

NATIONAL ASSEMBLY FOR WALES

RESPONSE TO SERIOUS CONCERN ABOUT LOCAL AUTHORITY SOCIAL SERVICES

1. INTRODUCTION

1.1 Preamble

This protocol describes how the Assembly will respond to serious concerns about local authority social services. It refers to the general powers and functions of the Assembly under social services legislation. Insofar as it also refers to powers of the Assembly under the Local Government Act 1999, it complements the protocol on intervention powers issued as an annex to the National Assembly for Wales Circular 14/2000 on the *Local Government Act 1999: Guidance to Local Authorities on Best Value*.

This protocol is written in the spirit of the *Framework for Partnership - Wales* signed in December 1997 by the Secretary of State for Wales on behalf of the government and the Chairman and Leader of the Welsh Local Government Association (WLGA) on behalf of local authorities. It gives expression to the shared aim of the National Assembly for Wales and Welsh local government to raise standards in public service, to support and assist local authorities in improving services, to provide a clear framework for intervention by the Welsh Assembly Government in cases of failure, and an orderly process for the resumption of normal arrangements following intervention.

1.2 The role of the Social Services Inspectorate for Wales (SSIW)

SSIW acts on behalf of the National Assembly for Wales, to inspect and monitor social services provided by local authorities and others and to develop good practice, and provides professional advice to the Assembly on social services matters. As such it will have a primary role in making judgements about service performance and in dealing with local authorities in respect of whom there are serious concerns. In doing so it will work closely with the relevant policy divisions of the Assembly, particularly those in the Health and Social Care Group and the Local Government Group. SSIW will also consult as appropriate with other inspectorates, district auditors and the Audit Commission.

1.3 Role of the WLGA, Syniad and IDeA in helping authorities at risk of failure

Where evidence and experience show that a local authority is at risk of failing in its duties in respect of social services, there are several ways of achieving improvements. Councillors, officers and contracted

providers of services have the prime responsibility for delivering quality services and addressing shortcomings and failings. The WLGA and Syniad are committed to work with authorities to support improvement where problems exist, and the WLGA encourages its member authorities to give early warning of potential problems emerging from inspections, joint reviews, draft reports, complaints, internal reviews or other sources so that advice and support can be offered. The Improvement and Development Agency for local government (IDeA), which works closely with Syniad, offers specialist advice and support for local authority social services. Support may be offered by other authorities through networks, or the authority may be helped to identify and procure other external advice and assistance.

1.4 Principles governing intervention by the National Assembly for Wales

The National Assembly for Wales will exercise statutory intervention powers only where there is clear evidence that an authority is failing either to discharge its functions adequately or failing to meet its statutory obligations.

The National Assembly for Wales will inform the authority of the reasons for intervention whenever it uses its statutory intervention powers.

The form and extent of the intervention will be commensurate with the type and seriousness of failure and the need for effective improvement.

Except in cases of serious failure or unless there is a need for urgent intervention, the authority will normally be given the opportunity to make the necessary improvements itself.

Local authorities will provide accurate and timely responses to requests for information, and co-operate with such action as the National Assembly for Wales may direct in accordance with its powers and this protocol.

In cases where a function is exercised by the National Assembly for Wales or a person acting on behalf of the National Assembly for Wales, both the National Assembly for Wales and its nominee will be subject to the statutory duties that the authority would normally be subject to in respect of that function.

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2. ESTABLISHING CONCERN

2.1 Concerns coming to the notice of SSIW

Concerns can come to the notice of SSIW through:

- inspections and joint reviews

- individual casework
- routine monitoring
- complaints from service users, staff, members of the public
- information from other agencies, AMs and other official figures.

2.2 Usual practice

2.2.1 Inspections and joint reviews

General concerns arising through inspections and joint reviews are dealt with through the normal process of recommendations in reports and the authority's action plan. SSIW (and the joint review team) monitor the implementation of the action plan. More specific concerns (for example about individual cases or incidents) are referred to the Director of Social Services and dealt with as other cases below.

The criteria for judgements in inspections and joint reviews are appended. A judgement that an authority is not serving people well or that it has poor prospects for improvement will trigger consideration of whether there are grounds for serious concern, SSIW will then act as outlined in section 4.

2.2.2 Routine monitoring

Routine monitoring will raise questions about the performance of authorities. If these suggest that authorities are significantly under-performing, or that the pattern of services is significantly different from most other authorities, SSIW will pursue these questions with authorities. Such enquiries may from time to time give rise to concerns that cannot be readily resolved.

If an authority's performance against a range of agreed national indicators is in the bottom quartile of authorities in Wales, or if indicators or other information about crucial service areas appear seriously adverse, this will trigger consideration of whether there are grounds for serious concern. SSIW will then act as outlined in section 4. (In practice, it is unlikely that performance information alone will give rise to serious concern; it will usually need to be interpreted alongside other evidence, such as inspection or casework.)

2.2.3 Other cases

Most concerns are resolved by SSIW in its routine contacts with local authorities through Directors of Social Services. Specific concerns are brought to the attention of the Director in writing, with the expectation that the matter will be investigated and resolved, with a report back to SSIW.

If any specific concern or the authority's response to it gives rise to more serious concern, SSIW will act as outlined in section 4.

3. DEFINING SERIOUS CONCERN

Serious concern arises when the severity, frequency or persistence of problems exceed that which can be dealt with by usual practice.

Serious concern about an authority may include the following:

Practice:

- frequent or very serious failure to meet statutory requirements or failure to follow guidance without appropriate justification
- failure to protect vulnerable people from actual or potential harm
- significant unfairness in dealing with individuals entitled to service
- persistent under-performance on key indicators

Staffing and management:

- lack of suitable staff in key positions
- lack of effective guidance and quality control
- failure to respond to concerns raised by SSIW or similar bodies, or to take corrective action following justified complaints
- deliberate attempts by senior managers to mislead or misinform

Policy:

- unfair discrimination
- flagrant breach of guidance

External relations:

- breakdown in working relationships with key partners
- serious and persistent adverse publicity, likely to undermine public confidence in the service.

In each case SSIW will make a judgement about the seriousness of the problems, their apparent causes, and the capacity of the local authority to resolve those problems. The processes of establishing concern, through inspections, reviews or other methods will happen in an open manner in consultation with the authority. Serious concern may lead to intervention beyond normal practice.

4. NOTIFICATION OF CONCERN

4.1 Preliminary letter

The Chief Social Services Inspector will write to the Director of Social Services and the Chief Executive, with a copy to the WLGA. The letter will:

- state that it is written in accord with this protocol
- state that there appear to be grounds for serious concern
- outline the grounds for that concern
- invite officers of the authority to a meeting to discuss whether the grounds for serious concern are justified and, if so, what action may be taken.

4.2 Meeting with officers

The meeting should normally take place no sooner than ten and no later than twenty working days after receipt of the letter. (In urgent cases, a meeting may be arranged sooner.)

The meeting will usually comprise the Chief Inspector of Social Services and relevant Deputy, the Head of the Assembly's Social Care Group (or equivalent) (and/or Head of relevant Division), the Chief Executive, Director of Social Services and other relevant senior managers from the local authority. Others, such as a representative of the joint review team or District Auditor, may be invited as appropriate.

Officials and officers will discuss the grounds for concern (including any representations from the authority that these are insufficient to merit serious concern), actions the authority will take to address the concerns, and further actions the Assembly may take to deal with the concerns and/or to monitor progress.

4.3 Confirmation letter

Following the meeting, the Chief Social Services Inspector will write again to the Chief Executive and the Director of Social Services, with a copy to the WLGA.

If there is no longer any cause for serious concern, the letter will say so. Relations will continue on a basis of normal business.

If there are still grounds for serious concern, the letter will confirm this, stating the grounds, confirming any actions agreed at the meeting and any further measures to be considered by the Assembly. The Chief Executive and Director should draw this letter to the attention of elected members (usually the Leader of the Council and the senior member for social services – committee chair, cabinet member or equivalent). The Chief Inspector will inform the Minister for Health and Social Services and the Minister for

Finance, Local Government and Public Services.

5. ACTION TO DEAL WITH SERIOUS CONCERN

The choice and order of these interventions may depend on the way in which serious concern comes to light and the response of the authority.

5.1 SSIW intervention

5.1.1 Agreeing an action plan

SSIW will attempt to agree actions to be taken by the authority to resolve the concerns.

5.1.2 Monitoring

SSIW will agree with the authority a series of reports or meetings or both to monitor progress in resolving the concerns.

5.1.3 Assistance

If the authority finds it difficult to resolve the concern, SSIW will discuss with authority what advice and assistance may be available, usually through the local government organisations.

5.1.4 Additional inspection

An inspection or inspection follow-up additional to the planned programme may be undertaken to check progress.

5.2 Political intervention

5.2.1 Minister's meeting with authority

The stage at which the Assembly Minister becomes involved may depend on the way in which serious concern comes to light. When serious concern comes to light in an inspection or joint review report, or if the authority's response to a formal letter from SSIW fails to deal adequately with serious concern, the Assembly Minister may request a meeting with the Leader of the Council. This meeting is likely:

- to make clear the Minister's concern
- to seek the commitment of the Council to putting things right
- to seek agreed arrangements for a suitable action plan
- to set out how progress will be monitored

- to make clear that the Assembly Minister may consider further action if progress is not satisfactory.

5.2.2 Formal powers:

If the authority's response does not appear likely to resolve the serious concern in a reasonable time, the Assembly may use its formal powers to direct or take other action. These formal powers are seen as a last resort and will only be used if other interventions are unlikely to succeed. The Assembly will notify the local authority and the WLGA of its decision to use formal powers. Except for reasons of urgency (which would be explained in writing), the authority will be given the opportunity to make representations about the actions proposed.

5.3 Ending of intervention

In cases where a function is exercised by the National Assembly for Wales or a person acting on its behalf, the Assembly will aim to return that function to the local authority as soon as is practicable. In cases where the Assembly makes a direction with continuing force, the Assembly will aim to lift that direction as soon as is practicable. In either case the Assembly will write to the local authority and to the WLGA giving notification of the decision and reasons for it.

In cases of intervention under this protocol short of formal powers, SSIW will write to the authority, with a copy to the WLGA, when it is satisfied that there are no longer grounds for serious concern.

6 MEDIA RELATIONS AND EXCHANGE OF INFORMATION

Any announcements, publications or press releases issued in relation to any part of the procedures for intervention covered under this protocol will be subject to the agreement set out in the document *A Framework for Partnership - Wales* (paragraphs 11 and 12 *Public Announcements and Exchange of Information*). This provides that each party to the agreement will convey announcements concerning the other to the other party no later than to the media. It is the normal practice of SSIW and the joint review team to share draft press notices, for information on a confidential basis, at least a day before the embargo time.

ANNEX

Summary of formal powers available to the Assembly

Social services powers:

Guidance

Under s 7 of the Local Authority Social Services Act 1970, local authorities "shall ... act under the general guidance of" the National Assembly for Wales.

Directions

Under s 7A of the Local Authority Social Services Act 1970, every local authority "shall exercise their social services functions in accordance with such directions as may be given to them ..." by the National Assembly for Wales.

Default

Under s 7D of the Local Authority Social Services Act 1970, if the National Assembly for Wales "is satisfied that any local authority have failed, without reasonable excuse, to comply with any of their duties which are social services functions (other than a duty imposed by or under the Children Act 1989), [the Assembly] may make an order declaring that authority to be in default with respect to the duty in question." Such an order "may contain ... directions for the purpose of ensuring that the duty is complied with ...".

Under s 84 of the Children Act 1989, if the National Assembly for Wales "is satisfied that any local authority has failed, without reasonable excuse, to comply with any of the duties imposed on them by or under this Act, [the Assembly] may make an order declaring that authority to be in default with respect to that duty." Such an order "shall give the [Assembly's] reasons for making it" and "may contain ... directions for the purpose of ensuring that the duty is complied with".

Local government (best value) powers:

Direction

Under s 15 of the Local Government Act 1999, if the National Assembly for Wales is satisfied that a best value authority is failing to comply with the best value Part of the Act, it may direct the authority

- to prepare or amend a performance plan
- to follow specified procedures in relation to a performance plan
- to carry out a review of its exercise of specified functions
- to take any action considered necessary or expedient to secure its compliance with the requirements.

Default

The Assembly may also direct

- that a specified function of the authority shall be exercised by the Assembly or its nominee, and
- that the authority shall comply with any instructions of the Assembly or its nominee in relation to the exercise of that function and shall provide assistance required for the purpose of exercising the function.

Except in urgent cases, these direction and default powers should be used only after giving the authority an opportunity to make representations.

ANNEX

JUDGEMENTS IN INSPECTIONS

This paper sets out how SSIW will make overall judgements in its inspections. It closely follows the grounds for judgements developed by the joint review team, in consultation with interested parties.

Inspectors gather evidence for judgements using SSIW's own standards and criteria in main service inspections. Inspectors may also refer to the joint review criteria (appended) in coming to their overall conclusions.

Note:

The papers in this annex are currently valid. They will be reviewed in the course of revisions to joint review and inspection methodologies, in consultation with interested parties.

How well are people served?

Authorities will be judged not to be serving people well [poor service] if they have:

- significant areas with unallocated statutory work
- poor access arrangements and/or long waits for assessment and/or services
- failures to complete their statutory reviews in a timely manner
- failures to deliver services in a timely manner.

Authorities will be judged to be serving some people well [fair service] if they have:

- basic assessment and service delivery systems in place with some weaker areas
- some areas where there is poor recording and/or unfocussed work

- some costly services and a limit of choice of services to meet people's needs
- developments that are seen as bolt-on with isolated pockets of good practice not affecting the whole system
- patchy collaboration with other organisations in delivering seamless services
- higher use of residential care and institutional building-based solutions to meet people's needs, rather than community-based individualised packages of care.

Authorities will be judged to be serving most people well [good service] if they have:

- basically sound systems for assessment and delivery of care, paying attention to the balance between safety and independence
- strong partnerships developing with a range of other organisations
- services geared to deliver specific outcomes for individuals as defined through the assessment process
- statutory work completed within timescales.

Authorities will be judged to be serving people well overall [excellent service] if they have:

- strongly managed departments that combine a professional approach to the work with evidence of positive outcomes for service users; clear focus for work that is undertaken
- strong partnerships with partner organisations who together provide a wide range of accessible and suitable services to meet needs
- an important sense from service users that their contributions are valued and that they feel empowered within the processes
- clear targeting of scarce resources.

What are the current prospects for improvement?

Authorities will be judged to have poor prospects for improvement [no] if they have:

- a lack of political leadership, corporate vision and/or managerial leadership
- some uncertainties about their financial viability
- little evidence of improvement to address serious shortfalls
- self-analysis [including in Best Value reviews] that does not recognise shortfalls.

Authorities will be judged to have uncertain prospects [unlikely] if they have:

- leadership and political vision that is not addressing the challenges faced by the authority
- slow or poor start to the implementation of Best Value reviews
- vision that is not owned or recognised by stakeholders or staff

- only patchy areas of improvement
- self-analysis that misses out some crucial areas requiring action.

Authorities will be judged to have promising prospects [likely] if they have:

- strong political leadership supported by a corporate agenda and managerial leadership that is delivering improvements in services (senior managers must demonstrate an interest in standards of practice and service delivery)
- accurate self-analysis
- a promising start to Best Value reviews
- some workforce planning
- inclusive policies that are seen in practice to be reaching out to the whole community.

Authorities will be judged to have excellent prospects [yes] if they have:

- clear evidence of significant improvements over the past two years
- strong strategic partnerships with other organisations
- clear vision and leadership that are owned by all
- workforce planning with strategic partners
- sound financial base on which to build
- excellent outcomes from Best Value reviews
- clear involvement with the community in developing the social care agenda
- excellent use of resources.

Joint review criteria for judgements

HOW WELL ARE PEOPLE SERVED?

The authority can show that it has:

Essential (carry a higher weighting)

1. Effective arrangements to ensure that they meet the requirements of statute, regulations and guidance. Policies and procedures to identify and address risk. Arrangements to ensure that all vulnerable people are allocated to a key worker.

2. Services that enable people to live independent lives in as safe as an environment as it is reasonable given their personal circumstances.

3. Effective assessment and care planning which focus on outcomes for service users with appropriate review mechanisms in place.

Evidence that service users have a choice, where appropriate, in the services that they are to receive.

Desirable

4. Good quality services provided or commissioned that can demonstrate best value. Residential care is "fit for purpose" and meets registration standards.

5. An emphasis of achievement of National and Local priorities and demonstrable progress in these areas.

6. Proper access arrangements to services that are well publicised, easy and fair. A co-ordinated approach between agencies so that users experience seamless access and delivery of services.

A way to ensure that access is offered in a consistent manner across the authority.

7. Strategic commissioning that is inclusive. Evidence that decisions are influenced by all available information and a Best Value approach is pursued for selecting providers.

8. Practice standards that are understood by the public and that performance against these standards is monitored.

9. A range of services and a method of delivery that recognises and reflects the strengths and diversity of the whole community.

10. A commitment to user and carer participation in shaping services at both an individual and a group level.

A culture that empowers service users in making arrangements for the delivery of care.

Services that are developed in partnership with key stakeholders including users and carers.

11. A well-trained and committed staff group supported by effective and efficient systems.

PROSPECTS FOR IMPROVEMENT

How well placed is the Authority to improve given its past records, its current systems and its capacity to address identified problems?

The Authority has:

Essential (Carry a higher weighting)

1. A proven track record (over at least the last 2 years) of identifying strengths and weaknesses in service areas and evidence of taking action to address weaknesses.
2. Awareness of its strengths and areas for development evidenced through the Position Statement.
3. The ability to respond quickly and effectively to identified weaknesses; with demonstrable outcomes for service users.
4. Effective Best Value Reviews that are used to identify strategic priorities and effective change. Demonstrable progress in taking action and monitoring outcomes following BVRs.
5. Evidence of action and follow-up on other audits, inspections and external evaluations and reviews.
6. Demonstrable improvements evidenced in national and local performance assessment frameworks. Evidence that these improvements will be sustained. Where performance is already in the top quartile there is activity in place to ensure that this is sustained or further improved.
7. Effective political leadership that has a clear understanding of the issues effecting social care and mechanisms to both set a strategic direction for the future and to monitor performance.
8. Effective managerial leadership, that drives clear strategies and delivers outcomes to meet the agreed social care needs of local people.

Desirable

9. Strategies and actions that are shared with key partners and stakeholders. Social Services strategies (and actions) that link corporate strategies (and actions) and community plans. Partnerships that appear sound with a solid basis present for joint working and demonstrable progress already achieved.
10. Sound arrangements for financial management including medium term financial strategies, budget control, budget management and unit costing. No surprises in year, because financial and activity data are linked and trends closely monitored. A track record of taking appropriate action when risks are discovered.

Financial strategies that are linked to service and corporate strategies.

Mechanisms in place to test and evaluate efficient use of resources.

11. Evidence that action is being taken to address future human resource requirements.

12. Successful strategies with visible outcomes already in place to promote a policy of equal opportunity/valuing diversity for both service users and staff.