clear about the level of expertise needed in delivering particular services.

Finally, the Bill will simplify arrangements in relation to adoption by placing a duty on the twenty-two Local Authorities to require them to come together to establish a single national adoption service.

Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

| | |
|---|---|
| Article 1 | Everyone under 18 years of age has all the rights in this Convention. |
| Article 2 | The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from. |
| Article 3 | All organisations concerned with children should work towards what is best for each child. |
| Article 4 | Governments should make these rights available to children. |
| Article 5 | Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. |
| Article 6 | All children have the right of life. Governments should ensure that children survive and develop healthily. |
| Article 9 | Children should not be separated from their parents unless it is for their own good, eg, if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child. |
| Article 12 | Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account. |

| | |
|---|---|
| Article 13 | Children have the right to get and share information as long as the information is not damaging to them or others. |
| Article 14 | Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters. |
| Article 16 | Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes. |
| Article 17 | Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children. |
| Article 18 | Both parents share responsibility for bringing up their children, and should always consider what is best for the child. Governments should help parents by providing services to support them, especially if both parents work. |
| Article 19 | 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. |
| Article 20 | Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language. |
| Article 21 | When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they are born or taken to live in another country. |
| Article 22 | Children who come into a country as refugees should have the same rights as children born in that country. |
| Article 23 | Children who have any kind of disability should have special care and support so that they can lead full and independent lives. |
| Article 24 | Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this. |
| Article 25 | Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly. |
| Article 26 | The Government should provide extra money for the children of families in need. |
| Article 27 | Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this. |
| Article 28 | Children have a right to an education. Discipline in schools should respect children’s human dignity. Primary education should be free. |
| Article 29 | Education should develop each child’s personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures. |

| | |
|---|---|
| Article 30 | Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country. |
| Article 31 | All children have a right to relax and play, and to join in a wide range of activities. |
| Article 33 | The Government should provide ways of protecting children from dangerous drugs. |
| Article 34 | The Government should protect children from sexual abuse. |
| Article 39 | Children who have been neglected or abused should receive special help to restore their self respect. |
| Article 41 | If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay. |
| Article 42 | Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too. (See also article 4.) |

## Step 3 – Respecting rights and giving greater effect to the UNCRC

Integral within the key aims of the Social Services and Well-being (Wales) Bill will be the focus being in place for children in Wales to help access their rights. Including the regard to **protection**, **participation** and getting the **right** support to help them reach their full potential in sometimes difficult and complex circumstances.

The well being of those who often require the most help is evidence of a commitment in regard to respecting the articles of the United Nations Convention on the Rights of the Child (UNCRC).

The following section indicates whether the articles identified above are respected or given greater effect by the proposals in the Bill. It also indicates any additional action which could help deliver rights based approaches. It is also a possibility that there may be a contradicting or counterbalance affecting certain rights.

*Article 1 - Everyone under 18 years of age has all the rights in this Convention.*

*Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from*

*Article 3 - All organisations concerned with children should work towards what is best for each child.*

*Article 4 - Governments should make these rights available to children.*

*Article 6 – All children have the right of life. Governments should ensure that children survive and develop healthily.*

*Articles 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.*

*Articles 17 - Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.*

*Article 25 - Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.*

*Articles 18, 19, 23, 26, 27, 29, 42*

**Respected**

The Bill will reform and integrate Social Services law for people and make provision for:

- Improving the well-being outcomes for people who need care and support, and carers who need support;
- Co-ordination and partnership by public authorities with a view to improving the well-being of people;
- Complaints and representations relating to social care and palliative care;
- Local authorities' social service functions and that of Welsh Ministers to intervene in a local authority's exercise of its Social Services functions; and connected purposes.

As part of this analysis and assessment, there is a focus which includes the socio – economic rights of children, defined as including health rights, the rights to housing, food water, education and an adequate standard of living, as well as social security and the rights to work. (Nolan) 2011.

*Article 6 - All children have the right of life. Governments should ensure that children survive and develop healthily.*

*Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.*

*Article 26 - The Government should provide extra money for the children of families in need.*

*Articles 24 - Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.*

**Given greater effect**

The Bill clearly looks to support better the well being of *people* within society and this will impact on children who may be disabled and those that are 'young carers' which is a significant step in identifying those often hidden within communities in Wales. This will the help them access their rights and avoid potential impact on their right to education and leisure potentially. It is also the case that work has taken place to ascertain views of the stakeholders including children in helping develop the focus of the Bill. The consultation was available in a child and young person friendly version. Organisations will be working on consulting further as the implementation phase develops.

It is important in looking at the Bill to also include the context of the overarching commitments within the Programme for Government. The key aim of tackling poverty has a strong focus on support for children, programmes such as ‘Flying Start’, ‘Families first’; ‘Position Communities First’ is a key part of the Anti Poverty Action Plan.

Basic health and welfare as a theme of the UNCRC using an inherent rights based approach, focuses on the underlying causes of poverty endeavouring to address the issues in the longer term. Inevitably this can be causal circumstances that require Social Services and well being support.

*Articles 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.*

*Article 25 - Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.*

*Article 27 Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.*

*Article 28 Children have a right to an education. Discipline in schools should respect children’s human dignity. Primary education should be free.*

*Article 29 Education should develop each child’s personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.*

**Potential breaches:**
In terms of the potential of a contradiction or countenance of the UNCRC as part of this assessment, it is the case that the overall focus is on ‘people’ collectively at the core of the Bill. There might be an analysis that a Bill singularly focused on children could further support a rights based approach?

Step 4 – What action could the Welsh Ministers take next?

- Ensure further participation activity takes places with marginalised groups of children being included.
- Continue providing information that is engaging and meaningful to children and young people.
- Ensure cultural and language issues are supported appropriately.
- Monitor and analyse the longitudinal impact evidence on children as a result of the changes.

Step 5 – Ministerial Decision

This **draft** ‘due regard’ analysis will be kept as a background document to the Social Services and Well-being (Wales) Bill as evidence that children’s rights have been considered in compliance with the **duty as of May 2012 on Welsh Ministers to have due regard to the rights and obligations within the UNCRC and its optional protocols.**

Step 6 – Keeping Records

This assessment is stored on the Welsh Government's record system iShare (A3901918)

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The UNCRC Impact Assessment was published as part of the Explanatory Memorandum and Regulatory Impact Assessment which was laid alongside the Social Services and Well-being (Wales) Bill on 28 January 2013. These documents were determined by the Presiding Officer as complying with the Standing Orders of the National Assembly for Wales. It is replicated below:

## The United Nations Convention on the Rights of the Child (UNCRC)

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. The Bill takes forward Wales' distinctive and internationally regarded rights based approach to children's social care. The assessment of the impacts that the Bill will have on children and young people confirms the rights based approach that is taken, reveals that many of the Articles are relevant and those listed below are being dealt with in the Bill:

**Article 1** Everyone under 18 years of age has all the rights in this Convention.

**Article 2** The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

The rights conferred on children in the Bill apply to all children regardless of any of their characteristics.

**Article 4** Governments should make these rights available to children.

All the sections creating rights for children within the Bill give effect to this obligation.

**Article 5** Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle.

Section 4(4) accords with this Article. "Well-being" is a key concept throughout the Bill. The definition of "well-being" in section 3 includes securing rights and entitlements to expressly acknowledge this aspect.

**Article 6** All children have the right of life. Governments should ensure that children survive and develop healthily.

The Bill's creation of a comprehensive framework of general duties for local authorities and other public bodies towards children in their area combined with specific entitlements for individual children or their carers following assessment accords with and supports this right.

**Article 9**
Children should not be separated from their parents unless it is for their own good, eg, if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.

**Article 12** Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

The Bill (Part 10, Chapter 1) re-enacts the entitlements given to children to make representations about how a local authority discharges its functions under the Act and their right to assistance in making those representations.

**Article 13** Children have the right to get and share information as long as the information is not damaging to them or others.

**Article 14** Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

**Article 18** Both parents share responsibility for bringing up their children, and should always consider what is best for the child. Governments should help parents by providing services to support them, especially if both parents work. The Bill is open about the type of care and support which may be needed by children and their carers to ensure that there is scope to recognise fully the varied roles which parents may provide in parenting their children.

**Article 19** 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 local authority's general duty under sections 6(2)(d), (e) and (f) give effect to this. The recognition of the broad range of circumstances which may trigger the entitlement to assessment and of the need for children's rights to services to bypass the eligibility criteria where they are at risk all give effect to this. All the provision in Part 6 creating safeguards for children who are looked after and the provision about Safeguarding Boards in Part 7 are relevant to the observance of this right.

**Article 21** When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they are born or taken to live in another country.

**Article 22** Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

**Article 23** Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

The needs of disabled children are recognised through the entitlement of carers or disabled children to assessment in their own right and through the availability of Direct Payments instead of services for carers of disabled children and for 16 and 17 year old children who are disabled.

**Article 29** Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

The education dimension of social care needs is recognised in a number of places – in the definition of well-being, in the specific duty for local authorities to promote the educational achievement of looked after children and in the provision extending the rights of care leavers where they are pursuing educational opportunities.

**Article 30** Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

**Article 34** Governments should protect children from sexual abuse.

See Article 19.

**Article 39** Children who have been neglected or abused should receive special help to restore their self respect.

The Bill sets out a comprehensive framework to assess needs and ensure that services are provided to those whose needs are greatest. The Bill provides scope for children who have suffered abuse and neglect to have their particular needs accorded given an appropriate level of priority.

*Note:* where there are references to parents, we consider that their definition can be extended to include the corporate parent, the local authority.

ssia

Improving Social Care in Wales
Gwella Gofal Cymdeithasol yng Nghymru

# Access to Care and Wellbeing in Wales Report

## 1 Introduction and Purpose of Report

This report has been prepared for the Welsh Government by the Social Services Improvement Agency for Wales (SSIA). It is based on the feedback from a series of 8 workshops between October 2012 and January 2013 run by the SSIA supported by the Institute of Public Care (IPC) at Oxford Brookes University. Their purpose was to develop and test out an approach to assessment and eligibility for access to care and wellbeing services which would meet the commitments of the Welsh Government's 'Sustainable Social Services: A Framework for Action'[1], and inform the proposed 'Social Services and Wellbeing (Wales)' Bill due to be published in late January 2013, and future associated regulations and guidance. The proposed approach was developed at a national workshop for representatives of national agencies and senior managers from local authorities and their partner agencies from across Wales in July 2012.

The workshops allowed the proposed approach to be tested with over 140 local authority and NHS managers, professionals and leaders from across Wales, informed by a number of case scenarios and case studies. The fact that the Welsh Government was willing to explore the proposed approach with those who would be charged to deliver it at such an early formative stage of development was much appreciated. This report draws together the verbal and written feedback, outlines a proposed framework based on this feedback, and considers some of the dependencies and 'wicked issues' which will need to be addressed if it is to be successfully implemented.

## 2 Summary of key points

- The current approaches to assessment and eligibility for care and support are inconsistent across different parts of the population and ineffective in helping people get the right support at the right time.
- New arrangements are needed which promote greater voice and control for the citizen and a more mature relationship between the individual and those services which promote citizens care and wellbeing.
- This will require a more flexible and responsive approach to assessing people's needs and helping them maintain their independence.
- A general principle should be of consistency of eligibility for all citizens including children and families, people with disabilities and older people.
- The new arrangements should be based on 3 pillars: better access to information and community resources for everyone; proportionate wellbeing support for those who need some help; and a guarantee of managed support for those who need it.
- At a national level eligibility criteria should focus on the advice and guidance that an individual is entitled to call on to help them get the right services to meet their need. It should be up to local professionals to work creatively with individual citizens to secure the services and outcomes they need.

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[1] Welsh Government, Sustainable Social Services: A Framework for Action. HM Government, 2011.

- There should be 3 levels of eligibility for access to this advice and guidance: firstly wellbeing, whereby any citizen can access a proportionate assessment of the support they might require to meet their wellbeing needs; secondly managed care and support, whereby a local authority assesses that an individual's needs will not be met without help through managed care and support; and thirdly automatic care and support, where the Welsh Government will specify particular people and situations which will require local authorities to offer managed care and support.
- Assessments need to be more individualised and flexible and will need to take account of 3 factors – a person or family's needs or problems, their desired outcomes and their capacity to achieve those outcomes.
- Local authorities and their partners will need to forge new integrated arrangements to undertake proportionate assessment and to develop services which will meet the needs of their citizens in the community.
- This more flexible and responsive approach to meeting citizens needs will require a number of 'wicked issues' to be addressed including changes in professional practice across health, education, social care and wellbeing; better information sharing; more effective commissioning to develop effective wellbeing services; and revised national performance and inspection arrangements.
- Without two key features built in, these arrangements will not be sustainable. First, that earlier contacts with more people to connect them up with help and support must be manageable with a very "light touch" by Councils, largely free of process and bureaucracy. Second, the services which Councils, Health and the third sector support in our communities must all be proven to be best at maximising independence.
- Many local authorities have begun to develop arrangements along these lines already, but the Welsh Government will need to lead a programme of change including informing with public to ensure that the arrangements and their implications are properly implemented and understood across Wales.

## 3 What was considered

The Welsh Government is clear in 'Sustainable Social Services: A Framework for Action' that it intends to introduce legislation which allows for a national framework to respond to the duty to maintain and enhance the wellbeing of people in need, within which local authorities and their partners can develop their own local arrangements. The framework will give individuals a right of access to an assessment of their needs, and require those assessments to be carried out in a way that focuses on the outcomes that people themselves are seeking. The framework will apply equally to citizens of all ages, and in this context citizen can be taken to mean individuals, families and carers. The best approach to delivering this national framework was explored in the workshops, and participants considered the following in particular:

- The problems in the current system which most need to be addressed.
- The principles which should underpin the new framework.
- The key pillars of the proposed framework.
- Key enablers.

- What the framework will and will not do.
- The implications of the framework for citizens, organisations and staff.
- How access to advice, assessment and services in future would be fair and equitable and ensure citizens have their needs met.
- Key dependencies and wicked issues
- The change management agenda and how the Welsh Government might support it

These issues are considered in more detail in each the following sections.

## 4 The problems in the current system which most need to be addressed

There were 3 key problems with the current system which were identified consistently by participants from across children's and adults services. The new framework will need to address all of them:

- Too little early intervention and prevention resulting in citizens of all ages needing too much acute and substitute care. This is partly an unintended consequence of the existing 'FACS' system which places too much emphasis on assessing whether someone qualifies for formal support.
- Too much time, skills and resources going in to over-elaborate assessment activities which do not help citizens address their concerns or achieve desired outcomes.
- Inconsistent approaches to eligibility across different groups of citizens within the population.

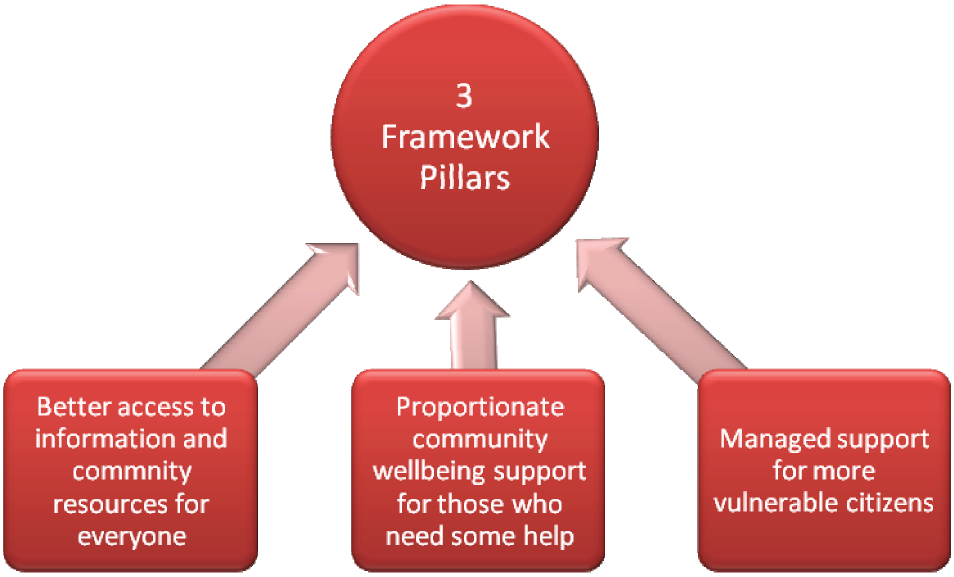
## 5 The principles which should underpin the new framework

Participants agreed that the following principles should underpin the new framework:

- Peoples' strengths, ambitions, contribution as citizens, and responsibilities are as important as their needs and rights. In general people are competent and want to manage their own affairs. Unless there is evidence to the contrary, the presumption should be that the citizen remain in control of their own life, and needing some help should not mean being "taken over".
- Assessment and eligibility must be driven by outcomes, both those individually negotiated and those democratically determined.
- Meeting care and wellbeing needs is a collective responsibility of all public agencies and needs to be delivered through effective joined-up services.
- Citizens should have direct access to up-to-date comprehensive information and to informed, respectful conversations at key points when they need advice, support and assistance.
- The vital contribution of broader, evidence-based 'wellbeing services' is central to effective support for all citizens.
- A key element in optimising independence is helping individuals and families to connect to their natural communities.
- The goal of wellbeing support is to extend the range of what is available to all citizens so that fewer citizens need to become reliant on more intensive support. It is not just to reduce access to substitute or acute care.

## 6 The key pillars of the framework

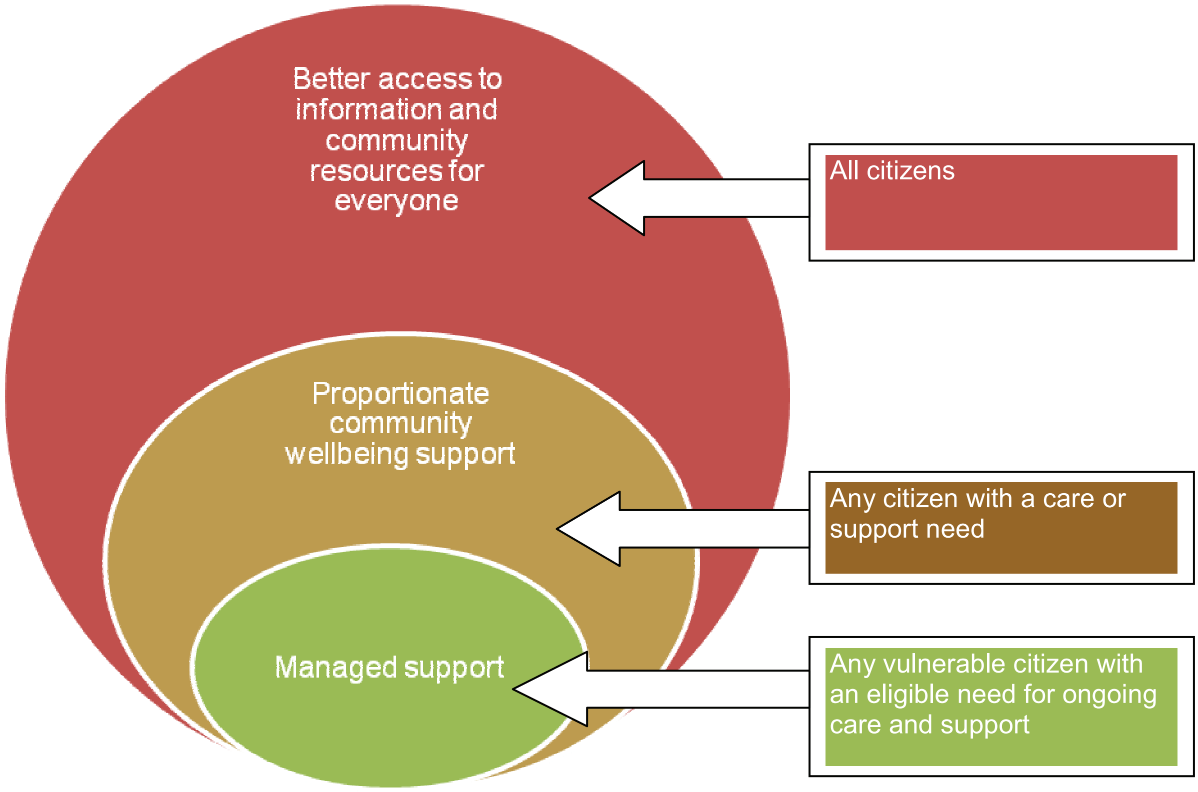
Participants were comfortable that the proposed framework has the potential to address the current problems and support the principles outlined above, with an approach based on 3 key 'pillars':



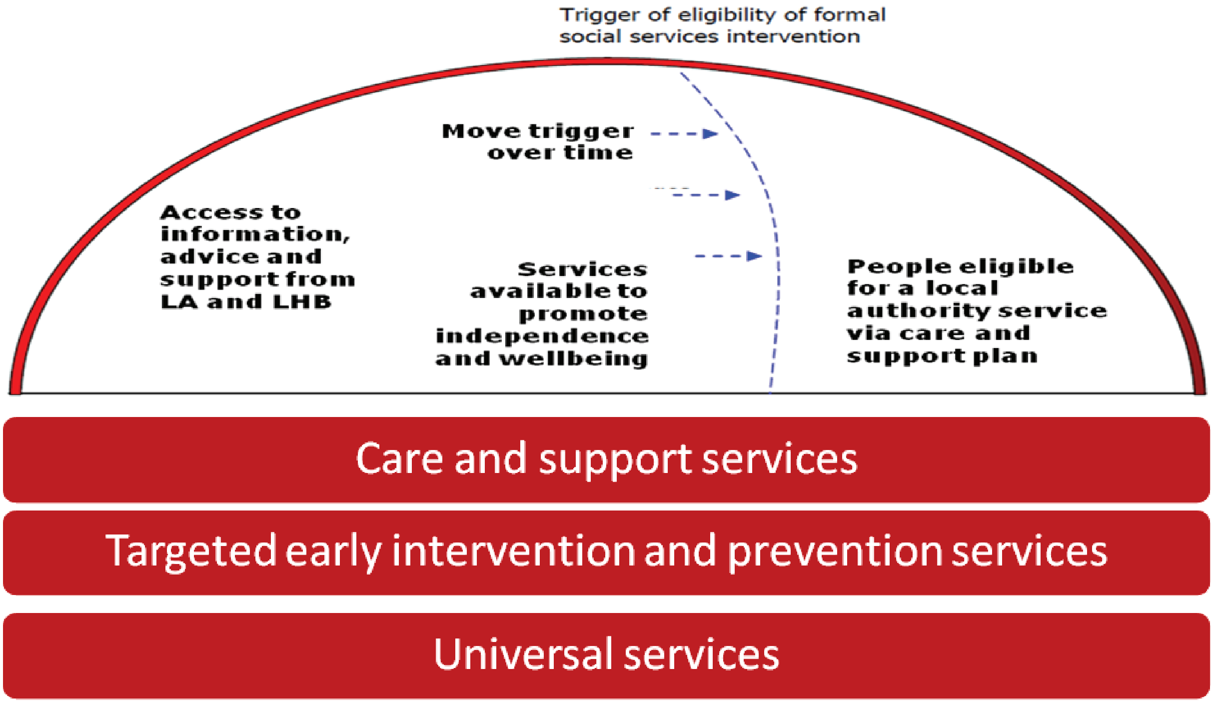
These pillars comprise a combination of:

- **Better access to good information, advice and assistance to engage with resources available in the community.** This will better enable individuals and families to exercise their voice and control and make informed choices about their involvement with their community, and about the support they need to help them live as they wish.
- **A wide spectrum of proportionate community support which citizens who have wellbeing needs can access** to help maximise their independence, live well in their community and achieve their desired outcomes without having to rely on complicated assessments or care packages.
- **Help to the most vulnerable individuals and families with significant or enduring needs to assess those needs and organise and secure the care and support they require**. Those who met relevant criteria by virtue of their vulnerability or need for safeguarding should have the right to a detailed assessment of need, a care and support plan and to ongoing help in ensuring that the plan meets their needs and helps them to achieve their desired outcomes.

Applying these pillars to the population:



Thus within the framework any individual or family with a care or support need will have access to a proportionate assessment and to the right services to meet that need. However, one of the intended effects of the approach is that as a result of more effective services promoting independence and wellbeing, the proportion of individuals or families who cannot get their needs met without more formal care and support plan would be expected to reduce:



## 7 Key enablers for the framework

To ensure that the framework would have the desired impact, participants identified the following duties on the part of the local authority and its partners which would be needed to support it:

- A duty to **provide information to citizens** and to ensure that the highest quality information about community resources is easily accessible so that individuals and families can make best use of it.
- A duty to **develop services to meet needs**. There should be a clear duty on the whole of the local authority and the LHB to understand the health, education, wellbeing and care needs of their local populations, and to develop services to meet these needs and to maximise independence in a fair and equitable way.
- A responsibility on **community and universal services**, including health education, social care, housing and other public services, to respond effectively to the needs of individuals to help maximise their independence and reduce their need to seek a more formal care and support plan.
- A duty to offer a **proportionate assessment** to anyone needing help to promote their wellbeing. Any individual or family with a need, no matter how small, should have the right to be assessed on the basis of that need. The assessment involved should be proportionate to the request. It should be up to the local authority and health services and partners to determine who should undertake such assessments and what they would look like, but this should not preclude professionals undertaking these assessments on behalf of other professional colleagues.
- A duty, where a citizen is eligible, to provide **ongoing help in securing, managing and reviewing the care and support they need in a care and support plan**. Participants proposed that the Welsh Government should define eligibility in general terms such as "the citizen is unable to manage and meet their own care and support needs and achieve defined outcomes without the Council managing a care and support plan with them". The national framework should name specific examples of groups who would automatically meet the criteria. It would then be the responsibility of local partners to develop specific local criteria within that context.
- A duty to **share information** about needs and services in the care and support plan with other local authorities if the person moves home. This will help to promote universal expectations across Wales, not of the services that the citizen will get (which will inevitably vary across the country depending on local resources and populations) but of the nature of the helping response.

## 8 What the framework will and will not do

Participants were clear that the framework will focus on the way in which local authorities and their partners interact with citizens, and that it will promote a more supportive, outcomes-based approach. However it will not prescribe nationally how local authorities and their partners will respond in any given situation. In particular:

- It will provide assurance that any person or family with a care or support need will have access to a proportionate assessment to help them work out how to address it.
- *It will not guarantee automatic access to a specific service.*
- It will encourage professionals to take a more creative approach when trying to help a person or a family address a need or problem based on the outcomes they want.
- *It will not dictate the services which professionals or agencies must provide to meet any assessed need.*
- It will encourage local authorities and their partners to develop community based services to meet the needs of the local population earlier and with less bureaucracy.
- *It will not guarantee that any one specific service will always be available to meet an individual's wishes.*
- It will require local authorities to be clear about the criteria they use to decide if a person or a family has an eligible need for ongoing managed care and support.
- *It will not eradicate the need for individual services to have their own access criteria (for example, blue badges, eye test, day care support).*
- It will require local authorities to make managed care and support assessment and plans portable, so that it can inform the response of another authority if a citizen moves.
- *It will not guarantee that care and support services provided in one authority will be replicated if a person or family moves to another.*

## 9 The implications of the framework for citizens, organisations and staff

There was agreement amongst participants that the framework represented the right direction of travel, and indeed was very much in line with where many authorities and their partners were moving. Nevertheless it was also clear that there are very significant implications for all stakeholders:

| **Stakeholders** | **Implications** |
|---|---|
| Individuals and families | • You will be encouraged to make best use of community information and resources to help you to maintain your health, promote your wellbeing and successful growth and development. |
| Individuals and families with an eligible need for ongoing care and support | • You will be encouraged to use community resources to minimise the impact of health, wellbeing or development problems, and to enhance your level of independence.<br>• You will be encouraged to play an active role in assessing your own needs, controlling your care and support, and in living as independently possible. |
| Health, education, care and wellbeing professionals | • You will need to make professional judgement about the type of assessment best suited to the situation of a particular citizen and their family. |

| **Stakeholders** | **Implications** |
|---|---|
| | • You will need to develop skills in outcome based assessment and planning with individuals families and carers.<br>• You will need to undertake needs assessments for more vulnerable citizens without the use of nationally determined FACS criteria. |
| Local authorities LHBs and other partners | • You will need to work together to make a shared vision of integrated seamless services a reality for citizens.<br>• You will need to work together to improve the quality of intelligence on population needs and services.<br>• You will need to provide more responsive information and advice services.<br>• You will need to work together to identify and target those in greatest need where early or timely intervention can make the most positive impact.<br>• You will need to build better arrangements for undertaking proportionate assessments, sharing information and reducing complicated assessments.<br>• You will need to build better arrangements for providing individuals and families with real voice and control over their care where possible.<br>• You will need to focus developments on services which offer proportionate community-based well-being support and help to avoid acute or substitute family care.<br>• You will need to develop local criteria and guidance which describe the circumstances when someone is eligible for managed care and support. |
| National improvement and inspection bodies | • You will need to introduce new skills required of professionals working in health, education, wellbeing and social care.<br>• You will need to support new forms of training and skills development.<br>• You will need to develop performance management frameworks which look at the whole system of care and wellbeing.<br>• You will need to develop proportionate integrated inspection arrangements which understand the inter-related nature of care and wellbeing services. |
| Welsh Government | • You will need to show strong leadership in elucidating the policy, ensuring a coherent national framework, and ensuring that citizens across Wales are clear about their rights and responsibilities. |

## 10 How access to advice, assessment and services in future would be fair and equitable and ensure citizens have their needs met.

The new approach to eligibility is summarised in the following national framework:

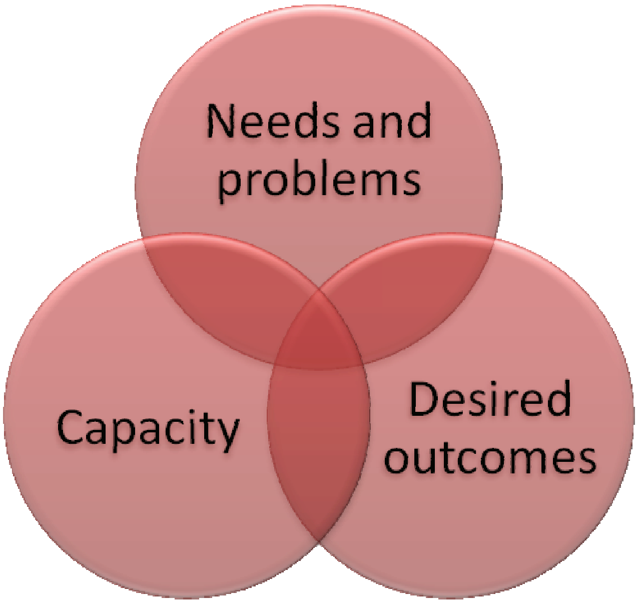
| Eligibility level | Eligibility for.. | Criteria | Access to services |
|---|---|---|---|
| Wellbeing | A proportionate wellbeing assessment, advice and help to access services | A citizen believes that they might need help to improve their wellbeing. | Individual services each have their own access and charging criteria which the citizen will be helped to deal with in the assessment. |
| Care and support | A managed care and support plan or direct payments | The local authority assesses that a citizen is unable to meet their own care and support needs and achieve defined outcomes without the local authority managing a care and support plan with them. | Individual services each have their own access and charging criteria which the citizen will be helped to deal with in the assessment and care and support plan. |
| Automatic care and support | A managed care and support plan | Children or adults at risk of significant harm.<br>Looked after children and care leavers.<br>A duty specified by a court order.<br>A situation where an individual lacks mental capacity and has no alternative support. | Individual services each have their own access and charging criteria which the citizen will be helped to deal with in the assessment and the care and support plan. |

In the framework any individual or family who believes they may need to help to improve their wellbeing will have access to a proportionate assessment. It will be up to the local authority and its partners to ensure that assessment arrangements are appropriate, and the Welsh Government will want to ensure, through inspection, that these arrangements are effective.

For citizens with greater care and support needs, as described above, a key enabling element of the Framework is to publish clear criteria specifying the conditions whereby a citizen would be eligible for ongoing help in securing, managing and reviewing the care and support they need in a care and support plan. It would also specify the conditions whereby it would need to act on behalf of a citizen, even if they were not directly requested by the person involved, such as in child or adult protection.

Participants proposed that these criteria should be developed by local authorities within an overarching framework set by the Welsh Government that managed care and support should be available where the local authority assesses that "**the citizen is unable to meet their own care and support needs and achieve defined outcomes without the Council managing a care and support plan with them".** This would enable authorities to respond effectively to local needs within a nationally consistent framework.

Participants also proposed that the local authority should have a duty of care to ensure that a proper judgement is made about the level of support which is needed for an individual, and specifically whether they needed to instigate the ongoing management of a care and support plan. This would need to be based on an analysis, in the assessment, of 3 key factors:



- So, for example, an older person with very severe dementia (need/problem), but who's daughter's family is happy and able to support them safely and comfortably at home (capacity) but who need occasional respite support (desired outcomes) might have their needs met through support from a local voluntary organisation, and not need an ongoing package of care. On the other hand, an older person with less severe dementia (need), but living on their own and finding it impossible to cope (capacity), might need an intensive package of residential and respite support for them to be happy and comfortable (outcome).
- Similarly, for example, young parents with financial problems finding it difficult to care for their disabled daughter safely (need/problem) but who are closely attached and caring (capacity) and want her to remain at home with them (desired outcomes) might have their needs met through one-off advice and provision of equipment and not need an ongoing package of care. On the other hand, parents who are financially secure but a teacher refers because they appear to be neglecting the development of their son (need / problem), and do not appear to have the necessary parenting skills to support him (capacity) even though he does want to remain with them (desired outcomes), might need a safeguarding approach leading to an intensive managed family support intervention.

Participants identified a number of situations within the wider population of people eligible for care and support, where the Welsh Government should require that the criteria for managed care and support are automatically met, including:

- Children or adults at risk of significant harm
- Looked after children and care-leavers
- Situations where the local authority has duties under a Court order
- Situations where an individual lacks the necessary mental capacity and has no family or other support available.

Individual authorities may wish to identify and publish local information about additional situations where they would provide automatic managed care and support.

Having a straightforward national framework such as that described above does not mean that local authorities would be expected inevitably to abandon current arrangements for ensuring that citizens have appropriate access to care and wellbeing support. So it will be up to individual authorities and their partners (including regional partners where appropriate) to draw on national guidance and legislation to make the judgement about whether and how to use, for example:

- Common assessment framework and joint assessment framework arrangements for families.
- Team around the child arrangements.
- Local resource and allocation panels.
- Child safeguarding and case conference arrangements.
- Adult safeguarding and case conference arrangements.
- Arrangements for assessing and meeting education needs.
- Housing allocation arrangements.
- Mental health assessment arrangements.

## 11 Key dependencies and 'wicked issues'

During the workshops a number of issues arose which participants felt were important to resolve to successfully implement the new framework. They included:

| | |
|---|---|
| Information sharing and data management | • A need to develop information sharing protocols and find better technical solutions to the electronic transfer of information between health and local authorities and between the statutory and other sectors. Frontline staff need to able to transfer information quickly and securely to develop effective assessments and support plans.<br>• A need to ensure that performance and management information requirements are proportionate and that unnecessary burdens do not add to the bureaucracy of assessments.<br>• There was a strong view that a web portal, holding all the information about benefits, services, networks and links was essential to this new approach. Agencies and citizens could co-produce "pathways" together using that site, even though remotely. It would need to contain very local information about all sectors as well as information about statutory services.<br>• A need to ensure that frontline staff understand the policies and procedures for sharing information about individuals and that the appropriate information sharing protocols are in place. The development of exemplar templates to guide local practice may help. |
| Professional practice | • There are very significant implications for universal and primary care professionals - to undertake appropriate assessments and to know about sources of information and how to access them to advise citizens<br>• A need to ensure that each agency and professional understand their roles and contributions in the continuum of care to avoid unnecessary escalation towards social services involvement.<br>• A need to ensure that appropriate mechanisms are in place so that the most appropriate professionals are available to support those groups of people who sometimes fall between agency boundaries e.g. people with a personality disorders. Professional engagement should be determined by appropriate skills and knowledge.<br>• A need to ensure that guidance achieves the right balance between proportionate assessments and risk management. At present assessments may become disproportionate because professionals are worried about professional liability and blame.<br>• A need to ensure that assessments are not passive episodes but part of the intervention process.<br>• A need to ensure that all managers and practitioners among people |

| | |
|---|---|
| | involved in assessment & support planning, commissioning and service provision understand and are able to work towards achieving outcomes. |
| Commissioning and service development | • A need to ensure effective joint commissioning and mature market facilitation to secure an effective continuum of services to respond to needs. LHB and local authority commissioners will need to work with providers to facilitate the development of services that can respond to the needs of the community including self funders.<br>• A need to ensure that appropriate mechanisms are place to monitor the changing needs of users of ongoing service provision (e.g. those people receiving ongoing home care or residential care provision) and the quality of services, perhaps combining some of the functions of care management and contract compliance constructively with providers.<br>• A need for a wider range of independence-promoting services to be developed in our communities. It was felt that it would be dangerous to make an assumption that this was inevitable, given what is clear about public spending constraints over the next several years. |
| Opportunities for integrated services | • Together for Health - The messages in this paper are similar to those conveyed in 'Together for Health' which is encouraging in terms of the opportunity for engaging colleagues in local health boards. There is however a strong divergence in terms of language. More work will have to be undertaken in relation to language and terminology to convey a consistent message about the change of approach and culture.<br>• The current language with its use of words such as 'assessment' 'eligibility' 'entitlement' tends to assume that people become passive recipients of care services rather than active participants and choice makers – rethinking is needed. |
| A clear care and support pathway | • Where is the front-door of advice and assistance to well-being best located, and who should "own it"? Whilst all agreed that social services input to its design, management and operation would be critical, many felt that it would be better seen as a corporate function of Councils and Health, and not narrowly a Social Services function.<br>• Key role of universal and community professionals to address needs of people early, share information and not expect to draw families and individuals in too early was identified by participants.<br>• A need to consider who will be expected to do the proportionate assessment - local arrangements and depends on if specialists are in place but general rule about expecting more assessments to be done by community professionals.<br>• A need to ensure that future arrangements promote and support the further implementation and development of direct payments |

| | |
|---|---|
| | and citizen –directed support across Wales.<br>• A need to ensure that the emphasis on voice and control for the citizen does not undermine the importance of the safeguarding role of professionals in the community, and therefore the need to emphasise the importance of professionals balancing these responsibilities effectively. |
| Inspection and Monitoring | • A need to support the changes in style and approach through the redesign of inspection arrangements and national performance requirements – particularly to recognise the whole system nature of effective response to the citizen.<br>• Some people favoured some new specific tests against which the draft legislation could be measured. Ideas included: - fairness, transparency, sustainable within available resources, maximise citizen's independence, protect and meet the needs of the most at risk, proportionate. |

These issues will need to be addressed in the period of change and development which will commence upon publication of the Social Care and Wellbeing (Wales) Bill and will continue throughout the period to Royal Assent and the implementation period thereafter – a period of at least 3 years.

It is worth noting in addition that many participants suggested that that the current £50 limit on maximum contributions towards home care costs is drawing people into dependency on formal social care, contrary to the spirit and intent of this new approach.

## 12 A national change management agenda

In summary, participants were clear that there was a significant "hearts and minds" battle to be won over the next few years, to encourage greater voice and control for citizens, and a clearer expectation that individuals and families should play the primary role in promoting better health, development and wellbeing. Some of the key elements of the national change management agenda will need to be:

### 12.1 Changing public perceptions

It was proposed that change must be whole-system wide. AMs, senior NHS managers, LHBs, GPs, leading Councillors, and Corporate Managers in Councils will all have a vital part to play in this. The Inspectorates, in turn, must sign-up to all the implications of the approach and reflect it in its judgements. Consideration will need to be given to a "public education" approach, and a proper balance struck between empowering service users and safeguarding those who are vulnerable. Perhaps most important is consistency of messages throughout the systems.

### 12.2 Changing professional practice

All agencies will need to recognise that the first engagement/conversation with a helping agency around an emerging issue will set the tone for everything that follows after. So the behaviours, knowledge-base, attitudes, skills at the first point of contact will be vital. Councils and their partners might design their first points of contact differently, but these things will be vital everywhere.

It would be a mistake to see the focus around change as being simply “retraining”. It is, in effect, about looking afresh at the skills, behaviours, knowledge-base, systems, and attitudes needed at the key journey points. Some called it “re-modelling the workforce”. An approach which focuses on helping people to identify the outcomes they want to achieve and the strategies and assistance which will achieve them was seen as central. Skills in engagement, and positive practical help such as motivational interviewing were seen as a new priority. Very important was the confidence to offer only as much help as each individual needs, and not feel the need to go through an exhaustive and uniform process, defensively, each time.

### 12.3 Changing systems

Reducing form filling where possible was seen as crucial although prompts, scripts, and algorithms were seen as providing structured support for good practice. For example, participants often referred to the “triangle” of fields which is the core of assessment with children and families. They found that simple structure extremely helpful (and thought it to be transferrable to adult services with only minor “tweaking”), but the many pages of forms which were developed to amplify it quite the reverse. Essentially, participants want tools, formats and processes which will support good practice and sound judgement, but they do not want to be constrained by over-complex process or burdened by “fail-safe” bureaucracy. Participants proposed that agencies must build competence and confidence in the workforce, encouraging professional judgement and accountability, and keep process to a very “light-touch” - a description used again and again.

Participants proposed that a whole new approach to recording is needed, which is proportionate to the different levels of engagement. So, for example, a one-stop-shop advice line may use a customer relationship management system, capturing basic data live on line, rather than an open case-record. But a formal case-recording approach would be vital once the Council takes responsibility for care-management. It was also noted that this approach would allow for evaluative methods to be introduced at key points. Simple follow-up around the quality of the experience and how far outcomes were achieved could be built in. There was interest in using this re-design opportunity to move decisively towards open-recording. Conversations with advisers at the “well-being” stage might be best captured in a simple letter (the “support agreement”), setting out the bones of the engagement and what was agreed. No other record would be needed.

### 12.4 Changing the language

Finally it was clear that a new and common language across agencies, professions and the public was needed to help to establish these new expectations, and this will need to be a key focus in changing not just the mechanics but the style of interaction between the citizen and the state in future.

### 12.5 A change management approach

This agenda will clearly be addressed by the Welsh Government in partnership with national bodies over the next period, and participants did not explore details of how the change management agenda might best be managed. However, there were a number of general points made consistently about the preferred approach:

- Recognise that many local authorities and their partners are already exploring many of the approaches described in this document.
- Consider the national agenda in terms of a public ‘campaign’ to engage with citizens and to help people understand how the new framework can help to support stronger local communities and responsive care services.
- Ensure that all key national agencies are clear about the implications of the change agenda and work cohesively within a single national programme for change.
- At a national level provide sufficient frameworks to allow local partners to design arrangements which will work for their localities, areas and regions, but avoid over-specifying requirements and practices. Use milestones and regular inspections to ensure that local partners are delivering the changes required.
- Use the existing national infrastructure of agencies and organisations to co-ordinate the change management agenda and drive it forward.
- Use a national learning approach to ensure that authorities and their partners can trial, test and evaluate and share emerging good practice.

**Social Services Improvement Agency**
**March 2013**

**Our Ref/Ein Cyf:**
**Your Ref/Eich Cyf:**
**Date/Dyddiad:** 8 May 2013
**Please ask for/Gofynnwch am:** Martyn Palfreman
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WLGA • CLlLC

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

Dear Vaughan,

**Social Services and Wellbeing (Wales) Bill**

Thank you for your invitation to WLGA and ADSS Cymru to provide further evidence and information following our oral evidence to the Committee on 18 April 2013.

I have pleasure in enclosing evidence relating to the areas requested, with the exception of our views on which provisions should be detailed on the face of the Bill and those that should be included in regulations, and why. We are seeking legal advice in relation to this and therefore need more time to bring this information together. I wonder whether we could pick up on some of our main concerns when we meet next week and then submit a full response on this later in May? I assume that in the mean time the Constitutional and Legislative Affairs Committee will also be giving these matters considerable attention in its scrutiny of the Bill.

I trust the further evidence enclosed will be useful to the Committee in its ongoing scrutiny of the Bill. I would be happy to discuss any of its contents further with you if that would be helpful.

Yours sincerely,

Martyn Palfreman

Martyn Palfreman
Head of Social Services Directorate, WLGA

Steve Thomas CBE
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**CC Phil Evans, ADSS Cymru**
**Emily Warren, WLGA**

# Social Services and Wellbeing (Wales) Bill

## Additional Evidence from WLGA and ADSS Cymru to the Health and Social Care Committee, May 2013

## Contents

## 1. Resource implications

1. The WLGA and ADSS Cymru have set out our position on resources in both our written evidence and the 'State of the Nation' document submitted to the Committee prior to our initial oral evidence session. We are absolutely clear that at a time of considerable pressure on the public purse and changing expectations of service users and carers, we must transform services, achieve efficiency savings, and where appropriate increase the pace of collaboration. The co-production of a Local Government Implementation Plan for Sustainable Social Services (which commits to an ambitious programme of local, regional and national collaboration in a number of service areas including Mental Health, Learning Disabilities, commissioning and procurement of placements and adoption) demonstrates our active commitment and collective action towards this aim.

2. However, we have significant concerns around the viability of implementing a Bill so extensive in scope, with no additional resources, at a time when Local Government has faced an 8% real terms reduction in spending power since 2008. The Spending Round announcement due on 26 June 2013 is likely to presage further reductions in the Welsh Block in both 2014-15 and 2015-16 at a time when demographic pressures will continue to rise and welfare reforms will start to impact on local services.

   - We have stated consistently that the Bill, by the nature of its scope, and the extent of new duties (as opposed to discretionary powers) which will be conferred on Local Government will involve new burdens and will not be cost neutral.

3. The Regulatory Impact Assessment (RIA) provided in the Explanatory Memorandum is weak, The opening paragraph acknowledges that '*The accurate prediction of costs and benefits to effect such a major change will be realised over time…..and there is a measure of uncertainty about some of the costs and benefits provided in this RIA'.* We are particularly concerned that this remains the only substantive evidence presented by Government to justify the costing of the Bill.

4. Whilst we recognise it may be difficult to project the costs of new duties, prior to implementation, it is not impossible. Since devolution the Welsh Government has been able to undertake financial modelling to project the costs of many new responsibilities. Forecasts can be done centrally using recognised econometric techniques and this can be triangulated by asking Councils and the NHS to validate the results. Latent demand for services is very difficult to estimate, as demonstrated by the difficulties which Welsh Government has encountered in funding the First Steps initiative. However, there are many experts working in the field who can make credible estimates. For example, Professor David Bell of Stirling University

was instrumental in changing Welsh Government policy on free home care based on the experience in Scotland.

5. Officials have been quite open in stating that they have not gone out to Local Authorities and the NHS before the Bill was published to ask if it could be costed. As a result, the RIA does not seek to determine the costs of much of what will be determined by regulation. However, during scrutiny, officials have accepted that there *‘will be choices that will have fairly substantial cost options’.* We remain concerned that the limited scope of the RIA will prove to be exceptionally misleading in that it underestimates the financial impact of proposed change.

6. As presented, the RIA provides analysis around only the redirection of the existing training budget, reduced cost of litigation and potential administrative savings. This may be an accurate assessment of these particular savings but they will not offset the increased demand driven by new duties imposed on Local Government.

7. The vision set out in ‘Sustainable Social Services for Wales: A Framework for Action’ and reflected to a lesser extent in the Bill, around which there is broad consensus, envisages increased access to services and a greater menu of preventative services, thereby reducing demand and costs. As stated in our submissions, we do not believe there is any genuine evidence to support this assumption. Prevention may delay or reduce demand but it will not release significant savings, as evidence from the Gwent Frailty Project has demonstrated. In addition, there is a question as to how Local Authorities will fulfil new duties to provide for a single right of assessment and greater access to information, advice and services, if additional funding is not forthcoming.

## WLGA/ADSS Cymru Research

8. ADSS Cymru has in place a resources group supported by WLGA Officers, and the Society of Welsh Treasurers. Following the publication of the Bill in February 2013, the group was asked to model the likely impacts of new duties in the Bill. Three priority work strands have been progressed to achieve this:

   Analysis of existing department spend per authority

   A national piece of research has been undertaken to determine the overall spend by Social Services departments in Wales during 2012/13, and to identify existing pressures and trends on budgets. Resulting material is currently being analysed.

Identification of new duties in the Bill with a resource implication and projection

Surveys have been issued to the 22 Local Authorities, to ask for detailed costing of key provisions included in the Bill, including:

- The cost of an assessment
- The cost of a carers assessment
- Eligibility thresholds- cost per head
- The number of people eligible for a portable assessment
- The cost of operating 'Family Information Services'
- Implications of extending service provision for disabled children to 21
- Cost of prevention services such as Flying Start and Families First.

In addition, we have worked with our counterparts at the Convention of Scottish Local Authorities (COSLA) to understand the rationale for the resource allocation provided by Scottish Government to implement the Protection of Vulnerable Adults Act (2007) and to determine the actual costs incurred by Local Authorities.

9. Once reports from these two pieces of work have been signed off by WLGA and ADSS Cymru, they will be submitted in full to the Committee.

Commissioning research to model the projected costs of introducing wellbeing/prevention services

WLGA officials are currently working with independent researchers who specialise in this area to finalise a specification for this work and we expect early research findings to be available from the early autumn onwards. This will be the most substantive piece of research conducted in Wales in this area, and will provide key evidence around the cost to authorities of meeting proposed duties in the Bill.

**Areas of specific concern**

10. Whilst our analysis is not yet complete, it is clear that there are some headline findings from our analysis. The current position reflects that 17 of 22 Local Authorities are overspending on Social Services, the total overspend across Wales fairly evenly split between Adults and Children's Services.

11. Local Authorities are already remodelling services to deliver improved outcomes for service users. These include a range of preventative services such as reablement. We are not seeing significant savings from such transformational change. This is consistent with predictions put forward by Professor John Bolton in connection with his work on Older People's Services in Wales and other programmes across the UK.

12. Other calculations suggest:

  - Based on the returns received to date, the average cost of providing the Family Information Service is £65,000 per Local Authority. The requirement on Social Services to provide additional Information, Advice and Assistance as set out in the Bill will have an estimated cost across Wales of £1.43 million

  - Assessment – if the Bill extends the right of assessment, this would potentially lead to an increase in the number of social workers/support workers employed.  The average cost of a Social Worker is £40,000 and the average cost of an assessment is £770.  On this basis, an additional 1000 assessments would cost £770,000 per year

  - The introduction of the Vulnerable Adults and Protection Act in Scotland was supported by an additional £15 million funding per year to Local Authorities.

## 2. Connecting systems that cater for a range of ages

1. Given the focus in Social Services on working with families to meet their members' needs for care and support, there is merit in close alignment between legislation that deals with children and young people and with adults. Additionally, this makes easier the role of the statutory Director in ensuring a unified approach, maximising the benefits of shared values and common core processes such as assessment and case management.

2. In our opinion, however, it is difficult to deduce from the current Bill where the Welsh Government stands on issues such as the benefits and limitations of 'genericism' for service users, carers, partner agencies and professional staff – issues which have been debated ever since the Seebohm reforms of social work in the early 1970s. Within the written evidence provided to the Committee, there is a strong consensus about the difficulties and challenges involved in approaches which seek to be age neutral.

3. In reality, considerable differences in practice have emerged, partly to deal with the fact that policy characteristically differentiates between how the state intervenes in the lives of children and adults. In Children's Services, most referrals relate to concerns about safeguarding and 36% are from the police. In adult services, self-referrals or referrals from carers predominate and they focus primarily upon meeting need for care and support.

4. As the Children's Commissioner makes clear, Social Services legislation and must demonstrate how it incorporates a rights perspective. Adults and children have different rights and need different safeguards (in areas other than abuse). Protecting children often means ensuring that their developmental needs in terms of health and social development and education are met. For adults, there is a key concern about capacity for making decisions in their own right. Children can be removed from their families, sometimes permanently, and the state will take over responsibility for making significant decisions on their behalf.

5. The provision of integrated services also has a different dimension, with the primary partnership for adult services involving the NHS and for children's services involving Education. Only if their joint responsibilities with Social Services are clearly defined for each 'category' of service user will the systems and services operate effectively across organisational and professional boundaries. This is the basis for developing good practice based upon 'team around the child' or 'team around the family' approaches which depend upon integrated working by the significant agencies involved with families.

## 3. Transition of children and young people to adult services

1. Welsh Government recognised the need to address the issue of transition in the Bill in respect of Children with Disabilities. We would ask that it is much more transparent about how agencies should carry out responsibility for assessing needs and providing services as these young people make the often challenging journey between childhood and adulthood (between the ages of 14-25 years).

2. Where unavoidable delays in children’s physical, emotional and mental development means that their capacity for greater independence is significantly compromised, the Bill should make explicit the provisions for ongoing support from the NHS, Education and others. This is a prerequisite to putting integrated, multi-disciplinary support on a sound footing. It needs to be more specific also about entitlement to transition support, with close collaboration between children’s and adult services to help young people bridge the gaps and adjust to new rights and responsibilities. Social Services have tried to make this support available but the costs of extended entitlement are proving prohibitive.

## 4. Portability

1. We acknowledge that there can be difficulties when people in need move across administrative boundaries but, in our experience, these occur in relatively few cases and the problems may not be susceptible to legislative requirements in respect of portability.

2. We know that families want consistency and continuity. However, Local Authorities rare question assessments carried out elsewhere. Delays and disputes arise most readily when people move across national borders or from urban to rural areas where the menu of services and the way in which need is met justifiably differ.

3. Some work has been done to see how many people are likely to be covered by the portability duty. It was very few. An analysis of sample cases, following their move, demonstrated that they often had very complex care and support needs which involved a range of agencies (especially the NHS). The relationship with a principal carer had also changed as a consequence of moving home. Hence, the relevant package of care and support still had to be recreated and re-negotiated.

4. In other cases, especially those which involve safeguarding concerns, good practice dictated that early reassessment was essential to ensure that risks were being managed appropriately.

5. In our opinion, the mechanisms set out in the Bill are more likely to produce unnecessary challenge and complaints than increased service user satisfaction. Similar unintended consequences would arise from extending the portability right to carers.

## 5. The merits and likely impact of the provisions in the Bill for strengthening the voice and control of people using Social Services

1. The WLGA and ADSS Cymru fully support the principle of maximising opportunities for users and carers of social care services to contribute actively to the identification of individual outcomes and the shaping of services to meet the needs and aspirations of the individual and deliver those outcomes.

2. 'Sustainable Social Services for Wales: A Framework for Action' includes the following commitment from the Welsh Government: 'We will work with all stakeholders, and in particular with service user interests, to develop a model of self-directed support that is consistent with our principles for social care - including a stronger infrastructure of support for those who choose these routes.'

3. We are disappointed, therefore, that there are no specific provisions around the development of a model for Wales within the Bill. Paragraph 24 of the Explanatory Memorandum states that: 'Across the 'spine of the Bill' the provisions are designed to promote an individual's voice and control in relation to access, assessment and eligibility for services'. We recognise that there is an implied requirement for Councils and partner agencies to give users and carers a voice in respect of these aspects of service, for example in (1) providing sufficient information and advice to enable them to make plans for meeting their needs for care and support, (2) engaging with them in identifying personal outcomes and (3) promoting social enterprises, cooperatives, user led services and the third sector.

4. However, there is no indication on the face of the Bill as to how a model of self-directed support will be implemented in Wales, a crucial step in delivering the Welsh Government's commitment to avoid a 'market-led model of consumer choice'. We believe this is a missed opportunity in an area which requires strong leadership and direction from the national Government and which has been promoted as a key objective in transforming Social Services in Wales.

5. We would look for clear principles being included in the Bill or in the regulations, without prescription over specific models. These would need to reflect existing effective practice in Wales, accommodate a range of approaches including but not limited to Direct Payments, and be founded on the principles of co-production, namely shared learning and growth of trust based on experience. Responsibilities for developing and implementing such approaches need to extend beyond Social Services, reflecting the wellbeing context articulated in the Bill. Local Government would look to contribute towards the development of these principles,

sharing the outcomes of helpful discussions between Local Authorities, WCVA, Welsh Government and the third sector which culminated in a national Summit on Citizen Directed Support on 26 April 2013.

6. In addition we have very real concerns that there is an inevitable conflict between the objective of providing voice and control – necessarily implying a significant degree of flexibility and variation across Wales and within local areas – and the provision within the Bill to introduce a National Eligibility Framework through Regulations. We do not see how the stringent application of national criteria can co-exist with the stated need for Councils to take individual needs, views and aspirations about the nature and level of services they wish to receive.

7. We believe a clearer definition of what is meant by strengthening voice and control would help clarify possible tensions and contradictions.

## 6. Independent Advocacy

1. Local Government is committed to ensuring all users of our service have increased voice, choice and control. Whilst provision of independent advocacy is only statutory for certain client groups, such as those with mental health needs, there is a commitment within Local Authorities to secure wider access to this type of advocacy, where it is appropriate. This was reflected in the Framework for Services for Older People, in a good practice compendium for Fulfilled Lives Supportive Communities and as a key priority within our Local Government Implementation Plan for Sustainable Social Services.

2. We support the provisions in the Bill, recognising the value of advocacy for the citizen where appropriate, but we do not believe in a broad duty enshrined in law for all service users. Advocacy needs to be viewed as part of a wider framework for strengthening voice and control for citizens. We believe it is right for this approach to be determined through policy as part of work to support a National Outcomes Framework.

3. We believe that independent advocacy is a critical tool but should be viewed as part of a wider suite of services that should be developed into a Welsh framework around voice, choice and control. As such, we would welcome the opportunity to discuss how we can contribute to this debate and maximise powers in the Bill to deliver an appropriate framework for citizens – one which is appropriately resourced but avoids legislation which demands a 'one size fits all approach' that may not be responsive to individual circumstances or account for the wishes of the service user.

4. The WLGA and ADSS Cymru believe that independent advocacy has an absolute value, alongside a range of other advocacy mechanisms such as Citizens Panels and Member Champions, and the Sustainable Social Services agenda provides a real opportunity to determine how this wider framework could be developed, and ensure appropriate resources are provided from the centre.

## 7. Social enterprises, cooperatives and user led services

1. The WLGA made clear in its written evidence to the Committee its view that social enterprises, cooperatives and user led services have a role to play in developing and delivering responsive social care and wellbeing services to people in need of care and support. The potential contribution of such models to strengthening the voice and control of service users and carers is recognised, although we would emphasis that this is not the only route to securing this goal.

2. Our concern is that a specific provision on the face of the Bill requiring Councils to promote the development of new models of service using these approaches is contrary to existing statutory commissioning guidance for Social Services and wider competition law. It also raises questions regarding the long term viability of existing contracts between Councils and providers from other sectors, notably the independent sector. Furthermore, we think that 'singling out' specific models of delivery in this way has the potential to harm existing and future relationships with the independent sector.

3. There are examples of cooperatives and social enterprises providing social care and wellbeing services in Wales and the feasibility of such arrangements is being actively pursed in other areas. Examples include 'Menter Fachwen' in Gwynedd, a social enterprise providing work experience and training for local people with a range of disabilities, and exploratory models such as the Community Interest Company proposed by Cardiff Council. However, we would contend that there remains a need for considerable development of this sector. This is undoubtedly one reason why the duties to promote these are included in the Bill. Developing social enterprises and cooperatives within local communities will take some time. It is imperative in the mean time that Councils and other statutory agencies work with other sectors to build and sustain vibrant and diverse local markets for social care which have the capacity to deliver current and new models of care. The Local Government Implementation Plan for Sustainable Social Services contains a series of commitments in this regard, including the establishment of a National Commissioning Board working directly with cross-sector provider forums to facilitate the improvement of services and development of new service models, and equipping Councils to analyse local markets and identify where improvements are needed to guarantee sustainability into the future.

4. We think that the inclusion in the Bill of a duty specifically to promote social enterprises and cooperatives might distort this productive activity and have an ultimately detrimental effect on services. We would call for it to be replaced by a more general duty to promote sustainable local markets including a range of different deliver models.

## 8. Direct Payments

1. We are working hard to increase take up of Direct Payments but they should be seen as one way of ensuring that care and support are citizen directed. The Bill does not establish this overall direction or make clear what other methods should be used if service users exercise a right of choice and decide against Direct Payments. On 26th April, ADSS Cymru and the Social Services Improvement Agency ran a joint summit to discuss the role of Citizen Directed Support (CDS) in Wales and to examine the range of options. The record of the event can be made available to the Scrutiny Committee in due course.

2. We acknowledge that there are unacceptable differences in the use made of Direct Payments by different Local Authorities and by different categories of service users. These differences are the product of many factors (including the influence of local cultures, social care markets, cross-border issues and long-term contracts with service providers) which are persistent in their effect. If Welsh Government adopts a very prescriptive role in seeking to overcome such barriers, there is a risk that Local Authorities will become non-compliant because of factors outside their control. In our opinion, additional support for change programmes would be a more effective response. There has been some research and piloting of the mechanisms which would increase use of Direct Payments such as Managed Accounts, National/Local Personal Assistant matching services and the extension of brokerage services. However, there are resource implications and there is concern that prescription may be used as an alternative to an effective funding regime.

3. The Bill does not deal adequately as yet with the potential impact of the Direct Payments provisions on the service commissioning role of Local Authorities. At present, this is heavily prescribed by detailed statutory guidance. One consequence of compliance with the current guidance is to encourage large scale block contracts with service providers. It is possible that greater use of Direct Payments would involve giving up these opportunities for efficiency savings. We do not know how far such costs would be balanced by the savings that can accrue from providing more individually tailored care and support. Additionally, it is anticipated that Local Authorities and the Direct Payment support organisations which they fund would need to invest considerably in the provision of training, financial advice and other 'infrastructure' to provide an effective service to increased numbers of Direct Payment users.

4. The current Bill does not deal effectively enough with the need for the NHS to align delivery of Continuing Health Care, joint packages of care and support and pooled budgets with the mechanisms which underpin Direct Payments. This should include the duty to provide funding toward a social care package where this clearly benefits the NHS in terms of best value.

5. ADSS Cymru supports the proposal that Direct Payments could be used to purchase services delivered by Local Authorities as well as other providers. This is consistent with the principles of strengthening choice and the voice of citizens. It would contribute also to the availability and development of sustainable services and new delivery options while increasing service options for citizens. In some areas, the independent and third sectors are not sufficiently robust to provide sufficient choice; in the short term, this means increased dependence on Local Authority provision.

6. It should be noted that the need for registration under the Care Standards Act can restrict Direct Payments users when they set out to find collective or social enterprise solutions to the provision of services. This demonstrates also the need for aligning properly the safeguarding/service quality assurance and the service provision/commissioning roles undertaken by Social Services.

## 9. National Outcomes Framework and its impact on delivery of Social Services

1. The WLGA and ADSS Cymru support the concept of a National Outcomes Framework and see this as an opportunity to properly assess the impact of services on people's lives, rather than focusing on systems and processes as a means of assessing the effectiveness of services.

2. Part 9 of the Bill states rightly links outcomes to the wellbeing of people in need of care and support. Assuming this incorporates the range of services, including preventative services, it is crucial that a National Outcomes Framework and the statements informed by it span Local Government and other services, such as those provided by Health and the third sector. Indeed the Explanatory Memorandum makes this point. The Framework should align with other outcomes methodologies being developed within Local Government's performance improvement framework and in relation to single integrated planning under the auspices of Local Service Boards.

3. We are concerned therefore, that the recent Wellbeing Statement by the Deputy Minister refers to a 'National Outcomes Framework for people who need care and support and carers who need support'. In our view this immediately limits the scope and impact of the Framework and diminishes its applicability to the wider wellbeing agenda. Conversely, the supporting outcomes and measures are very broad (for example including 'I have safe and healthy relationships'. A possible – if unintended – consequence could be the assumption that it is the responsibility of Social Services on their own to deliver these outcomes for people. This lack of clarity should in our view be addressed, and the opportunity taken through the Bill to require the establishment of a genuinely cross-sector Framework.

4. In addition, we are not clear about how the delivery of nationally-set outcomes can be aligned to those identified for individuals – a crucial element of user voice and control. We look to Welsh Government to engage with a range of stakeholders in further exploration of an appropriate relationship between the two levels.

5. Finally, we have some concerns about the provision in the Bill for Ministers to issue a code to help achieve national outcomes, in particular 'imposing requirements on Local Authorities in relation to provision of that kind'. We would want further clarification and discussion as to what such requirements might be. Any imposition of standards, measures and targets would need to be proportionate, balanced and agreed with Local Government. We also question why similar requirements are not proposed for other agencies.

## 10. Codes of Practice

1. The WLGA and ADSS Cymru are keen to ensure an appropriate balance between national and local direction. We have placed on record our concerns, during our recent evidence session that the tendency in this Bill is to vest a greater level of power in Welsh Ministers to direct authorities than any previously seen.

2. Section 125 highlights this stating that '*The Welsh Ministers may direct the Local Authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the excercise of functions by the authority in accordance with the requirement in the relevant code.'* This provision is in addition to those powers of intervention by central Government prescribed in provisions 126-134.

3. As such we are not persuaded by the current drafting of the Bill in relation to the broad powers conferred on Welsh Ministers to direct authorities and to issue codes. Additionally we are concerned about the prescribed powers in section 138(3) (4) to identify measures within codes which relate to standards, measures, targets, and specification of categories. We would advocate for clarity from the Welsh Government, around the specific areas for which they intend to issue codes, and for a dialogue around how any performance measures, standards or targets enshrined within codes would align to existing performance measures. Only in this way can we avoid a disproportionate level of regulations.

4. Our written evidence calls for the Bill to simplify legislation and reduce bureacracy, in accordance with the stated aims set out in the explanatory memorandum. As currently drafted provision 138 risks creating additional and unecessary legislation and bureacracy, and would directly undermine the evidence in the Munro Report and Law Commission reviews, both of which strongly advocated simplifying processes.

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

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10th May 2013

Vaughan Gething
Assembly Member
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Vaughan

Thank you very much for inviting the NSPCC to give oral evidence in support of our written evidence. We welcome the bill and its potential to improve lives of vulnerable children and young people and those who care for them by delivering a single framework which makes clear the responsibilities of social services and of key partners in delivering prevention, early help and acute services. I write now to confirm the key changes that we would like to see made to the face of the Bill and to clarify our views on other specific issues to support delivery of the aims of the legislation.

We would like to see:

- Duties on the face of the Bill which make clear the roles and responsibilities of all partners (and sets out who those partners are) in promoting universal wellbeing, wellbeing of those at risk of becoming "in need" and wellbeing of those who are "in need". We are concerned that the long title of the Bill states 'public authorities', Section 6 places the duty on local authorities and the title of the Bill states social services and consequently the responsibilities of partners are unclear. We recommend that these discrepancies are rectified and that Part 2 Section 4 states clearly the responsible partners and that Part 2 Section 6 (5), the duty on LHB, should be stronger.
- We are concerned that there may be a gap between preventative services and those with an eligible need and want to ensure that gap is closed. Besides the changes above, NSPCC Cymru/ Wales believes that partners, rather than just social services, should provide a spectrum of services to include:
  - 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)
  - services to children with an eligible need
- The UNCRC should be clearly stated in the policy objectives within the explanatory notes or the long title of the Bill and we are concerned that the due regard duty assessment against the UNCRC has not been published. Should there be principles included on the face of the Bill, then we would expect to see the UNCRC as one of those.
- A definition of "in need" which builds on that defined in the Children Act 1989 ( we are currently looking further at this and will write again to follow up)
- A duty on Welsh Ministers to issue a statement relating to the wellbeing of children in Part 9
- Clarification that Lead Directors and Members for Children and Young People from the Children Act 2004 will be retained
- Advocacy- We welcome the Deputy Minister's decision to consider an amendment to strengthen advocacy – it is vital that clear provision is made for easily accessible, independent advocacy.

*Noddwr: Ei Mawrhydi y Frenhines*
Sefydlwyd 1884. Corfforedig trwy Siarter Brenhinol. Mae ChildLine yn wasanaeth a ddarperir gan yr NSPCC, rhifau cofrestru'r elusen 216401 a SC037717. Mae croeso i chi cysylltu gyda ni yn Gymraeg neu'n Saesneg.

*Patron: Her Majesty The Queen*
Founded in 1884. Incorporated by Royal Charter. ChildLine is a service provided by the NSPCC, registered charity numbers 216401 and SC037717. You are welcome to communicate with us in Welsh or English. NS/332

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- Part 6 is effectively a copying over of Section 3 of the Children Act 1989 though the Explanatory memorandum states that it will not stand in isolation form other statutes. However, there are some changes which require further explanation. (For further information and detail see Appendix 1.) On the face of the Bill NSPCC Cymru/ Wales would specifically like to see:
    - A requirement to assess and provide services to children as they enter care to support their emotional wellbeing.
    - Greater support for children returning home from care through a requirement to assess, prepare, support and monitor wellbeing
    - Improved support for care leavers

In Part 7 we would like to see:

- Strengthening of Section 112 (3) so that Safeguarding Boards hold all agencies to account for exercising their safeguarding duties appropriately and effectively
- Section 115 of the draft Bill is not strong enough and we want to see commitment to a funding formula on the face of the Bill (NB This was an urgent recommendation of the previous Health, Wellbeing and Local Government Committee in November 2010 in their report following their inquiry into LSCBs)
- We support the Children's Commissioners views that there should be separate national safeguarding boards, one for children and one for adults, and that these should be independently chaired
- Independent specialist chairs of all Safeguarding Boards.
- Section 117 is removed from the Bill or, if it remains, that conditions are on the face of the Bill that need to be met before Safeguarding Boards could be merged (for example ensuring proper scrutiny of such decision by the NAfW).

We would also like to clarify our position on the paramountcy principle and Article 3, the child's best interests. The NSPCC does not support any measures which seek to alter the paramountcy principle as defined in the Children Act 1989, which ensures that the welfare of children overrides all other considerations. We would welcome the paramountcy principle being explicit on the face of the Bill.

As stated above we do have concerns that the commitment to the UNCRC is not expressed clearly enough within the Bill and if the UNCRC was clearly included in the policy objectives it would add strength in terms of the best interests of the child. Whilst there is reference to "best interests" on the face of the Bill, this is not always consistently done.

In terms of Sections 13 and 14, there are parents who will avoid assessment and intervention by statutory agencies and there are also children for whom detrimental experiences are normalised and they are unable to recognise or identify potentially harmful circumstances.

We share concerns that including sections which enable refusal for assessment will make it even more difficult for local authorities to provide early help to children and families who need it.

We currently have a child protection system which relies on a heavy burden of proof at an acute stage rather than an assumption of providing early intervention and promotion of wellbeing.

We welcome the potential of the bill to provide a step change in the way we safeguard our children by intervening at the earliest opportunity rather than waiting until there is an acute need.

Therefore, we believe the wording of sections 13 and 14 do not do enough to encourage intervention at the earliest opportunity. The ability for a child or parent to refuse an assessment could create a potential barrier to working with families who can be difficult to engage with.
Whilst Section 14 does build in a safety mechanism in that a parent's refusal can be over-ridden in certain circumstances, we would like clarity as to why a section which allows for refusal is necessary and in what circumstances a parent would want to refuse support. We would also highlight that Section 13 (3) appears to negate the safety over-ride if a child under 16 has sufficient understanding to make an informed decision, even though (4) provides that the LA is not discharged from its duty if it suspects the child is at risk (again the wording does not do enough to ensure early intervention and prevention). We would query the need for 13 (3) and highlight that within this section, the best interest test only appears to be included for 16 and 17-year-olds.

It is always difficult to strike a balance between protection and rights and that is why we call for a clear commitment to the UNCRC on the face of the bill. This would give clearer effect to article 3 – the best interests of the child – throughout the bill and help professionals continue to strike that balance.

We look forward to working with you over the coming months to strengthen the Bill and if we can help with anything please get in touch.

Kind regards

Des Mannion
National Head of Service for NSPCC in Wales

cc: Committee Clerk for Health & Social Care Committee

APPENDIX 1

Part 6 is an effective copying over of part 3 of the CA89. The Explanatory Memorandum says ""*The obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act 1989 have been included in this Part* (Part 6) *...However, the Bill will not stand in isolation of other statutes and local authorities will still have duties owed to children under the Children Act 1989 and the Adoption and Children Act 2002."*

This appears to suggest that the legislature's intention is not to substantially repeal provisions of Part 3 CA89 but to replicate them within Part 6 SSWB.

However, there are a couple of examples of areas where there are some changes which are not explained. This creates concern as to which substantive provisions of the CA89 will remain in force in Wales after the Bill has passed.

Examples:

Sec 60 – does not incorporate relevant sections of CA89 which provides for short breaks. This has not been addressed within the Explanatory Memorandum

Sec 62 - restates CA89 s22(3)-(8) however SSWB has removed the provisions which state that the local authority ought to take account of the wishes and feelings of the child, his parent or any person with parental responsibilities and simply states that the local authority ought to take into account any person whom it considers relevant. This has not been addressed within the Explanatory Memorandum.

Sec 65- This is a new provision to support permanency planning. We are supportive of the aims to reduce placement instability and, as we understand it, this provision aims to ensure that fostering to adopt happens where other placement options for the child, such as supported placement with their parents or kinship care, are not in their best interests. We are supportive of this principle. However, this an example of one area which may need further clarification – we are picking up differing interpretations of the wording, with some suggesting that the decision to place a child with a foster carer who was also an approved adopter only being able to be taken after care proceedings have begun, necessitating an additional short term placement. This could create additional instability and would be against the aims and purpose of the proposals.

**Gwenda Thomas AC / AM**
**Y Dirprwy Weinidog Gwasanaethau Cymdeithasol**
**Deputy Minister for Social Services**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF GT 422 13

Vaughan Gething AM
Chair
Health and Social Care Committee
National Assembly for Wales

14 May 2013

Dear Vaughan,

Thank you for your letter of 8 May concerning how "When I am Ready" will work alongside the Social Services and Well-being (Wales) Bill.

As Members will be aware, on 19 October 2011 Ken Skates AM was selected in the ballot to introduce a Member's Proposed Bill on Continuity from Care into Adult Life. During the Plenary debate on 11 January 2012 on Mr Stake's motion seeking the Assembly's leave to introduce a Bill I made clear that I supported the intention behind the Bill proposals but was of the view that a Bill was not required. Instead I agreed to work with him to develop a scheme to support young people transitioning from care.

The proposed "When I am Ready" scheme is one of a range of options that will be available to young people who are transitioning to adulthood when they are due to leave care at the age of 18. It is intended as an alternative to 'supported lodgings' and will enable young people to remain with their former foster carers in a familial setting with people who are known to them and who can offer continued support as they grow into adulthood. As you are aware I have agreed to pioneer this in three local authority areas during 2013/14 (using powers within Part 3 of the Children Act 1989) in order that the experiences of these areas can inform the further development of the guidance to ensure that it will meet the needs of young people and their carers.

As you know, we are incorporating the current provision contained in Part 3 of the Children Act 1989 into the Social Services and Well-being (Wales) Bill 2013 and Part 6 of the Bill, in particular section 93, will provide local authorities with the necessary legislative authority to operate the "When I am Ready" scheme.

Yours sincerely

Gwenda.

**Gwenda Thomas AC / AM**
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

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# Consultation Response – Additional Information

## Social Services and Well-being (Wales) Bill

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**Following our written submission on 14th March 2013 and oral evidence to the Committee on 2nd May 2013, Carers Wales would like to raise one additional issue.**

It has recently come to our attention that Welsh Government intends the Bill to repeal the Carers Strategies Measure (Wales) 2010. This came as something of a surprise as there is no mention of the Carers Measure in the Bill as drafted and only one reference in Explanatory Memorandum, which relates to the definition of a carer.

We would like to raise our concerns over the proposed repeal of the Carers Measure but also in regards to how this relates to the wider issue of the relationship between the Bill and existing legislation.

In regards to the possible repeal of the Carers Strategies Measure (Wales) 2010 we would question whether this is necessary or desirable. We fully understand the logic behind rationalising social care legislation in the Bill but would argue that there are also merits to maintaining distinct legislation for carers under the Measure, not least because of the impetus of having LHBs as the lead agencies has provided to taking carers issues forward in Wales.

If the Measure is to be incorporated into the Social Services and Well-being (Wales) Bill it will be essential that the existing legislation is transferred wholesale into the new Bill and that nothing is lost in the processes. We would be extremely concerned should the provisions in the Measure be split up or diluted as this would undermine the intentions of the original legislation and risk the positive progress being made so far. In particular it is essential that the duty placed on Local Health Boards to provide information and support to carers and act as the lead authority in the preparation and publication of the strategies is maintained.

To avoid any prolonged uncertainty we would call for the Welsh Government to issue a full list of repeals to be included in the Bill as a matter of urgency. The lack of clarity on repeals and how the new Bill relates to existing cornerstone pieces of social care legislation is an ongoing matter of concern.

Keith Bowen

Carers Wales
15th May 2013

**Comisiynydd Plant Cymru**
**Children's Commissioner for Wales**
Keith Towler

## Ymateb i Ymgynghoriad / Consultation Response

| | |
|---|---|
| Date/Dyddiad | **May 2013** |
| Subject/Subject | **Child Rights Impact Assessment:<br>CCfW Assessment of identified sections of the Social Services and Well-being (Wales) Bill.** |

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.[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] The Measure requires Welsh Ministers to have due regard to Part One of the UNCRC and specified articles of the optional protocols to the UNCRC when making decisions about provision included in new legislation, the formulation of a new policy and in the review of or change to an existing policy.

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[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.htm

## Context: Child Rights Impact Assessment and the Social Services and Wellbeing (Wales) Bill 2013 – Stage 1 scrutiny

Child Rights Impact Assessments (CRIA) are a key mechanism for implementing the United Nations Convention on the Rights of the Child (UNCRC). The United Nations Committee on the Rights of the Child, the monitoring body of the UNCRC, suggests that States Parties can use the child impact assessments as a means of supporting progress in meeting obligations contained under Articles 3 and 4 of the UNCRC. The Committee published General Comment No.5 on the general measures of implementation of the Convention in 2003:

> *'Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.'*[5]

Welsh Government has been undertaking CRIAs in line with application of the duty of due regard to the UNCRC contained in the Rights of Children and Young Persons (Wales) Measure 2011. The CRIAs are currently not routinely published. I have called for the CRIA process to be made transparent and consistent  in the interest of applying key principles of due regard and to improve the scrutiny process for policy and legislation, leading to better outcomes for children and young people. During stage 1 scrutiny of the Social Services and Wellbeing (Wales) Bill, the National Assembly for Wales' Children and Young People Committee and also the Health and Social Care committee examined my concerns at the robustness of the CRIA process for the Bill. In order to clarify my concerns, I committed to submitting a document to complement my written submission which would outline particular areas within the Bill which I believe may not have been subject to sufficient consideration as part of the CRIA process.

This document is not intended as a full CRIA and does not consider all of the provisions included in the Bill. Instead, the paper focuses on the provisions that are of greatest importance with regard to the application of the UNCRC and is based on the written submission I presented at stage 1 of the legislative process.

## Policy /Legislation:

## Social Services and Well-being (Wales) Bill 2013

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[5] Committee on the Rights of the Child (2003), *General Comment No.5, General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para 6).

The purpose of the Social Services and Well-being (Wales) Bill (the Bill) is to specify the core legislative framework for social services and social care in Wales. Welsh Government's primary policy objectives in relation to the Bill are to improve the well-being outcomes for people who need care and support and carers who need support and to reform social services law. The Welsh Government intends to achieve these objectives through:

a. simplifying the web of legislation that currently regulates social care in Wales;
b. providing people with a stronger voice and greater control over services they receive;
c. ensuring people receive the help they need to live fulfilled lives; and
d. stronger national direction with clear accountability for delivery.

## Children affected by the proposals

For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier (Article 1). 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. It is 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.

As of 31st March 2012[6] in Wales there were:

- 20,240 children in need included in the Children in Need census;
- A quarter (25 per cent) of children in need had a disability;
- 5,726 children were looked after;
- 246 children were adopted from care between 1 April 2011 and 31 March 2012;
- No robust data in relation to the number of young carers in Wales in available. The 2001 census recorded approximately 860 children under 18 years old providing more than 50 hours care a week. This is known to be an underestimate and Welsh Government have quoted a figure of 11,00 based on the 2011 census in the past.

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[6] SDR 30/2013, *Wales children in need census,* 2012; *Adoptions, Outcomes and Placements for Children Looked After by Local Authorities*, Year ending March 31st, 2012.

## Assessment of likely impact of legislative changes proposed in the Social Services and Well-being (Wales) Bill

**Proposal: Introduction of 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.**

**Relevant article(s) of the UNCRC: article 3**

**Assessment: Inhibits effect of article 3 the UNCRC.**

**Lack of application of due regard to the UNCRC in relation to the basis for legislative change.**

**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. 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 in line with the duty of due regard to the UNCRC.**

The Explanatory Memorandum 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). 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 give greater effect to the best interests of the child in compliance with article 3 of the UNCRC Para 1. 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.

The introduction of legislative change, specifically 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'.

**Proposal: Amendment to Section 25 of the Children Act 2004 (Section 144 of the Bill).**

**Relevant article(s) of the UNCRC: article 3; article19**

**Assessment: Lack of application of due regard to article 3 of the UNCRC in relation to amendments to existing legislation.**

**The decision to amend the existing duty towards children contained in the 2004 Act regarding cooperation should be based on a consideration of the impact of such a change on the promotion of compliance with the UNCRC.**

Section 144 of the Bill makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). The Bill's Explanatory Memorandum 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). In this case an assessment should be made of the impact of such a change in relation to compliance with: Article 3 Para 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.

**Proposal:** **Provision in relation to safeguarding arrangements (Sections 109, 110, 117 of the Bill).**

**Relevant article(s) of the UNCRC:** **article 3; article 19**

**Assessment:** **Retrogression of article 3 of the UNCRC.**

**Inhibits the effect of article 19 of the UNCRC.**

**The Bill provides for a National Independent Safeguarding Board to consider safeguarding arrangements for both children and adults (Sections 109 and 110). This arrangement fails to take account of the need for special care for children through the promotion of the best interests principle contained in article 3 of the UNCRC. There is a risk in the context of the new statutory framework for adults as set out in the Bill that a clear focus on providing national direction on the safeguarding of children in Wales may be diluted.**

**The Bill affords powers to Welsh Minister to amend section 117 of the Bill to require that a Safeguarding Children board and a Safeguarding Adult Board combine creating single regional boards. 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.**

The Declaration of the Rights of the Child was adopted by the General Assembly in 1959 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”. Children who have support and care needs requiring social care intervention and children at risk of abuse, neglect or other forms of harm are particularly vulnerable in this regard. Article 19 of the UNCRC sets out the provisions that should be put in place to promote the protection of children as a right.

**Proposal:** **Basis for an authority to have a duty to meet the care and support need of a child (Sections 19, 23, of the Bill).**

**Relevant article(s) of the UNCRC:** **article 18; article 19**

**Assessment:** **Inhibits the effect of article 18 of the UNCRC.**

**Inhibits the effect of article 19 of the UNCRC.**

**The Bill does not 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, but are not considered at risk and do not meet the eligibility criteria. The lack of provision on the face of the bill outlining the right to support in relation to this cohort may inhibit promotion of Article 19 Paragraph 2 and Article 18 Paragraph 2 of the of the UNCRC**.

Section 19 of the Bill provides that an assessment will be undertaken to conclude if a child has care and support needs or if a child carer has support needs. 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 are not provided on the face of the Bill.

Article 19 Paragraph 2 provides that: 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. While Article 18 Paragraph 2 provides that:  Para 2. For the purpose 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.

**Proposals: Provisions for a parent or child to refuse an assessment of a child's care and support needs (Sections 13, 14, of the Bill).**

**Relevant article(s) of the UNCRC: article 3; article 19**

**Assessment: Contravenes article 3 of the UNCRC.**

**Inhibits the effect of article 19 of the UNCRC.**

**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. The introduction of provision through which a child can refuse the assessment of their own need and retention of the existing provision for a person with parental responsibility to refuse consent to an assessment does not take account of the requirements of article 3 of the UNCRC. Further these provisions inhibit the implementation of article 19 para 2. of the UNCRC.**

The Bill provides under section 13 that:

- Where a child aged 16 or 17 refuses a needs assessment under section 12, the duty under that section to assess the child's needs does not apply. Unless the authority is satisfied that the child lacks capacity or suspects the child may be at risk of abuse, neglect or other kinds of harm.

- Where a child under the age of 16 refuses a needs assessment under section 12, the duty under that section to assess the child's needs does not apply if the local authority is satisfied that the child has sufficient understanding to make an informed decision. Unless the authority suspects that the child may be at risk of abuse, neglect or other kinds of harm.

Section 14 of the Bill provides that:

- If a person with parental responsibility for a child aged under 16 refuses a needs assessment for that child under section 12, the duty under that section to assess the child's needs does not apply. Unless the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm; the local authority is satisfied that the person with parental responsibility for the child lacks capacity to decide whether to refuse to have the assessment or the local authority is satisfied that the child has sufficient understanding to make an informed decision and the child does not agree with the refusal by the person with parental responsibility for the child.

These provisions represent a clear breach of the 'best interests' principle. The Bill's 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).This position fails to account for the need to extend safeguards and care to children and for application of the best interest principle.

**Proposals:** **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 derived from but replaces Section 17 of the Children Act 1989 (Section 23 of the Bill).**

**Relevant article(s) of the UNCRC:** **article 23**

**Assessment:** **Retrogression of article 23 of the UNCRC.**

**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 children who are entitled to support for their care and needs omits specific reference to disabled children and weakens regard to article 23 of the UNCRC as described in the General Comment No. 9 on the rights of children with disabilities.**

The Bill contains provision 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 recognise 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[7] 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).

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[7] Committee on the Rights of the Child (2006), *General Comment No.9, the rights of children with disabilities*.

**Proposals:** Application of policy intent to secure a stronger voice and real control in regard of children (Sections 8, 159, of the Bill).

**Relevant article(s) of the UNCRC:** article 12; article 13

**Assessment:** Fails to give due consideration to article 12 and article 13 of the UNCRC.

**There is no reference to advocacy in Section 8 of the Bill in relation to information, advice and assistance. 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. There is little evidence in the rest of the Bill of provisions that will provide a stronger voice and real control to children with care and support needs.**

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.

Article 12 of the UNCRC provides that:

> Para 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> Para 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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.

**Proposals:** Provisions related to looked after and accommodated children (Part 6 of the Bill).

**Relevant article(s) of the UNCRC:** article 2; article 20

**Assessment:** Fails to give due consideration to article 2 and article 20 of the UNCRC.

**Guidance and Regulations on measures to strengthen arrangements for the placement, health and well-being of looked after children and young people; and responsible commissioner for secondary health care for children places away from home was issued by Welsh Government in 2007 under sections 35, 27 and 28 of the Children Act 2004 and**

**section 7 of the Local Authority Social Services Act 1970. The inclusion of the provisions contained in this guidance could be usefully incorporated into the Bill in order to give greater effect to article 2 and article 20.**

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 updated 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 the application of the other articles of the UNCRC in line with the principle of non - discrimination under article 2 of the UNCRC and the United Nations framework: Guidelines for the Alternative Care of Children (2009).

**Proposals: Application of policy intent in relation to improve the well-being with regard to children.**

**Relevant article(s) of the UNCRC: article 19**

**Assessment: Fails to give due consideration to article 19 of the UNCRC.**

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 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 in order to give greater effect to article 19 of the UNCRC. Children’s right to respect for their human dignity and physical integrity and to equal protection under the law requires removal of the ‘reasonable punishment’ defence. The Committee on the Rights of the Child issued General Comment No.8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment in 2006[8]. The General Comment was issued to highlight the obligation of States parties to prohibit and eliminate all corporal punishment.

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**Proposals:** **Provisions for a child carer to receive an assessment as a child with care and support needs (Section 15 of the Bill).**

**Relevant article(s) of the UNCRC:** **article 3; article 19**

**Assessment:** **Gives greater effect to article 3 and article 19 of the UNCRC.**

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. This provision gives greater effect to article 3 and article 19 Paragraph 2 of the UNCRC.

**Proposals:** **Definition of well-being as it applies to children.**

**Relevant article(s) of the UNCRC:** **article 3**

**Assessment:** **Respects article 3 of the UNCRC.**

The definition of well-being included in the Bill 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'.

BARNARDO'S CYFLE
**STATEMENT TO SOCIAL SERVICES & WELLBEING BILL COMMITTEE**
May 16th 2013.

We've spent some time thinking about our experiences of moving to independent living and how these are linked to the **principles** in the Bill.

It's hard living independently for the first time and can be lonely. It feels like it becomes harder to get support and our social workers are around much less.
There isn't always enough consideration of our feelings when the time comes to move placement because of money or age reasons. Sometimes moves can feel forced and sudden and we don't have enough time to prepare ourselves.
There also isn't always enough support to keep in contact with previous foster carers when we want to.
These are examples where we would have liked more help to **adjust to new circumstances** and have a feeling of **stability.**

ID is also really important when you leave care. We need ID when applying for college, opening bank accounts, applying for accommodation, and even just for a night out. Our social workers often take far too long to complete applications for our ID, and they sometimes lose our birth certificates and deed poll documents or take too long to return them to us.
Social services can also be slow organising money we need for college, and when we pay for college things ourselves they take to long to refund the money to us. It can also take too long for us to be able to get access to our personal things in storage, even when we ask many times.
It can often feel like social workers are there when *they* need something, but not when *we* need something. Sometimes we can't get a reply from out social worker for weeks, even when we leave messages, send texts, or are waiting for an answer to something.
These are examples where we could be treated with more **respect** and **professionalism.**

Some of us were helped to learn about things like electricity bills before we left care and were also given help to understand our bills when we moved to independent living. This helped us to **adjust to new circumstances**.

We have all had a positive experience of our Personal Adviser service provided by Barnardo's. We think this service has worked well because it is independent from social services. We think that being independent can help services to work with **professionalism**.

It has meant a lot to us when workers have stayed with us for a long time, instead of having new workers all the time. It can be hard when these long-term relationships come to an end, but they give us real support, make us feel someone is always there, and we build up trust. These relationships give us a feeling of **stability** and make us feel we are being treated with **respect**.

**Older People's Commissioner for Wales**
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Vaughan Gething
Chair of the Health and
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20 May 2013

Dear Chair,

As requested following the recent evidence session with the Health and Social Care Committee attended by my Director of Protection, Scrutiny and Human Rights, please find below additional evidence in relation to the Social Services and Well-being Bill.

**Eligibility criteria**

Further to the issues raised during the committee's evidence session on 2nd May, thank you for the opportunity to provide supplementary evidence in respect of my concerns about the lack of detail on eligibility criteria in the draft Social Services and Wellbeing (Wales) Bill.

The Explanatory Memorandum accompanying the Bill makes clear that a range of proposals within the legislation will be subject to supporting regulations, delegated to Welsh Ministers. Whilst I am aware of the rationale for this approach, it is my view that some of the areas that are being devolved to regulations, particularly the national eligibility framework, are potentially high risk in terms of the impact and sustainability of the Bill.

I have publicly welcomed proposals to establish  national eligibility criteria as I believe that in principle, this will help provide clarity and fairness and help reduce inconsistencies across local authority areas; concerns which are often raised with me by older people.

One of my current priorities as Commissioner is to consider and analyse in detail the difference that the Bill will make to the lives of older people across Wales, whatever their care and support need.  The eligibility framework is a key component of this 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.

However, the current lack of detail around the eligibility criteria means that it is effectively impossible to fully assess how proposals across the breadth of the Bill will work in practice. Without seeing the detail of proposals around eligibility, it is not feasible to comment on them in any meaningful way.

I share the concerns of a number of other organisations that if the criteria for eligibility is set too high then this this will have a negative impact on the wider aspirations of the Bill, particularly those linked to prevention and well-being. There is a risk that the Bill's ambition to widen access to prevention could become irreconcilable with local authorities being allowed to raise their eligibility threshold to Critical levels and would mean preventative measures and services not being provided until an individual reaches a crisis point. This would be a backwards step.

I am strongly of the view that greater detail needs to be given regarding plans for national eligibility criteria in order that myself and other stakeholders can develop a more informed view of the Bill's proposals. I would urge the Welsh Government 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. I would specifically welcome a formal timetable and statement of intent from the Welsh Government on the eligibility framework.

In addition, the final position on eligibility must be open to strong and critical scrutiny.  My expectations are that the national framework is developed in collaboration with key partners, is subject to a full consultation process and a robust impact assessment.  More generally, I would reinforce my view that in order to ensure that the Bill delivers on its stated aspirations it is essential that scrutiny of the supporting regulations and guidance is  undertaken with the same vigour and gravity as for the primary legislation.  This is an area that as Commissioner I will be taking an on-going interest in.

**Definition of neglect/self-neglect**

‘Neglect’ is referred to in various sections of the Bill but always in conjunction with ‘abuse’ so that the term ‘abuse and neglect’ appears on 26 occasions. It is important to recognise that these two things are different – one involves doing something to someone and the other tends to be an omission to do something. Neglect will usually mean that a person who has a duty of care towards another person has failed to carry out that duty of care.

The starting point has to be to establish who owes the duty of care. In relation to children this is assumed to be a parent or person with primary caring responsibility and the duty broadens to others in society who may also play a significant part in a child’s life, such as a teacher or social worker or doctor. Adults, however, are assumed to be responsible for their own lives, circumstances and actions. Where they need care or support to help them live an acceptable standard of life, it can sometimes be difficult to establish who has a duty of care legally and morally. Neglect can only exist where a duty of care is not being met.

In the context of the older person, the duty of care may lie with a relative who has power of attorney for that person’s finances or welfare or with someone who has taken on the moral duty for caring for a person. When an older person enters a hospital or care home there is a duty of care on these agencies and their staff members to deliver a certain level of care and attention. The duty of care when someone enters a care home should be clearly outlined in the provider’s contract for care, whether with a local authority or health board or with an individual who funds their own care. Any failure to meet that duty constitutes a breach of contract and should be actionable.

Neglect might be described as a failure to fulfil a duty of care which has a serious adverse effect on the health and well-being of an individual or deprives them of the means by which they can sustain their health and well-being. Examples of this kind of neglect might include the provision of substandard care or no care, withholding resources that would enhance well-being, or withholding information about resources that would enhance their health and well-being.

Self-neglect is a more difficult term because it must be recognised that people may choose to live in circumstances that could be considered detrimental to their health or well-being or even dangerous. The key word here is ‘choice’ and people must be allowed to make choices about their lives. It is all about a balance of human rights – the right to choose a life that is unacceptable to others and the right to be supported and protected when a person is found to lack the ability to perform essential self-care tasks, which is having a serious adverse effect on their health and wellbeing. This might include an inability to provide oneself with adequate food, clothing, shelter, or medical care; or an inability to obtain services necessary to maintaining physical health, mental health, emotional well-being, general safety, and/or managing financial affairs.

I think it would be sensible to have a small working group that looks at this matter of neglect and self-neglect, and I would be happy to host such a group.

## Powers of intervention

At the Health and Social Committee session, Anna Buchanan said that I would provide more evidence on the law already used to gain access to those who may be living under coercive control or undue influence.

The recent judgment in *DL v A Local Authority and Others [2012] EWCA Civ 253* affirms that a local authority may call on the inherent jurisdiction of the court in order to gain access to those being unduly influenced/coercively controlled.

DL, a man in his fifties who lived with his father and mother (90 and 85 respectively), had behaved aggressively towards his parents physically and verbally, controlling access to visitors and seeking to coerce his father into transferring ownership of the house into DL’s name, whilst pressuring his mother to move into a care home against her wishes. It is important to note that both parents **had capacity** within the meaning of the Mental Capacity Act 2005.

The local authority, hearing about DL's conduct and being concerned about it, applied to the court for injunctions restraining DL's conduct towards his parents, for example, preventing him from assaulting them or coercing them or engaging in degrading treatment, such as making his father write 'lines' or doling out other punishments.

The Court also made an order that the Official Solicitor should be given powers of entry to find out the parents' true wishes and support them in resisting DL's behaviour, which could have included helping them move out or having DL removed.

It is also important to note, where it is argued that powers of intervention are a breach of human rights, that an interference with the right to respect for an individual's private and family life can be justified to protect his health and/or to protect his right to enjoy his Article 8 rights as he may choose without undue influence by a third party (Munby J in *Re SA (Vulnerable adult with capacity: marriage)* [2005] EWHC 2942 (Fam)).

## Section 47 National Assistance Act 1948

If the Bill does not include a power of intervention and a power to remove a person to a place of safety another option, in limited circumstances and with the court's permission, is to retain an amended version of s.47 of the National Assistance Act 1948. I have attached a relevant article on s.47 for the Committee to consider which questions the Law Commission's decision to repeal it.

I hope this clarifies my position on the issues raised at the evidence session. Please do not hesitate to contact my office if there is any further help that I can provide.

Yours sincerely,

Sarah Rochira

Sarah Rochira, **Older People's Commissioner for Wales**

# The strange deaths of section 47

David Hewitt

David Hewitt is a Judge of the First-tier Tribunal and a Visiting Fellow at the University of Northumbria, Newcastle, UK and at the University of Lincoln, Lincoln, UK.

**Abstract**

**Purpose** – *The purpose of this paper is to evaluate the Law Commission's recommendations concerning the power of removal contained in section 47 of the National Assistance Act 1948. That provision applies to certain people who are seriously ill, living in squalor, or not receiving proper care and it enables them to be taken to hospital or a care home and detained there.*

**Design/methodology/approach** – *The Law Commission's final report on adult social care law was considered and compared with earlier Commission publications that addressed this issue, and also with other sources (such as a paper published by the Department of Health in 2000).*

**Findings** – *The Law Commission calls for the repeal of section 47, because it is hard to interpret, difficult to implement and seems to breach the European Convention on Human Rights. The Commission says other provisions, such as those in environmental health legislation, the Mental Health Act 1983, and the Mental Capacity Act 2005, provide a more appropriate means of caring for people in distress and that more information is needed before a decision can be taken as to what, if anything, should replace section 47. Some of these criticisms, and also the call for more information, were made by the Department of Health.*

**Originality/value** – *The Law Commission's findings and recommendations concerning section 47 have not otherwise been widely reported, nor has much been done to analyse their development or antecedence. The paper also offers a modest critique of this aspect of the Commission's report.*

**Keywords** *Section 47, National Assistance Act, Detention, Grave chronic disease, Infirm, Unsanitary conditions, Proper care and attention, Hospitals, Patient care*

**Paper type** *General review*

Section 47 of the National Assistance Act (NAA) 1948 should be repealed. That, at least, is the conclusion of the Law Commission (LC) (2011b), in its final report on adult social care law. In many circumstances, section 47 permits the compulsory removal to hospital of anyone who is seriously ill, living in squalor or not receiving proper care. It has been wreathed in mystery, and controversy, for quite some time.

The LC's report is the culmination of a lengthy consultation that was itself preceded by a special paper (LC, 2010) and followed by a detailed analysis (LC, 2011b). The Commission received 231 responses, 79 of which concerned section 47 (and 56 of these said the provision should be abolished) (LC, 2011a, paragraph 12.143).

This result is not, perhaps, surprising: section 47 was first consigned to the dustbin more than a decade ago, only to be revived in 2008. As we shall see, the LC's own conclusion is far from unequivocal.

## What does it do?

Under section 47 of the NAA 1948, a local authority may apply to a magistrates' court for an order permitting it to remove a person to "suitable premises", such as a hospital or a care home. Such an application may be made in the case of someone who is:

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- Suffering from grave chronic disease or, being aged, infirm or physically incapacitated, living in insanitary conditions.
- Unable to devote to themselves, and not receiving from other persons, proper care and attention (NAA, s 47(1)).

The subject must be given seven days' notice of the hearing (NAA, s 47(7)), and the application must be accompanied by a certificate from a "medical officer of health", to the effect that removal is necessary:

- in the interests of the person; or
- for the prevention of injury to the health of, or of serious nuisance to, other persons (NAA, s 47(2)).

The magistrates' court may make an order if it is satisfied that it is "expedient" to do so (NAA, s 47(3)), and any order will authorise the subject's removal, and his detention for up to three months (a section 47 order is renewable for further periods of up to three months: NAA, s 47(4).)

The purpose of removing and detaining someone under section 47 is to secure "necessary care and attention" for him (NAA, s 47(3)), but there is no power of compulsion to that effect:

- If the person is capable of making a decision about them, his "care and attention" may be provided with his consent (but not otherwise).
- If he is incapable, they may only be provided in his "best interests", under section 5 of the Mental Capacity Act 2005.

After six weeks have expired in any period of detention, the subject of the order, or someone on his behalf, may make an application to the court, which may in turn revoke the order "if it appears expedient to do so" (NAA, s 47(6)).

There is also an emergency procedure, introduced by the National Assistance (Amendment) Act 1951. If it is necessary to remove an individual without delay, an order to that effect may be made without notice and will last for up to three weeks (NA(A)A, s 1(1) and (4)(a)).

These and other aspects of the section 47 power have been the subject of heavy criticism.

## General criticisms

Not everyone who took part in the LC's consultation exercise opposed the section 47 power (LC, 2011a, 12.168 and 12.169). According to one respondent (an adult safeguarding board): "It is a useful option [...] where the service user has capacity but needs to be removed from their home" (LC, 2011a, 12.149).

It seems that a number of respondents referred to the case of Mayan Coomeraswamy, who died in January 2009 at the age of 59 years, apparently from natural causes (LC, 2011b, 9.71). Media reports of evidence given at the inquest into his death, suggest that:

- Mr Coomeraswamy's home was in a state of grave disrepair and barely fit for human habitation.
- Though he suffered from mental disorder, he saw a community psychiatric nurse and received regular depot medication.
- He would not, however, accept assistance with cleaning, decorating or heating his home (Harding, 2010).

Mr Coomeraswamy was believed to be capable of making decisions about these aspects of his life, and as a result, though some thought was given to it, section 47 was not invoked, because of "human rights considerations".

Attributing Mr Coomeraswamy's death at least in part to "neglect", the coroner blamed mistakes by care workers, together with a "piecemeal legal framework", which he said was riddled with contradictions and inadequacies. It seems respondents saw this case "as evidence that the existing law was inadequate and [that] section 47 needs to be reformed to become ECHR-compliant" (LC, 2011b, 9.71). The LC (2010, 12.50) had reached a similar provisional conclusion (though reform is not the option it has chosen to recommend).

## Human rights-based criticisms

According to the LC, a "large number" of respondents favoured repeal on human rights grounds (LC, 2011a, 12.145) and none argued that section 47 did not breach the European Convention on Human Rights (ECHR) (LC, 2011b, 9.65). This is not, however, the first time that such a breach has been discussed. In August 2000, in a paper sent to regional directors of public health, the Department of Health raised it as a distinct possibility (Department of Health, 2000; Hewitt, 2002). It is perhaps surprising, therefore, that in 2008, the government introduced legislation whose effect was not to repeal, but actually to revise section 47 (Mental Health Act (MHA) 2007, Schedule 9, paragraph 12). In its paper, the Department of Health also asked for more information about the frequency with which, and the circumstances in which, section 47 continued to be used.

### *Criteria*

As the Department of Health had done, the LC said section 47 might be used in a way that breaches Article 5 of the ECHR. This is the "right to liberty", which, for present purposes, may only be taken away to prevent the spreading of disease or in the case of someone with an "unsound mind", or of an "alcoholic", a "drug addict" or a "vagrant" (ECHR, Article 5(1)(e)). The LC said section 47 might be used to detain someone of sound mind who is:

- Simply suffering from grave, chronic disease – without being infectious.
- Living in insanitary conditions and infirm, aged or physically incapacitated – without being an alcoholic, a drug addict or a vagrant (LC, 2010, 12.51).

(For its part, the Department of Health also argued that because section 47 contains no power short of detention, its use might be disproportionate and so lead to a breach of Article 8 of the ECHR – the right to respect for one's private and family life, amongst other things).

### *Ending the order*

A person "removed" under section 47 may be detained for up to three months, even though the condition that warranted his detention has now abated. Crucially, there is nothing to require – or even to permit – the order to be discharged in those circumstances. The LC (2010, 12.52; 2011b, 9.93) has argued that in many cases, this will render use of the section 47 power arbitrary and therefore constitute a further breach of Article 5.

### *Challenging the order*

The only way a section 47 order may be ended before it expires is by its subject making an application to the court to have it revoked. He may do that only once he has been detained for six weeks, a state-of-affairs the LC said might breach the right, guaranteed by Article 5(4) of the ECHR, speedily and regularly to challenge one's detention in court (LC, 2010, 12.54; 2011b, 9.94). Furthermore, there is no automatic right to review, and the LC has suggested that where someone lacks capacity to take the necessary steps himself, this too will breach Article 5(4) (LC, 2010, 12.55; *R (H)* v. *Secretary of State for Health*, 2005. It is understood that this case is the subject of an application to the European Court of Human Rights).

There might also be a problem with the emergency procedure, which research suggests accounts for a large proportion of removal orders (Nair and Mayberry, 1995; Muir, 1990, both cited in LC, 2010, 12.49), but which cannot be challenged in court at all. The Department of Health said this might breach Article 5(4) (Department of Health, 2000) and the LC has now expressed itself in more emphatic terms (LC, 2010, 12.53; 2011b, 9.93).

Other criticisms of the section 47 power have focused upon the mechanism by which it may be invoked and utilised.

## Operational criticisms

### *Definition*

In this respect, too, the criteria for use of section 47 are a cause for concern. The LC questions, for example:

- Why older, infirm and physically incapacitated people are targeted expressly.
- Why older people living in insanitary conditions are included, but younger people are not (LC, 2011b, 9.90).

The requirement that the person to be removed, and then detained, be living in "insanitary conditions" and "unable to devote to [himself], and not receiving from other persons, proper care and attention" has also come under close scrutiny. Consultation, it seems, suggested that it "set[s] the bar unrealistically high for the use of the power", and that "the reference to 'insanitary conditions' confuses this power with alternative public health powers" (LC, 2011a, 12.162; b, 9.92).

In fact, the LC (2011b, 9.92) described this reference as "anachronistic", a word that might, perhaps, be used more widely. In its consultation paper, the Commission said:

> [S]ection 47 is one of the few principles of the old poor law that remain in place[,] and its wording is based on local legislation drafted in Bradford in 1925, designed to assist in slum clearance (LC, 2010, 12.58).

One commentator, indeed, has questioned whether the "premises of the legislation (which derived from nineteenth century views of continency and 'proper' conduct) are concordant with modern values" (Counsell, 1990). Now, the LC concludes:

> [M]uch of the terminology in section 47 is outdated and stigmatising (such as "being aged"), or lacks sufficient clarity and precision (for example, it is also unclear how "infirm" or "physically incapacitated" a person would need to be in order to be removed) (LC, 2011b, 9.90).

There is also a feeling that those who have to interpret and apply section 47 must do so in a vacuum. Magistrates' courts are not courts of record, the LC pointed out in its consultation paper, "which may increase the likelihood of different approaches being taken to the meaning of section 47" (LC, 2010, 12.58) and to compound the problem, "review by the higher courts of section 47 orders is rare" (LC, 2010, 12.58). In fact, concerns about magistrates go beyond their ability simply to understand section 47.

### *Magistrates*

It has been suggested that magistrates' courts do not provide a suitable forum for the consideration of section 47 cases (LC, 2011b, 9.89). The LC notes that they are generally regarded as criminal courts, and that consequently, some respondents argued that they should not consider non-criminal cases and that it is stigmatising for all involved when they do. Furthermore, magistrates' courts are seen as being prone to delay and, unlike the First-tier Tribunal or the Court of Protection, lacking the expertise to deal with cases involving self-neglect and mental ill-health (LC, 2011a, 12.164).

It is perhaps surprising, then, that the LC has not opposed the involvement of magistrates in section 47 (or equivalent) proceedings. The alternatives, it says, "would not be without their difficulties" and would confer "no significant advantages", largely because: "any expansion of the role of mental health tribunals or the Court of Protection would entail a significant change in law and practice"; and authorising the High Court to hear these cases "will have potentially significant resource implications" (LC, 2011b, 9.89).

### *Entry*

The LC is also concerned about the extent to which the section 47 power permits entry into the home of the person who is its subject, or at least about the understanding of professionals in that regard.

Although section 47(11) makes it an offence wilfully to disobey or obstruct the execution of a removal order, the Commission noted that: "there is no explicit power to force entry into people's homes or over-ride a refusal of permission to enter" (LC, 2010, 12.59). The police, it seems, are reluctant to intervene (LC, 2011a, 12.161; b, 9.66) and, more broadly: "The extent to which subjects of section 47 orders can be compelled to obey the orders is not [...] clear and may cause confusion in practice" (LC, 2010, 12.59; 2011b, 9.95).

### *The sharp end*

The power to seek a section 47 order is given to the "appropriate authority", which will usually be a local authority. In practice, the power is exercised by environmental health departments, but, the LC (2010, 12.60; 2011a, 12.161; b, 9.66) suggested:

> [...] environmental officers may not be best suited for this role, particularly in cases where section 47 is needed to safeguard adults from abuse or neglect, as opposed to [on] environmental health grounds.

Others had already called for social services to have a greater role in such cases (Welsh Local Government Association, 2005), and it seems the LC was told that "social services [...] are the more appropriate agency for dealing with self-neglect by people of *unsound mind*" (LC, 2011b, 9.95; original emphasis).

Concern was also raised about the "medical officer of health", because the role might now have disappeared or the person filling it have become difficult to identify (LC, 2011b, 9.67). Furthermore, the LC has consistently raised concerns about the quality of the medical certificate tendered in support of a section 47 application. In many cases, it seems, that certificate comes from a consultant in communicable disease control, "even though a section 47 order does not require the risk of communicable disease or infection". This, it seems, "has led to concerns of an inappropriate focus on public health risk when assessing whether it is necessary to remove the person" (Welsh Local Government Association, 2005). It has also been suggested, the LC (2010, 12.61; 2011a, 12.163; b, 9.67) adds, "that the certificate is sometimes provided by public health specialists who are not medically qualified or have not conducted clinical examinations for some time".

### *Conclusion*

For all these reasons, the LC (2011b, 9.73) says there are "numerous operational difficulties that render [section 47] impracticable", and that in many cases, its use will breach Article 5 of the ECHR. The Commission sees no reason, therefore, to depart from its original proposal that the provision be repealed (LC, 2010, 12.71). As to whether it should be replaced by something rather more modern, workable and ECHR-compliant, however, the Commission remains unsure. The answer, it says:

> [...] turns largely on whether the repeal of section 47 will leave people unprotected who are currently protected from abuse and neglect. In other words, would public bodies lose safeguarding powers, and if so, are these powers used in practice? (LC, 2011b, 9.73).

## Is it obsolete?

It seems many respondents accepted that section 47 is obsolete; that "a large number" said it is rarely used in practice (LC, 2011a, 12.148 *et seq*); but that a "scattering" of them said they had used it in the past (LC, 2011b, 9.65).

In 2000, the Department of Health estimated that some authorities use section 47 orders "perhaps once or twice a year as a last resort" (Department of Health, 2000), while in its own consultation document, the LC repeated the call for more information in this regard (LC, 2010, 12.63).

There was already evidence that:

- Across England, in the 1970s and the 1980s, around 200 section 47 orders were made each year (Muir, 1990).

- In Leeds, in a five-year period during the 1980s, 17 orders were made (Fear *et al.*, 1988) (this, it seems, "would tend to support the national picture": LC, 2010, 12.62).
- In the mid-to-late-1980s, usage fell to less than 100 per year (Muir, 1990) (figures for 1988 and 1989 support this analysis: Nair and Mayberry, 1995.)

This evidence dates from before the introduction of the Mental Capacity Act 2005, since when, the LC (2011b, 9.65 and 9.85) notes, "No one [. . .] claimed to have used the power".

The Commission concludes that although section 47 is used only rarely, "[it] does not appear to be entirely obsolete" (LC, 2011b, 9.85). The Commission does not, however, feel able to argue for the reform (or, indeed, the retention) of section 47. Instead, it calls upon the English and Welsh Governments "to seek to clarify what does in fact happen, and to take forward consideration of any replacement for section 47 in the light of those findings" (LC, 2011b, 9.86). It seems that the information requested by the Department of Health in 2000 had not been provided by 2011.

## Why might it still be required?

The LC's ultimate conclusion had been anticipated in its consultation paper. "The question, therefore, arises", the Commission said, "as to why [section 47] is used at all" (LC, 2010, 12.64). The answer seems to be that when it comes to safeguarding adults at risk, other legislation might be helpful, but it does not offer a complete alternative.

### *The Mental Health Act*

There is, the LC (2010, 12.65) suggested, a "significant overlap" between cases in which the MHA 1983 and the NAA 1948 could be used. "Indeed," it went on, "some evidence suggests that section 47 is being used in cases where the 1983 Act should have been used instead" (LC, 2010, 12.65; Wolfson *et al.*, 1990).

If a person suffers from mental disorder, then, like the 1948 Act, the MHA might be used to detain him in hospital or provide care and treatment in the community, regardless of whether he is capable or incapable of making a decision in that regard (LC, 2011b, 9.78). Furthermore, the Act can be used to treat any underlying disorder and "since the property is vacated temporarily, mental health services may be able to arrange for the necessary cleaning or repairs to be completed" (LC, 2011b, 9.78; to which the response might be this, which was posted under the Guardian's story about Mayan Coomeraswamy: "Well, there are fewer sure-fire ways to induce a serious relapse in a mentally ill person than to force entry to their living space, kidnap them for three days and rearrange everything in their home while they're gone").

The two acts do not overlap entirely, however, and some people who might be cared for under section 47 would not fall within the MHA: people living in insanitary conditions who do not suffer from mental disorder, for example, or those whose mental disorder is not of a nature or a degree to warrant their being detained so that it can be treated (LC, 2011b, 9.78). Therefore, the LC (2010, 12.65) concludes: "there remains a gap between the scope of the 1983 Act and the wider remit of section 47".

The LC also gives voice to a suspicion that MHA powers are not used when they might be. Section 135 of the Act, for example – which "can be used to remove a person who is 'believed to be suffering from a mental disorder' from their home with a view to making necessary arrangements for their 'treatment or care'" (LC, 2011b, 9.68) – "is normally used to assess a person at a place of safety for detention in hospital, rather than its wider purpose" (LC, 2011a, 12.158; b, 9.70). Furthermore, even when invoked, the section only permits detention for up to 72 hours, which is inadequate for putting in place safeguarding arrangements (LC, 2011a, 12.158; b, 9.70) and, more specifically, "restricts its effectiveness in dealing with cases of extreme squalor and disrepair" (LC, 2011b, 9.79). Neither does guardianship entirely fit the bill. While it might enable a formal support structure to be imposed upon someone in the community, it "provides few powers to override a refusal by the relevant individual" (LC, 2011b, 9.79).

### *The Mental Capacity Act*

The Mental Capacity Act 2005 provides a framework within which care may be given to people in their "best interests". The LC (2011a, 12.153) notes that some respondents argued that it can be "much more effective" than section 47. The big difference between the two, however, is that the MCA can only be used where someone lacks decision-making capacity, meaning that section 47, which is not so restricted, "covers potentially a wider cohort of people" (LC, 2010, 12.66). It is also helpful, respondents argued, where someone needs removing urgently and it is not clear whether he lacks capacity (LC, 2011a, 12.156).

Where in the case of someone who lacks capacity a particular intervention is in his best interests, section 5 of the MCA permits that intervention and section 6 permits force to be used to ensure that it is made. The LC (2011b, 9.70) reports, however, that some respondents "pointed to widespread uncertainty over the amount of force that can be used to remove a person from their home in their 'best interests'".

The LC also considers the Deprivation of Liberty Safeguards (DoLS), an adjunct to the MCA that in some circumstances permit an incapable person to be deprived of liberty while also affording him compensatory safeguards. It seems section 47 is broader than the DoLS (LC, 2011a, 12.155), conceivably because, again, its use is not confined to incapable people.

The report contains a further comment on the DoLS, one that might suggest they have been misunderstood. Referring to a recent Court of Protection case, the LC (2011a, 12.155) notes:

> [S]ome local authorities argued that they are reluctant to rely on the [DoLS] to detain a person to a place of safety who is currently living at home. [The case of] *DCC* v. *KH* confirmed that a standard authorisation would be sufficient to return an individual from "contact sessions" to their place of residence, where so doing would entail a deprivation of liberty. However, some consultees suggested that the principle does not apply to the initial journey to admit the person to the residence.

In fact, and though the LC does not say so, the decision in the case was somewhat broader than that: even where there is no such "authorisation", section 5 of the Mental Capacity Act (read with section 6) will cover the return – and, by implication, the outward – journey (*DCC* v. *KH*, 2009).

### *Environmental health powers*

Under the Public Health (Control of Disease) Act 1984, a local authority may apply to a magistrate for an order to remove a person from a house where an infectious disease has occurred, and to detain him in hospital if he is suffering from a notifiable disease. This will be an alternative to section 47, provided the illness is infectious (LC, 2011b, 9.75), but the fact that section 47 is not so restricted means that it "covers potentially a wider group whose chronic illness is not infectious or capable of contamination" (LC, 2010, 12.67).

The LC notes, however, that "Article 5(1)(e) only permits the detention of people suffering from a grave chronic illness if the illness is infectious", and it adds:

> We therefore consider that section 47 can and should be repealed entirely in relation to people suffering from grave chronic illness (LC, 2011b, 9.75).

Under the Public Health Act 1936, a local authority may temporarily remove someone from his home where fumigation is required because there is a risk to health, and remove, detain and clean him where he is "verminous". It seems one respondent called these powers "arcane" (LC, 2011a, 12.160).

Under the Environmental Health Act 1990, a local authority has powers of entry, including into premises, to determine if a statutory nuisance exists or to take action or execute work. Unlike section 47, however, this power does not require that the occupier of the premises be physically incapable. The LC (2010, 12.698), therefore, concluded: "environmental health powers are potentially wider than section 47".

In fact, given their focus, the LC does not accept that the 1936, 1984 and 1990 Acts are a suitable alternative to section 47. Their powers, it says, "are aimed at protecting *public* health, rather than being focused on the harm that may be caused to the person responsible for the insanitary conditions" (LC, 2011b, 9.81; original emphasis). Furthermore, it seems there is a problem with those to whom such powers are entrusted. According to the LC (2011a, 12.160; b, 9.70 and 9.81), "consultation suggested that environmental health departments often set high thresholds for intervention under this legislation and accordingly the powers are only used as a last resort".

The LC (2011a, 12.160) argues that environmental health powers are ineffective in dealing with the sort of situations that fall within section 47, principally because "they fail to ensure that a sophisticated social work value-based decision is made about what to do with vulnerable persons in the way section 47 does". In fact, and even more fundamentally, the LC (2011b, 9.75) says:

> In our view, however, decisions concerning infection control should rest with agencies such as environmental health and the NHS, and it is inappropriate to use social care legislation for this purpose.

### *The inherent jurisdiction*

The "inherent jurisdiction" of the High Court, which seems to have been enjoyed since time immemorial and has developed case-by-case, may be used to remove and detain incapable (and maybe even capable) people (*Re: SA (Vulnerable Adult with Capacity: Marriage)*). It might, therefore, be an adequate substitute for section 47 (LC, 2010, 12.69), to which some respondents seem to have argued it is a better alternative and which some believe it thereby renders obsolete (LC, 2011a, 12.152).

The LC, however, seems to have undergone a modest change-of-mind during the consultation process, not least as to the precise ambit of the inherent jurisdiction in the case of capable people. Quoting from a recent case, the Commission notes that the jurisdiction acts to "facilitate the process of unencumbered decision making", but that it "cannot be used to compel a capacitated but *vulnerable* person to do or not do something which they have, after due consideration, decided to do or not to do" (LC, 2011b, 9.80; *LBL* v. *RYJ*, 2010). More generally, and in the case of incapable as well as merely vulnerable people, the LC notes that High Court (and Court of Protection) proceedings are expensive and prone to delay, and it says they are therefore "an inappropriate way of dealing with emergency safeguarding cases" (LC, 2011a, 12.154 and 12.159; b, 9.70 and 9.80).

### *A gap?*

The LC (2011b, 9.82) concludes that section 47 "could be removed entirely in relation to people with grave chronic illness and people who lack capacity", but that complete removal would deprive public bodies of the power to intervene where someone:

- "Is of unsound mind but not of a nature or degree to warrant hospital admission".
- "Makes a capacitous decision, which is free of external pressure or physical restraint, to live in insanitary conditions (and those conditions are not such as to necessitate intervention under public and environmental health powers)".
- "Is unable to devote to [himself,] and [is] not otherwise receiving[,] proper care and attention" (LC, 2011b, 9.69 and 9.78. The consultation document had anticipated precisely this gap: LC, 2010, 12.70).

Very few people would meet this description, and furthermore, the LC (2010, 12.70; 2011b, 9.83) suggests, "it is at the very least questionable whether the state should have powers to detain such people". In the circumstances, therefore, the Commission recommends that section 47 of the NAA 1948 (and section 1 of the National Assistance (Amendment) Act 1951) be repealed (LC, 2011b, recommendation 42).

## What are the options?

The LC also dedicates part of its report to considering what, if anything, should be done to fill the gap that repealing section 47 (and section 1) would leave.

### *Reform*

As part of its analysis, the LC (2011b, 9.88-9.96) considers how section 47 might be reformed not only to ensure that it complies with the ECHR, but also "to make it effective operationally and to modernise some of its provisions" (in fact, some of its suggestions would not only make section 47 better, and more ECHR-compliant; they would do a similar job if applied to successor provisions).

Ultimately, however, and by the LC's (2011b, 9.96) own lights, this is a pointless exercise, because "section 47 cannot become ECHR compliant and operationally workable without numerous and substantial reform", "which would not only extend the scope of the power but also would transform radically its nature". In effect, the LC (2011b, 9.96) concludes, "section 47 cannot be amended without creating a completely new compulsory safeguarding order".

### *Replacement*

Some respondents – the Supreme Court judge Baroness Hale among them (LC, 2011a, 12.168) – said that a replacement should be found for section 47 (LC , 2011a, 12.165 *et seq*). One suggested that a similar power will be required as the emphasis on safeguarding increases (LC, 2011a, 12.170), while another, a local authority, said it remains necessary to be able to deal with situations where a vulnerable person needs removing urgently from a situation that is causing them significant harm, and it is not clear if they have capacity (LC, 2011a, 12.156).

As to what any replacement provision should look like, however, the LC remains largely silent; it has, of course, set its face against "the creation of new compulsory/emergency powers" (Law Commission, 2011b, recommendation 41), and for now, it contents itself with the recommendation that:

> The Government and the Welsh Assembly Government should consider commissioning research into the existing use of section 47, and then decide, on the basis of that research, whether it would be appropriate to reform the section, following public consultation (LC, 2011b, recommendation 42).

## Discussion

The views of the LC appear to have changed little during its consultation period, at least as far as section 47 of the NAA 1948 is concerned: its conclusions, and much of the evidence given to support them, closely resemble the provisional findings set out in the original consultation paper (if those conclusions are accurate, of course, this suggests, quite simply, that the Commission's original instinct was itself closely aligned with prevailing opinion).

Times, though, have changed, if not very much over the last couple of years, certainly since section 47 was introduced. In 1948, there was little in the way of environmental health legislation, the inherent jurisdiction had yet to be applied in the context of social welfare law (in fact, there was precious little social welfare law) and, perhaps most significantly, there was no Mental Capacity Act (nor anything resembling it). Pretty much all there was, at least from a health care perspective, was the Mental Treatment Act 1930, which, though it introduced "voluntary" hospital admission and gave much stronger protection to practitioners, was plainly insufficient to assist with the care of the patients who became the stock-in-trade of the NAA.

In fact, those alternative powers might represent something of a blind-spot in the LC's otherwise sensible report. In concluding that sufficient of them exist to enable section 47 to be repealed without loss, the Commission seems to have ignored the problems they present – problems it has itself scrupulously documented. Nevertheless, it is surely right to conclude, as the LC does, that people with capacity (and without mental disorder) should not be subject to compulsion solely in their own interests.

The Mental Capacity Act, in particular, has transformed this area of the law, and has made it possible to provide all manner of care, at least where someone lacks the capacity to make decisions about it. In fact, the range of the MCA might be even broader than the LC, and certainly its respondents, appear to believe.

While the analysis now put forward by the LC seems sound, there are times when its proposals, or the fact it has chosen to make them, seem rather strange. This is most true where the Commission, having decided that section 47 should be repealed, spends several pages suggesting how the power might best be amended. Regrettably, because of its self-denying ordinance against the creation of new powers, the Commission cannot go on to look beyond amendment, and to sketch out what an alternative removal and detention power might look like. That, arguably, would have been a much greater service.

Having opted for repeal, the LC finds that it can do no more than repeat a plea the Department of Health made more than a decade ago – for more information. Until that plea is heeded, it seems we cannot regard the section 47 power as defunct. Unused – and unloved – though it might be, and human rights-non-compliant though it surely is, it seems the power has not yet passed on; the deaths it continues to die are strange ones indeed.

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Cynulliad Cenedlaethol Cymru
National Assembly for Wales

# Health and Social Care Committee: Social Services & Wellbeing (Wales) Bill

## Focus Group Participants

This document outlines the evidence gathered including the specific contributions of the focus groups and participants.

### Methodology

As part of the Health and Social Care Committee's Stage 1 scrutiny of the Social Services and Wellbeing (Wales) Bill the Outreach Team has conducted a series of focus groups across Wales. The Outreach Team undertook work to uncover the views of Day Centre users on two key elements of the Bill namely: safeguarding and intervention; and choice and control. Focus groups were conducted in all 5 electoral regions in Wales and a breakdown of all organisations visited is available in the following section.

### Summary

Total number of participant organisations: 7

Total number of focus groups: 8

Total number of participants: 61

## Fairwater Day Centre, Fairwater (Cardiff)

### Local Authority

*Fairwater Day Centre is situated in Fairwater on the outskirts of Cardiff. The Centre serves the town and nearby area, and attracts service users from both advantaged and disadvantaged backgrounds.*

*The focus group was conducted through the medium of English.*

**Date:** 18/04/2013

**Number of Participants:** 8 (female)

## Bryntirion Day Centre, Tregaron (Ceredigion)

### Local Authority

*Bryntirion Day Centre is situated in the small rural town of Tregaron in Ceredigion. The Centre serves the town and nearby rural villages which lay 14 miles outside of Aberystwyth. The Centre is a part of the "Communities First" Scheme.*

*Both focus groups were conducted bilingually through the medium of Welsh and English.*

**Date:** 30/04/2013

**Number of Participants:**

**Group 1:** 4 Females (2 Welsh-speakers)

**Group 2:** 2 Males (Welsh-speakers), 2 Females

## Bridgend Community Carers Café (Bridgend)

### Community

*Bridgend Community Carers Café is one of many Community Companions Cafes throughout Bridgend County Borough where carers can meet other carers, make new friends and take part in activities.*

*The focus group was conducted through the medium of English.*

**Date:** 24/04/2013

**Number of Participants:** 11 (mixed – 2 male, 9 female)

## Melrose Day Centre, Shotton (Deeside – Flint)

### Local Authority

*The Melrose Day Centre serves the town of Shotton and surrounding areas of Deeside. The area is considered socially and economically disadvantaged.*

*The focus group was conducted through the medium of English.*

**Date:** 25/04/2013

**Number of Participants:** 8 (mixed – 1 male, 7 female) including 2 members of staff

## Minerva Street Day Centre, Bridgend (Bridgend)

## Local Authority

*The Minerva Street Day Centre serves the town of Bridgend and the lower Valley areas.*

*The focus group was conducted through the medium of English.*

**Date:** 24/04/13

**Number of Participants:** 7 (mixed – 4 females, 3 males) and 2 members of staff

## Widdershins Day Centre, Griffithstown (Torfaen)

## Social Enterprise

*Widdershins Day Centre serves the areas of Griffithstown within the Torfaen constituency. The Centre is situated in a mainly residential area close to Pontypool.*

*The focus group was conducted through the medium of English.*

**Date:** 23/04/13

**Number of Participants:** 12 (mixed – 10 females, 2 males) and 1 member of staff

## Encil y Coed Day Centre, Criccieth (Gwynedd)

## Local Authority

*Encil y Coed Day Centre serves the area of Criccieth and surrounding villages.*

*The focus group was conducted bilingually through the medium of Welsh and English.*

**Date:** 03/04/13

**Number of Participants:** 7 (mixed – 5 females, 2 males) and 1 member of staff

## Scenario 1 – Choice and Control

*Mr and Mrs A are both in their late 70s and living in the same house in which they raised their family. Mrs A has been caring for her husband who has severe health problems including the early stages of Alzheimer's Disease but her own health is deteriorating and she and Mr A both need extra help. They are determined to remain independent and that neither of them will move into residential care.*

*They receive home care which has been arranged by the local council and is provided by a private care agency. Mr and Mrs A are struggling to cope with the arrangement which is insufficient to meet their needs. Care workers call at irregular times and the same staff rarely visit more than 2 days in a row. They are both confused by the care system and don't know whether there are other options available to them.*

| **Question 1) How do you feel about the amount of choice that Mr and Mrs A have over their social care needs?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Most participants did not feel as if Mr and Mrs A had enough choice.*<br>*A number of participants felt that social services should have set times for turning up during the course of the day, particularly with regards to meal times. There was a general feeling that routine is important.*<br>*One participant explained that in previous years she and her husband (who was diagnosed with Alzheimer's) did not receive help from outside the family for over 7 years and felt that they did not have much choice of care providers. However, the fact that they both valued their independence was cited as one of the factors behind coping by themselves for an extended period.* |
| ***Bryntirion Day Care Centre, Group 1*** | *All participants felt that they did not have enough choice.*<br>*However, all participants felt that extended family members should be doing more to support Mr and Mrs A in providing their care. If they didn't get more choice in this situation, then both Mr and Mrs A should into residential care.* |

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| ***Bryntirion Day Care Centre, Group 2*** | *All participants said that there should be a better dialogue between the service provider, council and Mr and Mrs A. This would give all of the parties an opportunity to openly discuss issues and build a trusting relationship from the onset.*<br>*One participant is currently waiting for her Social Services Initial Assessment. She has been waiting over 2 weeks and feels as if she's been "left suspended". It would be helpful to have a single point of contact at the Social Services Department to discuss her care needs and she feels like she has no one to talk to about her options.* |
| ***Bridgend Carer's Community Café*** | *All participants felt that Mr and Mrs A did not have enough choice.* |
| ***Melrose Day Centre, Shotton*** | *The participants felt that Mr and Mrs A should have more choice over their social care needs and that the social services should facilitate this.*<br>*They felt that Mr and Mrs A should have one carer responsible for them most of the time, as they feel that routine is important.*<br>*One participant had experience of a particular care agency that were not able to address her medical needs (regular dressing of a wound) and consequently had to use an alternative agency.* |
| ***Minerva Street Day Centre, Bridgend*** | *The focus group participants were unanimous in stating that they did not feel Mr and Mrs A had enough of a choice over their social care needs. Continuity of care was especially important in this instance, due to Mr A's ill-health.* |
| ***Widdershins Day Centre, Torfaen*** | *The focus group participants were unanimous in stating that they did not feel Mr and Mrs A have enough of a choice over their social care needs.* |
| ***Encil y Coed, Criccieth*** | *Most participants felt that Mr and Mrs A did not have enough choice, but felt that in some way, this was something they had to accept.*<br>*Some participants mentioned that if choice came with tasks such as filling in forms, then* |

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| | *Mr and Mrs A may not want more choice.*<br>*One participant also mentioned that not all older people like to make choices, and would rather have choices/decisions made for them.* |

| **Question 2) What would you want more choice over?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Most participants wanted more consistent care and the continuity of the carer was paramount.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group participants identified the following:*<br>▪ *More choice over the continuity of care and the continuity of carer so that a trusting relationship is built;*<br>▪ *Once a trusting relationship is built, the carers will be more aware of their needs, likes and dislikes (particularly when it comes to purchasing food)* |
| ***Bryntirion Day Care Centre, Group 2*** | *Participants stated there wasn't enough information made available to them on what care options are available to them.*<br>*One participant felt that the initial care assessment isn't fit for purpose. Often when you are assessed, you don't realise what your needs are until you are in receipt of care, which can lead to more time and resource in amending that individual's care package.*<br>*One participant said that when she tries to get information over the phone from social services, they are reluctant to answer questions and don't have the information to hand to help them.* |
| ***Bridgend Carer's Community Café*** | *The focus group participants identified the following:* |

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| | ▪ *More choice over the continuity of carer;*<br>▪ *Choice over when to go to bed;*<br>▪ *More choice over the person administering the care – trust was seen to be essential, and all participants said that building relationships with care providers was important.* |
| ***Melrose Day Centre, Shotton*** | *The group initially struggled to come up with a list, however these issues were discussed:*<br>▪ *The ability to change their care worker if they don't get on- they should be allowed to change;*<br>▪ *Fitting appointments into their routine;*<br>▪ *Transport allowances and providers.* |
| ***Minerva Street Day Centre, Bridgend*** | *A small number of the focus group participants felt that more choice and information should be given about who can provide their care.*<br>*One participant highlighted the risk intimidation that can come from receiving care from private firms. Many carers from private companies do not take the same level of time with the elderly, by sitting down with them to have a cup of tea and a chat. This is often the only form of social interaction that an elderly person will have during the day. That participator also suggested that they may not be monitored sufficiently enough in the standard of care they provide.*<br>*Other participants in the focus group discussed regulating the number of carers that visit elderly people, limiting them to 2 or 3, so that they are able to establish a relationship. Having the same carers ensures that a relationship is built and developed and opens up dialogue with individuals who provide social services, which can expose issues at an earlier stage.*<br>*Any changes to routine should be notified immediately, as this upsets people and breaks* |

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| | *up routines.* |
| ***Widdershins Day Centre, Torfaen*** | *The key theme in this section highlighted the lack of information available to elderly people who are in need of care.*<br>*One participant argued strongly that someone should outline all their options and the services available, and that this is never explained well. In outlining the services available – both private and council-run services should be included. The participant also highlighted the fact that often organisations, such as the Alzheimer's Society, are required to lobby on behalf of people, and explain to people the range of services and benefits that they are entitled to.*<br>*The focus group participants felt that more information is required and that such information should be made more accessible. A number of participants suggested that more information should be provided at all service contact points such as GPs surgeries, social services and at Health Centres etc. As such, all service areas should have shared responsibility for keeping the public informed.*<br>*A number of participants felt that carers themselves should also be provided with more information.*<br>*One participant also emphasised the importance of choice with regards to the carer that visits them and espoused the benefits of having the same person coming in to help her, thus providing a consistent service.* |
| ***Encil y Coed, Criccieth*** | *Participants couldn't come up with a list of things they'd like more choice over, however, they did note that people like routine and that it's important that they have the choices available to them if they want to continue to live in their own home for as long as possible.*<br>*They felt that greater discussion should be had which would make them feel more involved* |

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| | *in the decision-making process - everyone should work together.*<br>*One participant mentioned that Mr and Mrs A might not want to say no or complain about the choices available to them.* |

| **Question 3) Social Enterprises were outlined: how does the Social Enterprise model compare with council care? What are the potential advantages and disadvantages of this model?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Participants didn't really understand the concept of Social Enterprises.*<br>*The focus group generally felt that cost would be the number one consideration – namely how much any potential Social Enterprise would charge for anyone to attend.* |
| ***Bryntirion Day Care Centre, Group 1*** | *Awareness of Social Enterprises was very poor. Although there was support for greater choice in the system, the focus group was generally hesitant to the idea of Social Enterprises.* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *Awareness of Social Enterprises was poor. Although there was support for greater choice in the system, the focus group was generally ambivalent to the idea of Social Enterprises.*<br>*Concerns outlined included:*<br>▪ *Potential for Social Enterprise providers to cut corners thus leading to declining standards, would they be monitored effectively?*<br>▪ *The differing ideas that local communities may have – leading to a lack of clear decision-making;*<br>▪ *Concerns regarding the democratic control and accountability of the Social Enterprise model;* |

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| | ▪ *Concerns regarding privatisation of social care.* |
| ***Melrose Day Centre, Shotton*** | *The focus group thought that Social Enterprises in theory sounded like better models than private providers as it would be easier to keep an eye on them and monitor their work.*<br>*The focus group struggled to discuss this question because of their limited knowledge of Social Enterprises and there was a difficulty in coming up with advantages and disadvantages.*<br>*Advantages:*<br>▪ *Money going into community;*<br>▪ *Improved sense of community.*<br>*Disadvantages:*<br>▪ *Disagreement within the social enterprise;*<br>▪ *People with lack of experience running it.*<br>*A couple of participants within the group felt that people's opinions of it (the Social Enterprise) would probably depend on their financial background.* |
| ***Minerva Street Day Centre, Bridgend*** | *The focus group participants generally felt that Social Enterprises and the community-approach was a good idea, but awareness and understanding of what the Social Enterprise model meant in the context of the Social Services Bill was very poor and getting participants to understand the potential implications was difficult.* |
| ***Widdershins Day Centre, Torfaen*** | *The focus group generally felt that Social Enterprises and the community-approach was a good idea.*<br>*The Day Centre Manager highlighted the fact that this model already exists in Torfaen, however social services did not seem to be passing people on to these community assets.* |

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| | *Awareness of what the Social Enterprise model meant, in the context of the Social Services Bill, was poor amongst participants and getting them to understand the potential implications was difficult.* |
| ***Encil y Coed, Criccieth*** | *The focus group had no prior knowledge of social enterprises. They did like the idea of social enterprises in principle, but could not really comment on comparing the advantages/ disadvantages.*<br>*They did however have high praise for Encil y Coed and that they attend more than once a week for company and social interaction.* |

| **Question 4) Should care services be provided by organisations controlled or influenced by local communities or service users, and should they be non-profit making?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Participants didn't really understand the concept of Social Enterprises.*<br>*A number of participants felt that private providers are usually more expensive.*<br>*One participant identified a problem whereby social workers alone decide whether or not you're allowed to attend Day Centres, and that more often than not most elderly people do not receive help until there's a crisis in the family e.g. an accident, broken hip etc.* |
| ***Bryntirion Day Care Centre, Group 1*** | *See Question 3.* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *The focus group agreed that social care services should not be run for a profit.* |

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| ***Melrose Day Centre, Shotton*** | *The focus group agreed that social care services should be non-profit making.*<br>*The participants felt that if they were using care services then local communities should influence it, and felt it was important that they had the opportunity to have their say.* |
| ***Minerva Street Day Centre, Bridgend*** | *Awareness of what the Social Enterprise model meant in the context of the Social Services Bill was poor and getting participants to understand the potential implications was difficult.*<br>*However, all participants agreed that the Minerva Street Day Centre was run in a way which encouraged users to participate in decisions involving activities etc.* |
| ***Widdershins Day Centre, Torfaen*** | *Awareness of what the Social Enterprise model meant in the context of the Social Services Bill was poor and getting participants to understand the potential implications was difficult.*<br>*A number of participants suggested that local communities could raise money/generate revenue for more community-based social care services.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **Question 5) Would you be willing to take part in the running of Social Enterprises?** | |
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| ***Fairwater Day Centre, Cardiff*** | *In general, participants didn't know what would be expected of them.*<br>*A number of participants felt that they did not have the time and energy to take part in Social Enterprises.* |

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| | *One participant made the point that it may be beneficial for all if they were to get involved due to the previous knowledge and experience gained from caring for their spouse.*<br>*The general feeling was that if an elderly person is capable of making a decision then elderly people should be allowed to take part in the decision-making, however the capacity of most people to do this was called into question.* |
| ***Bryntirion Day Care Centre, Group 1*** | *All of the participants felt that they were too old to partake in the running of any form of Social Enterprise, and would find it burdensome.* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *There was a general willingness among the group to give their time as and when possible.*<br>*A number of participants raised concerns that the same set of people tend to help and give of their time in most instances and that a formalised system of Social Enterprises may ask too much of these people.*<br>*Participants stated that carers do not have much spare time due to the demands of their roles, should they be required to take part.* |
| ***Melrose Day Centre, Shotton*** | *The focus group weren't really sure of their answer here- it would depend on their circumstances and what they were being asked to do.*<br>*The focus group thought that a Social Enterprise would probably benefit from getting social workers involved, as you need experienced people who know what they are talking about.* |
| ***Minerva Street Day Centre, Bridgend*** | *The group generally felt that they would not be willing to take part in the running of a Social Enterprise. They do not want to be involved in the managerial/administrative aspects of running a Centre/Enterprise, but do wish to be consulted.* |

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| ***Widdershins Day Centre, Torfaen*** | *The focus group generally felt that they would be happy to give their point of view, and would welcome greater consultation with regards to the running of services; however participants were very concerned by their capacity to contribute beyond that.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **Question 6) With regards to being involved in the running of a Social Enterprise, what concerns would you have?** | |
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| ***Fairwater Day Centre, Cardiff*** | *The main concerns identified were:*<br>▪ *Concerns about the time commitments involved;*<br>▪ *Concerns about the general commitment – a number of participants stated that they did not know how they would be feeling from day-to-day;*<br>▪ *Logistical barriers that particular individuals may need to overcome e.g. disabilities etc.* |
| ***Bryntirion Day Care Centre, Group 1*** | *Their ability to take part, and that it could be too much of a commitments for them* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *Time constraints were seen as a barrier to participation.* |
| ***Melrose Day Centre, Shotton*** | *The focus group thought that not being an open and transparent organisation would be a concern to them.*<br>*They suggested that a Social Enterprise could work while it was a new service with money and resources being put into it, but then there was a danger that the service could deteriorate as time goes by.*<br>*One participant was worried about the structure and who would be responsible for what.* |

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| | *This is where he thought the need of experienced staff would be important.* |
| ***Minerva Street Day Centre, Bridgend*** | *Covered in question 5.* |
| ***Widdershins Day Centre, Torfaen*** | *A number of concerns were raised including:*<br>▪ *concerns about logistical arrangements;*<br>▪ *concerns about transport;*<br>▪ *concerns about the potential time commitments involved.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **Question 7) Benefits? What would you expect to get out of the Social Enterprise Model/greater local community control?** | |
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| ***Fairwater Day Centre, Cardiff*** | *The focus group identified a number of potential benefits from greater local community control. They included:*<br>▪ *A greater sense of purpose and self-confidence;*<br>▪ *Greater control over services and potential to create greater choice;*<br>▪ *Many participants felt that the type of benefit you may get out of being involved in such bodies (keeping minds active, combating loneliness etc) can be achieved by encouraging more older people to attend Day Centre's.* |
| ***Bryntirion Day Care Centre, Group 1*** | *N/A* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *The focus group generally felt that giving something back to the community was a good thing and that getting involved in community projects helped to give people a feeling of self-worth and satisfaction.* |

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| ***Melrose Day Centre, Shotton*** | *The focus group would like the opportunity to have their say, but had doubts about those being put into practice.*<br>*They felt that the structure of the social enterprise was very important with all staff and participants being valued.*<br>*They felt that the model could help give elderly people more confidence and greater control over what they want.* |
| ***Minerva Street Day Centre, Bridgend*** | *They are happy with the arrangement that they currently have with this particular Day Centre, and that a number of the potential benefits from being part of a Social Enterprise are experiences by attending Day Centres.* |
| ***Widdershins Day Centre, Torfaen*** | *Benefits identified included:*<br>▪ *increased personal satisfaction and self-esteem;*<br>▪ *improved services for other users;*<br>▪ *and the social benefits to be gained from supporting someone else.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **Question 8) Direct Payments were outlined: How do you feel in general?** | |
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| ***Fairwater Day Centre, Cardiff*** | *The focus group generally felt that they would prefer for the council to allocate spending on their behalf.*<br>*A number of participants outlined concerns regarding the ability of individuals to manage the responsibility associated with direct payments.*<br>*Only 1 participant in the group was in receipt of home care (and therefore likely to be eligible for direct payments). The participant outlined the fact that her daughter currently* |

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| | *manages all her finances, and that it is unlikely that she would have the time for the additional administration required by direct payments.*<br>*A number of participants reiterated the fact that other family members have responsibility for finances and did not want to place more of an onus on family members.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group had no prior knowledge or understanding of direct payments.*<br>*Some participants outlined the difficulties they already experience in accessing money via a third party (i.e. carer/family member). This involves writing a letter/providing proof of identity for the third party to carry. Having to deal with Direct Payments could pose similar problems.* |
| ***Bryntirion Day Care Centre, Group 2*** | *The participants felt that that this was a fairly good idea, though one participant had concerns over the provision of services, and the potential for individuals living in heavily populated urban areas such as Cardiff to have more choice of service providers, which may result in more competitive prices, and services which may not be the case in a rural area such as Tregaron, which may lead to a postcode lottery.*<br>*One participant said he hoped that assessments would result in people with the same health problems receiving the same amount of money.* |
| ***Bridgend Carer's Community Café*** | *The focus group had no prior knowledge of direct payments.*<br>*The focus group was generally hostile to the idea of direct payments. The concerns raised included:*<br>▪ *Lack of knowledge and expertise with regards to spending the money;*<br>▪ *Lack of time and energy to deal with the administrative burden associated with direct payments;*<br>▪ *Concerns that too much responsibility is placed on the individual;*<br>▪ *Concerns that the system may be open to abuse and fraud;* |

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| | - *The fact that using direct payments, an individual could enter into legal contracts with care providers only to find that the service does not meet their needs and is not up to scratch, that they don't have the recourses to pay for it, and no way of exiting the contract;*<br>- *The risk that direct payments will only hasten the end of state-provided care;*<br>- *Concerns about the lack of regulation and the lack of accountability.* |
| ***Melrose Day Centre, Shotton*** | *The focus group had no prior knowledge of direct payments.*<br>*Some participants liked the idea as they would feel like they were in 'control' of their money.* |
| ***Minerva Street Day Centre, Bridgend*** | *Awareness of Direct payments was poor, and a number argued that Council's should provide them with more information.*<br>*In a mixed response, participants generally felt that Direct Payments should be made available to choose as an alternative to Local Authority allocated care, but many voiced the concern that someone would have to help them manage that sort of financial responsibility.*<br>*Although many participants felt that they would like to have a grip of their own affairs, they felt that personally, they would need their family members (who already manage their finances) to help and bear the burden.* |
| ***Riddershins Day Centre, Torfaen*** | *Awareness of Direct payments was poor, and a number argued that the Council should give them more information about it.*<br>*A number of participants were receptive to the idea of receiving direct payments.*<br>*One participant outlined the fact that she was due to receive a hip-replacement and that direct payments could help her to tailor her own care post-operation.* |

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| | *Another participant knew of someone who had also been given direct payments, and that that person's experience had been good – receipt of direct payments had opened doors for that person and with regards to the administrative burden; family members had helped him to manage his affairs.*<br>*The focus group did not generally feel that there were many disadvantages to direct payments – although it was stated that Government needed to recognise that direct payments would not suit everyone.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **General Comments** | |
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| ***Fairwater Day Centre, Cardiff*** | *N/A* |
| ***Bryntirion Day Care Centre, Group 1*** | *A number of participants said that they would like to see more Day Centres across Wales. More people should be made aware of them, and be given information about how they can support individuals to remain independent for longer – as one participant outlined, "they don't have to compromise their independence by coming here".* |
| ***Bryntirion Day Care Centre, Group 2*** | *One participant felt that he would like some assurance that once a Direct Payment would be made that members of the public would not be able to find out how much he received.* |
| ***Bridgend Carer's Community Café*** | *The focus group considered more effective communication to be key:*<br>▪ *Participants felt that different public sector organisations such as the Police, the NHS and Social Services, did not speak to each other;*<br>▪ *Participants stated that they often have to repeat themselves and that there was a general feeling that they different service providers do not know what is happening*<br>*The focus group also felt that the lack of information available to care users needed to be* |

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| | *addressed. One participant stated that the lack of information "adds to the stress of an already stressful situation".*<br>*The focus group participants also reiterated their general hostility to the idea of direct payments.* |
| ***Melrose Day Centre, Shotton*** | *The group highlighted that there were issues with finding out what services are out there.*<br>*They praised the day centre staff for providing what information they did have and felt that Mr and Mrs A would benefit from going to a day care centre themselves.*<br>*They noted that routine was very important to older people and this should be a factor in all services provided.* |
| ***Minerva Street Day Centre, Bridgend*** | *Most participants felt that more information is required and that the services available to people need to be better advertised. Also, participants of the focus group discussed future changes to social care for the next generation who will have very competing demands to their own.*<br>*There was a strong feeling that building better relationships between service users and providers would help combat situations of abuse, whilst simultaneously keeping service users socially interactive on a daily basis.* |
| ***Widdershins Day Centre, Torfaen*** | *Most participants felt that more information is required and that the services available to people need to be better advertised.*<br>*There was a strong feeling that Day Centres are of strong community benefit and help to keep people active, engaged and help to fight loneliness.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

## Scenario 2 – Safeguarding and Intervention

*Neighbours are concerned about Mrs B who is elderly and lives with her son who has a history of drug abuse. She appears not to be looking after herself and is increasingly unkempt. On one recent occasion she had a cut above her eye. Some electrical items were recently repossessed to cover unpaid debts. Neighbours suspect that Mrs B's son may be forcing her to give him money to pay for his drug habits. A social worker has called several times but has been refused entry.*

| **Question 9) Do you think that social workers should be allowed to enter if they suspect abuse?** | |
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| ***Fairwater Day Centre, Cardiff*** | *There was a general feeling that intervention should happen.* |
| ***Bryntirion Day Care Centre, Group 1*** | *Yes – all participants were of the opinion that social workers should be allowed to enter in any instance where they suspect abuse.* |
| ***Bryntirion Day Care Centre, Group 2*** | *All of the participants agreed that the social worker should be allowed to enter.* |
| ***Bridgend Carer's Community Café*** | *Yes – the majority opinion was that social workers should be allowed to enter in instances where they suspect abuse.*<br>*One participant outlined the fact that she had been in a similar situation whereby an elderly neighbour had an anti-social son. The participant got in touch with Social Services who said that they couldn't do anything unless given permission to enter the property and therefore there was no help available for the neighbour who was suspected to be at risk of abuse.* |
| ***Melrose Day Centre, Shotton*** | *The overwhelming response from participants was yes to this question, and that the social worker should be allowed to enter.*<br>*Mrs B obviously needs help, and due to her age and circumstances probably wouldn't feel* |

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| | *comfortable asking for help. She might be afraid.*<br>*Participants felt that if they were in her situation they would want someone to help them.* |
| ***Minerva Street Day Centre, Bridgend*** | *Yes – there was overwhelming support and a general consensus for social workers to intervene in instances where they suspect that abuse is taking place.* |
| ***Widdershins Day Centre, Torfaen*** | *Yes – there was overwhelming support for social workers to intervene in instances where they suspect that abuse is taking place.* |
| ***Encil y Coed, Criccieth*** | *The majority of the participants thought no, that it was of not the concern of social workers to enter and that Mrs B should have privacy in her own home. She should decide if the social worker should get involved.*<br>*One participant did however recite a story of someone she knew who was in a similar situation, and had she not ended up in hospital then the abuse would have carried on. She could not understand how neighbours had not noticed what was going on and not got the authorities involved.* |

| **Question 10) Is the social worker the right person to intervene?** | |
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| ***Fairwater Day Centre, Cardiff*** | *It was generally felt that social workers should be allowed to intervene.*<br>*However, a number of participants raised concerns with regards to the safety of social workers as well as Mrs B.* |
| ***Bryntirion Day Care Centre, Group 1*** | *Whilst the focus group felt that it was the social workers duty to enter, all participants agreed that the social worker should be accompanied by a police officer or another social worker.* |
| ***Bryntirion Day Care Centre, Group 2*** | *All of the participants felt that the social worker should not enter the premises alone (given the severity of this situation), and should be accompanied by a second social worker or a police officer.* |
| ***Bridgend Carer's*** | *There was general agreement that the social worker should intervene.* |

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| ***Community Café*** | *Concerns were raised that the mother may not welcome the intervention of social services and that the situation should be dealt with sympathetically.*<br>*There was general agreement that the police should be involved at all times, and that consideration should be given to also involving another family member from the extended family.*<br>*The participant from question 9 said that the Police knew about the anti-social son but stated that there was little that they could do. The vulnerability of the elderly mother was often used as an excuse by the son to avoid a custodial sentence. Instead he was given a number of fines for drug offences.* |
| ***Melrose Day Centre, Shotton*** | *The focus group agreed that the social worker was the right person to intervene, as social workers are qualified and has the right skills to do this, although they may need police assistance as well.*<br>*The participants wanted to note here that people should trust their social workers, as they can help people access other help and services available.*<br>*The focus group also made a comment that within communities these days there is too much 'brushing under the carpet' with many having the attitude that it's not their problem and that they should leave it to social services to deal with. Mrs B would probably appreciate support from neighbours and friends.* |
| ***Minerva Street Day Centre, Bridgend*** | *The focus group all agreed that the social worker was the right person to intervene, as it is likely that the social worker will already have an established relationship with Mrs B.*<br>*The group stressed the importance of the Day Care setting in this instance. By being able to come to a Day Centre on a weekly/daily basis, Mrs B would be around professionals* |

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| | *who could identify any abuse that may be happening, as well as providing her with an opportunity to discuss issues at home with someone who isn't a member of the family.* |
| ***Widdershins Day Centre, Torfaen*** | *The focus group generally agreed that the social worker should be the people to intervene.*<br>*A number of participants emphasised the fact that social workers often have a good understanding of how their local community works and that they are trained to deal with such situations.* |
| ***Encil y Coed, Criccieth*** | *The focus group weren't really sure on this one (see answer to question 9 for reference), but did agree that if it wasn't the social worker then nobody else (including the Police) would care.* |

| **Question 11) Do you agree or disagree that social workers should have the right to force entry?** | |
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| ***Fairwater Day Centre, Cardiff*** | *It was generally felt that, in order to ensure the safety of everyone involved, the police should support social workers in doing so, and that they should be allowed to force entry if they felt that an adult is at risk.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group unanimously agreed that social workers should have this right; however the police should be involved.* |
| ***Bryntirion Day Care Centre, Group 2*** | *The focus group unanimously agreed that social workers should have this right; however the police should be involved.* |
| ***Bridgend Carer's Community Café*** | *The focus group unanimously agreed that social workers should have this legal right; however the police should be involved.* |
| ***Melrose Day Centre, Shotton*** | *All participants agreed that yes, the social worker should be able to force entry. Due to the issue of drug abuse in this scenario that the Police should also be involved, as Mrs B could get hurt.*<br>*The focus group suggested getting other family members involved if possible, especially in* |

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| | *this situation as Mrs B could get distressed if the social worker forced entry.*<br>*In general, the focus group felt that there was a lack of understanding of the role and responsibilities of social workers and that service users and carers should receive this information.* |
| ***Minerva Street Day Centre, Bridgend*** | *The focus group did not reach a consensus to this question.*<br>*A number of participants stressed that the social worker shouldn't have the right to force entry, even where abuse was suspected. The other participants felt that if forced entry was necessary, then the social worker should be accompanied by another person, for example, a police officer or another social worker.* |
| ***Widdershins Day Centre, Torfaen*** | *Participants generally felt that the situation was difficult.*<br>*A number of participants highlighted concerns about the personal safety of the social worker.* |
| ***Encil y Coed, Criccieth*** | *The participants had mixed reactions to this question - they were very concerned about Mrs B but then she is entitled to privacy in her own home.* |

| **Question 12) Should social services have legal powers to remove vulnerable adults?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Participants were unsure of the practicalities of removing vulnerable adults and many agreed that the response should take into consideration the circumstances of each case.*<br>*Many felt that it should be the son in the scenario that should be removed, not the mother.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group felt that social workers should have the legal power to remove vulnerable adults in this situation.* |
| ***Bryntirion Day Care Centre, Group 2*** | *Whilst the majority of the focus group felt that social workers should have this right, the group discussed the issues surrounding the aftermath of intervention.*<br>*One participant said that the son should be removed, rather than the mother.* |

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| | *The group felt that if the son wasn't removed, the mother may be returned to the home if she is well enough not to warrant a stay in hospital (for example) and could be at the son's mercy a second time.*<br>*A second participant outlined the need for social workers to be trained, and gain a recognised "qualification" to exercise this power. Guidelines should be in place to ensure that standards are met and maintained as this has the potential to be abused, though they didn't detail how they thought it could potentially be abused. There needs to be a check and balance.* |
| ***Bridgend Carer's Community Café*** | *The focus group generally agreed that social services should have the legal power to remove vulnerable adults.*<br>*A number of participants highlighted the fact that carers (and likewise the cared for) may sometimes end up becoming abusive due to the pressure of caring/the difficult circumstance that they are in. As such they highlighted the need for greater provision of respite care, more support and the value of schemes such as the Carer's Community Café.* |
| ***Melrose Day Centre, Shotton*** | *The focus group agreed that they should have these powers but most felt that these should be jointly with the police, and other relevant agencies should get involved on a case by case basis.*<br>*Participants discussed the need to ask a lot of questions before the decision is made to 'remove' a vulnerable adult, and that people should be encouraged to get involved, as some might feel too scared or worried about getting into trouble.*<br>*One participant noted that there should be a limit to social workers powers, and that if they had too much power then it 'would go to their head'.* |
| ***Minerva Street Day*** | *The focus group could not agree whether social services should have these legal powers. If* |

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| ***Centre, Bridgend*** | *there is clear evidence of abuse, they should have the power to remove, but other focus group participants felt that the power to remove vulnerable adults should lay on the police and not the social worker.* |
| ***Widdershins Day Centre, Torfaen*** | *The focus group agreed that social services should have these legal powers.*<br>*A number of participants stressed that social services should intervene if they have proof that the person may be in danger.* |
| ***Encil y Coed, Criccieth*** | *The focus group felt that Mrs B (or another family member or next of kin) should be involved and that the social worker shouldn't make the decision independently.* |

| **Question 13) Where should the mother (Mrs B) be moved to?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Participants agreed that convalescent-style homes should be reintroduced in Wales and the provision of respite care in Wales is poor.*<br>*It was strongly emphasised, that they must be moved to somewhere that is appropriate.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group found it difficult to envisage a situation whereby Mrs B couldn't be moved to stay with other family members. Again, the participants highlighted the point that the son should be moved.* |
| ***Bryntirion Day Care Centre, Group 2*** | *The focus group felt that if Mrs B had the option to return home without the son being there, then she should take it. In any other event, she could have the option of going to a day centre like Bryntirion.* |
| ***Bridgend Carer's Community Café*** | *General feeling that removal of vulnerable adults would depend on the situation. A number of participants suggested Sheltered Accommodation and/or 'Extra Care'.*<br>*The focus group also highlighted overwhelming support for Day Centres, with a number of participants suggesting that attendance at a Day Centre/Community Café or other social* |

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| | *space may help Mrs B to open-up and communicate her troubles to others.* |
| ***Melrose Day Centre, Shotton*** | *The focus group felt Mrs B should be moved to a 'safe house'- probably owned by the Social Services. The location of the 'safe house' should depend on circumstances in terms of how far from the home it is.*<br>*The son should be kept away until he had sorted his drug issues. He should not reside with Mrs B but should be allowed contact in a controlled environment.*<br>*Some individuals felt that social services should get 'proof' that the son is on drugs, and that the son should not be treated as a 'suspect' without proof.* |
| ***Minerva Street Day Centre, Bridgend*** | *A number of participants stated that the mother should stay in her home and that it is the son who should be removed in order to receive treatment.*<br>*Other participants thought that the mother should be moved to a place of safety. A number of participants highlighted the use of "extra care facilities" (formerly known as sheltered accommodation) as well as removal to a complex.* |
| ***Widdershins Day Centre, Torfaen*** | *A number of participants stated that the mother should stay in her home and that it is the son who should be removed in order to receive treatment.*<br>*Other participants thought that the mother should be moved to a place of safety, especially if the mother is a target for the son's potential abuse.*<br>*Places of safety included – residential homes and/or the homes of other family members.* |
| ***Encil y Coed, Criccieth*** | *The first option should always be to move to a family member's home or close relative.*<br>*Otherwise then she should be moved to a place of safety.* |

| **Question 14) The law does not include anything on Independent Advocacy. Do you think Independent Advocacy services are important?** | |
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| ***Fairwater Day Centre, Cardiff*** | *Although there was a general consensus that Independent Advocacy services lack geographic coverage in Wales, most participants would prefer for their children/close family members to act as advocates on their behalf.* |
| ***Bryntirion Day Care Centre, Group 1*** | *The focus group had poor awareness of Independent Advocacy services. None of the participants had made use of Independent Advocacy.*<br>*One participant felt that having the option of using an Independent Advocacy Service would be beneficial where there were no family members to support them.*<br>*In principle, the service should be there to choose if/when needed.* |
| ***Bryntirion Day Care Centre, Group 2*** | *Some participants had a general awareness of what Independent Advocacy would entail. While all of the participants felt that it was a good thing, one individual highlighted the benefits of a Befriending Service which is primarily run by third sector organisations. She felt that just having someone available to call on would be enough for her to know that she could discuss any issues that were worrying her. Though she isn't receiving that service at the moment, she drew comparisons between the Befriending Service and Independent Advocacy these services.*<br>*A second participant felt that if Independent Advocacy became widely available, any recommendation/support given should be vetoed by a second Independent Advocate.*<br>*Generally, the group felt that it was not always easy to confide in ones relations.* |
| ***Bridgend Carer's Community Café*** | *The focus group had a poor level of awareness of Independent Advocacy services. None of the participants had made use of Independent Advocacy.* |

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| | *In principle, there was support for the idea of Independent Advocacy, and the focus group was unanimous in supporting the inclusion of Independent Advocacy in the Bill.*<br>*A number of participants stated that there is no single point of contact when it comes to accessing services, and that no one sets out all care options.*<br>*One participant highlighted the fact that changes (that lead to a requirement of social care) can happen very suddenly, and that in their experience social services are "good at telling us what we can't get, but never explain to us what we can get".* |
| ***Melrose Day Centre, Shotton*** | *The group in general felt that these services are important and that they 'put things right for us'.*<br>*They did note though, that it did depend to a certain degree on the Advocacy Officer and their attitude and experience.*<br>*Some felt that their personal carers and staff in the day centre also provide this service.* |
| ***Minerva Street Day Centre, Bridgend*** | *The focus group generally agreed that Independent Advocacy is important. None of the participants, however, had received the support of Independent Advocacy nor had they used the services available. The group agreed that such a service should be made widely available to all as many individuals in their position aren't able to speak for themselves.*<br>*The Centre Manager signposted the Neath Port Talbot, Swansea and Bridgend Independent Advocacy Service which has been Big Lottery Funded for 3 years, but awareness and understanding of the Independent Advocacy services available in their area was poor.* |
| ***Widdershins Day Centre, Torfaen*** | *The focus group generally agreed that Independent Advocacy is important. None of the participants, however, had received the support of Independent Advocacy nor had they* |

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| | *used the services available.*<br>*Awareness of the Independent Advocacy services available in their area was poor. However, a number of participants felt that the Centre such as this could indirectly provide such services if needed.* |
| ***Encil y Coed, Criccieth*** | *N/A* |

| **General Comments** | |
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| ***Fairwater Day Centre, Cardiff*** | *The service providers involved in the focus group highlighted the benefits provided by Day Care Centres in relation to scenario 2. They argued that had the mother been offered care (in a Day Centre format) she may have had an opportunity to voice her fears, not least because there are staff on hand to look after them. They also argued that the safe environment provided by Day Centres may make elderly people more like to talk to social workers than their own home/unsafe environment.*<br>*One general comment made during the focus group was that the reassessment of people's needs (which currently happens at periodic junctures depending on the severity of an individual's needs) should happen more regularly.*<br>*The focus group also felt that ensuring that old people are not alone and neglected is of paramount importance, and that providing friendly, social places for them to go is of massive benefit to their wellbeing.* |
| ***Bryntirion Day Care Centre, Group 1*** | *N/A* |
| ***Bryntirion Day Care Centre, Group 2*** | *N/A* |
| ***Bridgend Carer's Community Café*** | *One participant, a former nurse and now an ex-carer highlighted the fact that there was a large time gap in care between the point where an elderly person is discharged from* |

| | |
|---|---|
| | *hospital and the point at which social care provision begins. The participant also highlighted that care assessments do not always receive a complete picture of a person's needs and often take too long.*<br>*This point was reiterated by another participant who stated that some elderly people want to leave hospital so desperately that they say that home arrangements are sufficient for them to leave hospital, whereas this may not always be the case. A greater role for wider family/next-of-kin during the care assessment process was seen to be one way of overcoming this.* |
| ***Melrose Day Centre, Shotton*** | *A few of the participants noted that getting transport to the day centre was an issue, and reflected on their attendance to the centre.* |
| ***Minerva Street Day Centre, Bridgend*** | *N/A* |
| ***Widdershins Day Centre, Torfaen*** | *N/A* |
| ***Encil y Coed, Criccieth*** | *N/A* |

**Gwenda Thomas AC / AM**
**Y Dirprwy Weinidog Gwasanaethau Cymdeithasol**
**Deputy Minister for Social Services**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LFGT043513

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

20 May 2013

Dear Vaughan

**Social Services and Well-being (Wales) Bill – Stage 1 Scrutiny**

Thank you for your letter dated 24 April in which you raise a number of questions following my evidence session to your Committee on 18 April. You wrote to me again on 20 May with further questions. My responses to all of your questions are set out in **Doc 1**.

In your letter of 24 April you also set out the commitments I gave during my appearance at your Committee. As you suggest, I will be writing to the Committee with an updated Regulatory Impact Assessment in the Autumn and in doing so will aim to bring forward further detail on the provision of preventative and early intervention services, a national consistent system for assessments and eligibility and ensuring greater collaboration. I can also confirm that I will write to the Committee on the subject of the power of removal for adults and how the Adult Protection and Support Orders will work in practice, once the discussions between my Officials and their counterparts in the Ministry of Justice have progressed further.

As regards the commitment I gave in relation to the timetable for Regulations, I am pleased to include further information at **Doc 2**. I would however like to clarify the commitment I made in this area. You suggest in your letter that this timetable would include detail "of when draft Regulations will be available for consideration." Whilst the Health and Social Services Committee will, I hope, play a role in considering these Regulations as they are developed, I want to be clear that the draft Regulations (and the Code or Codes) themselves will not be available until 2014 although I do intend to sign off the policy intent for the priority subordinate legislation by the end of this calendar year and to share that information with you then.

In advance of the policy intent being finalised, I have taken this opportunity to provide additional information where it is available on matters which I am sure will be of interest to the Committee. To this end please find attached a series of information sheets providing further detail on arrangements relating to information, advice and assistance, assessment, care plans and portability and eligibility. Collectively these will assist the Committee's understanding of the new rights that are set out under the Bill **(Docs 4a-d)**

The attached 'table of destinations' **(Doc 3)** will also be of interest to Committee members. It sets out the sections of the Children Act 1989 and where they are replicated in the Bill. I hope that this will allay concerns that I am aware of regarding the location of 'children in need' in the Bill. A table of repeals is also attached as you requested in your letter of 20 May. Further information relating to the replacement provisions in the Bill will be sent to you after recess.

I would like to close this letter by referring to an exchange in the Chamber on 14 May during which a member of the Health and Social Care Committee asked the First Minister 'Do you stand by your Deputy Minister for Social Services' statement that, if the Bill passes, no additional money will be needed to implement it?' The statement attributed to me is incorrect. May I direct the Committee's attention to paragraphs 111, 112, 141, 143 and 144 of the Explanatory Memorandum where I refer to budgets available to support the transitional phase following the passing of the Bill and to support the implementation of the Bill.

I look forward to my next evidence session with you on 6 June.

Yours sincerely

Gwenda.

**Gwenda Thomas AC / AM**
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

**Members commented on how comprehensive the Bill is and some suggested that it would be easier to navigate if it was cross-referenced. As the Bill is bringing lots of issues together in one Bill that would normally be separated, this can lead to confusion. Would you consider adding cross-referencing?**

It is not clear as to what the Committee is proposing. In order that we may consider the proposal, I should be grateful if Committee could clarify precisely what is meant by cross-referencing, and perhaps provide a practical drafted example.

**Would you consider adding statutory principles to the face of the Bill to help to stop some confusion as recommended by the Law Commission in their report on Adult Social Care?**

I addressed the issue of statutory principles when I attended Committee on 18 April. My position remains that I do not feel it necessary to add a list of statutory principles to the face of the Bill. The legislation does however set out fundamental principles which will underpin the change I am seeking to introduce. For example, it sets out the clear requirement for a person's well-being, rather than a list of services, to determine the care and support that is provided. It establishes outcomes as the primary measure of success as well as the principle that an individual is best placed to make the decision as to what those outcomes should be.

We are legislating for a clear new direction for social care in Wales through this Bill and I feel that embedding the core changes throughout the provisions rather than simply including a list of statutory principles is the best way of achieving this systemic change.

**It has been suggested that the Bill is too large in scope and that we would make better legislation if it was separated out. Do you agree with this?**

The Bill is indeed bringing together a range of issues, although I do not agree that these would 'normally be separated'. I have also noted that the suggestion that the Bill is too large arose in evidence provided by the Children's Commissioner and some NHS organisations whilst other stakeholders including the WLGA and ADSS Cymru made reference to the scope making it hard to fully understand what the impact of the legislation would be.

It needs to be understood however that this is a Bill which seeks to transform care and support provision in Wales and as such requires a system wide approach. This Bill is meant to herald change for a generation, if not longer. If services are to be sustainable, efficient and are to work towards improving outcomes for people, then they need to be considered together in order to offer seamless provision based on people's needs and well-being outcomes, rather than by providing a predefined list of services which would could never be satisfactorily achieved.

The Bill also introduces duties in relation to the integration of health and social care. It is right therefore that a wide range of functions are considered together under a piece of primary legislation. In this regard the integration of law will help the integration of services. It is recognised that this is a complex field in terms of legislation at present. This is why one of the main aims of the Bill is to simplify the law in this area by creating interlocking

Regulations and a code of practice which will help users, their families, practitioners and the courts navigate this area of law. So whilst the Bill is complex and large, it needs to be if we are to achieve this ultimate aim and I therefore do not agree that separating out the legislation is the best way to proceed. It is also worth remembering the Law Commission's recommendation that social care law be consolidated so as to resolve the 'confusing', 'piecemeal' and 'complex' array of legislation that has been enacted over the past 65 years.

**Similarly, it was suggested that this Bill is also being used to 'fix' some specific issues such as safeguarding. The suggestion was that the 'fix' items do not help with the coherence of the legislation. Do you have any comments?**

Few issues are higher up the agenda than protection and safeguarding of people – this is a key priority for the Welsh Government. It is therefore not an 'add-on' placed in the Bill to 'fix' a problem, rather it is included to make sure that safeguarding provisions are improved as part of the overall system changes that the Bill seeks to bring about.

I am strongly of the view that it is just not possible to talk about social care and support without including safeguarding and to this end the Bill will ensure that there is clarity and focus in this area and will ensure that key safeguarding agencies have the statutory tools to work collaboratively to protect people who might be at risk.

**The well-being agenda is complex and not primarily a social services agenda – it takes in health, social services and virtually all other public services. If social services are seen as the lead in providing well-being then the definition of well-being may well become narrowed in practice. Do you accept this and if not how do you expect a wide ranging well-being agenda to take place in practice?**

I do not accept that well-being is 'not primarily a social services agenda' although I do appreciate that it is an agenda shared across social services, health and other public services. Committee members will be aware of the provisions in the Bill relating to the integration of health and social care as well as cooperation and partnership between local authorities, local health boards and other agencies and it is through these provisions that I expect a wide ranging well-being agenda to be met in practice.

**Consent of UK Secretaries of State - Members noted that further work is on-going with the Westminster Government on competence. We would welcome regular updates on the position.**

With regards to competence, I am confident that this legislation is within the competence of the National Assembly. On the issue of consents, to enable us to include provision which imposes or modifies functions of Ministers of the Crown, we continue to liaise with the UK Government. Obtaining Ministerial consent will allow us to re-instate some of the provision about safeguarding boards and cooperation which was amended prior to introduction. The main sticking point is the funding model for safeguarding boards which UK Ministers will not countenance. Committee members will recall that the Bill I introduced was not dependent on these consent issues being resolved. If, as I anticipate the issues around UK Minister consent are resolved, I am pleased to say that I intend to bring forward minor changes to the Bill by Government amendments for consideration at stage 2. I plan to provide the Committee with a detailed update on this when I come before you again on 6 June. This answer also deals with your question on this subject in your letter of 20 May.

**Consolidation of existing legislation - We would welcome further information on where existing legislation is to be repealed by provisions in the Bill and where it is to be replaced within the Bill. Where existing legislation is to be repealed are there any provisions in place to ensure that existing important provisions are not lost?**

Yes, there are provisions in place. The Committee will have noted the table of derivations in the Explanatory Memorandum. To support this, Legal Services have also produced a list showing the principle provisions being repealed. In addition, work has also been undertaken to produce a further detailed table of destinations which sets out where the existing provisions in part 3 of the Children Act 1989 are to be found in the Bill. Taken together, these documents will provide the Committee with sufficient assurances in this matter. The table of destinations is attached and the table of repeals will be forwarded to you in time for you to consider them during Stage 1 scrutiny.

**Assessment - We touched on the new assessment arrangements but would welcome greater clarity on how you envisage they will work and how they will differ for specific groups of service users. Can you also expand on the reasons why an assessment would be refused and whether existing law provides for assessments to be refused?**

To assist the Committee's understanding of the new rights for citizens in respect of access to care and support, assessment, eligible need and care plans and portability arrangements, I attach four information leaflets that provide a fuller explanation of these matters.

**Transition from children's to adult services - We will be taking evidence on 16 May from disabled young people who have experienced the transition of moving from children's to adult services. Can you set out how you feel the Bill addresses and improves current practice on this important issue?**

This Bill legislates for the concept of a 'people model'. The 'people' model is designed to benefit *everyone in need of care and support* and to enable a smooth transition through services at all stages in a person's life. Disabled young people are therefore part of this group. I am content therefore that the provisions for new core processes and portability mean that there transitional arrangements will be improved for disabled young people and that there will be no gap in the law. It should also be remembered that the Regulations and Code(s) of Practice to be developed in this area will help address specific issues of transition which may relate to this group in particular.

**Charging - We had a detailed discussion in Committee about the cost implication of the Bill. The Committee will reserve judgement as to whether the Bill will be cost neutral. However, can you explain whether the Bill extends the range of services for which charges may be made or provides for the power to do so? Can you also confirm if the charging provisions in the Bill will replace those currently in force, for example, in the Social Care Charges (Wales) Measure 2010?**

Part 5 of the Bill will allow local authorities the discretion to levy a reasonable charge up to the cost of the care and support it provides under the provisions in the Bill, on those who are able to afford this. This will consolidate the existing powers local authorities have to charge, albeit that some of these local authorities do not presently use. It will, for example, replace the duty to charge under the National Assistance Act 1948 for the provision of accommodation with care to adults and the discretion to charge for non-residential care to adults under the Social Care Charges (Wales) Measure 2010. The Bill will also provide for the ability for authorities to levy a reasonable charge for preventative services, information, advice and assistance provided under Part 2 of the Bill, where they consider it appropriate to do so. I am aware that there has been some concern expressed about the range of the charging provisions and would want to remind the Committee that whilst local authorities will be able to charge for the same range of services under the Bill as they are able to at present, I will also have powers of Regulations and the Code(s) of Practice to set limits or disapply elements of the charging provisions.

**User voice and control - Can you expand on how voice and control is realised in the Bill including details of how the Bill will enable individual participation in setting and shaping services?**

Voice and control is realised right the way through the Bill: from the strategic level with the national outcomes framework, to the organisational level with the needs assessment, information, advice and assistance, to the individual when identifying need.

I believe that the starting point is well-being for people who need care and support and carers who need support. In setting out the meaning of well-being the Bill is clear: this is about rights, and for adults, control over day to day life. The overall approach is about transparency, giving people greater voice and control. We believe that an adult is best placed to make decisions about their own well-being; and that is at the heart of what we are seeking to deliver in securing a citizen centred approach.

At the strategic level, the national outcomes framework will support voice and control. That is all about well-being. Well-being is everyone’s right and everyone’s responsibility. By making this clear and putting in place an outcomes framework, we are setting out what the dimensions of well-being are, and making it clear that individuals themselves, communities and organisations will have roles to play.

At the organisational level, there is a duty to identify the needs of the local population, and to provide clear information advice and assistance. This again secures voice and control: a strong and transparent platform for people to make plans for meeting their care and support needs.

At the individual level, individual outcomes will have the well-being principle at their heart. The new assessment arrangements will be proportionate to an individual’s needs, not suitability for a particular service. Our aim to simplify assessment, empower people and professionals and support people to make informed judgements about the level of support they need.

**How do you expect the Bill will provide for the development and encouragement of co-production?**

The Bill at this stage is largely one of broad principle in relation to this aspect: subordinate legislation will provide the detail. I envisage that co-production, 'organisationally', would find its legislative foundations in Section 7(1)(c) of the Bill which is specifically about 'promoting social enterprises, co-operatives, user led services and the third sector'. There is a duty at sub-section (1)(c) where there is a requirement for local authorities to promote…'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'. The Bill as currently crafted gives proper endorsement to the principles that inform co-production.

Co-production at a more individual level finds its context in the Welsh Government's commitment in *Sustainable Social Services: A Framework for Action* to develop a model of self-directed support that is consistent with the Welsh Government's principles for social care - including a stronger infrastructure of support for those who choose these routes. That commitment has been developed through the provisions of the Bill which places citizens at the centre of services that will be shaped by the definition of well-being upon which the whole Bill is built. This includes that adults should have control over their day to day lives (Section 2(4)). The Bill also states 'A person exercising functions under this Act in relation to an adult must have regard to the importance of beginning with the assumption that the adult is best placed to judge the adult's well-being.' Section 2(3) (in relation to adults) enshrines an approach based on voice and control and which would invoke co-production and other support directed by the citizen themselves.

The Bill will also enable the extension of Direct Payments. Taken overall the Bill embeds in law a Welsh model in which co-production and other forms of partnership and co-operative activity could flourish.

**User/community controlled providers - Do you believe that a duty 'to promote' is strong enough to secure effective implementation by local authorities to promote social enterprises, co-operatives, user-led services and the third sector to provide care and support and preventative services? Do you see this duty as leading to a preference for non-statutory sector service provision in future over statutory provision?**

I believe that a 'duty to promote' provides a clear direction for local authorities to follow. It is for local authorities to create the conditions in which these types of services can thrive so a 'duty to promote' is, I believe, the correct language to use. I have been clear on a number of occasions that the current model of delivery is not sustainable and I think local authorities and other partners also recognise this. A key way of moving to a more sustainable model is to involve a wider range of partners who can deliver services in new ways. The Bill provides a framework under which local authorities and their partners will need to determine how best to do this, by increasing the use social enterprises and other initiatives according to their own local experiences and circumstances.

I do not think that this provision will automatically lead us towards favouring non-statutory provision over statutory provision in all cases but I do expect it to result in greater consideration of new ways of delivering services with the choice of the best way forward being dependent on the assessment of population needs in service areas. In this way I would expect it to remove any presumption that statutory provision is the automatic best choice for service delivery in all cases.

I should also add that when I attended Committee on 18 April I said that I would be keen to hear what ideas the Committee has in this area should it be of the view that a duty to promote in insufficient and that the inclusion of these ideas in its Stage 1 report would be very welcome.

**Direct payments - How do you envisage the Bill will change existing arrangements including the take up of direct payments?**

The provisions in the Bill relating to Direct Payments broadly maintain the current legal framework whereby a local authority may in most circumstances, make payments to a person (adult or carer) towards the cost of meeting their needs for care and support where that is the person's choice.. However, they will enable us to promote and extend Direct Payments in a number of ways. The Welsh Ministers will be able to make provision in Regulations about the kind of support that local authorities must provide to those who receive Direct Payments. We know that one of the key factors which makes a difference to the take up of Direct Payments is the nature and extent of the support available to users. To some extent this already happens through local authority contracts with support scheme providers. However, the Bill takes this further as it will also allow the Welsh Ministers to make provision in Regulations about the circumstances in which a local authority must act as an agent for the purpose of making contracts with providers on behalf of a person in receipt of Direct Payments. For example, the local authority would be able to act as a broker and survey the market of social care providers to identify which were best able to provide services to meet the individual's needs, to negotiate terms and introduce them to the provider.

In addition, the changes that we will be making to the assessment process, ensuring that users are alerted at an early stage of the financial implications of receiving a services and how these might be handled will mean that service users will be informed about Direct Payments as an option at the earliest opportunity. There are also linkages to be made with the promotion of social enterprises, co-operatives and user-led services under section 7 of the Bill and we will be exploring these further as we develop the Regulations and Code(s) of Practice.

**The Committee noted that you are working with Mark Isherwood AM on an opt-out method for people who do not wish to use direct payments. How do you envisage this will work in practice and can you provide regular updates on the progress of this work?**

There appears to be some misunderstanding over my recent discussion with Mark Isherwood AM. The Welsh Government is not intending to introduce an opt-out system for Direct Payments. We wish to promote the uptake of Direct Payments, but believe that this should be an informed choice by the individual needing care and support.

I met with Mark Isherwood to discuss his Member Proposed Bill on Direct Payments, which sought to introduce an opt out system, and its relationship with the Direct Payment provisions in the Bill. I assured him of my commitment to continue to work with him and stakeholders as we move forward with developing our own model of citizen directed support in Wales and as a result he agreed to withdraw his motion during the debate on his Bill proposal. I also gave a commitment to ask the Direct Payments Overview Group (which consists of stakeholders from the statutory and third sectors, and user / carer representatives) to work with the Welsh Government on developing a set of principles to underpin the Regulations and the code or practice on Direct Payments under the Bill and this task is now underway. I have undertaken to keep Mark Isherwood informed of progress.

**Safeguarding - We have received a considerable amount of evidence suggesting that merging children and adult safeguarding boards may lead to the agenda being dominated by one group over the other leading to a loss of focus. Do you agree with this and if not, how do you envisage that both groups will be protected?**

**Can you expand on the rationale for providing powers to allow for the merging of children and adult boards and how a merger will result in improved services for both groups?**

I am aware that, for example, ADSS Cymru and the WLGA have questioned the value or need of merging Adult and Children Safeguarding Boards: their reasoning being is that this could result in a loss of focus on both adults and children, with the more advanced position of the work of children's boards in particular being put in jeopardy. I do not agree with this analysis.

This provision within the Bill flows from the work and final report of the Wales Safeguarding Children Forum. The Forum was established by the Deputy Minister for Social Services in October 2009. It drew together significant expertise and experience in the field of safeguarding and protection to consider what steps might be taken to further strengthen the existing arrangements in Wales. Its members included senior leaders drawn from all aspects of the safeguarding agenda, including Welsh Local Government Association, Association of Director of Social Services, the Children's Commissioner and the Police.

Another aspect of the safeguarding proposals which has caused some concern is that which would allow for the merger of safeguarding children and adults boards. Again this is something which stems from the work of the Forum. Their report concludes, and I quote:

> 'There is a strong case to establish and develop combined Adult and Children's Safeguarding Boards to reflect the National Board proposal. This would strengthen further leadership and accountability for safeguarding and protection at a sub-national level. There is a rationale to progress this combined model at the same time as establishing the National Safeguarding Board for Adults and Children. It may, however, be advisable to work toward this, when a more robust statutory framework for adult protection in Wales has been introduced.'

The Deputy Minister for Social Services accepted the Forum's recommendations in October 2011. Twelve months on, she noted that 'the proposal that these boards should merge in time is one that has received considerable comment. I continue to be committed to the principle.. but recognise and appreciate the anxieties expressed.' Despite reassurances from the Deputy Minister subsequently, this issue has been raised again during the Bill scrutiny, including [disappointingly] by members of the Forum which made the original recommendation.

I want to reiterate, therefore, that in the short to medium term there is no intention to use the proposed powers to merge the boards. However this is a Bill for a generation and in that context we have decided to accept the Forum's advice and include the provision. This is because, we can see the benefits over the longer term that could arise from considering the safeguarding needs of people as a whole rather than separately as adults and children. However, any proposal to merge would be subject of formal consultation.

I believe that with the proper considerations and structures put in place, the merging of boards could in fact serve to raise the performance across the piece by allowing for the best practices in either board to become the norm.

Nevertheless, the current differences between the operation and performance of boards, is recognised and their merging is not a decision we would rush in to. In my evidence to your Committee on 18 April, I said that there are no current plans to merge these boards and that the intention is to set up strengthened safeguarding children boards and adult boards on the footprint of six.

I also stated that if it became apparent that it would strengthen safeguarding to merge boards, I would consider it at that time. The provision is included therefore to allow for this and to recognise the potential benefits over the longer term that would arise from considering the safeguarding needs of people as a whole rather than separately as adults and children.

**Partnership working - Can you expand on the intentions behind Part 9, Chapter 2 of the Bill on partnership arrangements and the ways in which the Regulations will promote them?**

Provisions in Part 9 Chapter 2 respond to evidence of the need to strengthen cooperation and integration of delivery of health and social services through requirements to work in partnership that can be determined by Regulations and guidance. Outcomes for individuals cannot be delivered unless service providers collaborate effectively. Previous arrangements for children under the Children Act 2004 are updated and replicated for the adult population, requiring local authorities and health boards to work in partnership and to integrate services, pool budgets and use other flexibilities. The new arrangements can also apply more widely than between a single LA and LHB.

Regulations and guidance will specify requirements for developing the proposed formal partnerships between local authorities, health bodies and other partners that will increase attention to delivery to users, clarify service access, generate flexibility and transparency in use of resources, achieve coherence in performance management and quality assurance and increase capacity to plan for future demand. These provisions incorporate the Children and Families (Wales) Measure 2010 which provides the legislative basis for the Integrated Family Support Services.

**How do you envisage issues around charging for social services and non-chargeable health services would be resolved in integrated health and social care arrangements?**

Integration of health and social services in the context of older people with complex needs is not being developed with a view to changing the charging arrangements across the interface, but is about ensuring that unscheduled admissions and delayed transfers of care are diminished and managed more appropriately and that the right service at the right time is provided in a joined up manner to better meet the individual's needs. It will still be the case that an individual will be entitled to free NHS care, an assessment for continuing health care, for NHS funded care and for social care need. The social care element will still be chargeable up to the cap that the Welsh Government has introduced for domiciliary care services. As I indicated in my recent Written Statement and the related debates in Plenary, we are also looking at how charging for residential care might be reformed in

Wales in the light of the UK Government's response to the Dilnot Report. The greater use of pooled budgets to integrate services between Councils and LHBs will also help minimise the problems with charging across health and social services boundaries.

**Definitions - I am aware that you said you are prepared to give further consideration to the list of definitions in the Bill and that you asked Committee to consider this issue. We will address this in our report but it would be helpful if you could explain your reasons for not including definitions as discussed in Committee?**

The core definitions on which the legislative framework will hang are set out on the face of the Bill. It is through the Code of Practice that further definitions will be provided. The approach ensures the flexibility necessary to respond to the changing needs of individuals or the population that may occur, or the development of other legislation in Wales and the UK that may be enacted, over the lifetime of the Bill. Therefore I do not feel it would be sensible to include any further definitions on the face of the Bill. To do so could potentially shorten the Bill’s lifespan and could increase the likelihood of the Assembly having to amend primary legislation.

The following questions were raised in your letter of 20 May:

**National Eligibility Framework**

I am grateful for the Committee’s interest in the national assessment and eligibility framework and its potential impact. The SSIA report *Access to Care and Wellbeing* recognised the challenges of developing the national assessment and eligibility framework; how it will operate and its status in the new integrated model for care and wellbeing. The SSIA report and the work my officials are progressing provides a clear context to developing a person centred approach to the care and well-being of people.

I have taken the bold step to include on the face of the Bill circumstances where individuals will be passported to have an eligible need: those at risk and looked after and other accommodated children. In such cases, the local authority will have **a duty** to meet the care and support needs and the outcomes that individuals wish to achieve. The national assessment and eligibility framework (through Regulations and the Code(s) of Practice) will define the circumstances in which other individuals who are determined as having eligible needs.

The information leaflets attached to this letter will aid your understanding of the new arrangements and how they connect.

In addition, I can give my assurance that I am giving great care to the planning and implementation of care and well-being this area including the need to ensure continuity of care for individuals in relation to the transition of the current system to the application of the new law. Transformation on this scale and the impact it holds for many people is significant and it is my plan to test these arrangements in advance of their implementation.

In June, I will make a statement where I will set out more detail on this and my plans for the next phase of co-production and testing of the new integrated model of care and well-being.

**Repeals of Existing Legislation**

**A list detailing where the Bill will repeal existing legislation, identify areas in the Bill where there will be replacement legislation and provide assurances that existing rights will not be diminished.**

A table is attached which lists the legislation being repealed. It is possible this list could be added to. A further list detailing the provisions in the Bill which replace the provisions being repealed will be available following recess. It will be important for both of these tables to be read together. I take this opportunity to reiterate one of my key messages which is that this Bill will bring no detriment to service users and carers in relation to the entitlements and rights they already enjoy.

I am also aware that, during scrutiny, concerns have been raised in relation to the following issues and I thought it would be helpful to provide you with my view on these matters:

*Charging policy and concerns regarding children and young people for information*

These are matters on which I will want to consult and have the power to do so. The charging provisions are enabling powers and replicate the principles of the charging provisions that currently exist in sections 17 and 29 of the Children Act 1989. What I will say is that I do not think it is unreasonable to expect a child or family that has the means to pay for a service to do just that.

*Section 17 of the Children Act 1989 and the potential loss of focus on children, for example, the status of disabled as children in need resulting in their automatic passporting to social services.*

We have not re-created the phrase "child in need" in the Bill and section 17, and the other sections in part 3 of the Children Act 1989, will be repealed. The rights we have created however go beyond what is provided by section 17 of the 1989Act by creating, on the face of the Bill, a duty on local authorities to carry out an assessment of children where they appear to need care and support and then a duty to meet those needs which meet the eligibility criteria. The Bill also makes provision to allow for a mature child who is deemed to be competent to refuse a right to assessment unless there are overriding protection issues.

The eligibility framework will provide a higher level of detail about the kinds of needs which will be prioritised and the eligibility criteria will be the means by which priority is accorded to, for example, children who are at risk of harm or children who are disabled.

It is also worth noting that there is no automatic right to a service for a disabled child under section 17 of the Children Act 1989. Under section 17, a disabled child's entitlement to services depends upon the assessment disclosing sufficient evidence to prompt the provision of a service. Section 17(1) of the Children Act 1989 does impose a duty on a local authority to safeguard and promote the welfare of a child in need (the definition of which includes a "disabled" child) by providing a range and level *of services appropriate to* the child's *needs.* However, there is no automatic right to services: the local authority must determine that the child has needs that can be met by the provision of a service under section 17. There is no guarantee that a disabled child will necessarily have a need for services, and if he or she does have a need that the local authority will provide a service to meet that need. Please see the 'table of destinations' for further information.

*Language and terminology: avoiding potentially discriminatory terms.*

I intend to introduce Government amendments at Stage 2 which will deal with matters of terminology by replacing the term ‘blind’ with the term ‘sight impairment or severe sight impairment’ and replacing the term ‘both blind and deaf’ with the term ‘deafblind’. My decision to do this follows a number of direct representations from stakeholder organisations about the terminology that is used in section 9 of the Bill which makes provision for registers of blind, deaf and other disabled people. These representations have also been made in written evidence to your Committee as part of your Stage 1 scrutiny of the Bill.

You are also aware of my support for the Social Model of Disability and of the Bill’s provision for Regulations which may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this legislation. I have said that I would be happy to bring forward at an early stage a commitment to consider how the concept of the social model can be promoted in Regulations and/or Code(s) of Practice.

*The Regulations regarding merging regional safeguarding boards and dealing with this via the affirmative procedure.*

Yes, I am persuaded that this issue should be dealt with via the affirmative procedure.

*Should it be mandatory that health and social services* ***must*** *work together?*

I assume in relation to this issue that the question is raised in terms of partnership working as in relation to integrated working and co-operation, the provision states that local authorities must exercise the relevant functions. In terms of partnership working, the use of the word ‘may’ only applies in relation to whether the Welsh Ministers decide to make such Regulations. I fully intend to do so and they will be subject to the affirmative procedure.

*Is there a requirement in the Bill in relation to post-adoption support?*

Local authorities currently have functions in relation to adoption support services under the Adoption and Children Act 2002. We are not repealing these provisions to merge this with the general duties to provide care and support under the Bill. Adoption support services will be affected by the Bill because the intention is that this is one of the local authority adoption functions which will be pooled and which will be carried out through the National Adoption Service It will continue what is done now by commissioning this service from the Third Sector but will be able to coordinate the provision of the services over bigger areas.

**Doc 2**

## Social Services and Well-being (Wales) Bill

## Development and Making of Subordinate Legislation

The purpose of this paper is to provide the Health and Social Care Committee with additional assurance on the development of subordinate legislation under the Social Services and Well-being (Wales) Bill and to provide, more explicitly, the rationale behind the balance of the primary and subordinate legislation.

### *The balance between Primary and Subordinate Legislation*

As I have stated in my response to the questions raised by the Finance Committee, I think it is important to recognise that this Bill is quite unlike any other that the National Assembly, and indeed any committee within it, have scrutinised since devolution. It aims to create a framework and solid foundation for sustainable social services in Wales, a foundation on which we can build social services that will meet the needs of the people of Wales for years to come. In order to do that, the system that enables the provision of social services, and the legal footing that that system sits on (this Bill), needs to be flexible.

This flexibility cannot be achieved if the fine details are set out on the face of the Bill as this would result in a potentially significant number of changes to the primary legislation in years to come, once the Bill has completed its journey through the Assembly process and has been enacted.

Instead, allowing the more operational details of the system to be defined through subordinate legislation provides the opportunity to 'future-proof' the Bill, to enable it to remain relevant and appropriate as circumstances and requirements change and as policies and evidence develop and grow over time. It also allows timely reactions to any amendments that may be needed as a result of the UK Government's legislation and policy changes, which are due to take place during the coming years.

In these circumstances, therefore, I feel the balance between primary and secondary legislation is not only proportionate, but necessary.

### *Managing the development of Subordinate Legislation*

The deadline for the delivery and implementation of this Bill, including subordinate legislation, is April 2016, prior to the end of the current Assembly.

A timetable such as this calls for a project-managed approach - one that manages the legislation, both primary and subordinate, in a holistic manner. To that end, I have agreed with senior officials that the role and remit of the team within the Social Services Directorate that have managed the Bill Project thus far, will be extended in order to continue the project management of the subordinate legislation. This approach will ensure strategic management of the whole picture of legislation for the Social Services and Well-being (Wales) Bill. This is vital, given that some of the detail of the new core system for social services will be taken forward through subordinate legislation – the reasons for which, I have already outlined above.

The timetable at **Annex 1** works backwards from April 2016, and sets out the key activities which need to have taken place in order to achieve implementation of the Bill by that date. While the timescales are tight, they are achievable and will ensure the following key elements of subordinate legislation are covered by allowing for:

- *Detail on the policy intent of Regulations to be developed for Ministerial sign-off in December 2013;*
- *The Regulations to be developed and consulted upon during 2014 and in a way that ensures the links between them are maintained and that they are presented to stakeholders as a holistic and coherent package - thus accurately reflecting the joined up and 'full system' nature of the changes they shall bring into force;*

- *Key Regulations, or sets of Regulations, to be accompanied by the publication of an Explanatory Memorandum and Regulatory Impact Assessment in time for those Regulations to be laid before the Assembly. Regulations to be made under the Affirmative procedure will then be scrutinised by the relevant Committee and those made under the Negative procedure will be laid for 40 days and therefore also subject to scrutiny;*

- *The Code(s) of Practice to be developed in parallel with the making of Regulations where required; and*

- *Sufficient time to be allowed during 2015 for the trailing of Regulations to be undertaken where necessary and for training to take place ahead of the coming into force of the majority of statutory instruments by 1 April 2016.*

In order to provide a sound footing for this timetable, officials have undertaken a further analysis of the Regulation making powers contained within the Bill and have categorised according to the priority in which they need to be developed and made. The three categories are as follows:

- **Priority** – Those Regulations which are essential to the enactment of the Bill, which will need to be developed and commenced in conjunction with one another; and commenced prior to implementation to enable the core system to be implemented effectively. These Regulations include those relating to the core processes of the Bill such as assessment and eligibility and those relating to some of the safeguarding, looked after children and elements.

- **Optional (as required)** – Those Regulations which relate to priority areas, but are not essential to the implementation of the core system. These can therefore be developed to a different timescale to those in the 'Priority' category. These include those relating to extending the range of definitions and some of the partnership elements.

- **Stand Alone** – Those Regulations which can be developed in isolation from all others as the core system is not reliant upon them, are likely to be of a smaller scale, and can therefore also be developed to a different timescale. These include those relating to social enterprises and co-operatives.

***Procedures***

In response to my appearance at the Constitutional and Legislative Affairs Committee on 22 April I indicated a willingness to change the procedure from Negative to Affirmative for the following Regulations:

**Section 3(6)** relating to Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.
**Section 23, 26, 27** relating to the duty to meet the care and support needs of a child, the duty to meet the support needs of an adult carer and the duty to meet the support needs of a child carer (Affirmative for the initial set and negative thereafter).
**Section 105(9)** relating to Adult Protection and Support Orders
**Section 112(4)** relating to the functions and procedures of Adult Safeguarding Boards

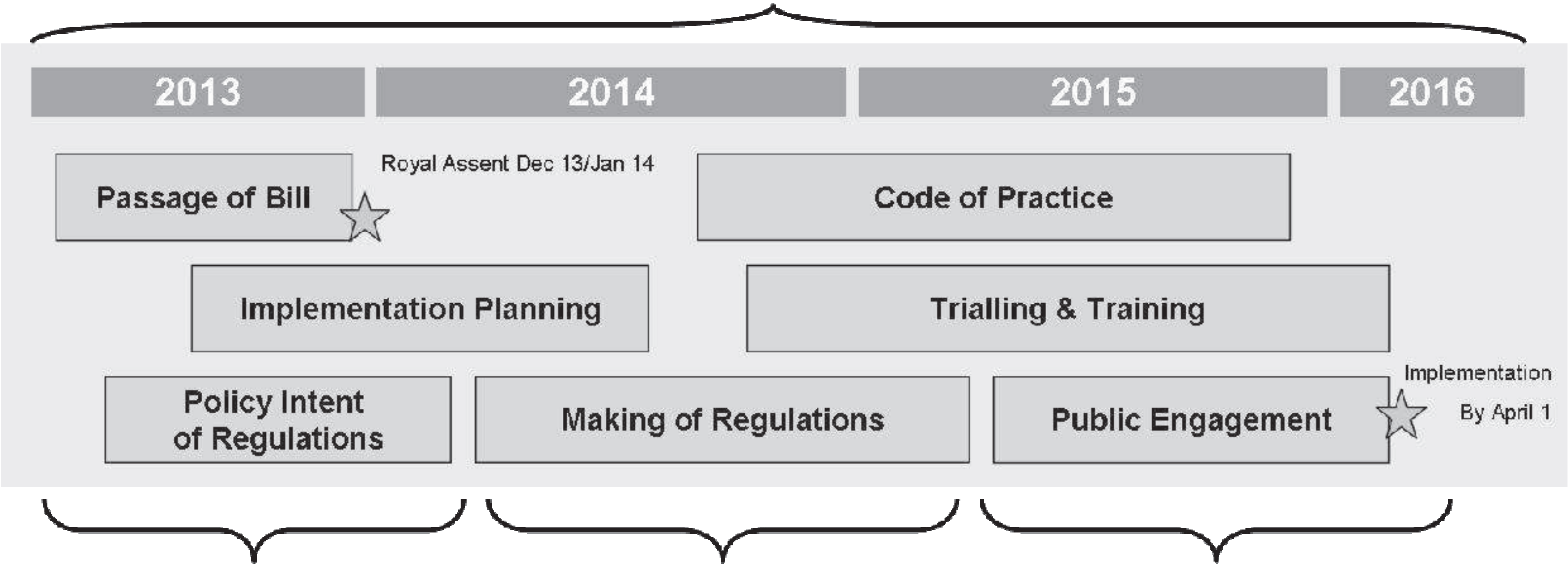
I am also willing to consider recommendations regarding the appropriate procedure for regulations from the Finance Committee or the Health and Social Care Committee where there are good reasons.

**Annex 1**

# Timeframe for the development of Subordinate Legislation

A commitment has been made to implement the core legislation under the Bill by April 1 2016. The timeframe set out below would ensure that regulations are made early enough to allow for trialling, training and public engagement.

**Engagement with Stakeholders throughout**



## 2013-14

**Development of policy**

Jan – Mar '14 – Drafting of policy instructions

## 2014-15

Formal Consultation

Trialling and making of Regulations

Making of Priority Codes

Planning for implementation

## 2015-16

Training

Implementation

Public Awareness Campaign

Final legal process and making of Code of Practice

**Doc 2**

# New Service Model under the Social Services and Well-being (Wales) Bill: Information, Advice and Assistance

**What is the new Information, Advice and Assistance service (IAA)?**

Under the Social Services and Well-being (Wales) Bill, each local authority – with the assistance of their LHB partners – must secure the provision of a service for providing people with information and advice relating to care and support, and (where appropriate) assistance in accessing these services.

Getting the right information and advice is the first step for people seeking some level of care and support to help them maximise their well-being. The quality of this service, and the ease of use is fundamental as the criticism of the existing social care system is that it is fragmented and difficult to navigate.

The IAA service must be sufficient to enable citizens to make plans for meeting their care and support needs now, and in the future.

**What will the service offer?**

Whilst each local authority (with support from its LHB and local third sector organisations) will develop its own IAA provision to serve its area, it is envisaged that there will be several common elements:

- It will serve as the **first point of entry** and be sufficiently flexible and responsive to deal with enquiries directly from the citizen and queries/referrals from professionals.

- It will provide **information** to help people understand how the care and support system operates within their area; the types of services available, and how they can access them.

- This service will be **available to all citizens** who may have needs for care and support, regardless of whether they will self fund or be reliant on some level of local authority funding.

- It will allow citizens to begin the **exploration of their care and support needs** and to identify what they want to achieve (in terms of their well-being). It will offer first line assessment and triage to offer a response that is proportionate to citizens' needs.

- It will **present options and signpost citizens** towards appropriate care and support, including advice on the range of preventative services available in the community.

- Where appropriate, the IAA will also **actively assist** some people in accessing services e.g. booking appointments or commissioning services on their behalf. This may also extend to providing some level of care package management.

- IAA services will be supported by a quality assurance framework that will set national standards across Wales.

**How will this service be delivered?**

IAA provision will need to be sufficiently flexible and comprehensible to provide integrated information and advice to a wide range of client groups, of all ages and abilities.

With this in mind, it is clear that a simple, yet multifaceted approach will be required to serve those people in need of care and support.

In practice this will mean that IAA is accessible:

Through a number of mediums: This may include e.g.

- a face to face consultation
- a telephone conversation
- a dedicated online service

By a range of people including:

- Children/ their families
- Adults
- Carers; or
- an appropriate professional, acting on their clients behalf

*Separate information sheets are available which deal with needs assessments; eligibility; and care and support plans (including portability)*

# New Service Model under the Social Services and Well-being (Wales) Bill*: Assessment*

### What is an assessment?

An assessment is the process by which the local authority considers a person's circumstances and makes a decision about whether they need care and support to help them live their day-to-day lives.

It will usually be carried out by a social worker, and will consider a number of factors. It will look at what needs the person has and consider their individual circumstances. However, not all of the needs will require or be met by public care and support.

### Why do we need to change the law?

Local authorities' responsibilities for assessments are currently set out in a number of statutes and there are a range of different processes for adults, children and carers. The law needs to be simplified so duties are more coherent and understandable. At the moment the focus (in particular for adults and carers) is on identifying a service to be provided, rather than on the needs of the person and the outcomes they wish to achieve.

We want to develop a system which is more streamlined, focussed on an individual's needs and gives people a stronger voice and real control in identifying what care and support is right for them in order maintain their independence for longer, make better choices about their care and maximise their well-being.

### What does the Social Services and Well-being (Wales) Bill do?

It creates a single right to an assessment for *people* – adults, children (and their families) and carers – where it appears to the local authority that the individual may have needs for care and support, or support needs in the case of a carer. This means that carers will have a right to an assessment of their needs for support, without having to formally request one.

The Bill aims to help foster a different relationship between practitioners, individuals and their community – creating a partnership in understanding needs, and as far as possible, achieving the right outcomes for people and their families.

Under the Bill, an assessment must:

- Focus on whether the person has needs for care and support, and what those needs are;
- Consider the outcomes that the person (and/or person with parental responsibility) wishes to achieve;
- Assess whether and to what extent the provision of care and support could contribute to the achievement of those outcomes.
- Be undertaken in a manner that the local authority considers *proportionate* in the circumstances i.e. if the person's needs can be met by the provision of information or advice, or a universal preventative service, then a fuller assessment will not be required.

**Where the person is a child**, the needs assessment must also include a consideration of their developmental needs; their parents' capacity to meet their needs; and other circumstances affecting their well-being.

**Where the person is a carer**, the assessment must take into account their ability and willingness to continue caring as well as their employment, education, training or leisure needs (if an adult) and development needs (if a child). If the carer is a child, the local authority must also have regard to whether it is appropriate for them to provide care in light of their own needs.

All assessments must be made regardless of the apparent level of need; financial resources available to the person (or their family, if a child); and any consideration of whether the person may be eligible for services.

Importantly the Bill also:

- makes clear the circumstances in which a person's refusal of an assessment (or a person with parental responsibility's refusal, in respect of a child) does not discharge the local authority's duty to undertake one i.e. where there is a risk of abuse or neglect.
- makes provision for combining assessments; for people and their carers (where appropriate); and for people who require multiple needs assessments (e.g. mental health, substance misuse, special education needs).

### What happens after assessment?

After carrying out an assessment, the local authority will then consider whether any of the needs identified can be met and whether the person is eligible for care and support, or whether their needs can be met through universal preventative services. *A separate information sheet on eligibility is also available*.

# New Service Model under the Social Services and Well-being (Wales) Bill: Care and Support Plans

**What is a care and support plan?**

Care and support planning is the process by which a local authority helps a person (and any carer they may have) to decide which services will best meet their assessed needs.

It considers what ‘eligible needs’ the person has, what outcomes they want to achieve, what they could do by themselves or with the support they already have, and what types of care and support might be available to them.

It records a person’s assessed and ‘eligible needs’ and describe how a local authority plans to meet, or make arrangements to meet, those needs. Plans are reviewed on a regular basis to ensure that they remain effective and current.

**Why do we need to change the law?**

There has been criticism of the disjointed and often overlapping arrangements for the care management and review of services for children and adults. This has led to inefficiencies and fragmentation within the current system causing difficulties for services users, as well as for practitioners, regulators and the judiciary in seeking to apply the law fairly and equitably.

We want to address these concerns through the introduction of a simplified (and where possible common) approach to care and support planning.

**What does the Social Services and Well-being (Wales) Bill do?**

Where the local authority is required to meet the ‘eligible needs’ of a person, they must prepare and maintain a ***care and support plan.***

Looked after and other accommodated children are also required to have a care and support plan and a pathway plan must be prepared for young adults leaving care.

Regulations will also provide further detail on:
- Preparation and prescribed format of plans
- Review or revision of plans
- People to be involved/consulted in developing/reviewing plans
- Combining the preparation and review of plans with other statutory plans e.g. those under Mental Health (Wales) Measure 2010.

These provisions create an opportunity to reduce overlapping arrangements and will ensure integrated planning and delivery of care to individuals to enable them to maximise their well-being. The aim is to simplify an individual’s journey to receiving care and support that is better tailored to their needs, and more likely to achieve their identified outcomes.

**Portability of Care and Support**

Importantly the Bill introduces the portability of care and support plans for people with ‘eligible needs’ across Welsh local authority boundaries.

- Duties on the ‘sending authority’ will require them to notify the ‘receiving authority’ when an individual has informed them that they will be moving to the new area.
- The ‘receiving authority’ must then put transitional arrangements in place for care and support to continue until it carries out a review/re-assessment of the person’s needs.

This means that if people (adults or children) with ‘eligible needs’ relocate within Wales, possibly to move closer to their families, the receiving authority has a duty to maintain the care and support set out in the plan (i.e. equivalent services in their areas), at least until the new authority has had the opportunity to review their needs.

Beyond this, the proposed National Eligibility Framework should ensure that appropriate care and support based on the person’s current needs is, as far practicable, maintained.

It is important to note that these portability arrangements will not apply in relation to support plans for carers. Therefore in such cases there will be no duty on the new authority to put transitional arrangements in place.

However, as the Bill creates a duty on local authorities to undertake an assessment of carers needs in their own right, this will now be triggered, so carers living within the new local authority’s area can exercise this right.

For those who previously received a discretionary service from their former local authority, the receiving authority will now have a duty to assess their needs, if it appears to them that the person may have needs for care and support.

**For further information please contact – SocialServicesNSM@wales.gsi.gov.uk**

# New Service Model under the Social Services and Well-being (Wales) Bill: Eligibility

## How is eligibility for care and support services established?

Currently the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following an assessment of a person's needs, they require a service to be provided.

For adults, *Creating a Unified and Fair System for Assessing and Managing Care (2002)* provides a standardised framework within which local authorities can also specify their own local criteria concerning the level of needs they will meet. If a person's needs fall within those criteria, the authority must meet those needs.

The guidance sets out four levels – critical, substantial, moderate and low – against which need should be assessed. Most authorities in Wales currently set their access threshold at 'substantial' or 'critical'.

For children, the Children Act 1989 established the definition of a 'child in need'. Under the *Framework for the Assessment of Children in Need and their Families (2001)* local authorities set their own local criteria on the access thresholds for a child in need.

## Why do we need to change the law?

In 2010, the Care and Social Services Inspectorate Wales (CSSIW) reviewed access to care services and reported that it is difficult to ascertain whether the system is fair and consistent across Wales. CSSIW have also reported on the variable of thresholds for children, in particular those with disabilities.

In its *Adult Social Care Report* of May 2011, the Law Commission:

- highlighted the complexity and lack of consistency in determining eligibility
- proposed a new interpretation of the legal duty to meet 'eligible needs'.
- called for greater clarity as to what service users are entitled to.

## What does the Social Services and Well-being (Wales) Bill do?

After conducting a needs assessment, if a person has needs for care and support, the local authority will be required to determine whether those needs are 'eligible' or whether they can be met through preventative services.

The Bill provides for regulations that will prescribe national criteria of the circumstances that are to be regarded as 'eligible need', where local authorities will ***have a duty*** to consider what can be done to meet the individual's care and support needs.

As a minimum, all local authorities will be required to meet the national criteria.

## What about those people who do not have 'eligible needs'?

Irrespective of whether a person's needs meet the eligibility criteria, there will be a duty for local authorities to provide care and support where:

- an individual is at risk of harm, abuse or neglect; or
- a child is to be or has been accommodated by the local authority (including looked after children, other accommodated children and care leavers)

## What outcomes will the Bill achieve?

Service users and their carers will see more consistency in the way that their eligibility for services is determined.

Establishing a national framework that requires minimum service levels will encourage greater collaboration between local authorities and regions in the delivery of care and support services. The portability of care and support plans will also contribute to more equitable services across Wales.

*Separate information sheets are available which deal with needs assessments; eligibility; and care and support plans (including portability)*

For further information please contact - SocialServicesNSM@wales.gsi.gov.uk

# TABLE OF DESTINATIONS

| SECTION / PARAGRAPH CHILDREN ACT 1989 | CORRESPONDING REFERENCE IN SOCIAL SERVICES AND WELL-BEING (WALES) BILL | COMMENT |
|---|---|---|
| **CHILDREN ACT 1989 - PART 3 : LOCAL AUTHORITY SUPPORT FOR CHILDREN AND FAMILIES (PROVISION OF SERVICES FOR CHLDREN AND THEIR FAMILIES)** | | |
| **section 17 -**<br>**provision of services for children in need and their families** | | |
| (1) | section 4 – overarching well-being duties;<br>section 2(3) – meaning of well-being | concept of “child in need” within the CA 1989 is not replicated in the Bill, the “people” model is used instead |
| (2) | | CA 1989 provision refers to Part 1 of Schedule 2 – provision of services for families |
| (3) | section 12(2) – duty to assess needs of a child for care and support;<br>section 23(2) – duty to meet care and support needs of a child;<br>section 24(1) – power to meet care and support needs of a child;<br>section 20(1)(c) – how to meet needs | these provisions maintain the concept of a LA being responsible for a child “within” its area; power to provide services for someone other than the child who has needs for care and support is maintained; |
| (4) | | the power for the Welsh Ministers to amend the duties of a LA contained in Part 1 of Schedule 2 CA 1989 by order is not replicated in terms; this is not an issue |
| (4A) | section 12((5)(a)(i) – duty to assess the needs of a child for care and support | duty to ascertain wishes and feelings of child and |
| (5) | section 7 – promoting social | wider duty than |

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| | enterprises, co-operatives, user led services and the third sector | currently exists in CA 1989 |
| (6) – (9) | section 20 – how to meet needs;<br>section 43 – power to impose charges;<br>section 44 – persons upon whom charges may be imposed;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 - duty to carry out a financial assessment;<br>section 50 – determination as to a person's ability to pay a charge;<br>section 51 – duty to give effect of determination to pay a charge | |
| (10) | section 166(1) – general interpretation and index of defined terms (for the definition of "family") | the concept of a "child in need" is not replicated in the Bill |
| (11) | section 3 – meaning of "adult", "child", "carer" and "disabled" | the CA 1989 definition of "disabled contained in subsection (11) is not replicated in our Bill, the definition used in the Equalities Act 2010 is applied (subject to a regulation-making power within section 3(6) of the Bill to make modifications for any purposes of the Bill) |
| (12) | | the regulation-making power for the Treasury contained in section 17(12) is not replicated in our Bill. DWP have been notified about our treatment of references to benefits for the purposes of charging provisions. Consent not required for the removal of this |

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| | | Minister of the Crown function – the amendment is incidental to another provision |
| **section 17A –**<br>**direct payments** | | |
| (1) | section 35 – direct payments to meet a child’s needs,<br>subsections (1), (2), (4) and (6) are relevant | |
| (2) | section 35 – direct payments to meet a child’s needs,<br>subsections (2) and (5) are relevant | |
| (3) | section 37 – direct payments : further provision,<br>subsections (1) and (2) are particularly relevant | 17A(3) operates by incorporation of the provision within section 57(3) to (5) and (7) of the Health and Social Care Act 2001. Note that section 57(7) is not replicated in our Bill because we will no longer be preventing the use of direct payments for purchase of residential care |
| (4) | section 37 – direct payments : further provision,<br>subsection (6) | |
| (5) | section 37 – direct payments : further provision,<br>subsection (7) | |
| (6) | | No longer required |
| **section 17B –**<br>**vouchers for persons with parental responsibility for disabled children** | | Provision not replicated in our Bill |
| **section 18 –**<br>**day care for pre-school and other children** | section 6 – preventative services;<br>section 20 – how to meet needs | |

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| **section 19 –**<br>… |  | Section 19 CA 1989 was repealed by section 149(2) of the Education Act 2002 |
| **section 20 –**<br>**provision of accommodation for children : general** |  |  |
| (1) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (1) |  |
| (2) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (2) |  |
| (3) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>(3) |  |
| (4) | section 19 – determination of eligibility and consideration of what to do to meet needs;<br>section 20 – how to meet needs |  |
| (5) | section 19 – determination of eligibility and consideration of what to do to meet needs;<br>section 20 – how to meet needs |  |
| (6) | section 4 – overarching well-being duties,<br>subsections (2) and (4) |  |
| (7) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (4) |  |
| (8) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (5) |  |
| (9) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (6) |  |

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| (10) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (7) | |
| (11) | section 60 – accommodation for children without parents or who are lost or abandoned etc,<br>subsection (8) | |
| **section 21 –**<br>**provision of accommodation for children in police protection or detention or on remand, etc** | section 61 – accommodation for children in police protection or detention or on remand, etc | Note that section 21(2)(c) CA 1989 is not replicated as it was repealed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 |
| **section 22 –**<br>**general duty of local authority in relation to children looked after by them** | | |
| (1) and (2) | section 58 – meaning of "looked after child" | |
| (3) – (8) | section 62 – principal duty of local authority in relation to a child it looks after | |
| **section 22A –**<br>**provision of accommodation for children in care** | | This section is not replicated in our Bill. This section together with section 23 was replaced by sections 22B – 22F (in accordance with amendments made in the Children and Young Persons Act 2008). A policy decision was taken to replicate the effect of the substituted provisions in our Bill, notwithstanding that not all such provision has been commenced in relation to Wales |

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| **section 22B –**<br>**maintenance of looked after children** | section 64 – maintenance of looked after children |  |
| **section 22C –**<br>**ways in which looked after children are to be accommodated and maintained** |  |  |
| (1) – (9) | section 65 – ways in which looked after children are to be accommodated and maintained,<br>subsections (1) – (9)* | * subsections (10) – (12) of section 65 of the Bill are new provisions –<br>they derive from the Children and Families Bill and gives priority to placements with foster parents which will afford “early permanence” for a child who is to be adopted |
| (10) | section 65 – ways in which looked after children are to be accommodated and maintained,<br>subsection (13) |  |
| (11) | section 71 – regulations about children looked after by local authorities |  |
| (12) | section 65 – ways in which looked after children are to be accommodated and maintained,<br>subsection (14) |  |
| **section 22D –**<br>**review of child’s case before making alternative arrangements for accommodation** | section 66 – review of child’s case before making alternative arrangements for accommodation |  |
| **section 22E –**<br>**children’s homes provided by the appropriate National Authority*** | section 70 – children’s homes provided, equipped and maintained by the Welsh Ministers | * the Welsh Ministers are defined as the ”appropriate national authority” in relation to Wales by section 30A(b) CA 1989 |

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| **section 22F –**<br>**regulations as to children looked after by local authorities*** | section 71 – regulations about children looked after by local authorities | *this section of the CA 1989 introduces Part 2 of Schedule 2, which makes further provision as to children looked after by local authorities and in particular as to the regulations that may be made by the Welsh Ministers |
| **section 22G –**<br>**general duty of local authority to secure sufficient accommodation for looked after children** | section 59 – general duty to of local authority to secure sufficient accommodation for looked after children | |
| **section 23 –**<br>**provision of accommodation and maintenance by local authority children whom they are looking after** | | This section is not replicated in our Bill. This section together with section 23 was replaced by sections 22B – 22F (in accordance with amendments made in the Children and Young Persons Act 2008). A policy decision was taken to replicate the effect of the substituted provisions in our Bill, notwithstanding that not all such provision has been commenced in relation to Wales. |
| **section 23ZA –**<br>**duty of local authority to ensure visits to, and contact with, looked after children and others** | section 81 – duty of local authority to ensure visits to, and contact with, looked after children and others | |
| **section 23ZB –**<br>**independent visitors for children looked after by a local authority** | section 82 – independent visitors for children looked after by a local authority | |

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| **section 23A –**<br>**the responsible authority and relevant children** | | In the Bill, the concept of a "relevant child" has been replaced with that of a "category 2 young person" although the qualifying criteria remains the same in section 88 of the Bill |
| (1) and (2) | section 88 – young people entitled to support under sections 89 – 96,<br>subsections (1) and (2) | |
| (3) and (5) | section 88 – young people entitled to support under sections 89 - 96<br>subsection (7), | |
| (4) | section 88 – young people entitled to support under sections 89 – 96<br>subsection (5) | |
| **section 23B –**<br>**additional functions of the responsible authority in respect of relevant children** | | |
| (1) | section 89 – keeping in touch,<br>subsection (1) | |
| (2) | section 90 – personal advisers,<br>subsections (1) and (2) | |
| (3) | section 91 – pathway assessments and plans,<br>subsections (2) – (4) | |
| (4) – (7) | | these subsections are not replicated in the Bill; they were replaced by the insertion of section 23CA (further assistance to pursue education or training) and amendments to section 23E (pathway plans) of the CA 1989 (by the Children and Young Persons Act 2008, section 22), |

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| (8) | section 92 – safeguarding and promoting the well-being of category 2 young people,<br>subsection (1) | which although not commenced in relation to Wales are incorporated into the Bill in their stead |
| (9) | section 92 – safeguarding and promoting the well-being of category 2 young people,<br>subsection (9) | |
| (10) | section 92 – safeguarding and promoting the well-being of category 2 young people,<br>subsection (10) | |
| (11) | section 89 – keeping in touch,<br>subsection (3) | |
| (12) | section 95 – charging for provision under sections 92 to 94;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 – duty to carry out a financial assessment | |
| (13) | section 4 – overarching well-being duties,<br>subsections (2) and (4)(b) | |
| **section 23C –**<br>**continuing functions in respect of former relevant children** | | In the Bill, the concept of a “former relevant child” has been replaced with that of a “category 3 young person” although the qualifying criteria remains the same within section 88 of the Bill |
| (1)(a) and (b) | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1), (2) and (5) | |

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| (2)(a) | section 89 – keeping in touch,<br>subsection (1) | |
| (2)(b) | section 89 – keeping in touch,<br>subsection (2) | |
| (3)(a) | section 90 – personal advisers,<br>subsections (1) – (2) | |
| (3)(b) | section 91 – pathway assessments and plans,<br>subsections (2) – (4) | |
| (4)* | section 93 – support for category 3 young people,<br>subsection (1) | * by incorporation of reference to provision in sections 24B(1) and 24B(2) CA 1989 |
| (5) | section 93 – support for category 3 young people,<br>subsection (2) | |
| (5A) | section 93 – support for category 3 young people,<br>subsection (3) | |
| (5B) and (5C) | section 93 – support for category 3 young people,<br>subsection (4) | |
| (6) and (7) | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1), (2) and (5) | |
| (8) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (6) | |
| (9)* | section 93 – support for category 3 young people,<br>subsection (5) | * by incorporation of provision within section 24B(5) CA 1989 |
| (10) | section 95 – charging for provision under sections 92 to 94;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 – duty to carry out a financial assessment | |

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| **section 23CA –**<br>**further assistance to pursue education or training*** | | * obligations to young persons covered within this provision of the CA 1989 are included within the definition of a “category 3 young person” |
| (1) | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1) and (2) | |
| (2) | section 90 – personal advisers,<br>subsections (1) and (2) | |
| (3) | section 91 – pathway assessment and plans,<br>subsections (2), (3) and (4) | |
| (4) and (5) | section 93 – support for category 3 young people,<br>subsection (1) | |
| (6) | section 88 – young people entitled to support under sections 89 to 96<br>subsection (2) | |
| (7) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (7) | |
| (8) | section 95 – charging for provision under sections 92 to 94;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 – duty to carry out a financial assessment | |
| (9) | section 93 – support for category 3 young people,<br>subsection (5) | |
| (10) | section 93 – support for category 3 young people,<br>subsection (4) | |
| (11) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (5) | |

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| **section 23D –**<br>**personal advisers** | section 90 – personal advisers | |
| **section 23E –**<br>**pathway plans** | section 91 – pathway assessments and plans | |
| **section 24 –**<br>**persons qualifying for advice and assistance** | | |
| (1) and (1A)* | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1) and (2) | * this category of young person has been defined as a “category 4 young person” within the Bill |
| (1) and (1B)* | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1) and (2) | * this category of young person has been defined as a “category 5 young person” within the Bill |
| (2) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (3) | |
| (3) | section 89 – keeping in touch,<br>subsection (4) | |
| (4) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (5)(b) | |
| (5)(za) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (5)(c) | |
| (5)(a) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (5)(b) | |
| (5)(b) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (5)(d) | |
| **section 24A –**<br>**advice and assistance** | | |
| (1) | section 94 – support for category 4 and 5 young people,<br>subsection (1) | |
| (2) | section 94 – support for category 4 | |

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| | and 5 young people,<br>subsection (2) | |
| (3) | section 94 – support for category 4 and 5 young people,<br>subsection (3) | |
| (4) | section 94 – support for category 4 and 5 young people,<br>subsection (4) | |
| (5) | section 94 – support for category 4 and 5 young people,<br>subsection (5) | |
| (6) | section 95 – charging for provision under sections 92 to 94;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 – duty to carry out a financial assessment | |
| **section 24B – employment and training** | | |
| (1) | section 94 – support for category 4 and 5 young people,<br>subsections (4), (5) | |
| (2) | section 94 – support for category 4 and 5 young people,<br>subsections (4) and (5) | |
| (3) | section 94 – support for category 4 and 5 young people,<br>subsection (6) | |
| (4) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (6) | |
| (5) | section 94 – support for category 4 and 5 young people,<br>subsection (7) | |
| (6) | section 94 – support for category 4 and 5 young people,<br>subsection (8); | |

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| | section 93 – support for category 3 young people,<br>subsection (6) | |
| **section 24C – information** | section 96 – information | |
| **section 24D – representations: sections 23A to 24B** | | |
| (1) | section 157 – representations relating to former looked after children etc,<br>subsections (1) and (2) | |
| (1A) | section 157 – representations relating to former looked after children etc,<br>subsection (3) | |
| (2) | section 157 – representations relating to former looked after children etc,<br>subsection (4)(b) | |
| **section 25 – use of accommodation for restricting liberty** | section 97 – use of accommodation for restricting liberty | |
| **section 25A – appointment of independent reviewing officer** | section 83 – appointment of independent reviewing officer | |
| **section 25B – functions of the independent reviewing officer** | section 84 – functions of the independent reviewing officer | |
| **section 25C – referred cases**<br>**section 26 –** | section 85 – referred cases | |

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| **review of cases and inquiries into representations** | | |
| (1) | section 86 – review of cases and inquiries into representations,<br>subsection (1) | |
| (2) | section 86 – review of cases and inquiries into representations,<br>subsection (2) | paragraph (2)(k) and subsections (2A) – (2D) of section 26 CA 1989 have been repealed by the Children and Young Persons Act 2008 (section 10) although we have not commenced the repeal in relation to Wales we have replicated section 26 as though the repeal has been commenced |
| (3) – (8) | section 155 – representations relating to certain children | |
| **section 26ZB – representations: further consideration (Wales)** | | |
| (1) and (2) | section 86 – review of cases and inquiries into representations, | |
| (3) | section 155 – representations relating to certain children,<br>subsections (1) and (3) | |
| (3A) | section 155 – representations relating to certain children,<br>subsection (2) | |
| (3B) | section 155 – representations relating to certain children,<br>subsections (1) and (5) | |
| (3C) | section 155 – representations relating to certain children,<br>subsections (1) and (4) | |
| (4) | section 155 – representations relating to certain children,<br>subsection (6) | |
| (4A) | section 156 – representations | |

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| | relating to certain children: further provision,<br>subsection (3) | |
| (5) | section 155 – representations relating to certain children,<br>subsection (7);<br>section 156 – representations relating to certain children: further provision,<br>subsection (1) | |
| (5A) | section 155 – representations relating to certain children,<br>subsection (8) | |
| (6) | section 156 – representations relating to certain children: further provision,<br>subsection (2) | |
| (7) | section 156 – representations relating to certain children: further provision,<br>subsections (4) and (5) | |
| (8) | section 155 – representations relating to certain children,<br>subsection (9) | |
| **section 26ZB –**<br>**representations: further considerations (Wales)** | section 158 – further consideration of representations | |
| **section 26A –**<br>**advocacy services** | section 159 – assistance for persons making representations | |
| **section 27 –**<br>**co-operation between authorities** | section 145 – duty to co-operate and provide information in the exercise of social services functions | the obligations within section 145 are apply to wider range of persons and bodies than apply in relation to section 27 CA 1989 |
| **section 28 –**<br>**consultation with local education authorities …** | | repealed by the Secretary of State in the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order (S.I. 2010/1158) in |

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| | | accordance with powers in sections 162 and 181(2) of the Education and Inspections Act 2006 with the consent of the Welsh Ministers |
| **section 29 –**<br>**recoupment of cost of providing services etc** | | |
| (1) | section 43 – power to impose charges;<br>section 44- persons upon whom charges may be imposed | |
| (2) | section 47 – duty to carry out a financial assessment;<br>section 50 – determination as to a person’s ability to pay a charge | |
| (3) | section 43 – power to impose charges,<br>subsection (3);<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 regulations disapplying a power to impose a charge;<br>section 50 – determination as to a person’s ability to pay a charge | |
| (3A) | section 43 – power to impose charges,<br>subsection (3);<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 regulations disapplying a power to impose a charge;<br>section 50 – determination as to a person’s ability to pay a charge | |
| (3B) | section 43 – power to impose charges,<br>subsection (3);<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 regulations disapplying a power to impose a charge; | |

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| | section 50 – determination as to a person’s ability to pay a charge | |
| (4) | section 44 – persons upon whom charges may be imposed,<br>subsection (3) | |
| (5) | section 55 – recovery of charges, interest etc,<br>subsections (1) and (3) | |
| (6)* | section 66** – contributions towards the maintenance of children looked after by local authorities | * subsection (6) introduces Part 3 of Schedule 2 to the CA 1989<br>** section 66 introduces Schedule 1 to the Bill |
| (7) | section 162 – recovery of costs between local authorities,<br>subsection (3) | |
| (8) | section 162 – recovery of costs between local authorities,<br>subsections (4) and (5) | |
| (9) | section 162 – recovery of costs between local authorities,<br>subsection (6) | |
| (10) | section 162 – recovery of costs between local authorities,<br>subsection (7) and (8) | |
| **section 30 –**<br>**miscellaneous** | section 164 – disputes about ordinary residence and portability of care and support | |
| **section 30A –**<br>**meaning of appropriate national authority** | | this provision is not repeated within the Bill as it superfluous |
| **section 85 –**<br>**children accommodated by health authorities and local education authorities** | section 98 – assessment of children accommodated by health authorities and education authorities | |
| **section 86 –**<br>**children accommodated in care homes or independent hospitals** | section 99 – assessment of children accommodated in care homes or independent hospitals | |
| **section 86A –** | section 100 – visitors for children | |

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| **visitors for children notified to local authority under section 85 or 86** | notified to local authority under section 85 or 86 | |
| **SCHEDULE 2 –**<br>**Local Authority Support For Children And Families** | | |
| **PART 1**<br>**Provision of services for families** | | |
| **paragraph 1 –**<br>**identification of children in need and provision of information** | section 5 – assessment of needs for care and support, support for carers and preventative services;<br>section 6 – preventative services;<br>section 7 – promoting social enterprises, co-operatives, user led services and the third sector | |
| **paragraph 2 –**<br>**maintenance of a register of disabled children** | section 9 – registers of blind, deaf and other disabled people | |
| **paragraph 3 –**<br>**assessment of children's needs** | section 17 – combining needs assessments and other assessments | |
| **paragraph 4 –**<br>**prevention of neglect and abuse** | | |
| subparagraph (1) | section 6 – preventative services,<br>subsections (1) and (2)(e) | |
| subparagraph (2) | section 108 – duty to report children at risk | |
| subparagraph (3) | section108 – duty to report children at risk | |
| **paragraph 5 -**<br>**provision of accommodation in order to protect a child** | | |
| subparagraphs (1) and (2) | section 20 – how to meet needs,<br>in particular, subsection (2)(c) | |
| subparagraph (3) | section 43 – power to impose charges;<br>section 44 – persons upon whom | |

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| | charges may be imposed;<br>section 45 – regulations about the exercise of a power to impose a charge;<br>section 46 – regulations disapplying a power to impose a charge;<br>section 47 - duty to carry out a financial assessment;<br>section 50 – determination as to a person’s ability to pay a charge;<br>section 51 – duty to give effect of determination to pay a charge | |
| **paragraph 6 –**<br>**provision for disabled children** | | |
| subparagraph (1)(a) and (b) | section 6 – preventative services,<br>subsections (1) and (2) | |
| subparagraph 1(c) and<br>subparagraph (2) | section 121 – power to issue codes | |
| **paragraph 7 –**<br>**provision to reduce need for care proceedings etc.** | section 6 – preventative services,<br>subsections (1) and (2) | |
| **paragraph 8 –**<br>**provision for children living with their families** | section 20 – how to meet needs | |
| **paragraph 8A –**<br>**provision for accommodated children** | section 101 – services for children notified to a local authority under section 98 and 99;<br>section 20 – how to meet needs | |
| **paragraph 9 –**<br>**family centres** | section 6 – preventative services;<br>section 20 – how to meet needs | |
| **paragraph 10 –**<br>**maintenance of family home** | section 25 – duty to maintain family contact | |
| **paragraph 11 –**<br>**duty to consider racial groups to which children in need belong*** | | * This provision is now otiose and will not be repeated in the Bill |

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| **PART 2**<br>**Children looked after by local authorities** | | |
| **paragraph 12A* –**<br>**regulations as to conditions under which child in care is allowed to live with parent, etc.** | section 72 – regulations as to conditions under which child in care is allowed to live with parent, etc | * There is no paragraph 12 |
| **paragraph 12B –**<br>**regulations as to placements of a kind specified in section 22C(b)(d)** | section 73 – regulations as to placements of a kind mentioned in section 65(6)(d) | |
| **paragraph 12C –**<br>**placements out of area** | section 74 – regulations about placements out of area | |
| **paragraph 12D –**<br>**avoidance of disruption in education** | section 75 – regulations about avoidance of disruption in education | |
| **paragraphs 12E and 12F –**<br>**regulations as to placing of children with local authority foster parents** | section 76 – regulations about the placing of children with local authority foster parents;<br>section 77 – regulations providing for approval of local authority foster parents | |
| **paragraph 12G** | section 78 – regulations about agency arrangements | |
| **paragraph 15* -**<br>**promotion and maintenance of contact between child and family** | section 79 – promotion and maintenance of contact between child and family | * There is no paragraph 13 or 14 |
| **paragraph 16 –**<br>**visits to or by children:**<br>**expenses** | section 80 – family visits to or by children: expenses | |
| **paragraph 17* -**<br>**appointment of visitor for child who is not being visited** | | This provision is not replicated in the Bill. Instead sections 23ZA and 23ZB (which were inserted into the CA 1989 by sections 15 and 16 of the Children and Young Persons Act 2008) deal with visits to and contact with looked after or |

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| | | accommodated children has been included (see notes to sections 23ZA and 23ZB earlier in the table) |
| **paragraph 18* -**<br>**power to guarantee apprenticeship deeds etc** | | * This provision is not repeated within the Bill as it is now otiose. |
| **paragraph 19 –**<br>**arrangements to assist children to live abroad** | section 102 – arrangements to assist children to live outside England and Wales | |
| **paragraph 19A -**<br>**preparation for ceasing to be looked after** | section 87 – befriending, advising and assisting looked after children | |
| **paragraph 19B –**<br>**preparation for ceasing to be looked after** | | |
| subparagraphs (1) and (2)* | section 88 – young people entitled to support under sections 89 to 96,<br>subsections (1) and (2) | *These provisions deal with the duties and of a local authority towards an “eligible” child. In the Bill, the concept of a “eligible” child has been replaced with that of a “category 1 young person” although the qualifying criteria remains the same in section 88 of the Bill |
| subparagraph (3) | section 88 – young people entitled to support under sections 89 to 96,<br>subsection (7) | |
| subparagraph (4) | section 91 – pathway assessments and plans,<br>subsections (1) and (3) | |
| subparagraph (5) | section 91 – pathway assessments and plans,<br>subsection (7) | |
| subparagraph (6) | section 91 – pathways assessments and plans,<br>subsection (8) | |

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| subparagraph (7) | section 91 – pathway assessments and plans,<br>subsection (5) | |
| subparagraph (8) | section 91 – pathway assessments and plans,<br>subsection (6) | |
| **paragraph 19C –**<br>**personal advisers** | section 90 – personal advisers | |
| **paragraph 20 –**<br>**death of children being looked after by local authorities** | section 103 – death of children being looked after by local authorities | |
| **PART 3 –**<br>**Contributions towards maintenance of children** | | |
| **paragraph 21 – liability to contribute** | Schedule 1* – contributions towards maintenance of looked after children,<br>paragraph 1 – liability to contribute | * Schedule 1 is introduced by section 69 – contributions towards the maintenance of children looked after by local authorities |
| **paragraph 22 –**<br>**agreed contributions** | Schedule 1 – contributions towards maintenance of looked after children,<br>paragraph 2 – agreed contributions | |
| **paragraph 23 – contribution orders** | Schedule 1 – contributions towards maintenance of looked after children,<br>paragraph 3 – contribution orders | |
| **paragraph 24 – enforcement of contribution orders** | Schedule 1 – contributions towards maintenance of looked after children,<br>paragraph 24 – enforcement of contribution orders | |
| **paragraph 25 – regulations** | Schedule 1 – contributions towards maintenance of looked after children,<br>paragraph 5 - regulations | |

## Social Services and Well-being (Wales) Bill

## Extract from Explanatory Memorandum - Paragraphs 111, 112, 141, 143, 144

### Transitional arrangements and funding

111. The Bill is part of a wider transformation programme for social services in Wales. The Sustainable Social Services for Wales: A Framework for Action programme is designed to enable the transformational change necessary and the Bill provides for part of that change. Much of the change necessary to support the introduction of the Bill is being driven through this wider programme. Current funding streams, for example, the workforce grant of £8.41 million are already being focussed to support the transition process and underpin implementation.

112. The Welsh Government has recognised this transitional agenda in 2012-13 and increased the funding available for leadership and improvement within the sector itself to approximately £2million. We plan for that transitional support to continue. In addition, the Welsh Government is supporting transformational change through its ‘Invest to Save’ programme. It is currently investing £10 million in projects which have a substantial social services element and is contributing to the overall transformation of social services.

### Reform and integration of social care law in Wales

141. The Welsh Government already provides substantial grant funding to local authorities to support workforce development across the social care sector. The grant is a match funded grant with planned expenditure on the Social Care Workforce Development Programme (SCWDP) for 2012-13 totalling £12,015,714. The grant element, which provides 70% of the cost of the programme, is £8,411,000. The SCWDP grant is intended as a supplement to employers’ own training resources. The funding is provided in acknowledgement of the considerable additional training requirements of the social care workforce and is already directed at up-skilling, obtaining new qualifications and building on existing qualifications.

143. Beginning in 2014-15, this grant funding will be re-directed to ensure the relevant staff receive the training they need throughout the preparation for, and implementation of, the Act.

b. the costs of disseminating information on the changes; and

c. the costs to the Welsh Government from implementing the changes.

144. The above costs (b. and c.) are transitional costs that will be borne by the Welsh Government. It has not been possible to estimate these costs at the present time due to the need for a substantial implementation project and full implementation plan to be developed first. The development of this plan, which will be undertaken in parallel with the passage of the Bill, will afford the opportunity for operational implications, and hence costs, to be worked out in conjunction with key stakeholders. Any such costs will be incorporated into existing work streams concerned with the development of social services in Wales. As noted at 141 and 143 above, it is the Welsh Government’s intention to re-direct existing grant funding to cover these costs.

## SOCIAL SERVICES AND WELL-BEING (WALES) BILL

## TABLE OF INTENDED REPEALS SHOWING WHERE RELATED PROVISION IS FOUND IN BILL

*NB This list may be subject to further minor change.*

| Statute | Provision to be repealed | Section/Part of Bill which corresponds |
|---|---|---|
| National Assistance Act 1948 Part III | Section 21 | Provision of accommodation for those in need is now incorporated within Part 4 of the Bill. |
| | Section 22 | The duty to charge is dealt with through the powers of a local authority to charge for services under Part 5. |
| | Section 23 | Management of premises in which accommodation provided – not reproduced |
| | Section 24 | The "deeming" provisions" in Section 24 are dealt with in Section 163 (ordinary residence). |
| | Section 26 | Arranging for a person other that the local authority to provide accommodation is provided for in Section 20 (how to meet needs) |
| | Section 29 | Provision of non-residential services is incorporated into Part 4 of the Bill and through Section 6. |
| | Section 30 | Power for local authorities to use voluntary organisations as agents in carrying out their functions –Section 20 (how to meet needs) provides for the local authority to meet needs by arranging for a person other that the authority to provide something. |
| | Section 30A | There will be a clause introduced dealing with Welsh Ministers and local authorities powers to conduct or contribute to research. |
| | Section 32 | Recovery of costs between local authorities is dealt with under s.162 |
| National Assistance Act 1948 – Part IV | Section 45 | Section 55(5) – recovery of expenditure following misrepresentation |
| | Section 47 | Not reproduced – power of local authority to remove person in need of care and attention from premises |
| | Section 48 | Section 42 - protection of property of those cared for away from home |
| | Section 49 | Power to charge for services of council officers acting as receivers – not reproduced in the Bill |

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| | | but equivalent provision is to be made in the Mental Capacity Act 2005. |
| | Section 51 | Offence of failure to maintain oneself -not reproduced. |
| | Section 52 | Offence of making false statements in relation to liability for charging - not reproduced |
| | Section 55 | Section 42(6) - Offence of obstructing a person exercising a power of entry for the purpose of exercising the duty in Section 42(2) |
| | Section 56 | Section 55 – recover of charges as debt |
| | Section 60 | Compensation of displaced officers – not reproduced |
| | Section 61 | Payment of receipts to exchequer – not reproduced |
| Disabled Persons (Employment) Act 1958 | Section 3 | Power of local authority to provide facilities for employment of disabled persons – incorporated into Part 4 (meeting needs) and also Section 6 (preventative services) |
| Mental Health Act 1959 | Section 8 | Provision dealing with overlap in functions of local authorities – not reproduced |
| Health Services and Public Health Act 1968 | Section 45 | Power of local authorities to promote the welfare of old people –. incorporated into Part 4 meeting needs and also Section 6 (preventative services) |
| Chronically Sick and Disabled Persons Act 1970 | Section 1 | Duty to discover the extent of need for welfare services in local authority area – Section 5 |
| | Section 2 | Duty to meet needs if necessary – this provision is replaced by Part 4 – Meeting Needs |
| | Section 28A | Application of the Section 2 duty to children in need – replaced by Part 4 – Meeting Needs |
| Local Authority Social Services Act 1970 | Section 1 | Section 1 defines what constitutes a local authority for the purposes of the Act. Such provision is made within Section 166 of the Bill – general interpretation and index of defined expressions. |
| | Section 1A | Section 119 of the Bill – Social Services functions of local authorities. |
| | Section 6 | Section 120 of the Bill contains similar provision – directors of Social Services. |
| | Section 7 | This provision is not repeated in terms as Sections 121 – 125 of the Bill require local authorities to exercise relevant functions in accordance with a code or codes of practice issued by the Welsh Ministers. |
| | Section 7A | This provision is not repeated in terms as Sections 121 – 125 of the Bill require local authorities to exercise relevant functions in accordance with a code or codes of practice issued by the Welsh Ministers. |
| | Section 7C | Provision made by this Section is not repeated |

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| | | in the Bill. Welsh Ministers have extensive powers to hold inquiries under the Inquiries Act 2005. |
| | Section 7D | The provision contained in Section 7D is contained within more extensive powers for intervention by central government into the exercise by local authority of its Social Services functions within Sections 126 – 136 of the Bill. The provision in the Bill applies to the provision of services for children and adults, whereas Section 7D applies only in relation to the exercise of Social Services for adults. |
| | Section 7E | Not repeated in the Bill. Wider and more flexible powers exist in other legislation. |
| | Section 9 | Event-specific provision therefore not repeated in the Bill. |
| | Section 12 | Section 12 deals with the application of the Act to the Scilly Isles and is not relevant. |
| | Section 13 | Section 165 of the Bill – orders and regulations. |
| | Section 14 | Section 167 of the Bill – power to make consequential and transitional amendments. |
| | Section 15 | Sections 166 and 169 of the Bill contain analogous provision. |
| | Schedule 1 | Schedule 2 to the Bill. |
| | Schedule 2 | Contains textual amendments to other enactments. Such provision is not relevant to our Bill and is not repeated. |
| Health and Social Services and Social Security Adjudication Act 1983 | Section 17(2A) | Not repeated within the Bill, Section 17(2A) is a Wales-specific provision dealing with the Carers and Disabled Children Act 2000 which is also being repealed. |
| | Section 20 | Not repeated in the Bill. Section 20 contains amendments to the National Assistance Act 1948, which is also being repealed. |
| | Section 21 | Principles in Section 21 of this Act, are reflected in Section 57 of the Bill, transfer of assets to avoid charges. |
| | Section 22 | Section 56 of the Bill – creation of a charge over an interest in land derives from Section 22. |
| | Section 23 | Not repeated in the Bill. |
| | Section 24 | The provision made in Section 24 is contained within Section 55 of the Bill – recovery of charges, interest etc. |
| | Schedule 9 Part 2 | Part 2 of Schedule 9 allows a local authority to provide and facilitate the provision of "meals and recreation for old people". Such provision may be made in the future in accordance with Sections 6, 7 and Part 4 of the Bill. |

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| Disabled Persons (Services, Consultation and Representation) Act 1986 | Section 3 | Section 3 makes provision which requires a local authority which is undertaking an assessment of the need for services by a disabled person, it must permit the person or their authorised representative to make representations during the process. Similar obligations are contained within Section 4 and Part 3 of the Bill. |
| | Section 4 | This Section contains provision which glosses a local authority's obligations under the Chronically Sick and Disabled Persons Act 1970 which is also being repealed. |
| | Section 8 | This Section imposes a duty on local authorities to take into account abilities of a carer. New duties towards carers are provided for in parts 3 and 4 of the Bill. |
| | Section 9 | This Section contains an amendment to the Local Authority Social Services Act 1970, which is also being repealed. |
| | Section 11 | This Section requires the laying before Parliament of an annual report which details the development of health and Social Services in the community for persons suffering from mental illness or mental handicap who are not resident in hospitals. It is not repeated in the Bill |
| Children Act 1989 – Part 3 | | Dealt with in separate table of destinations |
| Children Act 1989 – SCHEDULE 2 –<br>Local Authority Support For Children And Families | | |
| PART 1<br>Provision of services for families | | |
| PART 2<br>Children looked after by local authorities | | |
| PART 3 –<br>Contributions towards maintenance of children | | |

| | | |
|---|---|---|
| NHS and Community Care Act 1990 | Section 46 | Plans for community care services – Section 5 |
| | Section 47 | Duty to assess needs – Section 10, 12 and 15. |
| The Carers (Recognition and Services) Act 1995 | The whole Act | Entirely new provision for assessment of carers is dealt with in part 3 of the Bill. New duties to meet the needs of carers are contained in part 4 the Bill. |
| Carers and Disabled Children Act 2000 | The whole Act | Entirely new provision for assessment of carers is dealt with in part 3 of the Bill. New duties to meet the needs of carers are contained in part 4 the Bill. |
| Health and Social Care Act 2001 | Section 49 | Similar provision is contained within Section 31 of the Bill – exception for the provision of health services. |
| | Section 53 | This Section contains an amendment to the National Assistance Act 1948, which is also being repealed. |
| | Section 54 | The principles set out in Section 54 are included in Section 41 of the Bill – cases where a person expresses preference for particular accommodation. |
| | Section 55 | The principles set out in Section 55 are included in Section 53 of the Bill – deferred payment agreements. |
| | Section 57 | Section 57 makes provision about direct payments; such provision is included within Sections 34 – 37 of the Bill. |
| | Section 58 | Section 58 makes provision about direct payments for children by amendment to the Children Act 1989; such provision is included within Sections 34 – 37 of the Bill. |
| | Section 64(4) | Not repeated in the Bill. Relates to provision in the 2001 Act which is being repealed in relation to Wales. |
| Carers (Equal Opportunities) Act 2004 | The whole Act | Entirely new provision for assessment of carers is dealt with in part 3 of the Bill. New duties to meet the needs of carers are contained in part 4 the Bill. |
| Community Care (Delayed Discharges etc) Act 2003 | Section 16 | Power of WMS to prescribe services to be provided free of charge – incorporated within Part 5 Charging and Financial Assessment |
| Health and Social Care (Community Health and Standards) Act 2003 | Sections 114 – 118 | Complaints about Social Services – incorporated into Part 10 Chapter 1 |
| Children Act 2004 | Sections 31 - 34 | Local Safeguarding Children Boards–new Safeguarding Children Boards are established in Part 7 Safeguarding |
| National Health Service | Section 192(1) | Additional Social Services functions – incorporated into Part 4 meeting needs and |

| | | |
|---|---|---|
| (Wales) Act 2006 | | also Section 6 |
| | Schedule 15 | |
| Social Care Charges (Wales) Measure 2010 | The whole Measure | Charging for non-residential services - incorporated into Part 5 Charging and Financial Assessment |
| Children and Families (Wales) Measure 2010 | Part 3 - Integrated Family Support Services | Power to direct partnerships is provided for in Sections 147 to 150 |
| Carers Strategies (Wales) Measure 2010 | The whole Measure | The information, advice and assistance service in Section 8 of the Bill covers support to carers. Section 5(3) deals with well-being strategies that will include provision about carers. |

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

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

22 May 2013

Dear Vaughan

Following our earlier correspondence we would like to highlight additional areas for clarification.

We have previously identified a potential gap in early help services or support.

Under the legislation, a person is assessed and is found to have a need or emerging need. Once this has been established they are then considered to see whether they meet the National Eligibility Criteria. There has been no clear answer as to what happens if they are assessed as having a need but do not meet the criteria.

It may be that the intention is to refer those people assessed as having a need but not meeting the eligibility criteria back to information and advice services or universal provision.

If this is the case, then this intention should be clearly stated and we would like to highlight the wording of, Section 8 Provision of information, advice and assistance which is open to interpretation on this point as Section 8 (1)(a) relates to information and advice for "care and support".

Again this wording potentially leaves a gap in support for those "in need" but below the threshold.

NSPCC Cymru would like to see the bill strengthened on this point with clearer provision for targeted services. There needs to be active encouragement and support for people to access early help and so it is essential that information and advice is easily accessible for those eligible for care and support and for those who fall below thresholds.

The consultation document published ahead of the Bill contained a definition of "in need":

1.1.9 It will be important to be clear about the definition of a person in need. The working definition that we have at present is as follows:
A person is considered to be "in need" if:
(i) they are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or

wellbeing, (and, in the case of a child, development) without the provision for them of social care services;

(ii) their health, wellbeing (and, in the case of a child, their development) is likely to be significantly impaired, or further impaired, without the provision for them of social care services;
(iii) they are a disabled child;
(iv)they are in need of safeguarding or protection. If they are an adult they are an adult in need who has been harmed or is at risk of harm
by virtue of that need.

It would be helpful to understand the reasons why this has not be included and to have clarity about the status of the Children Act 1989 in Wales once the legislation is introduced.

Finally, of particular concern is a potential difference between the duties reporting adults at risk and children at risk.

Section 106 Duty to report adults at risk (1) requires **relevant partners** to inform the local authority if it suspects an adult is at risk.

Section 108 Duty to report children at risk omits this duty. We recommend the provision at Section 106 (1) be included for children at Section 108.

A wide range of stakeholders have expressed the view that prevention and early intervention cannot be the role of social services alone. Incorporating the duty for relevant partners to inform the local authority of children at risk would send a clear message that protecting children is everyone's business and would help to ensure vulnerable children and those who care for them receive support at the earliest opportunity.

Thank you for the opportunity to continue to contribute.

Yours sincerely

Des Mannion
National Head of service for NSPCC in Wales

GOFAL AM GYMRU . TAKING CARE OF WALES

# ADDITIONAL 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.

Following the oral evidence session we would like to submit further evidence about the role of non-statutory provision. Current mentions on the face of the Bill focus on co-operatives and social enterprises:

> *"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."*

Currently the vast majority of paid-for social care in Wales is provided in the private sector, mostly through SMEs. However, many of these meet the definition of a social enterprise:

> *"an organisation which a person might reasonably consider—*
> *(a) carries on its activities wholly or mainly to provide benefits for society ("its social objects"),*
> *(b) generates most of its income through business or trade,*
> *(c) reinvests most its profits in its social objects,*
> *(d) is independent of any public authority, and*
> *(e) is owned, controlled and managed in a way that is consistent with its social objects;"*

Care Forum Wales' welcomes the focus on expanding the type of social care provision, and in particular the emphasis on developing co-production. However, we believe the most important aspect of social care provision is not the structure of the organisation providing, but the quality of the care, which comes down to management and staffing. We would like to see a level playing field in terms of commissioning: it should be based on quality of service for the right price not about who provides, whether that is a group of people coming together in the community, a group of Care Forum Wales members or a housing association.

Whilst it is understandable that the focus of the Bill is on expanding types of provision that are currently small, or barely exist, given that the Bill is intended to set a framework for a generation we are concerned that there is no mention on the face of the Bill of the vast majority of current social care provision in Wales. There is also a section on co-operation and partnership which focusses on statutory services.

We would like to see a clear statement on the face of the Bill that that commissioners (local authorities and health boards, potentially working in partnership) have a legal responsibility to ensure co-operation with all parts of the system and all types of provision across the independent sector at a local and regional level. This could be based on the *Memorandum of Understanding: Securing Strong Partnerships in Care* as agreed in 2009 but not fully implemented. This was based on the Welsh Government's *Fulfilled Lives, Supportive Communities* publication of 2007 and was signed by WLGA, ADSS Cymru, ourselves and other provider organisations and witnessed by the Deputy Minister. We have also had indications that NHS Wales was ready to join. However, given that four years on, despite the commitment of the Deputy Minister, we are still talking about initial implementation, it could not be said that progress was anything other than glacially slow. Therefore, realistically it may be the case that such partnership is not a sufficient priority unless it is mandated by legislation.

Our members recognise that the vast majority of funding for social care in Wales comes from the public purse, and that they are in effect providing a public service. We would be happy to see a structure that reflects that on a national, regional and local level. We are also keen to work collaboratively and encourage collaboration amongst our members on issues such as training, marketing and purchasing. As our evidence to the Welsh Government's Co-operative and Mutuals Commission demonstrated there is much scope for such joint working while allowing individual organisations their independence and the ability to raise finance. However, our experience indicates that greater legal force is needed to ensure that commissioners work in partnership with providers at a local and regional level.

## Alice's responses to questions from Senedd Visit16 June (part of Barnardo's Group)

**If you have left care to live independently, were you given a choice about whether to remain in care?**

Yes my foster carer didn't want me to move out; she made it perfectly clear that I did not need to move out.

**Did you get support to help you manage leaving care and independently?**

No not really as I moved in with an ex- boyfriend, I did not have any contact with social services (through no fault of my own) for 6 months until I was made homeless.

**How could leaving care be improved?**

I think sometimes we have too much support and then we think everything will be done for us.

**What kinds of information, advice and assistance on care and support services do you get at the moment and how could it be improved, for example is the support suitable for you people?**

Well I currently don't have a social worker and haven't since January because she is off work due to personal reasons but I can go into the office at any time to see someone for support.

I also have a Personal Advisor she gives me most of the support. If I needed it she would help me with budgeting, cooking & all the life skills. She supports me like a friend would when I have personal problems & if she can't help me she'll find someone who can.

I think having a P.A as well as a social worker is the best idea social have come up with in a long time.

Social workers have too many case loads.

The housing support needs updating big time we need more places to go in nicer areas.

Agenda Item 7q

GIG CYMRU NHS WALES | Bwrdd Iechyd Hywel Dda Health Board

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Vaughan Gething AM
Chair, Health and Social Care Committee
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Cardiff Bay
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Dear Vaughan,

Further to our evidence session before the Committee on 16th May regarding the Social Services and Well-being (Wales) Bill, the Committee requested some additional information.

**Delegation of Assessment**
As you will be aware, the Bill as currently drafted focuses on the responsibilities of social services, with reference to the NHS only where responsibility is delineated or may be shared. As outlined during our oral evidence session to the Committee, the legislation would be improved if it allowed for the opportunity for dual delegation across agencies. Clause 10 in Part 3 of the Bill, "Assessing Adults" may offer one possible opportunity to be amended to allow for dual or delegated assessment. This would however, need further detailed consideration.

**Partnership Working**
In terms of what clinical professionals can do to ensure that people's clinical and wider non-clinical needs are routinely assessed and that their needs are met by health, social care or third sector providers, reference could be made to partnership working as part of service delivery in Part 4, Clause 10 of the Bill, although this would need further detailed consideration.

**Chronically Sick and Disabled Persons Act 1970**
The Committee also requested further information regarding the Chronically Sick and Disabled Persons Act 1970 and where the power or responsibility to provide that form of assistance can be identified in the Bill as currently drafted.

Part 4, Clause 20 "how to meet needs", subsection (c) could be interpreted to include assistance in arranging for the carrying out of any works of home adaptation (as described in Housing Grants, Construction and Regeneration Act 1996, Chapter 53) and additional facilities designed to secure greater safety and independence i.e. aids and equipment. There are some concerns however that these features of current service are not identified explicitly in any other section of the Bill and could in fact be interpreted as a reduction in the duties of Social Care. Our view is that the Committee should give further consideration to explicitly mentioning these responsibilities in the Bill.

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Bwrdd Iechyd Hywel Dda yw enw gweithredol Bwrdd Iechyd Lleol Hywel Dda
Hywel Dda Health Board is the operational name of Hywel Dda Local Health Board

Mae Bwrdd Iechyd Hywel Dda yn amgylchedd di-fwg Hywel Dda Health Board operates a smoke free environment

**Independent Living**
With regard to independent living, as currently drafted this duty is not currently explicit in the Bill and Part 4, clause 20 “How to meet needs”, subsection 2 (b) may offer the opportunity for amendment to include the opportunity to maintain, regain and/or establish essential independent living skills, although this would need further consideration.

I hope this information is helpful to the Committee and please do not hesitate to contact me should you have any further questions of queries.

Yours sincerely,

Sandra

Sandra Morgan
Head of Occupational Therapy
Hywel Dda Health Board

**Care Council for Wales**

**Focus of the oral evidence session:**

**Our response to the Bill – see briefing**

**General comments from Members**

Theme for your session is *Access to services by adults, children and carers* which will focus on, amongst other topics,

## 1. Well-being duties, preventative services, information and advice

- Charging for the provision of information will make it inaccessible for some, even if provision is made for some to be refunded after assessment of ability to pay. Few will seek an assessment for ability to pay, just to get information, especially if doing so also incurs a charge. I see little point in having information that is not freely available, (as in cost free). The cost of managing payments may also add to the cost of the service.
- Devising new practice tools. The theme of integration needs to be taken forward into methods of working e.g. a new assessment tools should always include an evaluation of the impact of an adult's needs on the development of or risks to children who may live with them. (This week I visited a Child Assessment Team where it was considered to be a recent development for an Adult Community Mental Health Team to consistently recognise the needs of a child of an adult with a mental health problem.)
- The aim of citizen centred and controlled services may appear to be just rhetoric if many assessments fail to lead to the delivery of support services. Most local authorities have already raised the eligibility threshold to 'substantial' and 'critical' and maybe there needs to be more transparency and honesty somewhere within the legislation that recognises how severe a situation of need may have to be for an assessment to lead to service delivery rather than signposting on.
- The Bill should promote fairness, respect and efficiency by adopting the portability of prescribed care and support plans, by promoting a National Eligibility Framework and by treating carers with the same status and seriousness as service users with respect to their needs for assessment and support.
- Again, preventative services will be useless if people are put off accessing them through charges. Need to have a business case for charging, to ensure that the opportunity cost of charging, does not mean an uptake which is too low to save the cost of providing care to those who don't avail themselves of the service because they had other financial priorities.
- The requirement for provision of information would support voice and control as well, but only if it is free of charge at the point of need. In fact it would be good to see the white paper on regulation create duties for ***all*** individuals and organisations providing services to 'people in need' to make specific disclosures regarding their services, qualifications, quality assurance arrangements, target group etc, free of charge to the service user and/or carer. The cost of this would need to be integrated within the whole cost/charging structure for the service once the service is being used, and not before. (As is the case in industry where marketing is an integral business cost, and potential customers are not charged

to access adverts). However,  where organisations are unsuccessful at attracting ‘business’ as a result of giving information, this could become a disproportionate cost. There need to be safeguards to monitor and control such costs.

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

- There are skills to be addressed, namely as per section 34 (4) (d) (ii)  and sections 35 and 36 following on the capability of handling direct payments which will include commissioning skills.
- Other skills development will be required by those employed by new social care  delivery agents from social enterprise, co-operatives, user led services and the third sector as laid out in part 2 of the Bill.
- Commissioning skills that must include the cost of training shoud be addresses in these general functions.
- Other groups that may require training and possible registration include foster carers, the independent visitor and the independent reviewing officer of sections 82 and 83.
- The provision of service information to be provided by local authorities facilitated by LHBs on social care as outlined on page 8 of the Bill should be linked to the information portal currently being developed by CSSIW and ourselves.
- Opportunities in the Bill include:
  - extending the development of social enterprises which, where successful may hold one of the keys to sustainable social services.
  - providing more support to carers, including recognising their aspirations for education and employment, can promote their longevity in their role. This may sustain the high quality of care they can provide and saves Government money.
- The requirement to support the development of services led by service users is not supported by the wording of the bill, which only requires that they be involved. This needs to be strengthened, and the assumption that this be only for low level needs also needs to be changed as it is with higher level needs that experts by experience have the most to offer,  as only they can truly understand what the individual is going through and as a result have far greater credibility when it comes to offering life style and coping solutions that will make a real difference. It is also critical that the bill makes provision for such services to be paid for by the LA, whether or not this cost is passed on to users of these services, otherwise there will be a continuing risk of vulnerable service users being financially exploited, despite the value they contribute,  and the fact that they are the most disadvantaged group with respect to access to employment and income generation. There is already a fixed pattern of exploitation of service users and carers through numerous programmes (eg expert patient programme, time to change Wales) where their offering is required to be voluntary.  For those projects where people can receive a payment service users and carers are excluded by the cost of training which is much higher for them than for wage earners (eg Mental health First Aid training, which costs least for employees of low income voluntary sector organisations, more for those with a turnover of more than £1 million,  and also for public sector employees,  and a crippling £1000 for those who are not employed by an organisation (self-employed perhaps) which includes the majority of service users,  who are unwaged).

- Under 7 (promoting social enterprises etc), it would be an opportunity to stipulate that all these arrangements must involve service users and carers in the design, delivery, monitoring and evaluation of services, and in the governance and scrutiny of the organisations concerned. Ironically service user and carer involvement in the voluntary sector is extremely variable, and at its poorest is far worse than in any other type of organisation. This is needed to deliver on the intention for greater voice and control.

**Assessing adults, children and carers**

- The objective of increasing voice and control in relation to access, assessment and eligibility is not promoted by this part because, whilst the memorandum talks about rights to assessment the bill only talks of a duty to assess ‘where it appears to a local authority that an adult may have needs for care and support’. In other words the LA and not the individual takes the initiative and can choose not to make an assessment if they don’t think there is a need – but how do they know if they don’t assess? There is no right to assessment unless there is legislation to back it up. There would have to be a duty to assess every person who is referred by themselves or others, if this were a right. If you want to leave discretion with local authorities (in which case the situation will be no different to the way it is now) then it is important that you ensure that explanations are clear that this is a discretionary service. The LA only has to prove that it did not believe there was a need, to be relieved of any duty. It would be better to say that the LA must assess where there is a need, and then they would have to prove that there wasn’t one to justify not making an assessment.
- The reference to combined assessment, and to social services carrying out assessments ‘on behalf of another body’, introduces a) the risk that the party doing the assessment does not have the necessary competence to do so effectively and be able to recognise complex needs, or b) that by doing so the body who would normally carry out the assessment may delegate responsibility and fail in its primary duty to the service user or carer. This is specifically the case in mental health where a social worker may assess health needs and as a result health may avoid any involvement in the care. (The opposite is also the case)

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

- There are particular parts of the workforce mentioned in the Bill that will need some focus. Carers are now main players in the delivery of social care and will need some attention paid, together with the service user. This is particularly relevant where direct payments are concerned.
- There is an attempt to create a more level playing field between adults and children, but this has not been fully achieved. There are risks relating to the equality of access with reference to diversity of disability going forward as a result of the power to change the definition of what is or is not considered to be a disability. There may be change or there may just be more expensive services. The outcomes framework, if it has enough service user and carer involvement may be helpful so long as it doesn’t create the temptation to fit people’s goals into the framework, rather than take full account of what the individual wants.

**Charging and financial assessment**

- The change for existing social services will be a large increase in dementia, domiciliary home care service, diversity of care homes.
- Potential barriers are around domiciliary care not being professional skill to delivery service. Pressure is already being put on domiciliary providers regarding hourly costs with some authorities are already using agency who so not train their staff because the hourly rate is cheaper. Also personal assistants are being used with care providers who avoid being registered with CSSIW and therefore do not come under any regulations. This also affects CCW in our aim to professionalise care workers.
- This will not give those requiring home service any informed choice. The provision of accessible high quality information needs to cover local and national advice on all care sectors available together with inspection reports of services which provide care.
- Financial implications are unknown as true costs cannot be identified on care home services which could double as there is an aging population. Local authorities can charge for services provided. If this is capped as domiciliary care at £50 per week it will be too costly for them.
- The affordability of the change management process inherent in the Bill. I did not find all the cost saving calculations of introducing new duties or simplifying the law totally convincing, in particular that there would be no extra costs for ‘Local Authorities to provide (or arrange for) the provision of a range and level of preventative and early intervention services for its area’ (Explanatory Memorandum p71) or that a ‘simplified law could release benefits of up to £1.2 to £2.7 million per annum’ in time saved by social services practitioners (Explanatory Memorandum p74). 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.
- Resource – provisions to charge just pass on the difficult decisions to individuals. Those who are financially privileged will benefit, but only if charging is also linked to choice.  For those who do not have direct control over their own finances, decisions may be taken out of their hands –even in situations where they might have mental capacity (for instance where there is financial abuse)

Other general comments

- Safeguarding has been mentioned regarding those who receive care, there also needs to be protection of staff who provide these services.
- The complaints section 153 should have a duty on all employers (private or public) of registered workers to inform the regulator of the potential to affect the registration of such worker. A protocol with the ombudsman on this point should come into being. Suspension from the register pending outcome of a complaint should be an option to prevent a worker suspended from their work from working in other social care settings including those as an unregistered social care worker.
- Opportunities include delivering the promise to social workers to appropriately reduce the bureaucratic burden and promote more relationship based, therapeutic casework.

Cyngor Gofal Cymru
Care Council for Wales
*Hyder mewn Gofal - Confidence in Care*

# Supporting carers through the development and delivery of a Quality Assured Lifelong Learning (QALL) unit for paid carer demonstrators

Noddir gan
**Lywodraeth Cymru**
Sponsored by
**Welsh Government**

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Further copies of this document are available in large print or other formats, if required.

## Acknowledgements

We would like to thank the Care Council for Wales for commissioning this project and the ongoing engagement and insightful contributions of Sheila Lyons.

We would like to give sincere thanks to the steering group in West Wales and in particular to Ken Jones (and the Carmarthenshire Carers Forum) who gave their time and considerable expertise and enthusiasm.

We would also like to thank the group of participants who undertook the pilot training and assessment and gave their valuable perspectives for evaluation.

Sue Gwynn and Rhys Hughes March 2013

# Contents

# Executive summary

1. This Care Council for Wales project commenced in September 2012 with the establishment of a steering group in West Wales whose members guided the development of a learning unit titled: Support Carers Through the Demonstration of Practical Care Techniques

2. The care demonstrator project has been an exciting and innovative pilot which has shown the potential to provide Carers with access to unique solutions that meet individual and often hidden needs beyond routine and established care techniques.

3. The collaborative approach to establish Carers specific concerns can be used to uncover areas of unknown need such as difficulties of communication and interpretation in dementia care or managing testing behaviours such as agitation and repetitive questioning. These interventions can contribute to Carer's well-being and resilience in the face of the personal demands of the caring role. These outcomes are in line with the prevention and early intervention aspirations that lie within the Social Services and Well-being (Wales) Bill and Sustainable Social Services in Wales: A Framework for Action (2011).

4. A two day training programme was developed to deliver the learning for this unit and advertised to care providers in the pilot region. The training programme delivery in January 2013 coincided with work by the Care Council for Wales and Agored Cymru to place the unit on the Quality Assured Life Long Learning pillar of the Qualification Credit Framework for Wales.

5. The pilot course demonstrations focused on traditional care tasks. Discussions within the pilot and steering groups have pointed toward a much broader range of interventions that could be demonstrated. These have the potential to have a wide impact on the quality of life of Carers by being specific to their individual needs in line with the aspirations of the Carers Strategies (Wales) Measure (2010)

6. Evaluation and reflections on the pilot training course have produced recommendations on course delivery and assessment as well as the potential for wider roll out and take up of the unit across Wales

# Introduction and background to the project

In 2010 the Care Council Wales published the results of an 18 month study into the care at home workforce[1]. This report found that 96% of annual care hours in Wales are provided by unpaid Carers. Unsurprisingly therefore one of the recommendations in the report was more active support for the role of Carers. The Care Council responded to this recommendation by commissioning further investigation and early in 2012 published a report on Carers access to training[2].

This report included the recommendations, which arose directly from discussions with Carers themselves, "Social Care and other paid service providers giving training and 'demonstrating' to unpaid Carers in their homes. Demonstrating may be a more acceptable model of delivery to avoid concerns about risks and liability" and "Social care and other paid service providers training and demonstrating to unpaid Carers in care homes, day centres or similar appropriate resources". The report states that support for social care and other workers in this demonstrating role could be achieved by a unit/s developed for the Quality Assured Lifelong Learning (QALL) pillar of the Credit Qualification Framework Wales (CQFW).

The development of a training programme and QALL unit for paid carer demonstrators was seen as having the following potential benefits:

- Enhancing the potential range of services and support for Carers
- Contributing to a safe service for Carers
- Provide vital information through 'signposting' of resources and benefits that could be used by Carers and the individual they support
- Facilitation of a national approach to supporting Carers
- Contribute to the cultural shift to person centred and citizen directed services and outcomes in Wales
- Supporting early intervention, prevention and care at home imperatives in line with the agenda from Sustainable Social Services in Wales: A Framework for Action and now the Social Services and Well-being (Wales) Bill
- Contributing to the range of learning and qualifications available to social care and health staff particularly for continuous professional development
- Enhancing the options available to those commissioning Carers services

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[1] Care at Home: Challenges, Possibilities and Implications for the Workforce in Wales, Care Council for Wales, 2010

[2] Supporting Unpaid Carers Access to Training in Wales, Care Council for Wales, 2012

Within its remit, the Care Council intended to explore what role it can legitimately play in supporting the training of informal carers and a further project was commissioned. In August 2012 the Care Council approached partners in the Hywel Dda Local Health Board region to discuss a pilot project to develop and deliver a training programme for the 'Carer demonstrator' and associated development of a QALL unit. As a result of these discussions a project plan was finalised and two Associates of the Care Council, Sue Gwynn and Rhys Hughes, were appointed to work with a steering group to deliver the project. The Steering Group consisted of representatives from the Care Council, Hywel Dda Local Health Board, Ceredigion County Council, Pembrokeshire County Council, Carmarthenshire County Council, Crossroads and Carers Trust. The Mid Wales and the South West Wales Social Care in Partnerships and Carmarthernshire Carers Forum were also invited to take part. A full list is in Appendix 1.

The project was undertaken between September 2012 and March 2013. The aim of the project was to: *Develop, deliver and evaluate a training programme and develop QALL unit/s for paid carer demonstrators*.

The objectives set were:

- *Identify pilot area / site*
- *Develop content of QALL unit/s for paid carer demonstrators*
- *Develop and deliver training programme for paid carer demonstrators in pilot site*
- *Submit unit/s for endorsement by Care Council*
- *Engage with Awarding organisation to undertake technical review of unit/s*
- *Facilitate uploading of unit/s onto QALL*
- *Facilitate roll out of unit/s*

The Associates built on the sound proposals initiated by the Carmarthenshire Carers Forum. The following report documents the work undertaken with the Steering Group and training participants over the last 6 months and the lessons learnt. It continues to identify recommendations and areas for further development in this exciting contribution to increase opportunities for Carers in Wales.

## Methodology

Steering Group meetings were held on 19-9-12, 7-11-12, 20-12-12 and 7-3-13. The unit was developed and revised being completed in March 2013 (see next section for more details). The training course developed mirrored the practice areas and knowledge requirements of the unit. It was agreed there would be 30 training places offered across the partner agencies, nominations to be coordinated by the Training Managers in Social Services (Carmarthenshire, Ceredigion and Pembrokeshire) and Hywel Dda Local Health Board. It was agreed that the target audience for the training should be '*qualified and experienced practitioners where it has been agreed that demonstration is part of their role'*. The training took place over 2 days on the 17th and 30th January 2013. Agored Cymru have now reviewed and uploaded the unit onto the QALL. Pembrokeshire College are an approved Agored Cymru centre and they will register the pilot group of learners to undertake assessment of the unit.

## The QALL unit and its development

The unit ***Support carers through the demonstration of practical care techniques*** is contained in Appendix 2. It was developed through the input and review of the Steering Group who considered the unit on 3 occasions. The unit was levelled at Level 3 and credit rated at 4 credits (40 notional learning hours).

The support of an Awarding Organisation was gained through the agreed processes and involvement of the Care Council. Agored Cymru supported the development of the unit. Following a technical review of the unit by Agored Cymru and the consideration of The Qualifications and Standards Sub-Committee on the 29th of January 2013 the unit was endorsed by the Care Council. Agored Cymru have added the unit to their database, website and to Pembrokeshire College's framework ready for use in the pilot.

The steering group and learners on the pilot have raised the issue of having the unit included as part of the main workforce qualifications particularly the QCF Diplomas in Health and Social Care or as a small, one unit, stand alone Award for updating and CPD.

## The pilot training course

**Course content**: 24 participants attended day 1 of the training. From the beginning it became clear that there had been confusion about the targeting and that 'Carer' had been misunderstood by some to mean a staff member or paid carer. Approximately one third of the group expressed their disappointment that the course was not right for their role and their concerns about continuing onto assessment. Despite this 18 participants returned for day 2 of the training and in evaluations these participants identified that the course experience had contributed to them reflecting and critiquing their practice.

In this pilot the training took place over 2 full days with 2 weeks between them though this did not seem essential and the days could have been back to back. The room was large but with a formal layout that which did not facilitate the experiential activities needed and this should be considered in future programmes.

Lesson plans and the overview of the training content were shared with the steering group who advised on approaches needed and key areas to prioritise such as the need to develop an understanding of positive risk management and a move away from risk averse thinking. It was hoped that the simulated demonstrations in day 2 would lead to participants gaining insight into the different perspectives (carer, service user/patient and demonstrator) and begin to use the knowledge highlighted in the course including communication styles and preferences, preparation and making agreements with Carers and reviewing of outcomes. A summary of the course content is in Appendix 3.

PowerPoint slides were used in presentations with plenty of discussion and engagement with the whole group. Work also took place in pairs, triads and small groups were frequent to allow exchange of experiences and cross sector learning. Feed back to the whole group was encouraged and ideas or experiences shared and collected on flip charts. This resulted in a rich exchange of information and ideas particularly in relation to potentially useful resources, information and ways of working. The group contributed to the development of a ‘Demonstrator checklist’ (Appendix 4) to assist in planning and preparation.

Simulated demonstrations took place in groups of 3 so each participant took a turn as demonstrator, recipient (Carer) and observer (often also acting as the service user for the demonstration). The demonstrations were chosen by the participants who were asked to keep them simple. Some did involve specialist equipment which participants brought in. They included:

- Putting on a garment when the individual had lost mobility x3
- Chair transfer
- Up and down stairs/stair practice
- Explanation of medical administration
- Epilepsy medication administration
- Safe standing and sitting following hip operation
- Hemiplegic dressing technique

Participants were encouraged to think widely about the potential wide range of demonstrations including emotional and other support that could have been used.

Participants formed a plan and outcomes with the ‘Carer/recipient’ before the demonstration began. Following each demonstration the participant gave feedback to the ‘Carer’ on their performance of the technique. The observer and ‘Carer’ also gave a peer review on the demonstration overall and provided this in writing on the form designed for the course. This encourages self reflection and review. The course tutors tried to observe each demonstration and give verbal feedback to each demonstrator but the numbers made this very challenging

The course content was designed to closely mirror the knowledge and understanding needed in the unit. A workbook was produced to reinforce the key learning areas and to capture learning as it took place. Links were made from the tasks and activities of the training days directly to the Learning Outcomes and Assessment Criteria they supported and evidenced. Participants were encouraged to become familiar with the workbook and to begin to make notes or even answer some of the knowledge criteria. For example after a group discussion  to look at potential barriers to effective demonstrations and a sharing of ideas about how to overcome the range of barriers the appropriate task in the workbook was highlighted:

***2.2*** *Identify at least 2* ***barriers*** *to effective demonstrating and explain ways to overcome* ***barriers*** *when carrying out demonstrations with* ***carers****. You could include examples from sensory impairments, psychological barriers e.g. resistance, confidence or reluctance of carers, privacy, working in a home environment*

| Barriers | Solution |
|---|---|
| | |

**Course evaluation** drew on both recorded comments during the training days and formal evaluation sheets completed at the end of day 2. A summary of the 13 forms returned is included in Appendix 5 together with key comments given by participants during the course. The comments of the Steering Group’s review following the training are also included.

Key points include:

- Prerequisites for participants may help to gain maximum participation and completion of the unit and assessments. These could include: a role involving demonstration to Carers (with a clear definition of who this means); a willingness to undertake assessment; an understanding of the benefits of being assessed and gaining the QALL unit

- It was clear that participants represented a wide range of roles and experiences. For some the course was very challenging, stimulating and relevant, whilst in contrast, others found it too low a level or not appropriate for their role. There are benefits to having a ‘mixed’ group for enhanced learning from each other but a ‘matched’ group may also be successful to minimise the differences in starting points.

- Feedback from participants suggested that the course could be delivered in one day for experienced staff with a two day version for those with less experience.

- Tutor observation of simulated activity for two day courses proved difficult and would only be possible with limited group size unless additional tutors are employed. Another option would be to have the demonstrations one at a time to the whole group but this may disadvantage less confident participants and would need to be done sensitively to avoid any inequality of access.

- A number of participants undertaking the simulated activity on the second day had prepared demonstrations designed for delivery directly to the service user/client as opposed to the Carer. This reflected many of their existing job roles. Future courses need to place more emphasis on this aspect of demonstrating i.e. using a person centred approach in collaborating with carers to establish need and identify direct benefit to Carers as well as recipients of care

- From the groups responses during the course it was clear that most were not familiar with positive risk assessments and they did not make links to person centred approaches and outcomes. For some there was a reluctance to consider changes to their ways of working and the tight procedures they felt bound to. This may benefit from more exploration in the training or post training signposting for further information.

- A set of resources were developed for the training which can be used in future programmes and roll out (see Appendix 6)

Further evaluation is expected during the ‘assessment’ phase of the programme which involves an actual demonstration in a real work setting. Forms have been developed to allow feedback to be collected from Carers and the individuals they are supporting following the observed demonstration in the work setting. Permission has also been asked for the project Associates to telephone Carers for their views on the process and outcomes of the demonstration they were part of. This was embedded in the training where demonstrations were practiced by participants and observation and feedback given by the recipient and an observer (sometimes acting as the service user).

The training content and workbook have been amended to reflect aspects of the feedback given at this time.

## Assessment and registration

For this pilot programme all learners who are undertaking assessment are registered with Pembrokeshire College who are an approved Agored Cymru centre. Sue Gwynn and Rhys Hughes have both been approved and registered as assessors and Internal Quality Assurers for Agored with the college. They will undertake the assessment of the work submitted and IQA each others assessment decisions and report back to the lead IQA in the college. Both Sue and Rhys have a large amount of assessment and quality assurance experience and both are External Verifiers for Awarding Organisations. This arrangement is for the pilot only and will not limit future assessment opportunities.

Of the 24 original participants 18 returned to day 2 of the training and 10 put themselves forward for registering for the unit assessment. Managers will be informed which of their staff have put themselves forward for assessment as they will need support and observation by an appropriate Expert Witness.

The workbook developed includes induction information such as Appeals and Complaints, Equal Opportunities and who their assessor and Internal Quality Assurer will be. A statement of authenticity for the learner to sign and date is also present. Information about the assessment process includes a statement as follows**:**

*The completed workbook together with testimony from an Expert Witness and Assessor should contain the evidence required for this Unit and will be used by your assessor to make an assessment judgment. You will be required to submit work within an agreed timescale which will be given to you on the course you attend.*

The expectations for assessment were given as:

*This unit is a Competence and Knowledge unit to show achievement of skills and understanding, as such there is a requirement for demonstrated competence. The unit is at Level 3 and is 4 credits. This unit is part of the Quality Assured Lifelong Learning Framework (QALL) and has been supported by the Care Council for Wales. The learning and evidence of knowledge, understanding and skills can be mapped against other similar units to show full or partial achievement. This is known as Recognition of Prior Learning (RPL).*

*Learning will be achieved through participation on the* ***Supporting carers through the demonstration of practical care techniques*** *training days and* ***assessment*** *completed after you have undertaken the training. Some evidence may be gathered during the course as you are working and learning. This includes: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 2.1, 2.2 and 5.5*

*The Level 3 unit contains five Learning Outcomes (LOs). Each Learning Outcome has up to 6 Assessment Criteria (ACs). Each AC will need to be evidenced through completion of the workbook tasks or through real work demonstrations to carers. These will need to be seen by an Expert Witness such as your manager or the course tutor/assessor*.

Participants seemed to understand and like the workbooks and some were completed by day 2. One organisation had given participants a half day to progress the workbook between days 1 and 2. All seemed to be able to identify an individual to undertake their work based observation; usually a manager. Some felt it may be some time before they had the opportunity to demonstrate to a carer as this was not normally their role but that it would be possible at some point.

It was anticipated that some supporting evidence would be gathered by the course tutors during the simulated demonstrations. However this was very difficult to achieve as the tutors needed to be present throughout and record for each individual demonstration. This may of course be possible in programmes with more time or if the demonstrations are carried out sequentially.

At the time of writing information about the assessment is not available but this will be fed back to the Care Council.

# Recommendations

**1** Strong links should be made into the developments within Carers Strategies as this will allow the initiative to be promoted, managed locally and possibly funded

**2** Roll out of the training programme across Wales will benefit from the identification of existing Agored centres such as colleges to act as hubs for registration, certification and quality assurance. Delivery of the Care Demonstrators unit could be via these hubs or between hubs and existing partnerships such as Social Care Workforce Development Programme partnerships (SCWDP) and the Social Care in Partnerships. This may give access to funding opportunities. Inclusion of the Care Demonstrator training in the county wide SCWDP partnerships could provide access to the training for third sector and private providers of care

**3** Funding opportunities may come from Skills for Industry, Carers Measure funding or SCDWPs

**4** Publicity material could be developed to promote awareness of the initiative and opportunities to access training. In order to gain maximum publicity existing health and social care networks should be utilised to distribute information and signposting to available courses. This could be via e- newsletters that can provide access to the wide variety of potential providers and recipients and this will assist in equal access to provision. The Carers Learning and Information Network would be particularly well placed to assist in this.

**5** Consideration should be given to having the unit as part of the main workforce qualifications particularly the QCF Diplomas in Health and Social Care or as a small, one unit stand alone Award for CPD.

**6** Future advertising and targeting of the course should make clear that demonstrations are to unpaid Carers. Managers also have a key role in nominating the appropriate staff.

**7** It is important that links are established which allow managers to know both the attendance of their staff on a programme and who is registered for the QALL unit as they will play a vital part in the assessment (as Expert Witness) and support for the staff member to complete

**8** A bilingual tutor's pack with guidance on course delivery and assessment including learning materials and assessment tools should be developed and made available in traditional and electronic formats. This would enhance standardisation of the training and assessment and mean that new providers would not need to start without resources. This would assist in the provision of the training experience and assessment through the medium of Welsh and to a Welsh language cohort.

**9** The inclusion of a tutor's pack can provide additional background material, signposting and rationales for emphasis on person centred practice, positive risk taking and boundary management.

**10** The provision of tutor's packs could allow for inclusion of formal feedback sheets providing information on course numbers and content of assessed demonstrations. These could be used to monitor take up and development of the programme including any disadvantaged groups.

**11** Whilst assessment and quality assurance staff would not need to hold formal assessment qualifications they would need to be conversant with awarding body requirements for assessment and quality assurance. They will play an important role in ensuring any disadvantages are addressed and there is proper access to equality of opportunity, complaint and appeals.

**12** The Carer Demonstrator Checklist (Appendix 4) derived from suggestions of the Carmarthenshire Carers Forum, Steering Group and course participants, could be used more widely as a tool to enhance practice in support for Carers

## Appendix 1 Membership and representation at the Steering Group

Care Council Wales

Carers Trust

Carmarthenshire Carers Forum

Carmarthenshire County Council SCWDP

Ceredigion County Council SCWDP

Crossroads Mid and West Wales

Crossroads Sir Gar

Hywel Dda Health Board

Hywel Dda Regional Partnership for Carers Measure

Social Care in Partnerships Mid & West Wales

Pembrokeshire College

Pembrokeshire County Council SCWDP

Rhys Hughes & Sue Gwynn (Associates for the Care Council for Wales)

## Appendix 2: The endorsed unit

| | |
|---|---|
| **Title** | **Support carers through the demonstration of practical care techniques** |
| **Level** | **3** |
| **Credit value** | **4** |

| **Learning outcomes**<br>**The learner will:** | **Assessment criteria**<br>**The learner can:** |
|---|---|
| **1. Understand the role and responsibilities of a carer demonstrator** | 1.1 Explain how demonstrations can be used to promote the **well being** and **quality of life** of:<br>• **carers**<br>• the **individual** they support<br>1.2 Outline the role of a **carer demonstrator**<br>1.3 Explain what is meant by **professional practice** when carrying out demonstrations with **carers**<br>1.4 Describe how to prepare for and carry out demonstrations<br>1.5 Explain how a positive approach to **risk** management facilitates safe practice when demonstrating care techniques<br>1.6 Explain how to access **support and advice** when carrying out demonstrations with **carers** |
| **2. Be able to establish positive relationships with carers** | 2.1 Describe the values, attitudes and skills which underpin partnership working with **carers**<br>2.2 Explain how to overcome **barriers** when carrying out demonstrations with **carers**<br>2.3 Identify outcomes and benefits of demonstrations with **carers** and **individuals** they support<br>2.4 Provide accessible information to **carers** about **resources** for support<br>2.5 Interact with **carers** in ways that respect their expertise, experiences, language and culture |
| **Learning outcomes** | **Assessment criteria** |

| **The learner will:** | **The learner can:** |
|---|---|
| 3. **Be able to plan safe demonstrations of care techniques** | 3.1 Agree outcomes for the demonstration of care techniques with the **carer** and the **individual** they support<br>3.2 Explain how to identify and positively manage **risks** when demonstrating for the **carer**<br>3.3 Develop **plans** for demonstrating care techniques which comply with<br>• **Agreed ways of working**<br>• Agreements with the **carer** and **individual** they support |
| 4. **Be able to carry out demonstrations of care techniques** | 4.1 Demonstrate care techniques for the **carer** based on plans where outcomes are agreed with the **carer**<br>4.2 Adapt demonstrations to support the needs of individuals<br>4.3 Record the outcome of the demonstration in line with **agreed ways of working** |
| **5. Be able to review the effectiveness of the demonstration of care techniques** | 5.1 Observe the **carer** carrying out the demonstrated techniques<br>5.2 Provide feedback to the **carer** on their use of the care techniques demonstrated<br>5.3 Review the effectiveness of the demonstration against the outcomes agreed with the **carer** and **individual** requiring care or support<br>5.4 Describe how to support **carers** with ongoing issues and additional resources<br>5.5 Review own practice in demonstrating care techniques |

| Additional information about the unit | |
|---|---|
| **NOS ref** | SHDHSC0387 Work in partnership with carers to support individuals.<br>SCDHSC0227 Contribute to working in partnership with carers.<br>SCDHSC0450 Develop risk management plans to promote independence in daily living |
| **Unit purpose and aims** | This unit develops the knowledge and skills of demonstrators working in services delivered for and with carers and individuals requiring care or support, normally in their own homes and where it has been agreed that demonstration is part of their role |
| **Assessment requirements or guidance** | This unit must be assessed in accordance with the Assessment strategy and requirements of the Care Council for Wales. Assessment will be via a portfolio of evidence generated through observation by course tutors during the training and Expert Witness Testimony in real work activities, short answers, work products, witness testimonies and reflective accounts. |

## Additional guidance

**Carer demonstrator -** qualified, experienced staff where it has been agreed demonstration is part of their role e.g. paid staff working in re-ablement, therapies, home care or community nursing. This could be within adult or children's services, third sector, statutory or independent organisations. Workers will normally be in regulated services registered with CSSIW, HIW or similar.

**Well being** – can be physical, social, psychological

**Quality of life –** access to a range of activities, resources and opportunities which enables the individual to value themselves and feel valued by others

**Carer** - an individual who provides a substantial amount of care on a regular basis for a) a child who is disabled or b) an individual of 18 or over. This excludes anyone who provides care by virtue of a contract of employment or as a volunteer for an organisation

**Individual** – a child or adult requiring care or support who may also be referred to as a 'service user', 'patient', or 'client'

**Professional practice** – this should include professional roles & responsibilities, organisational processes, boundaries and accountability

**Support and advice –** may be formal or informal and will include supervision & appraisals, within own organisation or beyond own organisation

**Barriers-** could include sensory impairments, psychological barriers e.g. the resistance, confidence or reluctance of carers, privacy, working in a home environment

**Resources – should include crisis intervention** and may include materials and equipment, training, financial support, transport, support groups, therapeutic services, other professionals

**Risks** – may include environmental, social and psychological factors

**Agreed ways of working** will include the use of policies, procedures, supervision, safeguarding and ethical practice

**Plans** – may be paper, electronic or verbal.

Unless specified, a plural statement within an assessment criteria means a minimum of 2.

## Appendix 3: Training course outline

- Background to the training
- What is a demonstration
- Values in partnership working with carers
- Person Centred approaches & positive relationships
- Communication, listening skills & overcoming barriers
- Codes of practice and practice boundaries
- Positive risk management
- Providing information & signposting
- Learning and communication styles
- Planning demonstrations
- Effective demonstrations & feedback
- Reflecting and personal review
- What next – planning for assessment

## Appendix 4: Demonstrator checklist:

- ✓ Do I have full contact details?
- ✓ What is the organisational process?
- ✓ What does the carer want/ is asking for?
- ✓ Do I feel prepared?
- ✓ Do I know about the communication needs of the carer and the individual being supported (including language preference and sensory impairment)?
- ✓ Who do I need to speak to?
- ✓ Are other professionals involved and do I need to contact them?
- ✓ Is consent or capability an issue?
- ✓ Do I need a written agreement or plan?
- ✓ Is this a new or established carer?
- ✓ Has there been a change or deterioration for the carer or the individual being supported?
- ✓ What is the medical history?
- ✓ Is moving and handling involved?
- ✓ Environmental issues e.g. access, pets, hazards
- ✓ What resources do I need / may be useful or needed?
- ✓ Are my resources working do I need to test them?
- ✓ What information may be useful to take or be able to signpost to?

## Appendix 5: Course evaluation sheets summary

| | 1 is low/no | 2 | 3 | 4 | 5 is high/yes |
|---|---|---|---|---|---|
| Was the course content as you expected? | 1 | 5 | 5 | 0 | 2 |
| Were the handouts and activities helpful? | 0 | 5 | 2 | 3 | 3 |
| Did the course meet your requirements? | 3 | 1 | 5 | 2 | 2 |
| Do you feel you have benefited from the course? | 3 | 2 | 4 | 2 | 2 |
| Were your questions dealt with adequately? | 0 | 3 | 0 | 6 | 4 |
| Were the tutors helpful and supportive? | 0 | 1 | 1 | 2 | 9 |

Key comments included:

- more on feedback – how do you know when it has been successful
- don’t assume, give time and listen
- it’s more than just equipment
- seeing demonstrations as a process
- a very good learning curve
- should be spread over 3 days to take more time on each section
- go into things in more detail
- how to prepare and the importance of planning
- researching the initial visit to see what is needed and build rapport
- have the workbook in advance
- the definition of ‘Carer’ needs to be clear

- better targeting as you need a role with carers in their own homes
- very interesting and a worthwhile course
- involve work based assessors in the training course
- it was a bit over our heads
- the demonstrations worked well and did give valuable experience
- good for people just starting in the job
- did help us reflect on how we undertake demonstrations
- need similar training for demonstrating to care staff
- demonstrate needs defining
- people confused about the purpose and how it related to their jobs
- I was expecting a more practical approach to demonstrate equipment or a specific technique

## Appendix 6: Legacy resources produced from the project:

- QALL unit
- Lesson plans
- Training content overview
- Training presentation in PowerPoint with trainer notes
- Supporting activity sheets (feedback exercise, feedback form for demonstrator, carer, observer/service user, simulation instructions) English and Welsh language versions
- Evaluation form
- Checklist of resources for demonstrators/carers(contained in course PowerPoint)
- Demonstrator checklist (Appendix4)
- Workbook for knowledge assessment and learner recording/reflection
- Expert Witness assessment sheet for work based assessment

## Appendix 7: Agored Unit Location:

https://www.agored.org.uk/default.aspx?id=236&opusid=CDB592&natcode=PT13CY080

## Supporting carers through demonstration of practical care techniques & skills

## Pilot Project in Ceredigion, Pembrokeshire and Carmarthen areas

### 1. Background

The Care Council for Wales (Care Council) is the regulatory body for social work and social care in Wales. The Care Council also has statutory responsibilities for promoting a safe and skilled workforce and high standards of education and training.

In 2010 the Care Council published the results of an 18 month study into the care at home workforce[1]. This report found that 96% of annual care hours in Wales are provided by unpaid Carers. Unsurprisingly therefore one of the recommendations in the report was more active support for the role of Carers. The Care Council responded to this recommendation by commissioning further investigation and early in 2012 published a report on Carers access to training[2].

This report included the recommendations, which arose directly from discussions with Carers themselves, "Social Care and other paid service providers giving training and 'demonstrating' to unpaid Carers in their homes. Demonstrating may be a more acceptable model of delivery to avoid concerns about risks and liability" and "Social care and other paid service providers training and demonstrating to unpaid Carers in care homes, day centres or similar appropriate resources". The report states that support for social care and other workers in this demonstrating role could be achieved by a unit/s developed for the Quality Assured Lifelong Learning (QALL) pillar of the Credit Qualification Framework Wales (CQFW).

Developing a training programme and QALL unit/s for paid carer demonstrators has the following potential benefits:

- Enhancing the potential range of services and support for Carers
- Supporting early intervention, prevention and care at home imperatives in line with Sustainable Social services for Wales: a Framework for Action and the Social Services and Well-being (Wales) Bill
- Contributing to the cultural shift to citizen directed outcomes in Wales
- Enhancing the options available to those commissioning Carers services
- Facilitation of a national approach to supporting Carers
- Contributing to the range of learning and qualifications available to social care and health staff
- Contributing to a safe service for Carers

### 2. Pilot project

In August 2012 the Care Council approached partners in the Hywel Dda Local Health Board region to discuss a pilot project to develop and deliver a training programme for the carer demonstrator role and associated development of a QALL unit. As a result of these discussions a project plan was finalised and two Associates of the Care Council were

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[1] Care at Home: Challenges, Possibilities and Implications for the Workforce in Wales, Care Council for Wales, 2010

[2] Supporting Unpaid Carers Access to Training in Wales, Care Council for Wales, 2012

appointed to work with a steering group to deliver the project. The Steering Group consisted of representatives from the Care Council, Hywel Dda Local Health Board, Ceredigion County Council, Pembrokeshire County Council, Carmarthenshire County Council, Carmarthenshire Carers Forum, Crossroads Mid and West Wales, Crossroads Sir Gar, Carers Trust and the Mid Wales Social Care Partnership.

The following work was completed by the Associates and Steering Group:

- A QALL unit 'Supporting carers through demonstration of practical care techniques & skills' was developed.
- A 2 day training programme was developed and delivered for 25 learners in the pilot region in January 2013.
- A process identified Agored as the Awarding Organisation and Pembrokeshire College as the assessment centre for registration of learners, quality assurance of the assessment process and certification of learners.
- An evaluation report[3] was produced.
- A resource pack for sharing with other parts of Wales is being developed.
- A plan for sharing the learning with other parts of Wales has been developed.

**Report by:** Sheila Lyons, Workforce Development Manager, Care Council for Wales
**Date:** May 2013

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[3] Supporting Carers through the development and delivery of a Quality Assured Lifelong Learning (QALL) unit for paid carer demonstrators, Care Council for Wales, 2013

# DELEGATION OF ASSESSMENT TASKS

**In its scrutiny of the Social Services and Wellbeing (Wales) Bill the Health and Social Care Committee has received evidence that nursing staff were able to delegate assessment tasks to social workers but that the reverse was not said to be possible. The Care Council were asked to give a written opinion on this matter.**

A social work or social care assessment of an individual is not only to assess the social needs of an individual but also determines whether an individual is eligible for services and potentially the amount an individual might have to pay for a service.

Therefore a significant difficulty in the delegation of the social work assessment to a health professional would involve delegation of a task that could have budgetary implications for the local authority. This highlights one of the key hurdles to greater integration of health and social care working where one service is deemed to be free at the point of delivery and the other has a means tested component.

In addition, the Social Services and Wellbeing (Wales) Bill identifies a key role for social services and social workers in working with individuals and families to establish mechanisms of support to achieve the greatest levels of independence for that individual.

This changes the nature of the assessment process but also potentially increases the importance of high quality social assessment to inform the identification and achievement of positive outcomes for individuals. This will involve close work with families to identify and negotiate community resources to support vulnerable individuals. In particular where individuals are discharged from hospital, as there is a joint responsibility to ensure they return to a safe environment with the right services in place to help them. While this is already an integral part of the role and training of social workers but will require significant development for the full implementation of the Bill, such requirements are not an integral part of the nursing or health professional role.

Service users who are members of the Care Council have frequently stated that while they want to minimise the number of professionals that visit them and, to whom they give information, they also want professionals who are skilled in the functions they have a responsibility for so they can have confidence that the information they give will enable better support to be provided.

WLGA/ADSS: Suggested definition of Adults at Risk

In terms of the discussion of adults at risk, which you requested, the broad view is that you would need to remove the provision 104 (1) (b) given that you would have to assess the person anyway to determine whether they had a care or support need

However, Directors have pointed out that the current definition covers what the Bill intends already ‘In need of community care services because of mental or other disability, age or illness and be unable to take of him or herself or unable to protect him or herself against significant harm or ‘exploitation’ and so committee members may want to consider the utility of section 104.

# Paper to note: Social Services & Well-being Bill Advisory Group briefing to Health Committee (Stage 1)

## Paper summary

The advisory group welcomes the opportunity to comment on the provisions of the Bill. Our comments and recommendations follow the summary:

### 1) Definitions and legal issues

The lack of clarity on a number of definitions – or their removal from law - may give rise to unwelcome or unintended consequences.

### 2) Principles on the face of the Bill

On balance we favour principles on the face of the Bill to agencies when they give effect to the promotion of wellbeing. It is crucial that the person is involved, their best interests and wishes respected etc. Principles would also guide interpretation and the writing of regulations for a Bill that the Public Service Ombudsman described as 'widely drawn'. The Welsh Government has placed two of the seven of the Law Commission's principles for adult social care in the Bill and we would suggest the remaining five are added too.

### 3) Wellbeing

The advisory group believes the Bill should be more explicit about the link between a person's wellbeing and the need for care and support services. The Bill also needs more consistency about when it refers to 'people with needs' as a whole and 'persons with needs' as individuals. We also believe the wellbeing definition should include a safe home/accommodation.

### 4) Repeals

There are interactions with numerous pieces of England and Wales and Wales law. The Welsh Government must make clear how existing duties will be replaced by new duties and why certain existing duties will not be carried forward into this Bill.

### 5) Access to services

A person's access to services must be supported by a transparent framework that includes the assessment process, where their needs are understood by themselves and the assessor; the eligibility process, where the local authority decides what it will do to meet a person's needs; and any financial or charging thresholds to determine whether and how much a person will contribute to their care.

### 6) Proportionate assessments

The concept has potential to make a more responsive and less bureaucratic system of needs assessment. However, we would like it to be defined and supported by minimum assessment standards to ensure that access to assessments does not vary across Wales.

### 7) Duties to meet outcomes

There is lack of clarity in the Bill about what the local authority could or must do in relation to the outcomes an adult wishes to achieve in day to day life if those outcomes are not eligible for services.

**8) Availability and ability to provide care and support informally**
We think consideration of this ‘capacity’ to provide care and support informally can be part of assessment but only when safeguarded by general principles in the Bill and specific safeguards to ensure the focus is on wellbeing and outcomes and not reducing local authority support.

**9) Preventative services**
We think these should be available to persons with both ineligible and eligible needs. There has been some ambiguity about whether preventative services are targeted or universal interventions. The group favours targeted preventative services and agrees with ADSS that the evidence suggests long term benefits result from specific rather than general prevention.

**10) Passporting**
The Welsh Government has mentioned the concept of passporting to care and support services, which needs to be further clarified.

**11) Charging**
We are anxious to ensure charges do not become a barrier to receiving care and support services that have a preventative effect or a positive effect on wellbeing.

**12) Voice and control**
Aspirations to increase voice and control need further Bill provisions to be realised. Involvement, access to advocacy, accessible information and a definition of co-production need to be added.

**13) Carers**
The advisory group is concerned about a number of provisions in the Bill that will affect carers.

**14) Barriers to implementation**
Finance has been mentioned as a barrier to implementation and we would welcome further cost modelling from the Welsh Government.

**15) Collaboration and integration**
Alongside the powers and duties in the Bill we believe health and social services should come to a common understanding and agrees aims around concepts like ‘integrated care’, ‘prevention’, ‘care’ and ‘support’.

**16) Commissioning**
The majority of social services are commissioned externally by local authorities. The Bill could make provision for regulations on standards of commissioning, including wider value tests beyond cost.

**17) Advocacy**
Access to advocacy is crucial, particularly at points in the process in which an individual needs a voice to protect their wellbeing.

**18) Safeguarding**
The safeguarding section is significant and needs amendments. The advisory group favours a funding formula for regional safeguarding boards and measures to ensure independent chairs and representative membership. The Bill drafting also omits a definition of neglect and corporate accountability for abuse and neglect. We would recommend the ‘adult at risk’ definition needs further clarity and there appear to be omitted duties around children at risk.

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## 1) Definitions and legal issues

There is lack of clarity around some definitions in the Bill:

### a) People who need care and support

While we welcome in principle the idea of using a definition of ‘people who need care and support’ rather than ‘adults’ or ‘children’ in need, there has been substantial evidence from the children’s sector that expresses concerns about this approach.

### b) Disabled child

Removing section 17 of the Children Act 1989 means the removal of the current category of a ‘child in need’. The most concerning result of this is the removal of the definition of a ‘disabled child’. At the moment a ‘disabled child’ has automatic entitlement following assessment because they are automatically defined as a ‘child in need’. This means access to important services, including respite. The Bill currently proposes to replace this with an eligibility test for children (section 23) that is yet to be defined. This could dilute the current duty. Although medically focused we think continuing the definition of a ‘disabled child’ in the Children Act would be compatible with aspirations for the Bill.

We believe that children who are currently a ‘disabled child’ have specific needs, such as the particular support needed for their development as a child, and we are anxious to ensure that these needs are addressed. Disabled children should not miss out on services as a result of the new eligibility test. We would also highlight that this could have an effect on entitlements, such as automatic exemption from the social size criteria for housing benefit.

### c) Disabled person

There has been discussion in evidence session about the definition of a disabled person (most notably with the Deputy Minister on the April 18 and Disability Wales on the May 2). The definition of a disabled person, as currently drafted in the Bill, uses the Equality Act 2010 definition. This means someone’s disability must be substantial and long term to entitle them to a range of services with the aim of ‘minimising the effect on disabled people of their disabilities’ (in 6(2)(d) of the Bill). **We suggest the committee takes legal advice both on possible alternative definitions of ‘disability’ and also how the social model of disability might be enshrined practically in law.**

## 2) Principles on the face of the Bill

### a) The case for principles

There has been a mixed response from committee witnesses about whether principles on the face of the Bill are needed. The Deputy Minister is not currently minded to include them and the WLGA has voiced some concerns. However, we would strongly argue in favour of them to guide interpretation of the Bill and writing of regulations in order to ensure the promotion of wellbeing and delivery of services is in line with agreed principles.

WLGA said: “The Bill is a useful vehicle, but we are not convinced that, as it stands in all those areas, it strengthens the expectations on local government. In some cases, it probably confuses those expectations”. **We share some of the confusion about how the Bill is drafted and believe one solution to this would be a set of principles on the face of the Bill.** Another is ensuring greater clarity about duties it lays on local authorities to enable people to maximise their independence and participate in ordinary daily and social life, such as accessing home, work, education and social interaction.

This appears to have support from the Older People’s Commission and from the Public Services Ombudsman for Wales. The PSOW expressed concerns that: “…this is very widely-drawn legislation and we will come to some of the areas where that might pose particular issues for us in understanding what the intentions of the legislation are”. He also said there was potential for “ambivalence in the way in which people respond to it” (April 18).

### b) Law Commission’s recommendations

The Law Commission’s original recommendation in this area, in its Adult Social Care report (recommendation 5), had two parts. The Bill currently adopts the first part (to place a duty to promote wellbeing) and two principles of the second part (to enshrine principles in the statute to give effect to the wellbeing duty). The principles recommended are 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 wellbeing of others, if this is relevant and practicable;
- “Safeguard adults wherever practicable from abuse and neglect;

- "Use the least restrictive solution where it is necessary to interfere with the individual's rights and freedom of action wherever that is practicable."

**We note that the first two points of the Law Commission principles have been adopted, using different wording, in clauses 4(2) and 4(3) of the Bill. Therefore, it seems anomalous that the Bill does not include the remaining five points also advocated by the Law Commission. We believe the other points are equally important and should be included. We would particularly draw attention to the fourth point around involvement of the person, which we believe is not realised in the Bill as drafted.**

The Bill also deals with children and we believe a comparable set of principles should be discussed and developed. **We draw the committee's attention to existing case law in health (Gillick competence) that is relevant in this area.**

The Wales Alliance for Mental Health has developed a list of principles based on the Law Commission's but has adopted them to apply them to children and to make more specific reference to UN Conventions on Rights of People with Disabilities and on Rights of the Child. The extra principles or amendments to the Law Commission's principles are:

- "Individuals are equal partners in assessments, planning, developing and reviewing their care and support."
- "Adults and children are appropriately safeguarded."
- "Carers are engaged and respected."
- "Fully adopt the Social Model of Disability which promotes a holistic, whole person approach to wellbeing except in cases where they lack capacity to make the relevant decision."

### 3) Wellbeing

The concept of wellbeing and achieving outcomes is at the heart of the Bill. The advisory group thinks parts of the Bill create uncertainty about how this will work in practice.

### a) 'People with needs' or 'persons with needs'

The Bill's definitions of wellbeing and outcomes imply local authorities will have to promote individuals' wellbeing and address individual outcomes. However, the section on preventative services refers to "people with needs" rather than "a person with needs", implying the duty will be to provide general prevention for sections of the population rather than targeted, person-level prevention.

The outcomes measures proposed by the Deputy Minister's wellbeing statement also suggest that the intention is to use population-level statistics to monitor the effectiveness of social care and support rather than person-level measures. There are clear practical considerations to using person-level measures, e.g. agreeing measures to monitor improvements in a person's sense of independence. One possible approach could be to measure 'value added' to a person's wellbeing and the agreed outcomes achieved as a result of care and support or prevention.

The definition of wellbeing is welcome in the sector and was described by a colleague at an advisory group event on the April 9 as "the exciting bit". We recognise the concerns the WLGA has about meeting the needs of the whole population in terms of wellbeing in clause 4(1), and believe the Deputy Minister's statement on wellbeing supports this view.[1] **We recommend the committee seeks reassurances that a person's individual wellbeing will be central to support and embedded within their assessment, care plan and the support they receive.**

**b) Safe home excluded from definition**

We recognise that the Mental Health Measure 2010 has a definition that includes eight 'areas of life' with regard to wellbeing. **We would welcome the current definition of wellbeing in the Bill being expanded to reflect the eight 'areas of life' in the Mental Health Measure 2010.[2] This means a 'safe home or accommodation' would be included** – and may go some way towards allaying fears about the right to aids and adaptations, which could be lost through repeals of provisions in the Chronically Sick and Disabled Persons Act 1970. It might also address the absence of housing in the Bill and contribute to a practical definition of a social model (i.e. making an accessible home environment).

**c) Missing link between wellbeing and needs for care and support**

We believe that the link between needs and wellbeing is missing from the Bill. The Welsh Government included a section in the Bill consultation during summer 2012 that said:

"A person is considered to be "in need" if:

"(i) they are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or wellbeing, (and, in the case of a child, development) without the provision for them of social care services;

"(ii) their health, wellbeing (and, in the case of a child, their development) is likely to be significantly impaired, or further impaired, without the provision for them of social care services;

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[1] http://wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en

[2] http://wales.gov.uk/docs/dhss/publications/121031tmhfinalen.pdf

"(iii) they are a disabled child;

"(iv) they are in need of safeguarding or protection. If they are an adult they are an adult in need who has been harmed or is at risk of harm by virtue of that need."

We recognise criticisms of the original term 'people in need' as not in keeping with the ethos of the Welsh Government's reforms. We note that it has been replaced with 'people who need care and support and carers who need support'. **We maintain that the missing section of the Welsh Government consultation on the link between wellbeing and persons' needs should be added to the Bill. We note it also included references to a 'disabled child' being a person in need** (see section 1b of this paper)**.**

**d) Independent living and the social model of disability**
Disability Wales and others have mentioned they believe the Bill lacks recognition of the concepts of independent living and the social model of disability. We think these concepts could be addressed through principles on the face of the Bill, to ensure that independent living and an enabling (or reabling) approach is taken in the course of promoting a person's wellbeing.

### 4) Repeals

One of the central principles of the Bill's reforms is to simplify the 'patchwork' of social care legislation. However, the Bill (and accompanying Explanatory Memorandum) must be amended to include missing definitions; to state what will be happening to existing legislation that the Bill should replace; and connections with existing Welsh legislation. We would be pleased to work with the committee to provide suggested or amended definitions to include in the Bill where we believe they are needed. We believe it is very difficult to understand what this Bill means for persons without a list of repeals.

The Deputy Minister said that repeals had been signed off at an official level but not yet at a ministerial level. On 20 May 2013 she provided a table of destinations with reference to the Children Act 1989. Therefore, there remain concerns about exactly what will be replaced or adopted in the Bill. **We would like the Deputy Minister to provide a comprehensive list of repeals before the committee reports at the end of Stage 1**. Specific concerns include but are not limited to:

- Children Act 1989.
- Chronically Sick and Disabled Person's Act 1970.
- Carers Strategies (Wales) Measure 2010 – uncertainty about whether it will be repealed or replaced.

There are issues both with overlapping duties or ones not carried into the Bill. For example, the Chronically Sick and Disabled Persons Act 1970 contains provisions for the triggering of assessment of needs, which should be repealed and replaced by the Bill. By contrast, parts of the 1970 Act about equipment and adaptation are missing. We are anxious to ensure the provision of equipment and adaptations should be brought into this Bill or a clear statement made that they will continue.

## 5) Access to services, including preventative services

### a) Necessary separation between assessment and eligibility

We are concerned that the Welsh Government's intentions appear to differ from the evidence the committee heard about the distinction between the assessment and eligibility processes. The system must maintain a clear separation between assessment (the local authority and the individual coming to an understanding about what needs a person has) and eligibility (what will be done to address those needs).

Currently we know broadly how the current system is supposed to work:

- The person becomes aware of a need and that local services may be available to support the need.
- They have contact with their local authority, which decides what to do about their query (e.g. signposting, information or assessment).
- The person's needs are assessed.
- Needs are compared against the Fair Access to Care Services (FACS) four level model of local authority eligibility. Those above the eligibility threshold are eligible needs, which are met by the local authority. Those below the line are non-eligible but the person may receive information services or signposting. The person may also be subject to financial tests to decide whether or not they will contribute towards meeting the need.

At present we know that assessment can end up being circumvented by local authorities that believe they should not undertake an assessment because a person's needs or their finances make them appear unlikely to be eligible for services the local authority may provide. There are provisions in the Bill (in 10(3) and with similar provisions for children) to address this by specifying the local authority must disregard a person's likely level of needs and their financial circumstances when deciding to undertake an assessment. This is welcome as it is an attempt to avoid 'pre-screening' people out of services by deciding they will not have an assessment because the local authority worker believes they will not qualify for services, so thinks an assessment would be a 'waste of time'. However, we are concerned by aspects of the Deputy Minister's evidence on the future of eligibility and assessment.

Eligibility criteria serve as a 'rationing' tool to decide who receives or does not receive a service. On April 18 the Deputy Minister said: "It is time for [the four level model] to go" and that "Sometimes it served to lock people out of services rather than bring them in". However, removing the current four level Fair Access to Care Services (FACS – low, moderate, substantial and critical needs with an eligibility threshold) model will not remove the need to 'ration' services between needs that will be met and needs that will not be met by the local authority.

### b) Eligibility for preventative services

We believe the threshold for intervention should be set at a level that encourages lower level intervention. We are also anxious to ensure that the new eligibility system has a requirement for local authorities to justify decisions using clear nationwide criteria. People with needs must be clear about why a local authority will not meet their needs. Therefore, we are concerned about how the new system would be designed.

The advisory group is pleased that prevention is on the face of the Bill. However, we have doubts about whether the Bill will realise the Welsh Government's aspirations. Receiving preventative services should be based on transparent and fair criteria: i.e. a person should be able to understand the system and challenge decisions they believe are not appropriate. Likewise, the local authority should be able to justify why it will not meet a need against agreed national standards. This would apply equally to people not eligible for care and support services generally and for those using care and support services. **Therefore, we recommend the Bill provides for a system of preventative services that allows for transparency and, when appropriate, challenge decisions not to give preventative services. The alternative is a system in which more assertive and informed people - 'those who shout loudest' - receive better services.**

We would suggest this section uses a duty to enable people through services, to focus prevention work on a skilled and targeted enabling approach to support a person to achieve their outcomes. We agree with ADSS (April 18), which said: "Where targeted preventative services with skilled intervention are available they make a difference. There is no evidence that general prevention has a great impact on the levels of demand."

**We would recommend that the committee seeks draft regulations from the Deputy Minister about national eligibility criteria before the end of Stage 2, including a statement of intent about paying for care (e.g. how the system of income and capital thresholds for state support might work).** It is vital to know what framework will be used because it will set the 'rationing' criteria for care and support and preventative services. **We believe the thresholds for intervention should be low enough to incentivise and recognise preventative work.**

## 6) Proportionate assessments

### a) Need for a definition

Assessment is valuable for the individual and local authority to understand needs. This is why the system should maintain separate processes for gaining understanding of needs (assessment) and deciding what to do about them (eligibility).

The Deputy Minister said in her first evidence session that “Assessments should be proportionate.” We are anxious to ensure the concept of ‘proportionate assessment’ is defined. We are concerned that if left undefined or poorly defined ‘proportionate assessment’ could lead to restricted access to an appropriate assessment. We recognise the potential to reduce bureaucracy and improve access to lower level support with proportionate assessment.

A national eligibility framework could promote equitable treatment for people with the same assessed care and support needs. However, variation in how local authorities interpret or implement ‘proportionate assessment’ could end up determining whether a person receives a service or not. For example, ‘local authority A’ might decide that people with low incidence conditions can be assessed by a generic social worker who would not be fully aware of the unique aspects of a person’s condition while ‘local authority B’ uses a qualified professional with experience of the condition. These two assessments could result in different needs being recorded, so the person in area A may receive a less suitable service from the person in area B, despite the national eligibility criteria, because of the assessments they received.

**We would like to see the concept of ‘proportionate assessment’ set out in regulation and explained in practice by the Deputy Minister. There should be minimum assessment standards, e.g. that the person is meaningfully involved in their own assessment. There is also scope in regulations in the Bill to reserve certain kinds of assessment to qualified/experienced workers or teams for specific groups of people.**

### b) Supreme Court judgment on current assessment and eligibility

There are useful lessons from a judgment by the UK Supreme Court (May 2012), which clarified existing social care law in England and Wales on whether a council can take its finances into account when assessing the needs of people for social care.

The Court confirmed it is not lawful for local authorities to have resources in mind when they assess needs of disabled people [R (on the application of KM) (by his mother and litigation friend JM) (FC) (Appellant) v Cambridgeshire County Council (Respondent), 31 May 2012]. **We would recommend the committee examines the judgment of R (KM) v Cambridgeshire, which sets out the legal importance of separating assessment from eligibility tests.**

Lord Wilson, on behalf of the court, has set out a broad pathway for provision that we think should be followed in the new system. The local authority should ask itself four questions .While we agree that the assessment approach should be proportionate to the person’s needs this process should be followed for each person and set out in assessment regulations:

- “What are the apparent needs of the [disabled] person?” The advisory group notes that these should be assessed in full without regard to cost or likely level of needs as the Bill requires. The definition of ‘proportionate assessment’ is crucial at this point.
- “To meet the person’s needs, is it necessary for the local authority to make arrangements for the provision of services?” The advisory group believes at this stage the authority is allowed to consider its own available resources, what the family may be reasonably able to provide, what other agencies can offer, how much money the person has to pay for their own services, what preventative or universal services may be available etc.
- “If it is necessary, what is the nature and extent of the services to be arranged?” The advisory group believes this is where eligibility tests and financial assessments arise and will often be the cause of discussion and argument.
- “What is the reasonable cost of securing the provision of the services identified in the previous stage?” The advisory group believes these costs should be set out in sufficient detail for the individual to understand what has been allocated to meet their needs, so that he or she can challenge if necessary.

### 7) Duties to meet needs

The advisory group believes the Bill is vague about the relationship between identified (assessed) outcomes and needs and what the local authority must do in response to these. We are clear that local authorities will have a duty to meet needs that are eligible. However, the Bill does not refer to what a local authority should do about outcomes a person wishes to achieve that are ineligible.

**We are concerned there appears to be only discretionary powers to meet needs outside of the eligibility system and that this could mean that in reality prevention and early intervention may not be achieved because they are powers rather than duties**. It is not clear what an individual’s rights to challenge would be. The current drafting of the Bill implies a person could be assessed as having needs that require preventative services but the local authority’s current provision of ‘preventative services’ might not meet the person’s needs but still fulfil the requirements of section 6 of the Bill to provide general preventative services. Therefore, the person would not receive a service to support their wellbeing but the local authority will have met its duty.

### 8) Availability and ability to deliver care and support informally

At Welsh Government stakeholder events in May 2013 the concept of a person’s informal ‘capacity’ (in the sense of availability and ability) to meet their needs was introduced as an element of the assessment process. This was explained to mean the individual's circumstances, including whether there is family available who may be able to provide care.

We are anxious about this concept. We think assessment should be allowed to consider what care and support is being given to an adult, child or carer with needs by family or third parties, so that a local authority or other assessor can understand what needs a person has that are already being met. The local authority should be aware, for example, what care and support needs a married older couple is addressing within itself in case of stoppages or interruptions to the care and support (e.g. by illness or death of the carer) and to understand what pressures the carer may be under.

However, **there must be safeguards on any provisions about considering capacity (availability and ability) to deliver care and support informally to ensure this avoids unintended consequences**:

- The Bill must ensure the focus of considering informal care during assessment is related to the wellbeing and good outcomes of the person. We think the inclusion of statutory principles on the face of the Bill would ensure the focus of consideration of capacity will facilitate a person's wellbeing rather than placing restrictive expectations on people who may feel unable to refuse because they are dealing with a public authority or because of moral pressure they might feel to care for or support a family member.

- The Bill must also ensure that the issue of informal care is not used to justify inappropriate generic support for specialist needs, e.g. a person with specific communication support needs that require an interpreter must have access to a suitably qualified interpreter and not have to rely on the interpreting capacity of family members if they are not qualified or feel that interpreting in a particular context would be inappropriate (e.g. at a hospital appointment or welfare benefits interview).

- The level of ongoing informal care provided by carers should be considered during assessment separately from those of the adult or child.

## 9) Prevention services

### a) Prevention for both eligible and ineligible needs

The inclusion of prevention in the Bill is positive from a policy point of view. However, the Bill and regulations should define the eligibility test - the 'rationing' or 'in or out' test - for these services (see section 5b of this paper).

We recognise concerns that prevention services could result in 'sucking people into services'. However, we are pleased the Deputy Minister clearly said on April 18 that she does not agree with this view. We believe the crux of the issue is how prevention fits into the pathway that people will take. We believe it should follow an assessment:

- For a person with non-eligible needs they may receive preventative services if their needs might escalate or become more acute.

- For a person with eligible needs they may receive preventative services if their needs could be reduced. For example, a person with recent severe sight loss might be socially isolated because they do not have the confidence or mobility skills to leave their home alone and travel safely. A preventative service could be mobility training to build the person's confidence, familiarity with a journey and training in the use of a long cane or guide dog to enable or reable the person into accessing local opportunities to socialise.

We would not wish to see a prescriptive definition on the face of the Bill of targeted preventative services. The definition should be outcome rather than service based. Local authorities should also have the flexibility to address needs in their areas. However, there may be scope for an indicative list (with the caveat of "including but not limited to") to reinforce the notion that preventative services should generally be skilled, specific and possibly time-limited and with the aim of reducing or significantly delaying care and support needs and, most importantly, promoting the independence of the person.

### b) Disproportionate expenditure

Sections 6(6)(c) and 7 introduce the concept of "disproportionate expenditure". **We are not convinced that this clause is necessary, given that local authorities are generally required to avoid expenditure that is 'disproportionate' and are held to account by their electorate and local scrutiny structures in their expenditure decisions.**

### 10) Passporting

The Bill states that local authorities will have a duty to provide and to keep under review care and support plans for people (children and adults) who have 'eligible needs' or fall into one of the 'passported' categories.

**We would welcome clarity from the Deputy Minister about how passporting might work from the current system to the new system brought about by the Bill and reforms in the Sustainable Social Services paper**. There were indications in the Welsh Government's consultation paper on the Bill that looked after children might be one group that would be passported.

### 11) Charging

Our priority around charging would be to ensure charges do not become a barrier to access to services that could improve a person's wellbeing and have a preventative effect.

Two areas of concern that have been highlighted are charging for information, advice and assistance (section 54) and charging for 16 and 17 year olds (clause 44(3)(b)). However, section 53 about deferred payments for 16 and 17 year olds was not discussed in committee.

We would welcome improved definitions of what information, advice and assistance are. **We are concerned about leaving the power to regulate for the charging of information, advice, assistance and preventative services in the Bill without clarity on the Deputy Minister's vision for charging.**

### 12) Voice and control

#### a) Strengthening involvement

There is wide support for more voice and control for people who access social care services in Wales, including from citizens' panel members on May 16. However, we believe this vision should be realised more strongly on the face of the Bill.

For example, in clause 4(2) of the Bill, a local authority in exercising its wellbeing functions "must have regard to the individual's views, wishes and feelings, in so far as doing so is reasonably practicable". **We strongly recommend an amendment to ensure the individual should be 'enabled' and 'involved' rather than 'regarded' in clause 4(2) of the Bill** (see section 2 of this paper, on principles on the face of the Bill)**.**

#### b) Access to advocacy, information and advice

We are concerned that in 20(2)(e) and (d) the Bill lists advocacy, information and advice as ways of meeting needs following an assessment. This implies that they are services that will meet care and support needs. While there will be instances where these would be a valid care and support needs **we believe there should be clear references on the face of the Bill to ensure access to advocacy, information and advice earlier in the process where they would facilitate a person's voice and control.** For example, this would include during the assessment process or when decisions about whether to undertake an assessment are being made, particularly when the absence of advocacy, information or advice could lead to a person's needs being inappropriately assessed or not assessed at all.

### c) Co-production

We have concerns about use of the term ‘co-production’. It has various meanings that have been used interchangeably. We favour the definition the Health Minister offered at Welsh Labour Conference Round Table (23 March 2013), when he said co-production in social care is when “participants and experts are different but equal partners”.

We have used this specifically to mean that there should be assurances that people are enabled to be involved in their assessment and care planning. We also note there is the use of the term ‘co-production’ to describe a wider involvement in shaping services – such as that described in 7(1)(c). **We would welcome a definition of co-production on the face of the Bill, potentially contained within principles, to enshrine the idea of equal partnership and difference between participants and experts.**

### d) Direct payments

We would like to see provisions that require local authorities to actively involve the person in the whole assessment and care planning process; to work together to produce the care plans and outcomes, and to promote the options that are available for people to exercise voice and control, including (but not limited to) direct payments.

We know that there is a limited take up of direct payments in Wales. People can already access direct payments as the law stands but there is a proportion of the population that does not know about them or understand what they are. 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.

Some organisations would like to see a duty to promote direct payments on the face of the Bill – as a group we would not be opposed to this but note that would need to be clarified in regulations to ensure that no pressure was put onto individuals and that refusing direct payments is a valid option if a person has the information necessary to reach a decision. We note that direct payments are not suitable for everyone and so do not think it would be appropriate to have direct payments as the default option.

We believe individuals should be informed of all the options available to them; the outcome we would wish to see is people being able to take informed decisions about their care and support. **Therefore, we would like to see a duty to promote access to information about options for voice and control (like direct payments) rather than a presumption in favour of direct payments.**

### e) Accessible information

Colleagues in the sector shared with the advisory group their concerns about the lack of accessible information, which can provide a barrier to accessing information, support and other services in social care. As a group we are concerned that the provision of information within the Bill does not refer to 'accessible' information. We note that 20(6) of the Equality Act 2010 contains duties to make adjustments, including information. **We would, however, welcome amendments in the Bill to add 'accessible' ahead of "information" in the Bill and recognise 'accessible information' would need to be defined in the Bill.**

People also need accessible information about the options available to them. We would like the Bill to explicitly require processes, such as assessment, and information, advice and assistance to be accessible. This requirement would not only include alternative formats, languages etc but also, for example, access to interpretation services for people with learning difficulties, sensory impairments and others with specific communication requirements.

### 13) Carers

**We are concerned that some of the provisions in the Bill may impact negatively on carers**:

#### a) Portability for carers

The portability provisions do not apply to carers, meaning carers who move with the person for whom they provide care and support do not have the same portability 'entitlement' for support for themselves as a person with support needs. This seems inconsistent with the aim of the Bill to put carers' rights on an equal footing with those for whom they provide care and support.

#### b) Carers Strategies Measure 2010

There is lack of clarity on the Carers Strategies Measure 2010. We understand informally that the intention is to repeal it. However, not all of the provisions in the Measure appear in the Bill, meaning they will be lost (see section 4 of this paper).

#### c) Ability and availability to give care and support

The consideration of a person's 'capacity' (availability and ability) to meet their own needs could lead to increased pressures on unpaid carers if clarity is not provided (see section 8 of this paper).

### 14) Barriers to implementation

We would identify two key barriers to achieving the stated aims of the Bill:

#### a) Finances

We would share the WLGA's concerns about the Bill in terms of resources. The WLGA said "we fundamentally challenge the assumption that it is cost-neutral". The Regulatory Impact Assessment states that the only cost will be training for social workers and sets this against the reduced costs of legal challenge.

We note that the Children Act 1989 had significant implementation resources and would expect that this Bill will need similar Welsh Government support to implement it. **We would like to see more detailed financial modelling as soon as possible and certainly at Stage 2. Additionally, we recommend the committee seeks clarity on the Welsh Government's intentions around the implementation of the Dilnot review on paying for care.**

### b) Culture change

The other barrier we would highlight is cultural change needed alongside the Bill. Training should be considered more widely as a cost implication of the Bill. People who work in social care (and some in the NHS) will need to be retrained to realise the aims of the Bill. WLGA and ADSS have raised the point that implementation of the Sustainable Social Services paper is already underway.

## 15) Collaboration and integration

### a) Importance of culture

WLGA has mentioned that the joint working and integration vision needs further clarity from the Welsh Government. We would tend to agree with this.

Witnesses have raised practical issues with collaboration and integration, such as implementing pooled budgets or difficulty placing duties on independently contracted healthcare staff (Anna Buchanan from Older Person's Commissioner's Office, 2 May). We note that the NHS Confederation, speaking on May 16, welcomed overarching joint outcomes between health and social care, but thought prescribing models of joint working were unhelpful.

Health sector attendees at an advisory group event on April 9 suggested that the key sticking points are that organisations are "set in their ways culturally" and that the Bill could have a role in:

- Ensuring information and advice hubs provide information on both social care and health.
- Agreeing standard language and concepts used across organisations.
- Setting lines of accountability for outcomes delivery: financially, managerially and professionally.
- Agreeing measures of success and periodic review.

**We believe social services and health services should come to a common understanding about what integrated care is and a common understanding and vision for terms like 'prevention', 'care' and 'support', which can vary not only between adult and child social**

**services but also between health and social services.** We note that witnesses from the NHS said (May 16) that the concept of ‘prevention’ had a very different meaning to health services, e.g. public health, immunisation etc, which is quite different from the broad definition used by social services.

**b) ‘Cost shifting’**

On April 18 the Deputy Minister said:

> “I am not aware that there is a problem [with combining budgets]. The Bill does not change the fact that the health service is free of charge and that social services are not the same. I do not see a problem.”

**We believe there is a particular gap in the Bill around preventative services and potential to result in ‘cost shifting’**. 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) through intermediate care.

We are also anxious to ensure that the division of responsibilities and duties between health and social care is defined fairly to ensure on one hand that people are not asked to pay for care they may have previously received free from the NHS or on the other hand that the NHS itself is not subject to disproportionate expenditure.

**c) Integration in separate legislation**

The advisory group has noted that in Scotland integration is dealt with in a separate piece of legislation. While we acknowledge the Welsh Government may not wish to separate this from the Bill, there is still a large amount left to regulations.

**The advisory group recommends the committee seeks assurances that development of regulations will engage all partners across health, social care and the third sector in developing and drawing up regulations and resulting structures and processes. We would also recommend the committee confirms the Deputy Minister is confident that section 147 will give the Welsh Government the necessary powers to fulfil its aspirations.**

**16) Commissioning**

We would like to note that there has been little discussion about the standards of commissioning within the Bill despite the majority of social services being externally commissioned. Section 7 outlines different models that should be promoted by local authorities, which has been welcomed. We would, however, highlight there are likely to be a range of providers commissioned to deliver social care services from the third and independent sector, as well as those noted in that section. **We would like to see standards set out for commissioning take into account values as well as cost, which would should be required by the Bill and set out in regulation.**

### 17) Advocacy

#### a) Access to advocacy

There has been discussion about advocacy and particularly the need for access to independent advocacy in the Bill. It is currently largely missing from the Bill. Where it is mentioned, for example, it is a social care service that could be provided once a person becomes eligible (in clause 20(2)(e)). We believe that in order to deliver a "stronger voice and greater control" the Bill must make provisions to improve access to independent advocacy support services, building on and enhancing existing provision for children and people experiencing mental ill health.

The Welsh Government’s Framework for Action on Independent Living (endorsed by the Deputy Minister for Social Services), the first priority identified as an enabler to independent living is information, advice, advocacy and peer support.

We have some concerns that current work is focusing on advocacy for children and older people specifically and note that 'working age' adults must not be overlooked.

**We believe that advocacy is a significant omission in the Bill and that it is important to rectify as a matter of urgency. We welcome the Deputy Minister’s statement that she would be open to an amendment on independent advocacy to extend the reach of services.**

We welcome informal assurances that the Welsh Government intends to bring forward an amendment on advocacy. It is essential that this amendment makes a strong commitment to independent advocacy and enables better access to services for people across Wales. It must improve existing provision and extend access to people of all ages. It is important that services are not charged for, and do not automatically exclude individuals on the assumption that they have someone who can speak up for them (such as family) because this will not always be appropriate.

#### b) Critical points for advocacy

We acknowledge that there are always costs associated with widening the provision of services. However, there are instances in which the absence of an advocate means a person will not have a voice. The benefits of advocacy are numerous in terms of outcomes for individuals and long term cost savings, particularly in terms of safeguarding and preventing potential abuse situations from escalating.

Access to independent advocacy is particularly crucial in terms of assessment and developing care and support plans, and safeguarding from abuse or neglect. **We would like to see advocacy available at the earliest opportunity – enabling people to access the assessment process and help to ensure their needs are being met in an appropriate way**.

### c) Advocacy standards

We support Disability Wales' comments that Action for Advocacy has developed quality standards and professional training programmes on advocacy from which we can learn. **We support the definition and promotion of core principles for advocacy services, which the Advocacy Charter uses**.[3]

### d) Safeguarding and advocacy

Adults and children at risk of abuse are amongst the most vulnerable people in our communities. Independent advocates can ensure 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 advisory group believes access to independent advocacy for adults and children is a crucial issue in safeguarding, and thinks the Bill provides a timely opportunity for the Welsh Government to strengthen its commitment and improve access to independent advocacy services across Wales.

The Welsh Institute for Health and Social Care's Review of 'In Safe Hands' recommended that "Legislation should include a duty to consider advocacy support."[4] The Scottish legislation includes a similar duty. The Children's Commissioner stated that he would like an amendment that specifically refers to widening access to independent, professional advocacy services. The advisory group supports this. WLGA acknowledged that independent advocacy is not sufficiently provided in Wales.

**We would agree with the view of the Older People's Commission that not everyone will need to use an independent advocate. Nevertheless, it is important that access is available to those who need it**.

Anna Buchanan, from the commissioner's office, said: "There are occasions where nothing but an independent advocate will do." Such occasions can include when the family is not working in the best interests of the person; where there is no one available to help; or when individuals are in an isolated situation where they do not feel they can trust anyone around them. Without access to an independent advocate the individual could lose their voice

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[3] http://www.aqvx59.dsl.pipex.com/Advocacy%20Charter2004.pdf

[4] 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

entirely, which is a human rights issue. We would agree with the Older People's Commission, which said the cost of providing these services should be weighed against the severe costs of violating a person's human right, when their voice is denied.

## 18) Safeguarding

### a) Funding formula needed for regional boards

A funding formula for Regional Boards that sets out an expected and proportionate contribution from each agency is required to ensure that the business of the Regional Boards is not disrupted or threatened by funding negotiations. There was agreement during committee evidence sessions, including from police representatives, that a funding formula is needed.

Evidence from a variety of expert groups suggests that the "creation of a funding formula is the best way to ensure that all partnership agencies make an equitable contribution to the work of the LSCB" (Health, Wellbeing and Local Government Committee Inquiry into Local Safeguarding Children Boards in Wales, November 2010).

The Bill says regulations *may* require payments to be made by partners (section 115) but does not make provision of a partner funding formula or central funding. This creates the danger that the new boards will be established with no firm or consistent funding base. The advisory group believes regulations *must* require partners to make requirements and provisions within the legislative competence of the National Assembly.

The Children Act 2004 did not provide for a funding formula, which has led to inconsistency across Wales. The WLGA budget survey (2010) indicated a significant shortfall for a majority of Local Safeguarding Children Board's through withdrawal of funding from partner agencies. We are concerned that without an established national funding formula, local authorities will continue to make up the deficit which will divert funding from front line services to maintain infrastructure.

**The advisory group believes that an established funding formula, with relevant and enforceable powers of sanction if not adhered to, would firmly establish each agency's strategic commitment to safeguarding.**

### b) Strengthening Adult Support and Protection Orders

Most organisations giving evidence agreed the orders should be strengthened and go further than is currently stated in the Bill. We agree that removal powers should only be used in exceptional circumstances but it is important that the powers are included in the Bill. Evidence from Scotland shows similar powers contained within the Adult Support and Protection (Scotland) Act 2007 are invoked only in extreme situations but act as a significant deterrent.

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 abuse.

We are not fully satisfied with the Deputy Minister's response in her first evidence session. She said that she assumed that if abuse was identified it would be a criminal matter and picked up by other agencies. We accept that some instances of abuse, such as physical or sexual, can (in theory) be picked up by criminal justice agencies. However, in other instances it may not be a straightforward case and **we are concerned that in the worst case scenario an adult known to be at risk will be left in a dangerous environment with their abuser**.

We believe that powers of intervention should include injunction orders and removal powers: the aim of which would be to reduce the risk posed to the adult at risk 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 the Social Services & Well-being Bill. These principles can provide checks and balances for professional judgement.

The police representatives at the Health Committee said removal powers are not necessary because police can use mental health legislation to remove an individual when necessary. We would question this belief and think mental health legislation should not be used inappropriately in this way. The person will not always have a mental health condition or lack capacity but they may still need authorities to intervene to protect them from abuse.

### c) Safeguarding Board membership

Service user representation
We think the Board needs to ensure it is a robust body, informed by both policy and practice leading to improvements in safeguarding. Its membership should reflect this through stakeholders working together with specialist experts. **It is important that both National and Regional Safeguarding Boards have representation from individuals with direct experience of service provision and safeguarding (such as previous users of social care services).**

A public appointments process may be most appropriate to ensuring individuals with direct experience of service provision and safeguarding are represented on the board. Service user representatives should be valued members of the board with an equal voice in decision making processes, and therefore must be able to play a full role in the board's business.

Independent chairs
There was no consensus on whether there should be a requirement for the Boards should have independent chairs. **The advisory group maintains that it is in favour of independent chairs. They are able to enforce, critique, question and uphold the statutory duties of chair without conflict, as may be the case if the person is from one of the key agencies involved in adult protection.**

Section 112 states that a Safeguarding Board must achieve its objective by co-ordinating and ensuring the effectiveness of what is done by each person or body on the board. Duties to co-ordinate and scrutinise present a potential conflict unless there is strong independent leadership to enable accountability. Independent Chairs are seen as a valued asset to the business of encouraging high standards in Scotland. We also note that in England every LSCB has an independent chair and the chairs are supported by an Independent Chairs Association.

ADSS said it agreed with the principle of independent chairs but was concerned about the costs. A funding formula would need to be in place and the role and remit of the chair must be clear. We agree with the point that an important issue is how the boards will be evaluated to assess effectiveness and held to account.

### d) Regional Safeguarding Boards

There is some concern around the democratic accountability of proposals for six Regional Safeguarding Boards that cross local authority boundaries. Lessons must be learned from issues with current Local Safeguarding Children's Boards (LSCBs). It is widely accepted that LSCBs, as they currently stand, need greater checks and balances in place to ensure that they are delivering robust outcomes for the children that they protect.

### e) Definitions of neglect

**The advisory group agrees with the Older People's Commission, which would like to see a broad definition of neglect included in the Bill**. As stated in its evidence submission Operation Jasmine (on care home abuse) charges could not be brought on the basis of wilful neglect as it was difficult to prove an omission. It is important to learn from such cases and prevent similar situations from happening again. We agree that such a definition should allow for self-neglect but that this must be handled carefully and balance human rights with assessing risk of harm to the individual.

Definitions to consider in relation to neglect:

i) Adult Support and Protection (Scotland) Act 2007

Section 3
(2) An adult is at risk of harm for the purposes of subsection (1) if—

(a) another person’s conduct is causing (or is likely to cause) the adult to be harmed,
or
(b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

ii) Review of ‘In Safe Hands’ (2010)

The review states: “Safe Hands (paragraph 7.4) defines neglect: as “including failure to access medical care or services, negligence in the face of risk-taking, failure to give prescribed medication, poor nutrition or lack of heating.”[5]

iii) Office of the Public Guardian Safeguarding Vulnerable Adults policy (2008)

“Neglect and acts of omission:
Includes ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.”[6]

We note that there is the option to explicitly mention self neglect or ‘harm’ (as in the Scottish Act) or for the definition to be worded in a way that would not exclude self neglect (some minor changes to the latter two definitions could provide for this).

### f) Safeguarding principles

**We believe that ‘principles’ of safeguarding would be beneficial, particularly to emphasise the importance of the local authority balancing the protection of a person at risk with the individual’s human rights**. This should incorporate relevant United Nations Conventions and Principles, including Article 19 of the UN Convention on the Rights of Persons with Disabilities: the right to live independently and be included in the community.

The Adult Support and Protection (Scotland) Act 2007 has positive, person centred general principles on the face of the Act. While we acknowledge that the Act covers adults only we think it would be beneficial to include similar principles in the safeguarding section of the Bill.

### g) Corporate accountability for abuse and neglect

Some organisations have noted that they would also support measures to increase corporate accountability of abuse and neglect in the care sector. Social care providers have a serious responsibility for the health and well-being of many people. **We would encourage the committee to seek views**

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[5] Review of In Safe Hands, A review of the Welsh Assembly Government’s guidance on the Protection of Vulnerable Adults in Wales, Welsh Institute for Health and Social Care, 2010

[6] http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/sva-policy1-12081.pdf

**on whether the Bill should also cover institutional abuse or neglect.**

### h) Adults at risk definition

**There are significant concerns 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, until they are being abused and are consequently vulnerable and in need of support as *a result of the abuse*. Such cases could be excluded from support in the current drafting.

Therefore, having *eligible* care and support needs should not be a pre-requisite in the definition for an adult at risk and clarity is needed on how it will be determined if a person is “unable to protect themselves”. Additional issues such as coercive control and breach of trust are often important factors in elder abuse but they are not taken into account in this definition nor within the safeguarding section as a whole.

Alternative definition to consider:
Professor John Williams (Aberystwyth University), the Older People’s Commissioner for Wales, Mick Collins (Chair, PAVA Wales), and Age Cymru proposed the following definition (as discussed in the evidence session with the commission):

A person is an adult at risk if they are a person:

> i) who is aged 18 years or over;
> ii) who, because of their circumstances, is suffering or is at risk of suffering harm; and
> iii) whose ability to protect themselves from such harm is significantly impaired through disability, illness, mental incapacity, age, coercive control or otherwise.

### i) Missing duties for children

Section 106(1) on a duty to report adults at risk requires relevant partners to inform the local authority if it suspects an adult is at risk. **Section 108 on a duty to report a child at risk omits this duty and refers to provisions in section 47 of the Children Act 1989, which do not contain a similar duty to the duty to report adults at risk**. This appears to be anomalous and we would recommend the committee confirms whether there will be a parallel duty on relevant partners to report a child at risk to a local authority.

## About the advisory group

**Aim**
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.

**Members**
The group is made up of a series of third sector and professional organisations that work with people who use social care and support services:

Age Cymru (co-secretariat)
Leonard Cheshire Disability Cymru (co-secretariat)
Sense Cymru (co-secretariat)
Barnardo’s Cymru
British Association of Social Workers (BASW) Cymru
Carers Wales
Chartered Society of Physiotherapy
College of Occupational Therapists
Contact a Family Cymru
Mencap Cymru
MS Society Cymru
NAS Cymru
NSPCC Cymru Wales
RCN Cymru
Royal Voluntary Service (formally WRVS)
Scope Cymru
Wales Alliance for Mental Health

Leading Social Services in Wales
Yn arwain Gwasanaethau Cymdeithasol yng Nghymru
ADSS CYMRU

THE WELSH NHS CONFEDERATION
CONFFEDERASIWN GIG CYMRU

WLGA • CLILC

**Our Ref/Ein Cyf:**
**Your Ref/Eich Cyf:**
**Date/Dyddiad:** 3 June 2013
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Vaughan Gething AM
Chair, Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
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Dear Vaughan,

**Social Services and Wellbeing (Wales) Bill**

Further to our helpful discussions with you on 17 May, we are pleased to submit further evidence on behalf of the WLGA, ADSS Cymru and the Welsh NHS Confederation.

It is our intention that this shared view:

- Contributes to strengthening the current provisions on the face of the Bill; and
- Demonstrates our genuine desire to improve collaboration and integration across health and social care.

As articulated in previous evidence to the Committee, our view is that the current provision on the face of the Bill (s143) dilutes existing legislation in relation to integration and partnership working[1] and appears to be an unambitious response, given the scale of the challenge. Our joint view is that the legislation as currently drafted would do relatively little to facilitate genuine collaborative working on the ground and, whilst intending to be enabling, it could undermine existing statutory duties.

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[1] National Health Service (Wales) Act 2006 (Part 3, Section 33)

We believe the Bill needs to provide a clear vision for integration, enabling local authorities, the NHS and other partners to work constructively together whilst recognising their distinctive contributions.  It should require local authorities and NHS to work in partnership, through local statements of intent, appropriate joint governance mechanisms, and proportionate shared performance management arrangements.

As such, we would advocate that the existing provision within the Bill is strengthened by adding provisions that draw on those already enshrined within the Carers Strategies (Wales) Measure and the Mental Health (Wales) Measure, in relation to joint strategies or schemes.

We believe these proposals embrace the evidence set out in key documents published by partners such as the King's Fund and Ernst and Young.  The research identifies the key enablers of successful integration as a focus on frontline delivery, as opposed to organisational structures. Delivery needs to be shaped around the 'whole care' needs of the citizen, through community-based, integrated care networks, flexible resource management across health and local government, and adaptability across professional roles.  This emphasis on whole system responses to the needs of citizens will help also to establish arrangements which are more effective in providing individual families with real voice and control when decisions are made about how care and support will be provided.

Yours sincerely

Martyn Palfreman

Martyn Palfreman
Head of Social Services Directorate, WLGA

H.C. Birtwhistle

Helen Birtwhistle,
Director, Welsh NHS Confederation

Philip Evans

Phil Evans
President, ADSS Cymru

**CC	Steve Thomas CBE, Welsh Local Government Association**
**Emily Warren, WLGA**

**Mark Drakeford AC / AM**
**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**
**Minister for Health and Social Services**

**Edwina Hart MBE OStJ AC / AM**
**Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth**
**Minister for Economy, Science and Transport**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MB/MD/2222/13

Vaughan Gething AM
Chair
Health and Social Care Committee
HSCCommittee@wales.gov.uk

14th May 2013

Dear Vaughan

**Sub-Committees on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012**

The above sub-committees were set up at the Welsh Government's request in October 2012 to meet concurrently to hear evidence from relevant parties on the proposed amendment to the Smoke-free Premises etc (Wales) Regulations.

Having reviewed the evidence presented to the sub-committees to date, we have concluded that the Government will not proceed with the original proposals at this time.

We would like to thank all Members who have taken part in the discussions for the valuable evidence collated and integrated as part of your work.

We are writing in similar terms to Nick Ramsey.

Mark Drakeford

**Mark Drakeford AC / AM**
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

**Edwina Hart MBE OStJ AC / AM**
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Agenda Item 7w

**Y Pwyllgor Iechyd a Gofal Cymdeithasol**
**Health and Social Care Committee**

**Y Pwyllgor Menter a Busnes**
**Enterprise and Business Committee**

Cynulliad
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Assembly for
Wales

**Edwina Hart MBE OStJ AC AM**
Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth
Minister for Economy, Science and Transport

**Mark Drakeford AC AM**
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

20 May 2013

Dear Ministers,

Thank you for your letter concerning the Welsh Government's intention not to seek an amendment to the Smoke Free Premises Regulations. In the circumstances the two sub-committees will no longer need to meet jointly. The committees will no doubt make use of the additional time that is now available to us.

Yours sincerely,

Vaughan Gething Nick Ramsay

**Vaughan Gething AC AM**
Cadeirydd – Chair

**Nick Ramsay AC AM**
Cadeirydd - Chair

CC: Rosemary Butler AM, Presiding Officer
Lesley Griffiths AM, Minister for Local Government and Government Business

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg / We welcome correspondence in both English and Welsh