

Health and Social Care Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
2 May 2013

Meeting time:
09:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

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Agenda

1 Introductions, apologies and substitutions

2 Social Services and Well-being (Wales) Bill: Evidence Session 2 (09:00 – 10:00) (Pages 1 – 45) Carers Wales

Keith Bowen – Director, Carers Wales and Chair of the Welsh Carers Alliance

Wales Alliance for Mental Health

Ruth Coombs – Wales Alliance for Mental Health
Ewan Hilton – Wales Alliance for Mental Health

Disability Wales

Rhian Davies – Chief Executive
Paul Swann – Policy Officer

3 Social Services and Well-being (Wales) Bill: Evidence Session 2 (10:00 – 11:00) (Pages 46 – 116) Age Cymru

Victoria Lloyd – Director of Influencing and Programme Development

Children in Wales

Catriona Williams – Chief Executive, Children in Wales

British Association of Social Workers Cymru

Robin Moulster – BASW Cymru Manager

Association of Directors of Social Services

Parry Davies – Director of Social Services, Ceredigion County Council

Sally Ellis – Corporate Director of Social Services and Housing, Denbighshire County Council

Welsh Local Government Association

Martyn Palfreman – Head of Directorate

(Break 11:00 – 11:10)

**4 Social Services and Well-being (Wales) Bill: Evidence Session 2
(11:10 – 12:15)**

Adult Safeguarding Boards

Jake Morgan – Director of Social Care and Housing, Pembrokeshire County Council

Jenny Williams – Director of Social Services, Conwy County Borough Council

Children Safeguarding Boards

Simon Birch, Chief Officer Social Care, Health and Housing, Monmouthshire County Council

Sue Cooper – Head of Adult Social Care, Bridgend County Borough Council

Welsh Local Government Association

Emily Warren – Social Services Policy Lead

(Break 12:15 – 13:00)

**5 Social Services and Well-being (Wales) Bill: Evidence Session 2
(13:00 – 13:45) (Pages 117 – 118)**

Association of Chief Police Officers Cymru

Jeff Farrar – Deputy Chief Constable Gwent Police

National Offender Management Service

Richard Booty – Governing Governor HMP Cardiff

Probation Trust Wales

Ian Barrow – Director of Operations

6 Social Services and Well-being (Wales) Bill: Evidence Session 2

(13:45 – 14:30) (Pages 119 – 130)
Older People’s Commissioner for Wales

Anna Buchanan – Director of Protection, Scrutiny and Human Rights

(Break 14:30 – 14:35)

7 Social Services and Well-being (Wales) Bill: Evidence Session 2
(14:35 – 15:15) (Pages 131 – 136)

Local Health Boards

Michelle Denwood, Deputy Director of Nursing and Safeguarding, Betsi Cadwaladr University Health Board

8 Social Services and Well-being (Wales) Bill: Evidences Session 2
(15:15 – 16:00) (Pages 137 – 148)

Children’s Commissioner for Wales

Keith Towler – Children’s Commissioner

Dr Sam Clutton – Policy Officer

9 Minutes of meetings held on 18 and 24 April 2013 (Pages 149 – 155)

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

Items 1 and 2 for the meeting on 8 May 2013.

Agenda Item 2

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 23 - Carers Wales

CARERS Wales
the voice of carers

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Consultation Response

Social Services and Well-being (Wales) Bill

Consultation questions

- 1. Is there a need for a Bill to provide a single Act for Wales that brings together local authorities and partners duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer?**

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

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

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

The conflict between health and social care is historic. In our opinion the Bill seems to miss this valuable opportunity to close the gap between the political rhetoric to drive forward through legislation this joint working and close this organisational

divide. We would like to see the law mandated to encourage more shared working, shared budgets and encourage more joint commissioning of services.

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

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

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

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

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

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

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

Well-being and prevention

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

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

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

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

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

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

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

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

Assessing the needs of individuals

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

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

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

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

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

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

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer?**
- 7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

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

Carers Wales
14th March 2013

ⁱ Welsh Institute for Health and Social Care Data from 2011 census

ⁱⁱ Valuing carers – Carers UK May 2011

ⁱⁱⁱ Census 2011

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

Wales Carers Alliance response

15.03.13.

Consultation questions

- 1. Is there a need for a Bill to provide a single Act for Wales that brings together local authorities and partners duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer?**

The Wales Carers Alliance welcomes this once in a generation opportunity to provide a single Act for Wales that brings together local authorities and partners duties and functions in relation to improving the well-being of carers and people who need care and support. We support the high profile and status given to carers throughout the Bill and welcome the clear duty for carers to be treated in the same way as the person needing support. This recognition acknowledges the key role played by carers in social care across Wales and offers the potential to transform the way carers are supported by the statutory agencies.

We fail to understand therefore the rationale behind excluding carers from the positive introduction of portability of assessment and care plans from one local authority to another. The exclusion of carers from this section of the Bill is inconsistent with the stated aim of treating carers in the same way as the person needing support and we call for carers to be fully included the portability of assessment and care plans, as recommended by the Dilnot Commission (Fairer Care Funding, The Report of the Commission on Funding of Care and Support 2011).

There is currently a poor knowledge and understanding of existing legislation amongst social care practitioners across Wales so a single Act could provide a valuable impetus to the delivery of better care and support services. The Alliance however, has some concerns about the extent to which the Bill as currently drafted fully integrates existing legislation which has provided the legal framework for social care for a considerable time. It will be vital to make sure that the relationship between the new legislation and previous laws is made explicit, so that the implications of changing or removing key duties and definitions is clear and understood e.g. definition of a disabled child (Children's Act 1989 or duty to provide aids and adaptations (Chronically Sick and Disabled Persons Act 1970).

The Alliance appreciates and supports the ambitious aims and objectives of the Bill but are not convinced that the Bill as it currently stands does enough to address many of the longstanding legal barriers to greater cooperation and coordination between health and social services. There are numerous mechanisms in place currently to encourage and enable greater joint working between health and social services which are not fully taken up and the Bill does not seem to substantially change the legal status quo in this area. If this Bill is to achieve its stated aims and objectives we would call on the Welsh Government to strengthen the duty on health and social Services to cooperate.

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

The Wales Carers Alliance welcomes the ambitious aims and objectives of the Bill outlined in the Explanatory Memorandum in particular the full inclusion of carers, the emphasis on voice and control, the focus on well-being and prevention and promoting user-led and socially orientated services.

Our key concern would be that the wording of the Bill as currently drafted does not clearly describe how these admirable aims will affect carers and the people they care for on an individual basis. The sections on well-being and prevention tend to be general rather than specific to individuals and therefore do not clearly explain how the new law will facilitate the flow between universal, preventative and targeted care and support. We do not feel that the Bill is prescriptive enough on preventative services and well-being at an individual level e.g. who will take the decision to offer preventative services or will there be another level of assessment in addition to those already outlined and will there be a charge? This could potentially work against the objective of transforming social care and possibly end up reinforcing a narrow service led approach.

We are concerned that we have not had enough information on how eligibility thresholds will be formulated and at what level will needs be set to become eligible for services. In our view, if the criteria for eligibility is set too high then this this will have a negative impact on the aspirations for prevention and well-being contained within the Bill. Not everyone will want or need contact with social services or have a formal assessment to access services. For those individuals who do request assessments, if eligibility criteria is set too high then preventative measures and services may not be provided until that individual reaches a crisis point, which happens all too often at the moment. The lack of information on eligibility criteria is a serious cause for concern and as it stands the current wording of the Bill could easily be read to facilitate increased gatekeeping by local authorities.

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Members:

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer's Society, Care & Repair Cymru, Carers Wales, Children in Wales, Christian Lewis Trust, Contact a Family Wales, Hafal, Learning Disability Wales, Macmillan Cancer Support, MS Society Wales, National Autistic Society Cymru, Parkinson's UK, SNAP Cymru, The Carers Trust, The Stroke Association

- 3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

To deliver sustainable social services it is essential to have a thorough knowledge and understanding of existing costs and future challenges. The Alliance have reservations about the current Regulatory Impact Assessment provided in the Explanatory Memorandum and would call for a much more thorough analysis of the real cost implications of the Bill. We are concerned that the costs of the new system may have been under-estimated and given the opportunities for charging contained within the Bill we would be anxious that existing and additional costs will increasingly be transferred onto service users and carers.

The Alliance has particular concerns over the sections in the Bill on charging for services to carers as well as charges for preventative services and the provision of information and advice. The possibility of charging for information and advice seems particularly perverse and would seem to undermine the transformative agenda contained in the Bill.

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

The Wales Carers Alliance welcomes the high profile and status given to carers throughout the Bill, we believe that this provides a real opportunity to transform existing social services provision by putting carers at the heart of social care in Wales. For this change to occur it will be vital that carers, individually and collectively, are seen as equal partners in the provision of care with social services and health, whilst also having a right to a life of their own and a real choice about whether to continue caring or not. We would hope that the Bill will be a catalyst for change in the way that services are commissioned and provided. We would hope that social services embrace the Bill and consult with a wide range of individuals including carers within their own area about what sort of services they would wish to see. The impact would be that people are put at the heart of services and that any services are provided or commissioned around their needs rather than the other way around where people are made to fit into services that already exist. The sections on voice and control in the Bill at an individual and collective level will need to be strengthened to ensure this change in services takes place across Wales.

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Members:

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer's Society, Care & Repair Cymru, Carers Wales, Children in Wales, Christian Lewis Trust, Contact a Family Wales, Hafal, Learning Disability Wales, Macmillan Cancer Support, MS Society Wales, National Autistic Society Cymru, Parkinson's UK, SNAP Cymru, The Carers Trust, The Stroke Association

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

The Wales Carers Alliance thinks that the main barriers to implementing the provisions of the Bill will be the increasing demands on social care due to demographic changes, the associated accumulative costs and limited financial resources to meet demand. However other barriers are inherent in the Bill itself such as; the lack of a new legal framework to increase joint working between health and social services, unclear definition and description of prevention and preventative services and uncertainty over eligibility criteria. For the Bill to be successful it will be important for these key areas to be clarified and strengthened.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer?

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answer to both these questions there seems to be considerable amount of detail which has either been left to regulations at a later date or to the powers for Welsh Ministers to make subordinate legislation. The Wales Carers Alliance would be concerned that too much detail has been left to regulation and subordinate legislation and we would hope that much of this information will become clearer through the passage of the Bill.

Keith Bowen

Chair of the Wales Carers Alliance.



Health and Social Services Committee consultation on the Social Services and Well-Being (Wales) Bill

Response from Mind Cymru

Introduction

Mind is the leading mental health charity in England and Wales. Mind Cymru is Mind's presence in Wales.

Mind Cymru welcomes the opportunity to contribute to this consultation process. The views expressed within this response are the views of Mind Cymru and are informed by people with direct experience of mental distress.

Mind Cymru is experienced in matters of legislation affecting people with experience of mental health problems, living in Wales. Example of this are the facilitation of 13 events across Wales, in community settings, hospitals, secure units and prisons, to inform the Mental Health Act Code of Practice for Wales 2007, the consultation on Regulations for the Mental Health (Wales) Measure 2010 and the Welsh Government Consultation on this Bill 2012.

Mind Cymru's key messages are that:

- People with experience of mental health problems inform all that we do.
- Because people with mental health problems inform all that we do, we know what the real issues are.
- We are determined to improve society's recognition, understanding and acceptance of people with mental health problems.
- We value diversity and ensure inclusion is at the heart of our work.

General Comments

Mind Cymru welcomes the introduction of the Social Services and Wellbeing (Wales) Bill (the Bill) as it will enable a number of positive developments. We particularly welcome the emphasis on prevention and wellbeing and that of cooperative approaches. However there are still shortcomings which need to be addressed at this stage to enable the Bill to match the aspirations of *Sustainable Social Services: A Framework for Action*.

Mind Cymru is a signatory to the joint response by 25 third sector and citizen organisations, representing the interests of thousands of people with diverse backgrounds across Wales. A summary of this response is contained in Appendix 1, page 8 below.

Our individual response has focussed on some additional aspects of the Bill, highlighting key issues affecting the lives of people with mental health problems.

Overarching Principles

1. Definition of Disability

Mind Cymru supports the need to base the Bill on the principles of the Social Model of Disability (see Appendix 1 point 1).

Mental health problems are often fluctuating, with different individuals experiencing different cycles of good and poor mental health and wellbeing.

They often “fall out” of definitions of disability on the grounds of long-term adverse effect, due to this being given a fixed time interpretation.

1 in 4 people will experience a mental health problem in any one year, however of the number of people in Wales aged 18-64 in receipt of social services on 31 March 2012 those identified as having mental health problems comprised only 6.96%, compared to 39% for those with a learning disability¹.

Building the Bill around the Social Model of Disability will support people with mental health problems access the support they need to break down the barriers they face to maintaining their health and wellbeing.

¹ <https://stats.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Adult-Services/Service-Provision/AdultsReceivingServices-by-LocalAuthority-ClientCategory-Age> downloaded 2 March 2013

2. Synergy with Existing Legislation and Practice

There is recently introduced new legislation² and strategy³ which support people in Wales with mental health problems. It is vitally important that the Bill complements and enhances opportunities and services for people with mental health problems and is not counter intuitive or counter productive. Currently there is insufficient evidence that these major developments have been taken into account when drafting the Bill.

Mind Cymru asks the Committee to seek evidence based assurance that both The Mental Health (Wales) Measure 2010 and Together for Mental Health have been fully considered and have informed the Bill, and will inform the Code of Practice and Regulations.

2. Wellbeing

Mind Cymru sees the Bill as an ideal opportunity to give direction to wider social and community partnership working both across local authority functions and in meaningful partnerships with Health Boards, third sector organisations, community initiatives and individuals, to promote and develop resilience. It is vital to ensure a sound practical application of wellbeing approaches across health, social care and the wider determinants of health and wellbeing.

The New Economics Foundation's Five Ways to Wellbeing⁴ gives an effective model on which to base such partnerships.

Mind Cymru asks the Committee to consider embodying the Five Ways to Wellbeing on the face of the Bill, or at the very least in the Code of Practice.

4. Co-production

The Bill is an opportunity to transform health, social care and wellbeing in Wales and as such must adopt a genuine co-production approach across assessment, care and support and care planning with the citizen at the centre, (see Appendix 1 point 3).

Wales has a diverse population across urban, semi rural and rural settings. It is vital that co-production includes genuine participation of marginalised individuals and groups, including the seldom heard, or "hard to engage".

² Mental Health (Wales) Measure 2010

³ Together for Mental Health 2012

⁴ <http://www.neweconomics.org/projects/five-ways-well-being>

In developing a co-produced model Mind Cymru asks the Committee to consider current examples of co-production such as Together for Mental Health building outcomes 'through the service user lens'.

5. Reablement

Currently reablement is not addressed in the Bill.

Research has shown that reablement services **enable people to live at home longer and reduce care costs**. As Welsh services face potentially greater demand alongside increased financial pressures, there is a compelling moral and financial argument to ensure these services are consistently available across Wales. The Social Care Institute for Excellence (SCIE) identifies that "*Reablement is key because it appears to be welcomed by people receiving the service, and represents an investment that may produce savings*"⁵.

Mind Cymru asks the Committee to consider seeking an amendment to include reablement on the face of the Bill.

6. Code of Practice and Regulations

The Bill refers to a Code of Practice and Regulations. Evidence from both the Mental Health Act Code of Practice for Wales 2007 and the Mental Health Measure Code of Practice 2010 demonstrate the need for an effective, robust and accessible Code of Practice, co-produced with individuals and a range of organisations, which is available from the point of implementation of law.

Mind Cymru asks the Committee to consider seeking an amendment to include the need for the Code of Practice to be co-produced and published concurrently with the Bill.

7. Direct Payments

Mind Cymru welcomes commitments to extending the availability of Direct Payments (see Appendix 1 points 4a and 4b). People with mental health problems have the lowest take up of direct payments in Wales. Building co-operative models of support, with citizens at the centre, which take into account the particular barriers faced by people with mental health problems and seek to find solutions to enable people to break down those barriers is vital.

There needs to be put in place simple systems of support and brokerage, which are accessible to people, including those with mental health problems. The role of care co-ordinators and other supporters is key to meaningful participation in this. Adopting a joined up approach to assessment and care

⁵ Social Care Institute for Excellence (SCIE) (2011) [At a glance 46: Reablement: A key role for occupational therapists](#) London: SCIE

planning across health and social care should assist in this regard, (see also point 10 below).

People should have access to visionary, person centred support and care, encompassing a wide range of provision beyond traditional narrowly focused 'care packages', whether they choose to take up direct payments or choose not to do so. It will be important to ensure that people can access real opportunities to do things differently and these are not narrowed, or eroded by cost constraints. For example riding, or cycling activities for disabled people can make a big positive difference to wellbeing.

Mind Cymru seeks assurances that those who do not wish to take up Direct Payments are not 'left behind', or offered poorer quality services and support.

Mind Cymru has heard of inconsistent approaches to provision of similar services through Local Authority commissioned services. For example one person being advised not to use a Direct Payment approach as they would have to make a financial contribution, whereas if the person accessed the same services through a Spot Contract they would not. These confusions form particularly challenging barriers for people with mental health problems and there must be access to good quality advice, support and advocacy to assist disabled people navigate through life.

8. Part 1 Key Terms 2 Meaning of "well-being"

(4) (b) participation in work.

Mind Cymru fully appreciates the positive impact that work can have on mental health and wellbeing. However it is good work that is good for your wellbeing, not any work. For work to impact positively it must be appropriate to the person's needs, skill match and capacity.

Often people with mental health problems have low self esteem and others have low expectations of them:

"When I finished my MSC in Electronic Engineering, the person at the job centre could not understand that I did not want a job stacking shelves".

In addition, people with mental health problems are often furthest away from the workplace. The definition of wellbeing should include access to meaningful activities.

Mind Cymru asks the Committee to consider seeking an amendment to the Bill to include (4) (b) participation in appropriate work and (4) (c) meaningful activity.

9. Part 2 General Functions

6 Preventative services

6 (6) (c) disproportionate expenditure

Mind Cymru welcomes the emphasis on early intervention and prevention services, which can support the development of resilience, both at individual and family level and in whole communities. We are concerned that the inclusion of 6 (6) (c) is likely to lead to services being considered in isolation, and cost driven, which is unhelpful at least and counterintuitive. It is widely recognised that investing in early intervention and prevention saves money. However some of these are evident over time.

“In some cases the pay-offs are spread over many years. Most obviously this is the case for programmes dealing with childhood mental health problems, which in the absence of intervention have a strong tendency to persist throughout childhood and adolescence into adult life. However, the overall scale of economic pay-offs from these interventions is generally such that their costs are fully recovered within a relatively short period of time”⁶.

Mind Cymru asks the Committee to consider an amendment to remove Part 2 6 (6) (c) from the Bill.

10. Part 3 Assessing the Needs of Individuals

38 Care and support plans and support plans

In order for people facing barriers to maintaining their health and wellbeing, including people with mental health problems, accurate and holistic care plans should be produced and maintained with regular review in partnership with the person facing such barriers.

Many people in such positions will have a range of agencies involved in their assessment and planning. The Bill needs to ensure a joined up approach to planning and assessment in order to maximise engagement and minimise duplication.

⁶ Mental Health Promotion and Prevention: the Economic Case Martin Knapp, David McDaid and Michael Parsonage (editors) Personal Social Services Research Unit, London School of Economics and Political Science January 2011, p43

The 8 measures based on areas of life used in mental health Care and Treatment Plans should be considered as part of the mix to ensure greater joined up support in overcoming barriers faced by people in all aspects of their lives.

The 8 areas are

- Accommodation
- Education and Training
- Finance and Money
- Medical treatment including psychological interventions
- Parenting or caring relationships
- Personal care and physical wellbeing
- Social, cultural and spiritual
- Work and occupation

For those people in secondary mental health services, who have an existing care and treatment plan enshrined by law in the Mental Health (Wales) Measure 2010, there should be one joined up plan, not different plans for health and social care. This also allows for greater portability of plans.

Mind Cymru asks the Committee to consider an amendment to enshrine the eight areas of life in care planning on the face of the Bill.

11. Part 7 Safeguarding

Vulnerable people including adults with mental health problems and young carers of adults with mental health problems must at all times be treated with respect and dignity, without fear of violence, mistrust or neglect.

Scope, definitions and duties around safeguarding must not focus on how practitioners can assess and make decisions about an individual's level of risk and fail to take account of service users' own perceptions of their vulnerability.

An appropriate definition of vulnerability can only be reached by taking the views of those deemed to be at risk as its starting point. In Mind's consultation, in 2008, 35 per cent of respondents considered themselves to be 'vulnerable' or 'at risk' of abuse all of the time, whilst 49 per cent felt vulnerable or at risk sometimes. Only 16 per cent of respondents (13 out of 83) said they did not feel vulnerable.

Many respondents explicitly stated they felt vulnerable because of their mental health. However, a strong message that came out of focus group

discussions was that people's sense of vulnerability is not constant, but may fluctuate in line with their condition. There was a firm resistance to being defined as 'vulnerable' automatically by virtue of a diagnosis. Respondents agreed that your level of vulnerability will vary depending on the severity of your problem at any one time, as well as a number of other factors, such as who is providing your care, what other people you come into contact with regularly, whether you are on medication, and so on.

Some people with mental health problems have told Mind about not being referred to adult protection teams, because the current definition is often interpreted as those who meet the high levels of need required for access to local authority social care services. (Mind (2008) *Health Select Committee Inquiry into Patient Safety: Response from Mind*). Our research shows that people may not meet social care eligibility criteria but may still feel vulnerable because of their mental health problems. The definition of vulnerable adult must clearly include people with mental health problems. However, Mind is concerned that any duties and their interpretation are sensitive to the fluctuating needs of people with experience of mental distress and do not prejudice their circumstances.

It is important that this is not interpreted as a need to sustain the current risk averse culture in Social Services (see Appendix 1 point 8).

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Appendix 1

Introduction and Executive Summary of a joint response to the Health and Social Care Committee Consultation on the Social Services and Well-being (Wales) Bill

Introduction

We are a partnership of 25 third sector and citizen organisations, representing the interests of thousands of people with diverse backgrounds across Wales (see Annex).

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

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

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

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

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

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

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

Executive Summary

The partner organisations call upon the Committee to:

1. recommend an amendment to the SSW Bill to replace the current Medical Model definition of disability with a Social Model definition.
2. recommend an amendment to the SSW Bill to incorporate enjoyment of the right to Independent Living into the meaning of well-being.
3. obtain assurance from WG that the Code of Practice will clarify its commitment to transforming Social Services by supporting development of a co-produced model of Citizen Directed Support.
 - 4a. consider how the Social Care (Self-directed Support) (Scotland) Act 2013 may be drawn upon to inform further development of the SSW Bill, e.g. by making Direct Payments the default method of administering care and support services.
 - 4b. recommend to Welsh Government that new models of support should be actively developed which place control with citizens, including within collective approaches to support provision.
5. recommend an amendment to the SSW Bill to require local authorities to ensure access to Independent Advocacy and peer support, as well as information, advice and assistance.
6. clarify whether an Equality Impact Assessment has been carried out on Section 54 of the SSW Bill, and to seek an amendment to the SSW Bill to prevent local authorities "charging for preventative services and information, advice and assistance."
7. obtain confirmation that the £50 per week cap on charges for domiciliary care and support will be retained under new regulations.

8. recommend an amendment to the SSW Bill to acknowledge the right of individuals to take risks, to take full account of the positive use of the Mental Capacity Act requirements, and to ensure that risk is managed on an individual basis.
9. bring the Talking Points Personal Outcomes Approach, as developed by the I Matter, We Matter campaign, to the attention of WG, with a view to incorporating its principles and practice into development of the National Outcomes Framework.
10. obtain an assurance from WG that the Code of Practice will establish Co-production as the preferred method of delivering a genuinely transformed Social Services across Wales.

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

Introduction

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

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

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

OVERARCHING PRINCIPLES

1. Definition of Disability

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

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

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

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

gives practical effect to the Social Model of Disability which the

National Assembly for Wales adopted in 2002. This recognises that people are disabled by the barriers created by society, and that **the guiding principles of policy** should be:

- to remove these barriers and create an enabling society;
- to promote the rights and full inclusion of disabled and older people (emphasis added).

Within the Social Model disability is defined as:

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

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

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

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

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

2. Independent Living

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

The Framework adopts the following definition of Independent Living:

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

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

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

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

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

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

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

the definition of well-being.

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

All people with a learning disability are full citizens, equal in status and value to other citizens of the same age. They have the same rights to:

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

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

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

ACCESS TO SERVICES

3. Citizen Directed Support

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

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

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

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

- by putting citizens in control of all aspects of their support arrangements, to the extent that they are comfortable with, by providing a range of options for administering support packages, including Direct Payments and co-operative models
- by focusing on identifying and removing the barriers that prevent disabled and older citizens from actively participating in their communities, and
- by supporting citizens to establish fulfilling relationships with everyone in their lives, and in particular ensuring that relationships with support workers are empathic and appropriate.

Within this model of CDS, the role of local authorities and social workers will shift from controlling and allocating available resources to community building and facilitating Independent Living, with the aim of enabling

citizens to achieve the outcomes they choose for themselves.

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

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

4. Direct Payments

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

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

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

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

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

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

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

Option 1 The making of a direct payment by the local authority to the supported person for the provision of support.

Option 2 The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.

Option 3 The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.

Option 4 The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

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

The legislation requires that local authorities must also:

- take steps to promote the availability of the options for self-directed support
- give effect to the option for self-directed support chosen by the

person.

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

Local authorities are also required:

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

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

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

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

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

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

The DPSSN's paper concludes that:

Direct Payments should be actively promoted as the default option for all local authorities because they are cost effective and represent positive alternatives for all stakeholders, including:

- increased choice and control
- increased satisfaction
- opportunities for innovative and creative citizen led solutions
- facilitative of the "outcomes" focus of Citizen Directed Support
- purposeful use of resources to overcome the barriers to social inclusion
- increased community involvement and active participation for all citizens
- cost effective solutions which are more sustainable long term.

Direct Payments support the Social Model of Disability by viewing older and disabled people as active participants in their communities who have control of their lives, rather than passive long-term recipients of social care.

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

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

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

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

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

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

We also call upon the Committee to recommend to Welsh Government that new models of support should be actively developed which place control with citizens, including within collective approaches to support provision.

5. Independent Advocacy

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

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

These four services have different but equally important roles in strengthening the citizen's voice. Whilst provision of information and advice is addressed in the SSW Bill (together with "assistance in accessing care and support"), and has been subject to a recent WG

review, Independent Advocacy and peer support services have not been included.

Independent Advocacy is:

A service provided by independent organisations set up for the specific purpose of enabling people who are unable to make their voice heard, or who may communicate through alternative methods, to clarify their options, make choices and express their wishes and feelings.

Advocates support their partner and, when necessary, speak on their behalf so that they feel they've been fully heard, understood and included in decision making processes.

Advocacy also helps to ensure that an individuals' human rights are fully respected, that they obtain the services they need and receive their full entitlements.

Independent advocacy may support individuals to self-advocate or assist the development of self advocacy groups.

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

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

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

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

Sustainable Social Services: A Framework for Action stated:

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

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

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

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

Furthermore, WG’s own Strategic Equality Objectives include:

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

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

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

6. Charging for preventive services

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

We believe in the principle that charging for services which aim to

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

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

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

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

7. Charging and Financial Assessment

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

We assume that this will be incorporated into the regulations but seek

reassurance that the £50 cap will not be abolished when the existing Social Care Charges (Wales) Measure is repealed.

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

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

SAFEGUARDING

8. Risk

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

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

The culture and ethos surrounding risk and rights, both in wider society and within individual services, is risk-averse, with a tendency to blame individuals when something goes wrong...the overpowering culture is for individuals to fear standing up for their (or other people’s) rights.

A significant fear for many people, particularly at this time of welfare reform and service cuts, reviews and reassessments, is the fear of losing their independence...Several people supported the view that the right to independent living for disabled people should be enshrined in law.

The paper acknowledges that “The landscape surrounding risk and rights remains immensely complex”. Because one person’s choices and risks may not be appropriate for others it is vital to ensure that risks are managed on an individual basis and are not subject to blanket regulations designed to protect agencies rather than service recipients. Individuals should be enabled to make fully informed choices about risk

taking, ensuring that they can live the life of their choosing, and giving them the same rights as everyone else.

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

SOCIAL SERVICES FUNCTIONS

9. National Outcomes Framework

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

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

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

The project has conducted in-depth research, gathered a wealth of evidence and developed clear, practical guidance on implementing a citizen-led approach to achieving personal outcomes across social

services and health. Talking Points supports a bottom up, relationship centred approach which contrasts significantly with the top down, performance focused Results Based Accountability (RBA) approach.

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

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

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

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

A briefing by Talking Points states:

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

We propose that WG should consider incorporating the Talking Points

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

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

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

10. Co-production

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

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

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

1. **Recognising people as assets:** seeing people as equal partners in the design and delivery of services, not passive recipients of – or worse, burdens on – public services.
2. **Building on people’s existing capabilities:** rather than starting with people’s needs (the traditional deficit model), co-produced services start with peoples capabilities and look for opportunities to help make these flourish.
3. **Mutuality and reciprocity:** co-production is about a mutual and reciprocal partnership, where professionals and people who use services come together in an interdependent relationship recognising that each are invaluable to producing effective services and improving outcomes.
4. **Peer support networks:** engaging peer and personal networks alongside professionals as the best way of transferring knowledge and supporting change.
5. **Blurring distinctions:** blurring the distinction between professionals and recipients, and between producers and consumers of services, by reconfiguring the way services are developed and delivered.
6. **Facilitating rather than delivering:** enabling professionals to become facilitators and catalysts of change rather than providers of services.

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

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

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

References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annex

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

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

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Consultation Response

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

March 2013

Introduction

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the Committee's consultation on the Social Services and Well-being (Wales) Bill. We are active members of the Social Services and Well-being Bill Advisory Group, the Welsh Reablement Alliance and the Wales Carers Alliance, and endorse the joint responses produced by these groups.

Summary

In order to achieve the positive ambitions of the Bill and deliver real benefits to the people in Wales, we believe:

- Access to independent advocacy support must be included in the Bill to deliver voice and control – this is particularly crucial for adults at risk of abuse
- The 'adults at risk' definition should be revised, and care and support needs must not be a pre-requisite in the definition
- Clarity is needed in a number of areas, particularly how assessment, preventative services, eligibility and charging will work together
- Further detail is needed on the intentions for the eligibility threshold – this will have one of the biggest impacts on sustainability and individual outcomes
- General principles should be added to the face of the Bill, a crucial principle being to actively involve the person and their carer throughout the process

Questions

1. **Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

Yes. We believe there is a clear need to simplify, consolidate and in some cases modernise

existing legislation into one statute, and we welcome the focus on improving wellbeing, both of people who need care and support and their carers.

However we do have reservations that these positive intentions may not be achieved with the current drafting of the Bill.

There is a lack of clarity in several sections which need to be resolved in order for the Bill to meet its stated aims. For example, it is not clear who would have access to preventative services, i.e. at what point a person will be deemed to have 'care and support' needs and how this will promote real prevention and early intervention.

The Bill needs to identify more clearly the steps that are envisaged to provide proportionate support to people, and the relationship between preventative services, assessment and the eligibility framework. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences. We note that the proposals for preventative services will not bring benefits if the threshold for accessing them is set too high.

The Bill contains a list of purposes for preventative services which are very process-driven rather than person centred; the focus should be improving wellbeing and quality of life for individuals. As members of the Welsh Reablement Alliance, we would like to see a reference to promoting enablement on the face of the Bill to ensure that preventative services are outcome focused. We welcome the powers to prescribe partnership arrangements between social services and health boards; (part 9, chapter 2), but we would suggest that such partnerships should also incorporate housing departments given the clear link between built environment and personal health.

Despite positive intentions, the wording is not strong enough on the need for a person centred approach. We believe the Bill must include provisions that require local authorities to actively involve the person throughout their experience of care and support services - please see our response to Question 2 for more detail.

We share the advisory group's concerns about whether all appropriate existing statutes have been properly considered for repeal and consolidation, given that the list of repeals is currently incomplete. For example, there is particular concern and uncertainty around the Chronically Sick and Disabled Persons Act 1970.

We note that it is important to have a standard definition of wellbeing across the Welsh Government, and for the Bill to reference other relevant policy and legislation such as the Framework for Independent Living, and the development of the Strategy for Older People.

We also note the White Paper for the Sustainable Development Bill aims to enhance: 'economic, social and environmental wellbeing of people and communities', but contains no reference to this Bill. We would hope that there was cross-government working to ensure these, and all, pieces of legislation complement each other and work together in practice.

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

No. Whilst we welcome the positive objectives as laid out in the Explanatory Memorandum, we do not feel that the Bill as currently drafted will deliver the stated objectives.

It states that the Welsh Government intends, “to improve the well-being outcomes for people who need care and support and carers who need support and to reform social services law” through, “providing people with stronger voice and greater control over services they receive...”

We very much welcome these principles; however, we are concerned that important sections of the Bill will not provide real voice and control as currently drafted. The language of some sections still maintain a traditional service led model (matching people to available services) rather than focusing on individual outcomes and finding ways to meet those needs.

The wording of the Bill needs to be stronger on a commitment to a person centred approach. We believe the Bill must include provisions that require local authorities to actively involve the person in the whole assessment and care planning process; to co-produce their care plans and outcomes, and to promote the options that are available for people to exercise voice and control. The outcome we wish to see is people being able to take informed decisions about their care and support.

We believe that the Bill needs to focus on individual outcomes, and feel that general principles on the face of the Bill would help to achieve this. We endorse the Law Commission’s recommendation¹ that the statute should set out a checklist of factors that must be considered before a decision is made in relation to an individual. Thus the decision maker would be required to:

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

Advocacy

We maintain that in order to give people real voice and control, the Bill must make provisions to improve access to independent advocacy support services. We are disappointed that the

¹ Adult Social Care, Law Commission, 2011

new information and advice duties refer to “information, advice and assistance” rather than advocacy.

Independent advocates empower people by giving them voice, choice and control and helping to navigate through the complicated social care system. Welsh Government has acknowledged that advocacy services, particularly for older people, are patchy across Wales, but as yet has not committed to improving this.

Nevertheless, the Welsh Government is currently working with the Commissioner for Older People on a business case for a comprehensive independent advocacy service for older people in Wales, and we will be feeding into this process through the task and finish group led by the Commissioner. We note that time is of the essence on this matter; we believe that advocacy is a significant omission in the Bill and that it is important to rectify this at Stage 1 of the scrutiny process.

The first objective of Welsh Government’s own Strategic Equality Plan is to ‘Strengthen advice, information and advocacy services’, and we’d argue that in order to comply with this, the legislation should include wider access to independent advocacy.

We stress that access to independent advocacy is particularly crucial for adults at risk of abuse, and strongly believe it must be included in the Bill in regard to safeguarding.

Adults at risk of harm are amongst the most vulnerable people in our communities, and we must ensure that they have a voice and are safeguarded from abuse. Independent advocacy can help to redress the power imbalance that occurs in abuse and can enable the person to take back some control.

The Welsh Institute for Health and Social Care’s Review of ‘In Safe Hands’² recommended that, “Legislation should include a duty to consider advocacy support”, and the Scottish legislation includes a similar duty.

When the Bill was introduced in Plenary, the Health Minister stated:

“It is important that people, whatever their age, have a strong voice, and that is why we intend to put advocacy for the most at risk on the same footing as it is for children and young people with care and support needs”

We were encouraged to hear this statement, but in its current form, the Bill does not provide for this. We urge the Committee to seek clarification on this matter.

The Bill provides an excellent opportunity to reaffirm the Welsh Government’s commitment to access to independent advocacy, particularly in terms of safeguarding, and strengthen the national direction and provision across Wales.

Charging

² A review of the Welsh Assembly Government’s guidance on the Protection on Vulnerable Adults in Wales, Welsh Institute for Health and Social Care, 2010

Age Cymru, along with other members of the advisory group and the third sector are concerned about the powers to allow charging for services; particularly for information, advice and assistance and preventative services. We have concerns that this could potentially work against the intended aims of the Bill. We maintain that information and advice should be free, independent and accessible as a basic principle, and would welcome clarification on this.

Carers

The 'purpose' section of the Explanatory Memorandum states that, "The Bill will also, with the exception of provisions for portability, provide equivalent rights for carers, putting them on a similar legal footing as the people they care for".

We and other members of the Wales Carers Alliance welcome the move towards equality for carers but strongly feel that there is no sufficient justification for excluding them from the right to a portable assessment and support plan. This move will undermine the policy intention to extend the same entitlements to carers as the people for whom they care. We believe this must be rectified.

We believe that the Bill should also make carers assessments portable, and linked to service users' assessments to give them the same rights and facilitate a streamlined process. This was recommended by the Dilnot Commission³.

Partnership working and integration

The Explanatory Memorandum lists another purpose of the Bill as to, "Strengthen collaboration, provide a framework for integration of key services".

We do not feel this will be achieved with the current drafting. We and other members of the advisory group are concerned that the role of partners (such as Local Health Boards) remains unclear. We are unsure how the Bill extends the role of partners beyond that which is already in place.

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

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

It is extremely important that the Bill enables the delivery of sustainable social services. We believe that further clarification is needed on a number of areas in order to accurately assess

³ Fairer Care Funding, The Report of the Commission on Funding of Care and Support, 2011

the sustainability; without this there is the possibility that the Bill will not be sustainable long-term.

Potential threats to sustainability include:

Eligibility threshold

We welcome in principle the proposed introduction of a national eligibility framework, but the crucial issue, and one of the biggest implications of the Bill, will be the level at which the bar or eligibility threshold is set.

A national eligibility framework will be a huge change for local authorities and it is vital that clear and consistent definitions are produced for category levels. It is important to note that a national framework will only promote prevention and early intervention if the level of eligibility to receive services is reasonable, and is not set so high that it would exclude a significant number of people. The Welsh Government must also ensure that no one is worse off as a result of the reforms.

It is impossible to envisage how the proposals outlined in the Bill will work in practice without knowing the plans for eligibility criteria. We need to know the Welsh Government's vision and intentions around eligibility, so we can best understand whether the proposals will meet the needs of individuals for care and support services.

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

We are also concerned about a potential three stage process – assessment of needs, eligibility tests and financial tests – and how this will work in relation to promoting well-being, prevention and managing needs. We are particularly concerned that some people might not receive the right amount of support due to potential charges applied. We would like to see more clarity about this.

Provisions for charging for services

Provisions in the Bill will allow local authorities to charge for information, advice and assistance and preventative services. While we acknowledge that the provisions are powers and not necessarily intentions, they do raise some strong concerns and we would welcome indication from the Welsh Government about its policy intentions.

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

Lack of clarity around preventative services

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

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

We would welcome an indicative definition of preventative services on the face of the Bill to ensure that local authorities provide both general, universal prevention and more targeted, individual-level prevention. We cannot see how the Bill will incentivise early intervention. Our concern is that prevention work will not bring benefits if the threshold for accessing them is set too high or prohibitive charges are applied.

The Bill suggests that the application of preventative services will be discretionary, that is not subject to an eligibility framework. However, we would like to see a transparent and fair framework for deciding individual entitlement to prevention services.

Incomplete costs analysis

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

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

It is clear that access to good quality information and advice needs major improvement; Age Cymru know that many older people and their families currently find the care system complicated and daunting, and do not know where they can access information, or what their rights and entitlements are. Current provision of information and advice is patchy across Wales, largely as a result of unequal funding and support in different areas.

The new provisions in the Bill around information and advice, and preventative services have the potential to deliver a positive impact, both in terms of individual's wellbeing and a long-term reduction of pressure on social services, providing they are clarified and implemented correctly.

We stress that information and advice must be free, independent, and provided in accessible formats at the earliest opportunity, as a basic principle. We would like the Bill to clarify that the provisions will also proactively apply for self-funders, as many self-funders do not go through social services when arranging care provision, and often do not have access to information or advice services.

As members of Age Alliance Wales, we would like to see the introduction of a duty to ensure that the NHS and social services provide relevant information on the support available for older people who are being discharged from hospital or who begin receiving social care support. This is currently not happening consistently and we believe it should be built into this

section of the Bill to ensure people can access support at the right time whilst recovering, and to avoid preventable readmissions to hospital.

We note that the Chronically Sick and Disabled Persons Act 1970 contains a duty to provide aids and adaptations, so there is the potential for people to lose this right if this duty is not explicitly included in the Bill.

Safeguarding

Our Rule Out Abuse campaign called for legislation to safeguard adults at risk and strengthen adult protection processes, so that tackling adult abuse is given the priority it deserves. We are pleased the Welsh Government has committed to do so and has accepted many of the campaign's recommendations with new duties on public bodies to investigate, report, cooperate and provide information.

We welcome the new legislative framework on safeguarding and improved powers with regards to adults at risk of abuse; this has great potential for positive impacts on older people and reducing and tackling elder abuse. However, we have some concerns which we believe must be addressed in order to achieve these outcomes for older people in Wales:

Adults at risk definition

We do not agree with the current definition of adults at risk:

To qualify as an adult at risk, a person must have care and support needs and be unable to protect themselves **as a result of those needs**. However it can often be the case that a person may not have identified care and support needs, but they are being abused and are consequently unable to protect themselves **as a result of the abuse**; such cases would be excluded from legislative support under the current drafting. Therefore we strongly believe that care and support needs should not be a pre-requisite in the definition for an adult at risk.

We also feel that issues such as coercive control and breach of trust are important factors in abuse which must be considered, but aren't sufficiently addressed in the section.

For the previous consultation, Age Cymru worked with other experts in the field including the Older People's Commissioner and Professor John Williams from Aberystwyth to propose an alternative definition of an adult at risk, and will continue this partnership working to suggest amendments to improve the current definition.

We note that there is no definition for "abuse or neglect" in the Bill. We believe it would be beneficial if a broad definition were included, and would like clarification as to why this is not the case.

It is important to note that safeguarding as a concept includes protection but is wider and more proactive. To safeguard adults, the powers should include support and protection as equal priorities for practitioners. We believe that support and prevention must have a stronger emphasis in this section of the Bill, which currently reads as very 'protection' focused.

As previously mentioned we believe that access to independent advocacy support for adults at risk of abuse is vital to achieving positive outcomes, and giving voice and control. We strongly believe it should be included in the Bill.

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

There are significant potential barriers to implementation of the provisions of the Bill which are not sufficiently addressed.

As discussed in previous answers, the lack of clarity and ambiguity in the current drafting of key areas of the Bill is a potential barrier to effective implementation, as certain provisions may be open to interpretation by local authorities, for example the preventative services section. Thus the current postcode lottery in access to services could be maintained across Wales.

Another potential barrier is the amount of detail that is being left to regulations and the code of practice – these will not be subject to the same level of scrutiny as the Bill and could result in unintended negative consequences.

Costs

We see the main barrier as the incomplete cost projections as we do not feel that the Explanatory Memorandum sufficiently covers all the costs that will be incurred. We are also concerned that, as currently drafted, the Bill will not produce the savings predicted through lawyers' fees, because we believe some areas of the Bill are unclear and may lead to challenge. We have major concerns about the Regulatory Impact Assessment, please refer to our response to question 7 b) for further details.

There is wide agreement in the advisory group and the wider third sector that a more thorough cost analysis is required.

Lack of joint working

We are concerned by the lack of explicit duties on the health service, and believe there the Bill currently misses the opportunity to advance and enforce better joint working. We feel that what is drafted could maintain the status quo, and the tendency to work in silos rather than improve joint working.

Charges may also cause difficulties in NHS and social services collaboration. A person who is already in receipt of care and support from social services and then develops a need for prevention may have charges applied. However, a person unknown to social services who develops a need for prevention services after a stay at hospital may have their services covered by the NHS (i.e. without charges). The risk is that this may lead to 'cost shifting' between NHS and social services

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

No. We do not believe there is an adequate balance between the powers on the face of the Bill and details that will be left to regulation. We would like to see a series of additions on the face of the Bill.

We are concerned that there are some key definitions which seem to have been overlooked in the drafting of the Bill. For example, “assistance”, “abuse of neglect”, and “people who need care and support” are not defined.

As previously discussed, more clarification is also needed around preventative services, and how they will interact with assessment, eligibility and charging for services.

We believe there should be a reference to promoting enablement on the face of the Bill, as well as general principles which set out factors to be considered before making a decision (as recommended by the Law Commission) – please see our response to Question 2 for further details.

We would also like to see a statement on the Welsh Government’s commitment to a Human Rights based approach and to the UN Principles for Older Persons on the face of the Bill.

The Scottish Adult Support and Protection Act 2007 has positive, person centred general principles on the face of the Act⁴ which we feel would also be beneficial to include in the safeguarding section of the Bill.

Regulations

We and the advisory group believe that in places the Bill could be more prescriptive about what ‘must’ be detailed, rather than what ‘may’ be detailed in regulations. The advisory group’s joint response gives an example of this in relation to funding of Safeguarding Boards.

7 (a). What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

We recognise the need for some issues to be left to regulation. However, we have concerns that the balance is inappropriate. We are particularly concerned that much of the detail of regulations is yet to be drafted and would like assurances that this is published before Assembly Members are required to vote on the Bill’s general principles at the end of Stage 1.

We are particularly concerned with the level of subordinate legislation that is left to negative rather than affirmative procedure. For example regulations on “carrying out financial assessments” (Section 48 in the table in the Explanatory Memorandum) should be subject to ‘affirmative’ procedure to ensure the regulations are given proper scrutiny, due to the significant impact these regulations will have on individuals. We would like to see this table looked at again, with the needs of those who use social care and support services taken into account.

Adult protection and support orders

⁴ <http://www.legislation.gov.uk/asp/2007/10/section/2>

We have some concerns regarding the proposed adult protection and support orders.

We do agree that in order to adequately protect those adult most at risk and affected by abuse, legislation should include powers of intervention, but would like further clarification on these orders.

There was consensus amongst our focus group with older people for the previous consultation that powers of intervention were required so that experts could “step in” to protect adults at risk, albeit “to be used in extreme circumstances”. Evidence from colleagues in Scotland is that similar powers contained within the Adult Support and Protection (Scotland) Act 2007 are invoked only in extreme situations but act as a significant deterrent

However the danger is that if handled inappropriately, such powers can actually increase an individual’s risk of being abused. As we understand it, the orders will give powers of entry and assessment but the Bill does not clarify what will happen next, which is the crucial issue. If you enter a home, identify a person is a risk, what is the next step?

Without robust powers, the legal duties would increase practitioners’ opportunities to identify issues, but do little to increase opportunities to tackle abuse, particularly in the most extreme circumstances where an adult, who has capacity, is suspected to be coercively controlled and at risk of harm.

We urge the Committee to seek clarification and further information on these orders. We believe that powers of intervention should include a power of access and assessment and an injunction order: the aim of which would be to reduce the risk posed to the adult at risk by the perpetrator in the most supportive and least restrictive means possible

The “General principle on intervention in an adult’s affairs” in the Adult Support and Protection (Scotland) Act 2007 enshrines this principle in legislation, and we consider this principle valuable for the Welsh Government to adopt within the Social Services (Wales) Bill. These principles can provide checks and balances for professional judgement.

The Welsh Government should consider how these orders will sit with other legislation, covering areas such as domestic violence, to ensure a consistent approach to interventions.

Consent from the adult at risk should always be sought before proceeding with any intervention, however intervention should not rely explicitly on consent in situations where there is evidence to suggest coercive control. It is important to ensure that the person at risk of harm has the right to an independent advocate to assist them to navigate through this process and help them weigh up their situation.

7. (b) What are your views on the financial implications of the Bill?

We have major concerns about the Regulatory Impact Assessment, which we do not feel provides a full cost analysis of the Bill. For example, the only cost listed in regards to implementation of the Bill is the cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services. We note that there will be additional costs that are not included such as for

the establishment of new national safeguarding boards, and the provision of information, advice and assistance, as well as preventative services.

We also believe it is critical to understand the cost implications if Welsh Government were to continue the current FACS four-level eligibility levels in the new system. We are concerned that the Government is unaware of the number of people currently receiving care at each level⁵, therefore making it difficult to predict whether any new model will have cost implications.

The Welsh Government recently published research⁶ on the cumulative impacts of welfare reform, which indicates the proposed changes by the UK Government through the welfare reform agenda could increase spending on social care and support services. We would like to see these costs accounted for in the Regulatory Impact Assessment.

We would like to see a fully drafted regulatory impact assessment which takes into account the full costs of implementing the proposed changes in the Bill, as set against the proposed costs of maintaining the status quo.

We believe publication of a more detailed cost analysis is needed before the end of Stage 1, which takes into account the full cost of the Bill, including preventative services.

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

Paying for care

We are concerned that there is no detail about paying for care in the Bill, i.e. the cost to individuals for paying for the care and support that they need. The Dilnot Commission report Fairer Care Funding was published in July 2011 and the UK Government have recently announced their plans for reform. We would welcome the Welsh Government publishing their proposals for the cost of care as soon as possible, and would have liked to have seen them alongside this Bill.

Safeguarding (see previous responses)

Please see our earlier comments on the safeguarding section, particularly on the need to include a duty to consider independent advocacy support for adults at risk of abuse, and our concerns regarding the adult at risk definition and adult protection and support orders.

Conclusion

We hope this response is useful to the Committee. Please do not hesitate to contact us for any further information. We would be very pleased to give oral evidence to the Committee on this vital legislation for older people in Wales.

⁵ Written Assembly Question 61983 and WAQ61984, answered on 25 January 2013

⁶ <http://wales.gov.uk/topics/educationandskills/publications/reports/analysingreforms/?lang=en>



Children in Wales
Plant yng Nghymru

Children in Wales response to Stage 1 of the Social Services and Well-being (Wales) Bill

15.03.13

Introduction

Children in Wales is the national umbrella children’s charity, bringing organisations and individuals from all disciplines and sectors together. Its activity is based on the principles of the United Nations Convention on the Rights of the Child and aims to make it a reality in Wales. Children in Wales also fights for sustainable quality services for all children and young people, and special attention for children in need, as well as ensuring children and young people have a voice in issues that affect them. Its primary activity is supporting the children and families workforce to improve outcomes for children and young people.

Children in Wales has around 200 organisations in membership, including the major third sector children’s agencies, professional associations, local authorities and health bodies, as well as many smaller community groups. Children in Wales facilitates a variety of forums and networks across Wales and works in partnership with the National Children’s Bureau in England and Children in Scotland, and internationally is active in Eurochild and the International Forum for Child welfare. Children in Wales has representation on numerous Welsh Government and other working groups in Wales.

Response prepared by

Catriona Williams
Chief Executive

This response is not confidential

Consultation questions

1 Is there a need for a Bill to provide a single Act for Wales that brings together local authorities and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer?

- a) Children in Wales strongly supports the rights based approach of this legislation as well as the principle of bringing together the duties and functions of local authorities and partners in relation to improving the well-being of children and young people. Indeed the requirements of Section 25 of the Children Act 2004 did just that and the Social Services and Well-being (Wales) Bill, (the Bill) will primarily achieve the same for adults as already exists for children. The critical issue for children and young people is their connection to non social services and health services such as education and leisure. Implementation would be more successful if the requirement to collaborate is simultaneously re-iterated in legislation/and or guidance issued to other agencies such as Police, Education and Health. Those agencies inevitably prioritise the statutory duties emanating from the government departments to whom they are directly accountable. This Bill had its origins primarily in adult social services and Children in Wales would have preferred a **consolidated Children Act for Wales** bringing together the Children Acts of 1989 and 2004 and other existing legislation and incorporating the Welsh policies that have systematically been developed based upon the United Nations Convention on the Rights of the Child (UNCRC) and including the Children and Young Persons (Wales) Measure 2011. We regret that the Welsh Government did not carry out its original plan to introduce a Children and Young Persons Bill building on the Children and Young Persons (Wales) Measure 2011. This would have been a significantly better way forward even if it had not been possible to achieve during this particular Assembly term.
- b) In line with this we would also like to have seen the **UN Convention on the Rights of the Child** on the face of the Bill as it would give a clear message about the importance of the UNCRC in conjunction with the Children and Young Persons (Wales) Measure 2011. (NB this was nearly achieved in the passage of the Children Act 2004 in the section on Wales).
- c) We believe that amendments proposed to the Children Act 2004 to align them with the Bill are unfortunately an erosion of the current 'best interests' of the Child under Article 3 of the UNCRC.

- d) We do however fully recognise the need to have a holistic approach to working with complex families, but would advocate that it is still essential that there is an understanding of the particular needs of children in terms of working with families. In its most simplistic form, knowledge of child development and how to communicate with children are essential components of working with children in order to assess their needs wherever they are – in families or outside of families. We are also acutely aware of the important issues around transition from children and young people services to adult services. However the radical shift to ‘people in need’ as opposed to ‘children in need’ appears to have been a case of family issues and transition issues dictating the design of all the other core services for children and young people. In the views of our members there is both a place for a focus on family support and also on children and young people themselves.
- e) If however the cradle to grave approach continues to be the direction of travel, we fully support the introduction of a duty on local authorities and their partners to maintain and enhance the wellbeing of people in need through identification of persons in need (needs can’t be met if they are not identified) and encouraging the provision of a suitable range of services. We anticipate however that there is a real cause for concern in that identified need may inevitably outweigh the resources available to meet those needs and expectations may be raised. We feel that there should be further consideration of managing this aspect.
- f) **Well-being** The concept of well-being is well known in the children’s sphere following the 2004 Children Act as well as all the work done at EU level in relation to child well-being indicators, (which we campaigned for through Eurochild, rather than child poverty indicators to measure the impact of the EU programme to address child poverty and social exclusion). The Welsh Government’s (WG) Child Well-being Monitor for Wales has been a good tool in beginning to address the collection of data to give a picture of the well-being of children in Wales but needs to be developed further. The Monitor is a means of comparative opportunities to see how Wales is doing on a UK and European basis. It enables data to be disaggregated, needs identified and resources deployed appropriately. The Child Well-Being monitor work has also begun to gather data that has a direct bearing on how children themselves feel through some subjective data gathering to a separate statutory Children’s Plan.
- g) Measuring well-being should be linked to agreed outcomes with service users and this will inevitably require gathering extra data that is not routinely collected at present. The Monitor also ensures effective reporting to the UN Committee on the

Rights of the Child which is the main independent monitoring mechanism along with the Office of the Commissioner for Children, of the effectiveness of government's actions. There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

- h) Whilst we are extremely positive about the concept of well-being as we know it for children, we would urge the Welsh Government to not confuse matters by having the concept of well-being using a variety of definitions placed in other pieces of legislation - eg Sustainable Development Bill, proposed Public Health Bill and the Domestic Violence Bill.
- i) **People in Need** By attempting to bring the adult legislation to where children's legislation is now, we fear all the attention will focus on adults at a cost to the children's rights agenda and the progress made over recent years. We believe we need to be building on the 1989 and 2004 Acts as there is still a huge amount to be done. There are many outstanding issues relating to the delivery of the key duties as described in the 1989 Children Act which are not being met. There is also increasing pressure on services to meet growing response in relation to Children in Need and Looked After Children. A shift to 'People in Need' will inevitably lead to increased demand.
- j) The definition of 'people in need' is based on the definition of 'children in need' used in the Children Act 1989 and is comprehensive. It is rather outdated though in that it does not completely reflect a rights based approach but more of a welfare model. Some young disabled adults have expressed concern about this term being applied to them as it has some negative connotations with disabled people being known as handicapped (from "cap in hand") and disabled people being seen as objects of charity and in need rather than having rights. They also wonder why a disabled child is covered by the definition but disabled adults aren't. It is important that there is also adequate cross referencing to existing legislation such as the Chronically Sick and Disabled Persons Act and also the UN Convention on the Rights of Persons with Disabilities.
- k) The move towards the concept of 'people in need' is also of concern to our members because unless children, young people and families are specifically mentioned, policies have historically developed on an adult model, primarily because of two reasons – the significantly larger numbers of adults and their workforce plus - the fact

that adults have influence, they have the vote whereas children do not. An example of resources following an adult based needs assessment was where the original Communities First resources allocation were based on socio economic geographical population data, but this was not the same as the needs of the child population because the distribution of need for children is quite a different geographical profile to that of adults which is affected by the profile of the elderly population.

- l) Our networks have expressed concern that the focus on 'people' will compromise the future children's agenda. This is compounded by the changes relating to multi agency planning processes such as the demise of Children and Young People's Partnerships and development of the Local Authority single plan in some areas as opposed to a separate statutory Children's Plan.
- m) There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

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

- a) The concept of well-being is effective in broadening the scope of the Bill and provides a continuum of social care involving partners that Children in Wales welcomes. It is not however as yet clear how engaged or committed other partners are to this legislation and how it cross references with legislation already affecting them directly. It actually broadens social services beyond its traditional remit into universal prevention and early intervention services.
- b) Well-being encourages focussing on what really matters to service users and not just to service providers! We do however urge Welsh Government to consider other areas of activity eg mental health, where outcomes and collaboration also feature in recent legislation. It is essential that there is coherence between the various Assembly Measures to avoid duplication or contradiction.
- c) The Bill creates an opportunity to develop a seismic cultural shift in that it is much more of a rights based approach than the existing welfare model. However whilst the rhetoric is stronger voice and control, we fear that children's voices will be lost for example in families where the adults have significant needs as well as the child. Whose voice will be heard?

- d) There needs to be a coherence between what are nationally directed services and the voice and control of service users.
- e) The emphasis on prevention and early intervention is extremely welcome and is an important step forward, especially because it addresses both access to and provision of services. Our concern however is that in the current economic climate demand will exceed supply and thresholds will inevitably rise. As previously stated we are also concerned about the impact of the extra demand on children and families. There is also inconsistency in terminology in what 'spectrum' of services is provided and also who provides them. Emphasis on the role of the third sector is important as is the concept of co-production. Third sector organisations are invariably close to the people who use services and so are well placed to promote the design of services for them.
- f) There is a considerable amount of existing children's legislation and case law has set many precedents. Indeed there is legislation currently going through Westminster at present. There are inevitably many issues of transition and repeal. For instance 'a child in need' versus 'people in need'. How will the most appropriate definition be decided upon. For Children in Wales we are unable to comment sufficiently until we have seen the detail and we understand that this may not be for some time.

3 The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

- a) There is no doubt that early intervention and prevention are both effective and economic in the longer term. However it does mean that the culture of putting the service user and carer at the centre of service design and delivery has to become key and this requires a considerable culture shift.
- b) Sustainability will depend very much on the engagement of partner agencies and sectors in the delivery of integrated services for the cohort of people involved with social services – usually the most vulnerable in society. It will also depend on the empowerment of service users and carers and their active involvement in the design of services and identification of meaningful outcomes.
- c) Transformation of social services will require a seamless connection between universal and targeted services from all agencies involved and particularly the involvement of the third sector in co-production in relation to services in which they

have particular expertise. It appears to us that partner agencies have had little involvement in the development of the Bill and this would need to be implemented in practice to avoid the legislation becoming purely aspirational. It is also critical that there is clarity about where the responsibility of social services lies and where the responsibility of the wider local authority or health boards lie in relation to the early intervention and prevention agenda. Social Services do not have the capacity to deliver this vast agenda alone.

- d) Accurate correlation to other UK legislation and Welsh Measures such as the Mental Health Measure are essential for sustainability. As previously stated we are concerned that the 'people in need' definition may water down the rights of children, such as disabled children who are entitled to services under section 17 of the Children Act 1989. Similarly children 'looked after may be adversely affected.
- e) We welcome the concept of a stronger voice but are not convinced that this applies to children and young people and we wonder if the Bill has in fact been examined against the UNCRC in line with the due regard duty in the Children and Young Persons Measure.
- f) Finally, the issue of charging for services must be dealt with carefully as not all services, eg safeguarding, may lend themselves to charging.

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

- a) The Bill will increase the scope of social services considerably and this will require much more joined up working across agencies if duplication and confusion are to be avoided and integration achieved.
- b) It will also refocus the priorities towards outcomes for people which they have been involved in developing. There will be significant transformation required of the workforce in terms of cultural shift from a welfare to a rights based model of practice.
- c) As yet it is unclear how a national eligibility framework will affect thresholds and thus affect delivery.
- d) The changes for children and families will largely depend on subordinate legislation

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

- a) Lack of accurate information about care and support needs both nationally and locally.
- b) Demand outstripping supply because of assessments
- c) Overall increased volume of demand due to external factors such as welfare reform, family justice reform etc
- d) Charging policies – more consideration needs to be given to this in relation to children’s services
- e) Contraction of many third sector services through reduced funding

In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer?

- a) We believe that there is too much left to regulation- especially in the children’s field. We would also like to see more ‘must’ than ‘may’ in the regulation. This for instance would be significant in relation to funding safeguarding boards.
- b) There is a critical balance between what is in statute and what is in a statutory code of practice. Recognition of the fact that authorities under financial pressure will primarily deliver statutory requirements should be considered even though case law can use guidance regarding judgments on thresholds for instance as in the Gloucester case. By widening the range of people within the ‘people in need’ group there will inevitably be increased demand especially if there is more access to assessment.
- c) We support a code of practice providing it is realistic and based on evidence with a view to continuous monitoring and updating according to the realities in practice. This would assist in getting consistency in implementation.

6 What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

- a) This is an extremely interesting area which we do as yet not have a clear position on. There are clearly issues of failing services to be addressed, but there are also existing methods of Welsh Government intervention.
- b) It is clearly a risk for Ministers to have potential to issue subordinate legislation too freely without parliamentary process. It is also not generally our view that Welsh Government should become an operational body. CAF/CASS Cymru was taken into

Welsh Government and is under the Deputy Minister, but this is an exception. Without more information on this area we are unable to comment further at this time.

7 What are your views on the financial implications of the Bill? In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum 9the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

- a) Children in Wales fundamentally questions the assumption in the Explanatory Memorandum that the Bill will be cost neutral. Many times in the past there have been attempts to move from crisis services to preventive services and this has required management of change processes including detailed costs.
- b) Whilst we are totally committed to the preventative agenda, this, combined with the likely increase in demand due to the assessments will inevitably incur costs as the transformation takes place in the initial stages.

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

- a) Children in Wales is a leading member of Sdim Curo Plant/ Children are Unbeatable Cymru and as such fully supports the abolition of the physical chastisement of children and we wish to ensure equal protection for children in the law on assault. We fully endorse the evidence submitted by Sdim Curo Plant/ Children are Unbeatable Cymru and believe that the Assembly has opportunity of showing its total commitment to children's human rights.
- b) The importance of the National Outcomes Framework is fundamental to the success of improving children's lives. This needs close scrutiny and there can't be more than one outcomes framework for all agencies to work towards without causing confusion.
- c) As the trend towards 'family' continues we wish to point out that Looked After Children are a significant group who are not in 'families' as such. Existing legislation is strong for them as children 'in need'. This should not be diluted. We also are concerned that advocacy doesn't feature on the face of the Bill as this is a key service for vulnerable children and funds follow statutory requirements.



Written submission from BASW Cymru

In relation to oral evidence for

The Social Services and Well-being (Wales) Bill

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

Introduction

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

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

Well-being duties, preventative services, information and advice

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

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

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

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

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

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

Assessing adults, children and carers

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

Assessing Adults

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

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

Assessing children

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

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

Assessing carers

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

Has a costed analysis of this duty been undertaken?

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

Supplementary

Section 17, 'Combining needs assessments and other assessments', also needs to include the amendment to care and/or support. In Sub-section (2), will require very clear guidance regarding the process of ascertaining agreement to combine assessments. In Section 18, 'Regulations about assessment', what consultation process will be

undertaken before additional regulations are introduced about assessments? In this respect, Sub-section (1) and (2) will need to reflect a clear process before new or additional regulations are introduced.

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

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

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

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

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

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

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

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

Section 20, 'How to meet needs', provides examples of what may be provided to meet the needs in Sub-section (2). Whilst BASW Cymru supports the mention of 'social work' in the list, the options appear very

traditional and do not reflect the ever-increasing multi-disciplinary way in which new models are being provided e.g. with a range of different professionals and their expertise.

What duty will local authorities have to provide preventative services?

And

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

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

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

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

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

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

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

Direct Payments

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

Supplementary

Under Section 40, 'The portability of care and support', we support the intentions of this area. However,

Will this legislation be applied to people moving to and from local authorities in Wales , from and to othe areas of the UK outside of Wales? and

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

Charging and Financial Assessment

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

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

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

Conclusion

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

Robin Moulster
Country Manager
BASW Cymru
14th March 2013



Leading Social Services
in Wales

Yn arwain
Gwasanaethau Cymdeithasol
yng Nghymru

**ADSS CYMRU
WRITTEN RESPONSE**

**TO THE
CONSULTATION ON THE SOCIAL
SERVICES & WELLBEING (WALES)
BILL**

March 2013

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INTRODUCTION

1. ADSS Cymru is the recognised professional and strategic leadership organisation for Local Authority Social Services in Wales. It comprises the statutory Directors of Social Services and all Heads of Services who have responsibility for adult services, children and young people services or business management. Our primary purpose is to promote the social well-being, protection, support and care of adults and children in vulnerable situations in Wales.

2. We are committed to:
 - providing modern, accessible and responsive services, which are delivered flexibly, consistently and sustainably across organisational boundaries;
 - working with all partners in the transformation of social services in Wales;
 - shaping and influencing public policy development across Wales;
 - ensuring that social services have a strong voice at the corporate centre of local government;
 - promoting public understanding of social services and the positive role it plays by engaging with the media, opinion formers and the wider public;
 - providing effective leadership for the social services work force;
 - strengthening relationships between commissioners and providers of social services; and
 - helping to ensure excellent public services as a whole.

3. ADSS Cymru welcomes the initiative taken by the Welsh Government in seeking to create a new legal framework for social services in Wales. This is the first opportunity we have ever been given in Wales to change the deeply confusing assortment of care and support law which exists at present. We support the ambition of the Welsh Government to introduce a Bill that draws together our legal framework for social services, in a way that both helps to bring about transformational improvements in the help available to people and also provides a clear, ambitious but realistic direction for social services.

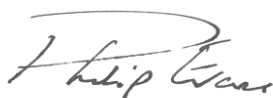
4. In the past few years, a good start has been made in addressing the need to transform the delivery of social services, with the Welsh Government leading a programme of major reform. Local Government has demonstrated a strong commitment to delivering the changes required and to providing good leadership through its Sustainable Social Services Implementation Plan, developed by ADSS Cymru and the WLGA. The plan has been welcomed by the Deputy Minister as demonstrating *“the absolute commitment of local government to transforming social services in Wales, and to collaborating with all partners to deliver the improvements that are needed for people who need care and support.”* We believe strongly that this emphasis on co-production and collaborative working across the range of stakeholders is the key to effective delivery of policy objectives.

5. In developing our submission, we have involved our members and other specialist officers in local authorities. ADSS Cymru and WLGA have worked together in developing written responses to the Bill because there are a number of areas where we share the same views and advocate the same solutions. Recognising that our role is different, we share the same desire to see local government at the heart of delivering more effective systems of social services on behalf of our communities and citizens.

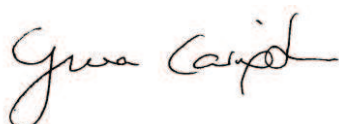
6. Social care cannot be viewed in isolation. The care and support needs of the people of Wales are affected significantly by poor levels of health and socio-economic factors such as poverty. Effective solutions require local government to work as a trusted partner of Welsh Government and other key stakeholders. Hence our commitment to developing a strategic response at national, regional and local levels to the challenges we face in achieving sustainable social care and public services. We are intent on finding new ways to ensure that all the functions of local authorities contribute to this agenda, embracing the potential of increased citizen involvement in the design and delivery of services, stronger professional delivery teams and collaboration across public services.

Summary of key points

- We welcome the introduction of legislation to simplify the current law and to support delivery of new integrated service models.
- The Bill must be proportionate and enabling, achieving the right balance between primary legislation and regulation.
- The Bill is just one element of a bigger picture, where the care and support needs of the people of Wales are affected significantly by poor levels of health, and socio economic factors such as poverty.
- Improved wellbeing is a whole public service responsibility and, to be effective in its aim, the Bill must demarcate the specific role expected of social services.
- Local government is well placed to deliver locally determined models of care aligned to population requirements. Legislation must not undermine the autonomy of Councils to make decisions on resource allocation and service delivery as a result of needs analysis, engagement with service users and carers and democratic processes.
- Given the scale of new responsibilities and changes to current practice and patterns of service, resources will be required to deliver the policy objectives stated in the Bill, alongside efficiency savings being delivered by local government.



Phil Evans, President ADSS Cymru and
Director Lead for the Bill



Gwen Carrington,
Director Lead for the Bill

WILL THE BILL ACHIEVE ITS STATED PURPOSE?

7. In our opinion, a really good start has been made. We appreciate the progress made by Welsh Government in designing and getting consensus around its ten-year strategy for major reform in social care, a programme which includes the current legislation. The values and aspirations set out in the strategy and the Bill provide essential building blocks for the framework we will need for transformational change.

8. Local Government has demonstrated already a strong commitment to delivering this scale of change and to providing good leadership, in part through its Sustainable Social Services Implementation Plan developed by ADSSC and the WLGA. The Plan, owned by the twenty-two Welsh councils, supports the delivery of modern, accessible and responsive services capable of meeting people's needs and of being delivered flexibly and consistently. These changes are being taken forward at a local, regional and national level. Where all the stakeholders are working together, it has been possible to take real strides in areas such as remodelling services, joint commissioning, joining up health and social care services, and improving shared responsibility for safeguarding children.

9. Building upon the considerable and acknowledged strengths that exist in social services in Wales and working closely with the WLGA, members of ADSSC are intent on achieving service transformation through providing:
 - a clearer focus on improved wellbeing outcomes for the people using services;
 - greater control and choice for citizens about the help they want and improved access to that help, without unnecessary bureaucracy;
 - more effective and better integrated models of care and support and a more responsive range of services; and

- a better qualified workforce with skills that enable them to work across organisational boundaries.
10. This is a comprehensive agenda, properly so in the current and future context for social care services. Radical and urgent change is needed as the numbers of people needing care and support continue to grow year-by-year. We believe, therefore, it is appropriate that the Bill is extensive in scope and that it sets out to define:
- a. who should get help and support;
 - b. what services should be available to them;
 - c. where people can expect to have control and choice about the help they get; and
 - d. how the most vulnerable groups in society will be protected from harm.
11. However, there are great hazards too if the Bill fails to provide a coherent way of providing social care fit for the 21st Century. It is essential that the changes made as a result of the Bill can become a reality on the ground, a force for positive change and not a series of promises which cannot be delivered in the even harder times that lie ahead. With great ambition comes increased risk, especially in terms of unintended consequences. Therefore, as always in looking at new laws, it is often the degree of coherence and the detail which tend to be most problematic.
12. The activities of local government are strongly shaped by the legislative context. In social services (and in contrast to some other areas such as criminal justice), we have been exceptionally fortunate in the major acts which have steered our work to date. Additionally, there is considerable experience in the task of making statute, regulations and guidance work in practice. Staff are often very idealistic, willing to embrace change where this has clear benefits for service users and carers. However, they also need to be very pragmatic, asking questions such as: what should I/we say or do to keep this person engaged and help them to achieve what they want? how do I/we help them to negotiate the

correct access, assessment and care pathway? what do the law and regulations require me/us to do in circumstances where there is conflict and risk? what does our agency say and what does evidence-based practice tell us works best? It is essential that, as far as possible, they are able to rely on a coherent framework for this work, one which is consistent and clear. Similarly, we have growing evidence about what makes for an effective social services department and here again clarity about purpose and priorities is a crucial factor¹.

13. In many ways, the Bill makes a good start in providing the legislative framework needed. It defines well many of the objectives which collectively we have agreed to be necessary.

- To mitigate and manage the increasing demand for high quality social services
- To drive forward an outcomes approach and focus for users of social services
- To make savings and efficiencies at a time of acute economic pressures
- To ensure the sustainability of services with more effective models of care
- To reduce the unjustified variations in the quality of care across Wales
- To achieve a more responsive, needs led, range of services with a strong and professional delivery team that can work across organizational boundaries
- To safeguard adults, and protect children and young people more effectively
- To ensure that users of social care services have a stronger voice, and real choice and control over their lives.

14. We welcome the focus on improved wellbeing outcomes; recognition of the role of information, prevention and early intervention; the potential for changes to assessment and eligibility; increased entitlements for carers; the impetus for integrating health and social care at the service level; the move to place adult safeguarding on a sound statutory footing; the emphasis on partnership

¹ For example, in 'Reviewing Social Services in Wales 1998-2008 - Learning from the Journey', CSSIW and the Wales Audit Office analysed what had been learned about organisational effectiveness from the joint review programmes. Also, to assist CSSIW in their annual performance evaluation of council social services functions, they have developed 'performance descriptors' taxonomy.

working; and greater responsibility for promoting a more diverse social care market through an enhanced role for social enterprises. These are potentially strong pillars in new models of service provision.

15. However, as we will seek to demonstrate later in this document, there are legitimate questions about whether some of the proposed solutions in these areas have been spelled out sufficiently. In our judgement, they do not yet provide a sound guide for those who will be responsible for implementation. The sheer weight of the legislation only confuses the interdependencies of many of Bill's provisions and so it can be read as a mixture of seemingly unrelated measures, with attendant difficulties in identifying a coherent thread running through it. The underpinning emphasis on sustainable social services appears to have been lost in translating the ten-year strategy into legislation. The proposed Bill sets a whole range of new challenges that will have to be met at a time of severe financial restraints for local government and social services. It is right to remain cautious about whether there will be sufficient resources available to meet all the increased commitments and expectations in the Bill in the face of growing demand for services.
16. We believe that there are reasons to question whether prevention and early intervention can deal well enough with increasing demand or act mainly to delay the need for more acute services. There is limited evidence to date whether extensive integration of health and social care services at an operational level can generate considerable savings in the Welsh context, especially as the Bill is not very ambitious in this area. The outcome may be increased competition for scarce resources which will undermine commitments to increased levels of engagement with citizens at an early stage, improved access to assessments, more services for carers and higher standards in protecting adults. Where will we find the resources needed for transformational change across so many areas of service on the scale set out in the Bill, in terms of improvement funding, bridging costs, sustained policy implementation and a determined focus on innovation with reducing numbers of staff? It is important also not to

underestimate the groundwork needed to put in place the significant changes in working practice and organizational cultures required to implement such ambitious reform.

17. We are currently conducting our annual survey of the social services budget position in each local authority. In many of them, there is a pattern of overspending against allocated budgets and SSA over many years. The pressures are across all service user groups but the position in children's services and services for people with learning disability appear to be especially acute areas in which the Bill may prompt increased expenditure, especially in the context of welfare reform and austerity measures. The impact of changes to eligibility criteria and charging regimes has not been assessed and some local authorities are still waiting to be reimbursed for significant loss of income from the First Steps requirements.
18. The case for transformational change has been well made. However, if there is to be no additional funding for implementing reforms on the scale set out in the Bill, we would want to ensure that it sets out more clearly the priority areas for change. Only in this way can we all focus on delivering a programme which is phased, properly understood and collectively promoted.
19. It is our view also that the Bill will affect profoundly local government as a whole and its key statutory partners, not only social services. The principle of wellbeing in the Bill cuts across all functions of local government, the NHS, other public services, the third or voluntary sector, independent providers of care and social enterprises. The Bill does not yet spell out in a compelling enough way their contribution to service transformation.
20. Shaping the Social Services and Wellbeing (Wales) Bill is one of the biggest challenges that the Welsh Government and the National Assembly for Wales have taken on. We are yet to be convinced that all the measures in the Bill require legislation. Some may well be redundant when they finally become law

and are implemented; others are on a relatively small scale and could be achieved by means other than legislation. This risks distracting effort from those which are crucial to the whole enterprise of reform. We believe that the Bill can only achieve its aims through a proportionate approach, legislating only where new duties and powers will support its aspirational aims.

21. A serious concern is that a significant part of the legislation is coming forward as delegated legislation and as powers for Ministers. The legislative framework is broad and lacking in detail; detailed changes will be set out later in regulations, guidance and codes of practice. This is even the case with issues such as eligibility criteria, an area which Welsh government insists that local authorities should debate through transparent political processes, to ensure proper accountability and scrutiny. We do worry that there is too much scope for frequent amendments to secondary instruments, thereby undermining the stable direction which is needed.

22. Will the Bill achieve its stated purpose? Our current answer is “potentially and perhaps but this is not yet proven”. There is a serious risk that we are willing the ends without proper regard to means. Therefore, we would welcome the opportunity to provide further detailed evidence on specific sections of the Bill, using expert testimony from our members.

ARE THE BILL’S PROVISIONS APPROPRIATE TO DELIVER ITS STATED PURPOSE?

25. We believe that some of the key areas in the Bill will need considerable consideration during the scrutiny process. These are:

- I. Wellbeing
- II. Access, Assessment & Eligibility
- III. Adult Safeguarding
- IV. Remodelling care and support services and integrating with Health services.

I. WELLBEING

26. In our opinion, the concept of wellbeing is a powerful one, with a wide range of uses. It can be a helpful tool in defining the role that public services as a whole can play in improving the lives of citizens. It has merit as a way of fostering discussion about how far the state can and should take responsibility for such amelioration and what is the role of the individual or family. We should aspire to giving Welsh citizens, in the circumstances in which they are born, grow, live, work and age, better life chances and the opportunity to flourish in sustainable, cohesive communities. There is some consensus about the determinants of wellbeing. Use of the concept is not new in local government (as in the 2000 Act) and we know that Welsh Government may soon have two other Bills in which it is a key tenet. The concept of wellbeing is also embedded in the Government's anti-poverty agenda.
27. It is essential that social services are acknowledged as having a key role in this agenda. Social care and support services can be designed around and judged by their contribution to improved wellbeing. The Bill reflects the World Health Organisation's definition of the term. Consequently, this gives greater potential for local government and key partners such as the NHS to 'own' the definition and to generate a common understanding about need that supports joined up, outcome based planning and commissioning of service, as well as promoting good working.
28. However, perhaps we need to be somewhat wary as well about a term which appears to be so plastic and ubiquitous. It is hard to understand differences between its use at a population level and at the individual level. People generally do not approach local authorities or social services with a request for help that will improve a specific aspect of their wellbeing and they tend to use the word, if at all, as a general measure. It risks, therefore, confusing the dialogue between practitioners and potential service users and carers while increasing the numbers of people seeking help without being given any clear

idea about what and why. Are social services being given paramount responsibility for wellbeing or primarily for the wellbeing of those who may need care and support? This could be especially problematic if the definition includes economic wellbeing. Social services operate very rarely as a means of income maintenance, perhaps only for young people leaving care.

29. In these circumstances, there is a risk that the term will achieve limited congruence with other key aspects of the proposed legislation. In many places, it appears to be overtaken by reliance on the provision of information and prevention as the passport to social services. We are not entirely reassured when the Explanatory Memorandum outlines that the Welsh Ministers will publish at some point a statement of the outcomes to be achieved in terms of wellbeing for people who need care and support, and carers who need support.
30. ADSS Cymru believes there is scope for improvement. By placing the provision for wellbeing at the corporate centre of local government and partners such as the NHS, (but not on social services *per se*), public bodies can work together to improve 'wellbeing' in their local communities. We support WLGA's general thrust that it is local government and other public bodies that must manage the wellbeing agenda in Wales. Legislation then becomes an enabling tool to pursue an outcome based approach to the creation of social services, based on the concept of social wellbeing but not constrained by tight bureaucratic definitions. The Bill's provisions could then become largely a means of improving performance, accountability, and consistency in service provision. This shift in thinking provides empowerment and choice² for the users of social services, because measures of outcome will be firmly centred on the concept of social care interventions having value for users in ways that they themselves define.

² Forgeard M, Jayawickreme E, Kern M and Seligman M, 'Doing the right thing: Measuring wellbeing for public policy', *International Journal of Wellbeing*, 1(1), 2011, pp 79-106.

31. The following diagram is intended to clarify this issue about how we might demarcate more precisely the specific role of social services vis-à-vis other public services while still acknowledging the place of local authorities in providing leadership for the wellbeing agenda in their own area.

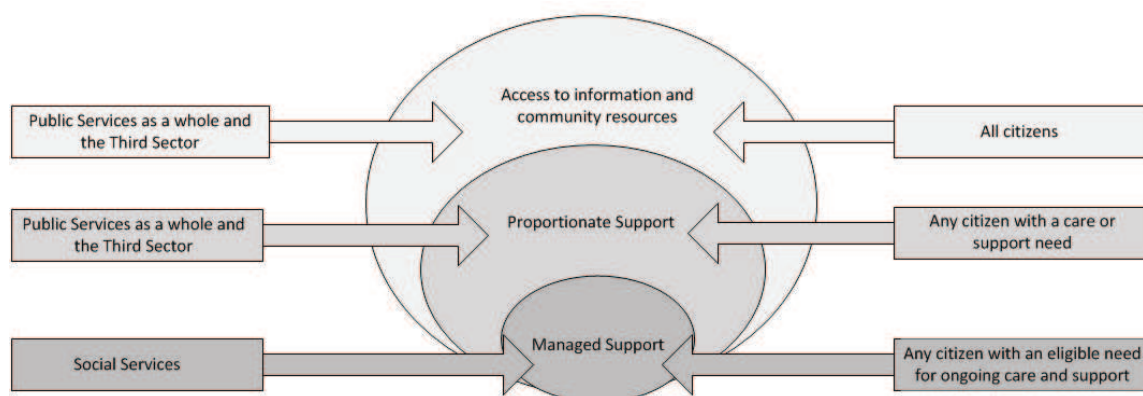


Diagram 1: Specific role of social services vis-à-vis other public services

II. ACCESS, ASSESSMENT AND ELIGIBILITY

32. The current system of access, assessment and eligibility has considerable flaws. It provides differential rights of access to care and support across different service user groups, consumes considerable resources with limited evidence of impact upon outcomes and acts to deter people seeking to arrange early intervention and prevention.
33. There is considerable consensus about the principles that should underpin new arrangements. Staff from local authorities have been working with the Social Services Improvement Agency (commissioned by Welsh Government) to develop and test out a new model which takes into account the requirements of the ten-year strategy. The report should be available soon.

34. If the national framework for these areas of work is to ensure a consistent approach to the way in which local authorities and partners interact with citizens and promote more responsive services, there is general agreement that the new arrangements should:
- begin with the provision of comprehensive information and advice, including what help is available within communities;
 - allow access to early intervention and prevention services, without complex assessment processes;
 - Offer proportionate assessment for those who may require managed care and support.
35. Changes of this kind are starting to emerge in practice with developments such as intermediate care and reablement, communication hubs and integrated hospital discharge services, Flying Start and Families First initiatives. However, we are learning too about how big is the gap between where we are now and where we will need to be in order to meet the statutory requirements set out in the Bill. The new model has considerable implications for all the stakeholders.
36. If we are to avoid duplication and confusion, the provision of information and advice needs to be managed in a unified way across the public sector and with partners. It is difficult to discern how costs can be apportioned and shared between those organisations that are resourced as universal providers of services and those who have a residual and rationing role. There is a need for further consideration about how systems for children and adults will align. In particular, the Bill as it stands appears to pay little attention to the complex interface between needs, problems, risk, capacity and outcomes. There will be people for whom there is prescribed duty to assess and plan.
37. One of our major concerns is with the next stage in the process when issues of eligibility become more central and centralised. The Bill provides for a new National Eligibility Framework which will introduce a uniform threshold for

people to access publicly funded state support wherever they live in Wales. This addresses the problem of substantial variability in adult services across council areas under the current system (i.e. the Fair Access to Care Services or FACS framework). However, in our opinion, national eligibility criteria should be applied initially to a small range of services, to allow a managed period of transition but also to ensure that a worthwhile goal (consistent eligibility) does not undermine another valuable principle (local determination about the best models of service that can be put in place in response to particular circumstances in the local context).

38. ADSSC broadly supports the modernisation of the system through these provisions but, as stated earlier, we do have some reservations about the anticipated outcomes from the Bill's drive on early intervention and prevention approaches in order to rebalance the system and make immediate savings. There is some evidence that, if poorly managed, such work can create unrealistic expectations, increase levels of dependency, and accelerate a "care career" which requires unnecessary provision of long-term support. Timely early intervention is critical to preventing high end, high cost interventions in some circumstances. For children and families, timely intervention depends on the coping capacity of the family and what is needed are the resources to determine when intervention will likely reduce escalation of need and therefore service demand. Greater access to assessment, even if assessment itself is more proportionate and less bureaucratic, risks taking capacity away from work that is geared towards assessing and managing risk and protection at a time when these are already stretched thinly.
39. Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential future cost pressures (for example, John Bolton's work in Coventry council³) rather than in existing

³ <http://ssrg.org.uk/wp-content/uploads/2012/01/2006files/10JohnBolton.pdf>

budgets for acute needs can be reduced. We advocate, therefore, an approach which recognises the need for additional investment in information and prevention services alongside the development of outcome based, citizen centred/integrated models of care that prevent institutionalised care, support people in their own homes, and provide for integrated care pathways.

40. To be effective, the Bill has to encourage financial remodelling across the public sector to create sustainable investment in early intervention and prevention. This means ensuring good joint commissioning processes and the use of an appropriate range of delivery mechanisms (to include social enterprises, co-operatives and user-led initiatives]).
41. As Professor Bolton points out, there is an important link between prevention and outcomes but that does not always sit well with increased entitlement to assessment and eligibility. These complexities must be fully understood. Alignment of outcomes through a whole systems approach from delivery through to regulation including social care and health will minimise unintended consequences of some of the provisions in the Bill (elaborated later in this evidence).
42. The parallel system of eligibility that determines access to fully funded NHS continuing health care operates under a different legal and operational framework, and so creates another set of challenges to be resolved. The development of appropriate secondary legislation offers the opportunity for addressing some of the longstanding issues here.
43. There is a perception, also, that the proposed model of access, assessment and eligibility in the Bill is too focused on adults and that current legislation already allows children and families to benefit from a proportionate assessment response in relation to need (based upon development of the CAF and the team around the family approach). There may be greater benefit from

focusing attention on provisions that deal with the transition of young people from children's services to adult services.

III. SAFEGUARDING ADULTS

44. The Bill provides for putting on a statutory footing our work to safeguard adults at risk. ADSSC welcomes this new provision but believes that the Bill could further develop the parameters of a comprehensive framework for adult safeguarding and protection. If adult protection is to gain further force in policy and practice, the right to protection and the right to take risks have to be balanced. Reconciliation between prioritising protection and the role of choice in risk assessment and the management of risk is not easy. For example, aligning potentially competing needs of a carer and the person being cared-for can be a critical component in the management of risk. The Bill rightly emphasises the right to self determination, independent control over one's own life (except for those without capacity) and so the right to take reasonable risks. However, an individual is also entitled to protection from undesirable risks. The draft legislation is relatively weak on this very important matter, particularly when risk management can either viewed as a strategy for eliminating risk or a strategy for empowering an individual to take control. We would be concerned about replicating the development of children's safeguarding where a series of tragedies brought about more and more prescription in terms of process and procedures which acted to marginalise the voice of the child.
45. Unlike the legislation successfully enacted in Scotland in 2007, the new provisions in the Bill for safeguarding and protection have no new resources identified to support the implementation of the new framework or the new structures. Furthermore, the Bill does not acknowledge its lack of legislative competence over non-devolved partners such as the police and probation so these professional bodies are not required to contribute to the funding of the boards and may not be fully accountable to multi-agency boards. The absence

of a national funding formula will increase the financial burden on local authorities and may limit what the boards can deliver.

46. We welcome the creation of National Independent Safeguarding Board which should help to provide consistent leadership to drive forward the transformation of social care protection systems. ADSS Cymru and WLGA have jointly commissioned a study from the University of Sheffield to consider the benefits of regional boards. Our initial reservation is that the Bill focuses on creating structures for collaborative working at a strategic level rather than focusing on safe and effective practice. For this reason, we welcome the Committee's invitation to contribute to the thematic oral evidence session on safeguarding in May.

IV. SERVICE REMODELLING AND INTEGRATING SOCIAL CARE AND HEALTH SERVICES: COLLABORATING FOR SERVICE IMPROVEMENT AND BETTER OUTCOMES

47. A national policy goal is for closer and more effective integration of social care and health services, rightly regarded as crucial to the sustainability of services and to improving health and wellbeing outcomes for service users. ADSSC welcomes the requirement for local authorities to promote partnership working and making arrangements to promote co-operation with partner bodies, as set out in the clauses of Part 9 of the Bill.
48. Whilst we support the Bill's emphasis on the role of local government in championing the needs of the local population and those in need of help, we are concerned that the Bill does not contain sufficient detail making explicit the requirements on key partners. The evidence from our own consultation with stakeholders views the lack of well defined statutory duties on the NHS as a major challenge to the delivery of the Bill's stated purpose.

49. Sustainable Social Services: A Framework for Action is prompting a radical change in the way that we organise and manage social care and health services. This is in response to wide range of issues, including an unsustainable current pattern of social care services which has the potential for increasing the costs of provision by 84% over the period 2010-2030. Specific tasks include:
- developing new service models for adults and older people predicated on principles of prevention and reablement and designed to improve outcomes for individuals while reducing demand for core services.
 - reforming the commissioning and purchasing of Adult Social Care, through the potential use of joint commissioning arrangements and promoting the development of social enterprises;
 - building management capacity to meet the challenges of the emerging agenda.
50. This agenda is being delivered in so far as it can be without a fundamental overhaul designed to overcome many of the formidable challenges and barriers to change, especially the difficulties both the NHS and local authorities are experiencing in their genuine efforts to work together effectively. This includes factors such as:
- meeting the costs of service transformation;
 - the scale of the agenda, with a need to focus on innovation and continuous improvement in all areas of service design, delivery and evaluation;
 - securing the right service scale - balance of local and regional and national
 - budgetary pressures and the need for savings
 - different funding and charging;
 - the risks of cost shunting between partners and the potential for a breakdown in trust between partners
 - finding the resources required to bring about transformational change
 - effective leadership across all sectors
 - difficulties experienced by Health Boards in shifting resources from acute services to community health and prevention.

- local authorities and health boards have their own local political, corporate, performance and improvement priorities
48. Only if working together on service remodelling and integrating services is seen as a joint statutory obligation and policy imperative is it likely that these challenges can be met. The current Bill is seen as too weak a tool to tackle such entrenched difficulties which undermine the key purpose of integration which is to deliver new service models, better citizen experiences of services and improved outcomes in terms of independence and wellbeing. In our opinion, it allows too much opportunity for silo working, rather than joint accountability for securing appropriate and high quality provision across health and social care in the local authority area. Government needs to be sure that the NHS is obliged to participate fully and not only to co-operate *when required* to do so by local government. Otherwise, the Bill's provision runs the risk of disengagement by the NHS leading to disjointed assessment processes, confusion over who is accountable for the provision of services for agencies and for service users, an increase in complaints due to unworkable care and support plans, an incomplete local offer to citizens and limited use of joint commissioning and pooled budgets where these are appropriate. Social care has to be regarded as having equal status with health, not a subordinate one, if partnership working is to be a joint responsibility and to have positive outcomes.
49. Government needs to consider the practicalities that will realise the vision of the Bill in relation to provisions to promote partnership working. We know that outcomes for adults and children can be vastly improved by integration on different levels, allowing for a range of professional perspectives to shape and develop effective models of intervention. But aligning the agendas of both health and local authorities does not happen automatically; it requires conscious effort to develop a matrix of management arrangements, resource alignment, shared policies, and a shared language about holistic outcomes for service users. Despite acknowledged difficulties, in our opinion, rebalancing

the burden of responsibility across partner agencies in the Bill is critical to the principle of integrated health and social care, and the success of this legislation.

50. The NHS has the power for pooling budgets but it is not used properly. Local authorities and the NHS have different financial arrangements and different regimes; at present, it can be very difficult to reconcile these differences. Government may need to reflect on the mechanisms that need to be in place in order for the provisions in the Bill to deliver its vision. For example, the Bill should place a duty on the NHS to participate in joint assessments and discharge other functions efficiently and effectively, such as the provision of information in the Carer's Measure, to address present variations across Wales.
51. We share the belief that good partnership working with health will strengthen the role and impact of the Bill's prevention agenda. There is a real opportunity here for public health to play a key role in addressing the wider social determinants of ill health through the full range of local government functions and partnerships. We know that ill health can potentially escalate both the clinical and social care needs of vulnerable individuals. In England, for example, Professor Michael Marmot's Review⁴ noted that only 4% of NHS funding is at present spent on prevention. Partnership working between primary care, local authorities and the third sector is proven to deliver effective universal and targeted preventative interventions for those most in need.⁵ ADSS Cymru recommends that the present Bill should provide for a more inclusive role by Public Health Wales.

⁴ <http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review> .

⁵ Strategic Review of Health Inequalities in England Post 2010. Marmot Review. P.32

IMPLEMENTATION OF THE BILL – POTENTIAL BARRIERS

I. FRAGMENTED POLICY

52. There is body of evidence that points to disjointed policy initiatives in social care as a critical factor and a root cause in tackling crises of unsustainable cost increases, poor quality and inequity. Unfortunately, a series of narrowly-focused provisions in the Bill will serve further to fragment social care policy and may possibly undermine the Bill's broad vision or strategy for efficiently delivering a national social care system. The proposals for direct payments are a good example. The overly prescriptive approach taken in the Bill without due consideration to the wider policy context in which direct payments operate (that is, citizen centred support) means that the use of direct payments to encourage and support self determination and self management of social care needs loses its flexibility and become less responsive to the assessed needs of an individual. The danger of over-prescription is potentially the 'undoing' of complex whole system arrangements already in place on the ground. ADSSC advocates that legislative prescription on this scale should not be on the face of the Bill.

II. RESOURCES & FUNDING

53. ADSS Cymru would welcome a more evidenced appraisal of the resources and funding consequences of the provisions in the Bill. There is a real danger in creating increased expectations and duties at a time of depleting resources and the absence of an agreed funding formula for social services that we simply will not be able to meet the expectations of our citizens and deliver on the Act.
54. We are working with WLGA to produce more detailed financial modelling of the impact of the welfare reform and an interim report on likely resource implications of the Bill as currently drafted. We would appreciate a more

detailed assessment within the Explanatory Memorandum to support the assertion that in some areas costs are minimal or cost neutral.

UNINTENDED CONSEQUENCES

I. RISK TO LOCALISM

55. We do not feel that the provisions made on the face of the Bill are in keeping with the localism agenda and there is no guarantee that secondary legislation will acknowledge the potential differences between local areas, so that each area has a measure of flexibility to mitigate risks when implementing the Act. This is in keeping with the greater emphasis in the ten-year strategy on strong national leadership but there has been little debate about the potential impact of moves towards a national care service. Involving communities, adults, children, young people and carers in the development of 'local offers' is critical to successful wellbeing outcomes.
56. The Bill presents a mixed picture of provision where some areas (such as assessments, direct payments, safeguarding and adoption) appear to be overly prescribed and others (such as promoting integration and co-operation with partner agencies) are under-prescribed – often without any clear rationale for such differentiation. We believe that the Bill risks overriding the legitimate autonomy of sovereign bodies to plan and design services around local need which respects geographical terrain, diversity, local demographic profiles and local cultural sensitivities.
57. The Simpson report⁶, commissioned by the Welsh Government in March 2011, made a valuable contribution to the debate on 'what services should be delivered where and on what scale'. There is much work being done to agree what services should be delivered at national, regional or local levels, within the limits of current governance arrangements. The Bill appears to

⁶ <http://wales.gov.uk/docs/dsjlg/publications/localgov/110325Inrservicesv2en.pdf>

shed little light on this area apart from prescribing a national adoption service. We recognise the need to increase the pace of collaborative activity and our regional improvement collaboratives are making a significant contribution. The Bill gives Welsh Ministers substantial powers to pre-empt and override decisions which may be strongly grounded in local political and professional judgements about complex interdependencies of policy and practice at the point of service delivery.

II. CONSEQUENCES OF A DISJOINTED APPROACH

58. The interface of this Bill with the Sustainable Development Bill and the Public Health Bill suggests that the Welsh Government is working towards a holistic approach to sustaining people and place, helping communities to help people and communities to help themselves. However, it has not explicitly stated or debated its conclusions. Similarly, the recent Welsh Government White Paper on 'Ending Violence against Women, And Domestic Abuse' has crossovers with this Bill. It would be helpful to see an explanation of how the Government sees the provisions in this Bill sitting alongside those in other existing Acts and forthcoming Bills.
59. The Bill takes on board the Law Commission's recommendation to consolidate and simplify existing adult social services law into a single legal framework for Wales. We support this endeavour. However, while acknowledging that this Bill will work alongside the majority of the provisions contained in the Children's Act, it does struggle to connect coherently systems that will have to cater for a whole range of ages, from unborn babies to the very oldest people in our population. There are many common factors but different groups of service users also have different rights, different needs and different potential solutions for meeting needs for care and support.
60. We would want to ensure that the Bill is clear about (a) which provisions in other legislation have been repealed or transferred to this Bill so that local government might act lawfully and (b) provisions for the transfer of

responsibility for assessing needs and providing services for young people from children's services to adult services, between the ages of 14 to 25 years. The success of such transition planning and programmes are crucially dependent on collaboration between children's and adult services and a multi-agency, integrated approach is required to ensure clinical, educational and social outcomes for young people⁷. The journey from adolescence to adulthood can be a challenging time for young people, (especially young carers and those with complex needs). As they move between different services, they find significant differences in the expectations, style and culture of these services while their own care needs are evolving at the same time. We recommend that the Bill takes these issues into consideration more explicitly.

61. It is understandable perhaps that the Bill makes little reference to the social care workforce, given the commitment to producing a White Paper on Regulation and Inspection. However, it would be helpful to see a better understanding in the Bill of the role played by strong professional teams across social care and health (many of which now operate in a very integrated way) and the need for training them to meet the changes and challenges it introduces. Associated with this issue is the future of training funds for the workforce which is under review currently.

ACHIEVING A REASONABLE BALANCE IN THE PRIMARY AND SECONDARY LEGISLATION

62. Given the complexity of what the Bill is aiming to achieve, ADSSC would welcome the opportunity to engage in debate about effective secondary legislation as this is material to the Assembly's understanding of how the legislation will operate successfully for individual citizens as well as on a theoretical level.

END

⁷ <http://www.everychildmatters.gov.uk/>

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Social Services & Wellbeing (Wales) Bill

March 2013



WLGA • CLILC

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the opportunity to provide written evidence on the Social Services and Wellbeing (Wales) Bill, which has been developed in close consultation with local authority lead politicians, and the Directors of Social Services.
4. In constructing our response we have worked in partnership with local authorities, ADSS Cymru and the NHS Confederation. We have also sought to work closely with our partners in the third sector, and with the offices of the Children's and Older Peoples Commissioner for Wales.
5. In this submission, we make comments on those areas in the Bill required by the Committee, and limited to the principles of the Bill. We refer you to the ADSS Cymru submission for greater detail regarding key policy implications, and support their professional perspective on these matters.
6. We welcome the opportunity provided by the committee to provide additional oral evidence on provisions within the Bill, such as Safeguarding, and would advocate that wellbeing, integration, eligibility and assessment are also afforded the same opportunity, given their importance to the wider policy agenda. Work has already commenced with key colleagues on a number of areas to develop more detailed evidence, on areas with the Society of Welsh Treasurers and ADSS Cymru on the financial implications of the Bill, IPC on Assessment and Eligibility, Professor Jan Horwarth on Safeguarding and the King's Fund on integration with health..
7. Building a robust legislative framework to support the delivery of truly '*Sustainable Social Services*' in Wales is a critical task, and one in which we must work in partnership to ensure we get it right. Social Services cannot deliver this agenda alone and the contribution of partners in the wider public sector, and third and independent sectors will be crucial in delivering the policy objectives.

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Introduction

8. The WLGA welcomes the sustained commitment of the Deputy Minister for Children and Social Services to transforming social services in Wales, and her continued support for social services as a core function within Welsh Local Government.
9. Local Government values the open and constructive approach taken by the Deputy Minister in shaping the reform agenda for social services in Wales. The WLGA, working with ADSS Cymru, will continue to actively contribute to the developing the national policy framework through forums such as the WLGA's Social Services Policy Group, and Welsh Government's National Social Services Partnership Forum Strategic Leadership Group and thematic stakeholder groups.
10. We look forward to maximising opportunities to shape the forthcoming regulations, guidance and codes of practice, via these forums, and building on the existing collaborative and cross party approach to policy making established by the Deputy Minister.
11. ADSS Cymru and WLGA have worked together in developing our written responses to the Bill, as there are a number of areas of where we share the same views and advocate the same solutions. Whilst recognising that our roles are different, we have a shared desire to see local government remaining at the heart of social services transformation and delivering a more effective system of social services through effective political and professional leadership.
12. The WLGA wishes to work closely with the Welsh Government and the National Assembly to shape legislation which enables the delivery of truly sustainable social services. Given that increasing demands and reduced resources are placing social services under extreme pressure, we welcome the commitment by government to legislate, to ensure that social services are sustainable into the future.
13. We are clear however, that the Bill is just one element of the wider policy framework set out in the Welsh Government's policy framework 'Sustainable Social Services; A Framework for Action'. Legislation must not be seen as an end in itself, but used proportionately where it is deemed new legal duties and powers are the most appropriate option to achieve the stated policy objectives.

14. We believe that the introduction of the 'Social Services and Wellbeing (Wales) Bill', builds on the significant progress already made in Wales, as reflected by the 'Independent Commission on Social Services 2010', who stated *'we are building from a position of strength'*. Significantly, much has since been achieved, resulting from the publication in 2011 of Welsh Government's policy framework 'Sustainable Social Services; A Framework for Action'.
15. In demonstrating the commitment of local government to the 'Sustainable Social Services' agenda, the publication in October 2012, of the first ['Local Government Implementation Plan'](#) for 'Sustainable Social Services', reflects both the commitment and leadership shown by social services in advancing improvement. The plan developed by WLGA and ADSS Cymru in partnership with NHS, third sector and independent sector colleagues was welcomed by the Deputy Minister as demonstrating *'the absolute commitment of local Government to transforming social services in Wales, and to collaborating with all partners to deliver the improvements that are needed for people who need care and support'*. She described the plan as a 'Landmark Document' which reflected *'that this is a further significant milestone your delivery of the local Government compact'*, which has since been completed.
16. Building upon the considerable and acknowledged strengths that exist in social services in Wales, the WLGA working with ADSS Cymru are intent on achieving service transformation, as set out in our implementation plan through providing:
- A clearer focus on improved wellbeing outcomes for the people using services;
 - Greater control and choice for citizens about the help they want and improved access to that help, without unnecessary bureaucracy;
 - More effective and better integrated models of care and support and a more responsive range of services; and
 - A better qualified workforce with skills that enable them to work across organisational boundaries.

Achieving the Bill's stated purposes

Recommended Principles

- Legislation must simplify the current law, and support delivery of new and more integrated models of service.
- Achieving the right balance between primary legislation and regulation is critical
- Local Government are well placed to deliver locally determined models of care aligned to population requirements. Legislation must not therefore undermine the autonomy of Councils to make decisions on service delivery.
- Resources will be required to deliver the policy objectives stated in the Bill, alongside efficiency savings delivered by local Government
- Improved wellbeing is a public service responsibility, and to be effective in its aim, the Bill must demarcate the specific role expected of social services

17. In its current form the Bill is significant in scope, and larger than any other to come before the National Assembly to date. It is therefore of crucial importance that the legal framework it provides, is proportionate, deliverable and supports sustainability of services.

18. The WLGA looks forward to working constructively with the Health and Social Services Committee and Government, to ensure the Bill delivers the aspirations of 'Sustainable Social Services: A Framework for Action'. To do so, we believe that the Bill must deliver a reduction in bureaucracy, mitigate increasing demand and enable collaboration both within local government and with our key partners. We believe the Bill at this stage, does not set out how it will achieve these objectives.

19. Crucially, there needs to be a dialogue around the reframing of social services proposed by the Bill, which moves towards a more 'progressive universal care service'. We question whether as drafted, and with no additional resources, this vision can be translated into operational reality.

20. The Bill therefore provides a historic opportunity to build on existing innovation and progress, providing a Welsh legal framework which reframes how social services are delivered in Wales, aligned to the changing needs of the population. It is important, that we get it right, and that the legislation is fit for purpose. Therefore at this early stage we believe that the policy objective outlined in the Explanatory Memorandum is both too broad and too vague. The Explanatory Memorandum states the policy objectives are to *'improve the wellbeing outcomes for people who need care and support and carers who need support..'* This is an aspiration not an objective. To ensure the Bill succeeds, we would suggest greater clarity as to what the policy objectives are, and how legislation is being used to achieve these, as set out in paragraphs 15 and 16 above.
21. There also needs to be consideration on the apparent dichotomy in the Bill, between giving users real voice and control, and nationally prescribed arrangements as currently implied in the Bill. Specific elements of the proposed legal framework, such as those relating to assessment and eligibility, need to be framed in a way which enables and supports the development of models that deliver improved outcomes for people in need. Early modelling work by SSIA in relation to Access to Social Care services, and campaigns such as those of Age Cymru and WCVA provide a useful basis for new models that will meet the objectives within 'Sustainable Social Services'. Conversely, over-prescription within the Bill will distract from the development of responsive services that meet locally identified needs.

Are the provisions of the Bill appropriate?

22. We welcome the inclusion in the Bill of new provisions around safeguarding, integration with health, provision of information and advice, and assessment and eligibility as being some of the cornerstones of reform. There is a risk however, that the current drafting of the Bill, and its vast scope, may not be deliverable, particularly around the new duties in relation to wellbeing and prevention. We would recommend similar transitional provisions are placed on the Bill, as recommended in the Stage 1 report, of the regulated Mobile Home sites (Wales) Bill, under recommendation 8, to ensure deliverability.
23. There is also a risk that as currently drafted the Bill may undermine the sovereignty of local government, and its statutory and leadership roles in delivering social services to local communities. Potentially, it reduces subsidiarity and the democratic legitimacy of Councils, through the increased powers conferred on the Welsh

Ministers set out throughout the Bill. For example in 125 (2) power is provided to the Welsh Ministers, *'to direct the local authority to take any action which the Welsh Ministers consider appropriatein accordance with the requirements in the relevant code'*.

24. Additionally the Bill presents a mixed picture of provision where some areas appear to be overly prescribing. For example we believe that section 8 (3) is too prescriptive, it should be left to local authorities to determine how they would deliver service, within the duties prescribed on the face of the Bill. Whereas other sections such as promoting integration and co-operation with partner agencies are under-prescribed – often without any clear rationale for such differentiation. We provide greater detail under the section on 'Balance'.

Costs

25. The WLGA believe that the Bill must achieve the collective aim of supporting the delivery of services that are both high quality and responsive, but that are sustainable, at a time of increasing pressure and reducing resources. Recognising the current pressures on the public purse we would advocate that the Bill should be focused on priority areas of transformation, which require statutory change, for example integration and safeguarding

26. The WLGA fundamentally questions the assumption within the Explanatory Memorandum, and stated by the Minister for Health and Social Services, that the Bill will be 'cost-neutral'. Colleagues from across the public, third and independent sector support this view, and share the view of the third sector advisory group that *'the main barrier to delivery will be cost projections'*. We share their view that there is both a lack of clarity, and of detail in the Explanatory Memorandum, as currently drafted, and would advocate this is reviewed in light of evidence provided to the Committee before the Stage 1 debate.

27. Evidence from transformation already underway in Wales and from similar changes to the social care infrastructure introduced elsewhere in the UK provides a compelling case that change costs money, and that efficiency savings achieved through change are realised in the longer term and cannot be relied upon to drive the initial change. In subsequent sections of this response we look at some particular examples of this. However our general call is for an honest and open debate about

the resources needed to drive the envisaged change, and what is ultimately achievable.

28. The recent study undertaken by the [Institute of Fiscal Studies](#) for the WLGA, entitled 'Local Government Expenditure in Wales: Recent trends and future pressures' suggests that whilst spending on social services in Wales has been relatively protected, *'the expected cuts over the coming years will be increasingly hard to deliver against a backdrop of new statutory duties, and growing demand'*. In particular, demand is expected to grow as a result of imminent changes to welfare, and the report states *'groups impacted most by the benefit and tax credit cutsmay come to rely more on local Government services (housing, social services)'*.
29. We refer you to recommendation 5 of the Health and Social Services, Stage 1 Committee report recommendations of the Recovery of the medical costs of Asbestos Bill, who state *'We recommend that the financial estimates on which the Bill is based, are updated as quickly as possible, ideally before the Stage 1 debate, and in any event before detailed consideration of the Bill at Stage 2'*.

Prevention & Early Intervention

30. The Bill focuses on the need to increase early intervention as the way to rebalance the system and improve the wellbeing of people with care and support needs. Welsh Government describe the vision behind the Bill as responding to the fact that *'Current arrangements are not sustainable, therefore we must invest in prevention and early intervention to create sustainability, savings will be made through rebalancing the system, to ensure the masses rather than the few can receive services'*.
31. Whilst we absolutely support the need to rebalance the system to provide responsive services, there is little evidence to suggest that a focus on early intervention and prevention alone, will achieved the desired rebalance, or the long term savings the Government envisage. Indeed the Explanatory Memorandum, which accompanies the Bill, itself acknowledges that this approach will not completely remove the need for ongoing care and support, and in some cases will only delay it.
32. This view is supported by ADSS Cymru, and Professor John Bolton, who determined from work undertaken in Coventry Council that *'Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential*

future cost pressures rather than in existing budgets'. Similar messages emerged from the work undertaken by Professor Bolton in Wales during 2010-11, in his report entitled 'Delivering better services at a lower cost for older people' as such we join with ADSS Cymru and other colleagues from across the third sector in calling for, an approach which recognises the need for additional investment from the outset, for example in information, and advice prevention services and generally in developing new and more integrated models of care. The Government's view that the Bill is cost neutral, and that realignment of services can be delivered without additional resource is absolutely unviable.

33. We therefore advocate that a proportionate approach is needed; one which recognises the importance of early intervention, alongside an acceptance that more acute services will always be required. A key outcome of the Bill must be the creation of new powers for local authorities to develop new ways of delivering services, through vibrant multi sector provision, recognising in Wales the specific role of the third sector.

34. To this end we welcome the inclusion of a duty to promote new models of delivery, which include social enterprises and cooperatives. However we believe it should not be limited to such models, enabling real innovation to take place in partnership with providers in the independent and voluntary sectors alike.

Wellbeing

35. The WLGA recognise the role of public services, in improving the wellbeing of the population. In defining the contribution of social services, the WLGA has previously advocated a defined corporate leadership role for Directors and Cabinet Members, around the 'coordination and promotion' of wellbeing to be included in the Bill.

36. As currently drafted the definition of wellbeing is too broad, and relates to a general duty across the whole public sector, for example paragraph (g) refers to social and economic wellbeing which is extremely broad and vague. The Bill states that the definition relates to '*Any persons exercising functions under this Act*' yet the definition of any persons is not provided. The Bill therefore must clarify the role and duties of social services, in improving the wellbeing of those with care and support needs.

37. The WLGA believes as a minimum the Welsh Government should provide additional information or guidance as to the practical application of the duty, related to the paragraphs (a) to (g) of section 2(2). As drafted the current definition, spans the public sector, and is aligned with the wider policy aspiration of improved population wellbeing, rather than the statutory contribution of social services.
38. Given that we know now the Sustainable Development Bill, Domestic Violence Bill, and proposed Public Health Bill, will also include definitions of wellbeing, and place new duties on public services, we ask the committee to consider the value, of the inclusion of wellbeing in this Bill. Whilst we advocated for its conclusion at the consultation Stage, we were not aware at that time, of the Governments intention to include wellbeing duties in up to three other pieces of legislation. As such we ask the committee to consider the utility of its remaining inclusion in this Bill, or opportunities to ensure it is reframed in the context of the contribution of social services.
39. We would welcome additional information on this provision to be included in the Explanatory Memorandum, around the definition of wellbeing, what the duties mean more explicitly, and on whom they are conferred. In addition we would welcome clarification as to how these provisions will relate to or interface with those proposed in the three Bills referenced in paragraph 38.

Integration

40. Unless enhanced legislative powers are to health and social care, enabling integration across services with a shared population, it is suggested by organisations such as ADSS Cymru that the cost of providing social care will increase by up to 84% over the period 2010-2030. As such the WLGA welcomes the recognition that enhanced statutory powers and duties, are necessary to unblock existing organisational and performance-related barriers, enhancing integration with relevant health services.
41. We strongly believe that the NHS must be full and equal partners, mandated by legislation, in the development of truly integrated models of care if the vision set out in the programme of Government is to be achieved, where it is stated the Government will *'Support service modernisation in the NHS including better integration with Social Care to ensure all services are safe and sustainable in urban and rural areas'*

42. Any new partnership duties must be supported by appropriate arrangements to ensure shared planning, delivery and accountability. Good practice is already in existence across Wales, through county level, health and social care 'boards' (e.g. Hywel Dda) together with detailed evidence presented in a number of studies on integrated care undertaken by organisations such as the Kings Fund.
43. Certainly we believe that the inclusion in the Bill of greater powers to require integration with health is fundamental. There is a real and genuine opportunity to demarcate a Welsh approach to integration, where it is of added value to do so. However as currently drafted, the Bill does not present a clear vision around the integration agenda, nor provide a stronger mandate than already exists to take integration forward.
44. In framing such provisions, we would advocate that the evidence from use of existing legislation is considered (NHS Act 2006) and used to inform requirements. At present, a duty to promote cooperation, is helpful, but is not meaningful.

Unintended Consequences

45. As already set out in this document the WLGA believe that as currently drafted the Bill will result in the unintended consequences of producing a system unable to manage increased expectation and demand, and placing increased pressure on already diminishing and overstretched budgets. We see value in discussing how best to mitigate these consequences, alongside provision of resources appropriate to the new duties outlined in the Bill.
46. Such discussions must be take place in the context of work commissioned by the WLGA from the [Institute of Fiscal Studies](#), which projected that local government may potentially lose up to a fifth of its spending power between now and the end of the decade. The next Spending Review is likely to be extremely tight, and authorities are struggling to balance budgets in line with existing statutory duties.
47. The WLGA recognises the current constraints on Government finances, and we are keen that this does not stymie innovation and reform. It is important that we work together to ensure a realistic resource base is secured, to enable local government to uphold the new statutory duties the Act will confer. This will also ensure local government is able to effectively manage the increased expectations and demand on

services which we expect to result from the Act. As such we have called for an open and honest debate about the level of additional resources required, and a more detailed financial assessment within the Explanatory Memorandum. To support the debate, the WLGA working with ADSS Cymru and the Society of Welsh Treasurers have developed an interim report detailing likely resource implications, and this will be further developed by a commission of independent experts to consider the financial implications of the Bill as currently drafted.

48. The WLGA believes there is value in consolidating legislation into a coherent framework for Wales, and endorses the Law Commission view on this. However our membership does not feel that this has been effectively communicated in the Bill, and we would welcome clarity on what provisions will be repealed and replaced within the Bill, so that our Members are clear of the parameters of the new legal framework. This will avoid any unintended consequence of local authorities being in breach of legislation.

49. In relation to wellbeing we are concerned that there are currently up to three potential pieces of legislation which create new duties around wellbeing, these being this Bill, the Sustainable Development Bill, Domestic Violence Bill, and Public Health Bill. This may lead to confusion and a disjointed approach to achieving improved wellbeing across the population. We ask the Committee to consider carefully the provisions included in the Bill, alongside the other legislation highlighted and advocate a consolidation of wellbeing duties in one Bill.

50. The Social Services and Wellbeing (Wales) Bill is both an enabling and consolidating piece of legislation, and many of the proposed provisions are generally welcomed by our membership. However in drafting the Act we would expect to see a balanced approach to legislation where function, rather than form is prescribed. At present the Bill presents a mixed picture, which risks an overly prescriptive approach in areas such as assessment, adoption, safeguarding and the provision of information and advice. We believe that this risks to affect the flexibility of local authorities as sovereign bodies to plan and design services around evidenced local need, and which is able to respect cultures, traditions and local sensitivities.

Balance

51. With a Bill as wide in scope as this, ensuring an appropriate balance between what is on the face of the Bill, and regulations is crucial. We recognise and welcome the role

of the National Assembly in being part of the transformation of social services and as a strong legislature. This function is fundamental with a Bill the size and scope of the Social Services and Wellbeing (Wales) Bill. However along with a number of other partners have concerns that there is a considerable imbalance between the use of the negative procedure and of the affirmative procedure for agreeing regulations to result from the Act.

52. We refer you to the Stage 1 report of the Constitutional and Legislative Affairs committee regarding the Mobile Homes Bill. Conclusion number 3 states '*While we agree in principle that technical and administrative changes should be left to the negative resolution procedure, as a general rule we would like to see more significant issues subject to the greater level of scrutiny that is provided for by the affirmative procedure*'
53. In particular we would advocate the table setting out the power to make subordinate legislation is revisited by officials prior to the commencement of Stage 2, in accordance with the above conclusion number 3.

Views of Stakeholders

54. As the representative body for local government in Wales, we reflect the views of our members, through network groups such as the Social Services Policy Group, and Bi Lateral meetings with the Deputy Minister. We ensure close alignment with key professional organisations such as ADSS Cymru, and the Society of Welsh Treasurers, and work effectively with key external partners such as the NHS Confederation and a wide range of voluntary organisations. Specifically in drafting this evidence we have worked with ADSS Cymru and the third sector advisory group on Health and Social Care.
55. The Local Government Implementation plan provides an enduring commitment to improving the voice and control of the citizen to shape services, and as such has a significant number of work programmes designed to this effect. We hope that through programmes such as our service user surveys for looked after children, and vulnerable adults, and work led by the SSIA on [Citizen Directed Support](#), through their Learning and Improvement Network, and [Getting Engaged](#) programme, our evidence reflects a strong representation from those in receipt of social services throughout our evidence.

Conclusion

56. The WLGA welcomes the introduction of the Social Services and Wellbeing (Wales) Bill, to the National Assembly for Wales. Our evidence sets out our broad views related only to the principles of the Bill, as required by the committee.
57. The Deputy Minister welcomed the commitment within the local government Implementation Plan to empower citizens, to shape locally delivered, responsive services. The plan is aligned to the common goals shared by national and local Government, of providing citizens with a stronger voice, establishing a strong and professional delivery team, driving forward collaboration and service integration, and improving the safeguarding and protection of those at risk within our communities. We believe that it is therefore appropriate to have legislation that supports local government and partners to deliver these policy aspirations in a way that respects the need for flexible models of delivery, aligned to local need, and we will be focusing on ensuring the Bill is able to enable local government, working with partners to deliver these policy objectives.
58. In our evidence we have set out those aspects which we welcome, areas we believe would benefit from amendment, and also areas of specific concern. We believe our response to be pragmatic, recognising the value of the legislation, whilst focusing on what must be deemed priority areas on which to legislate, and what is realistic to achieve within the existing resource base.
59. In particular we welcome the focus on providing greater information and advice to citizens, empowering the development of new models of service by unblocking existing statutory obstacles, and demarcating a Welsh approach to the delivery of services. However we remain concerned about placing wellbeing duties on a statutory footing, whilst the definition remains so broad, and the costs of a move to a social care service with increased statutory duties.
60. We look forward to continuing to work constructively with our professional partners in the ADSS Cymru, NHS and across the third sector via the Health and Social services advisory group, and to participating in the debate to improve the Social Services and Wellbeing (Wales) Bill.

Agenda Item 5

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 6 – Gwent Police

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

1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the wellbeing of people who need care and support and carers who need support?

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

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

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

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the wellbeing of people. Do you feel that the Bill will enable the delivery of social services that are sustainable?

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

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

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

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

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

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

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?
 - **The absence of funding formulas for boards could be an issue when public finances are under such pressures.**
 - **The ability of Regional Boards to hold member agencies to account needs to be strengthened as does the role of the Chair of the Board. It is important that Boards are able to demonstrate effectiveness in terms of holding partner agencies to account for safeguarding services.**
6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by regulations?

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

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

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

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

Please see previous comments in relation to resources.

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

No.

Agenda Item 6

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 31 - Older People's Commissioner for Wales

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

8th March 2013

Dear Committee Members,

Re: Consultation on the Social Services and Wellbeing (Wales) Bill

Thank you for the opportunity to provide initial written evidence to the Health and Social Care Committee on the general principles of the Social Services and Wellbeing (Wales) Bill.

As Commissioner, I have a statutory duty, as set out within the *Commissioner for Older People (Wales) Act 2006* and *The Commissioner for Older People in Wales Regulations 2007* to keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales. Effective and robust scrutiny of the Social Services and Wellbeing (Wales) Bill, from the perspective of older people, is therefore a major priority for me in discharging my legal powers.

In my scrutiny of the Bill, I have three specific points of interest. Firstly, my overriding priority is to ensure the adequacy of the proposals from an older person's perspective i.e. that the intent of the proposed legislation will deliver the changes that older people have told me are needed.

Secondly, I will take a view on the extent to which the detail contained within the Bill reflects this intent, and thirdly, the level of assurance I have that the Bill will in practice deliver the outcomes that it aspires to.

As I outlined when I spoke with the Committee in a private session recently, it is crucial that the Bill remains focused, as the initial Framework for Sustainable Social Services did, on the impact it will have on the lives of people. It is essential that it remains a Bill about people, rather than a Bill primarily about systems and services.

From my perspective as Commissioner, there is much in the Bill that I welcome, including simplification of the ways that people's needs are assessed, improved rights for carers and a commitment to ensuring that high quality services are delivered more consistently across Wales. I particularly welcome the upfront focus on wellbeing and the central role for prevention. However, at this stage there are number areas of the Bill that, as currently drafted, limit its potential to make a real difference to the lives of older people. These areas are explored further in my response to the questions below, but in summary relate to:

- The absence of statutory principles on the face of the Bill.
- Lack of clarity around how the bill will deliver greater voice and control to older people and a failure to recognise the role of advocacy, particularly independent advocacy, within this
- Overreliance on regulations, particularly in respect of some high risk areas including eligibility criteria
- The need for further clarification and strengthening of proposals around adult safeguarding
- Potential risks around the practical implementation of new partnership and collaboration duties, which will require leadership, cultural and governance changes alongside legislation if they are to be effective

Consultation Questions

1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

I have strongly and publicly supported the aims and aspirations behind the Social Services and Well-being (Wales) Bill to transform the way that social services are delivered, making them simpler and giving people stronger voice and more control. Older people frequently inform me that services are complicated, difficult to access and often fail to provide a little bit of help on a timely basis. Older people also raise with me their concerns about the unacceptable variations in the way that services are delivered across Wales.

A Bill that brings together local authorities' and partners' duties and functions in order to improve the well-being of people who need care and support is a significant, once in a generation, opportunity to 'reboot' our social services systems in Wales around the issue of wellbeing and ensure that in future they are more simplified, integrated and outcome focussed, and more importantly, informed by the voices of service users. It is imperative that we get this right.

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

In general, the objectives set out in Chapter 3 of the Explanatory Memorandum are reflected by the areas covered within the Bill. However, there is one significant exception that is of critical importance to ensuring that the Bill delivers on its stated aims, and this relates to the current absence of statutory principles.

I have previously called on Welsh Government to introduce statutory principles on the face of the Bill in order to uphold the human rights of all those affected by it and I am extremely disappointed that this is not

reflected in the current draft. The overarching well-being duties currently included in the draft Bill (to promote the well-being of people who need care and support and of carers who need support) **are not statutory principles**.

Statutory principles should be included on the face of the Bill for three reasons:

1. They will provide a solid statutory foundation. This would make them 'hard' law as opposed to 'soft' law that is tucked away in a Code of Practice.
2. Core legal expectations should not be assigned to a Code of Practice. They should be on the face of the legislation to guide the reading and interpretation of it; they must be at the forefront of the mind rather than considered later.
3. Principles set out clear statutory parameters for those who must exercise professional judgement when using the legislation. They also provide a good basis for service users to assess and, if necessary, challenge decisions made about them. Decision making can be measured against the letter of the law and against the spirit of the principles.

The principles should:

1. Demonstrate the policy aims behind the legislation and maximise the probability that these are reflected in decision making. They should ensure that decision makers give effect to the purpose behind the legislation.
2. Reflect human rights principles.
3. be consistent with the requirements of related legislation, e.g. the Mental Capacity Act 2005, the Mental Health Act 1983.

It is my view that more must be done to ensure that the Bill takes a human rights approach for both adults and children. Statutory principles MUST be included on the face of the Bill in order to uphold the human rights of all those affected by it. Through the discharge of my statutory duties my formal advice, as Commissioner, is that inclusion of principles in a Code of Practice is not sufficient, and the lack of statutory principles will significantly undermine the impact of the Bill.

I am currently preparing a separate paper on potential wording of these statutory principles which I will forward to the Committee sedately.

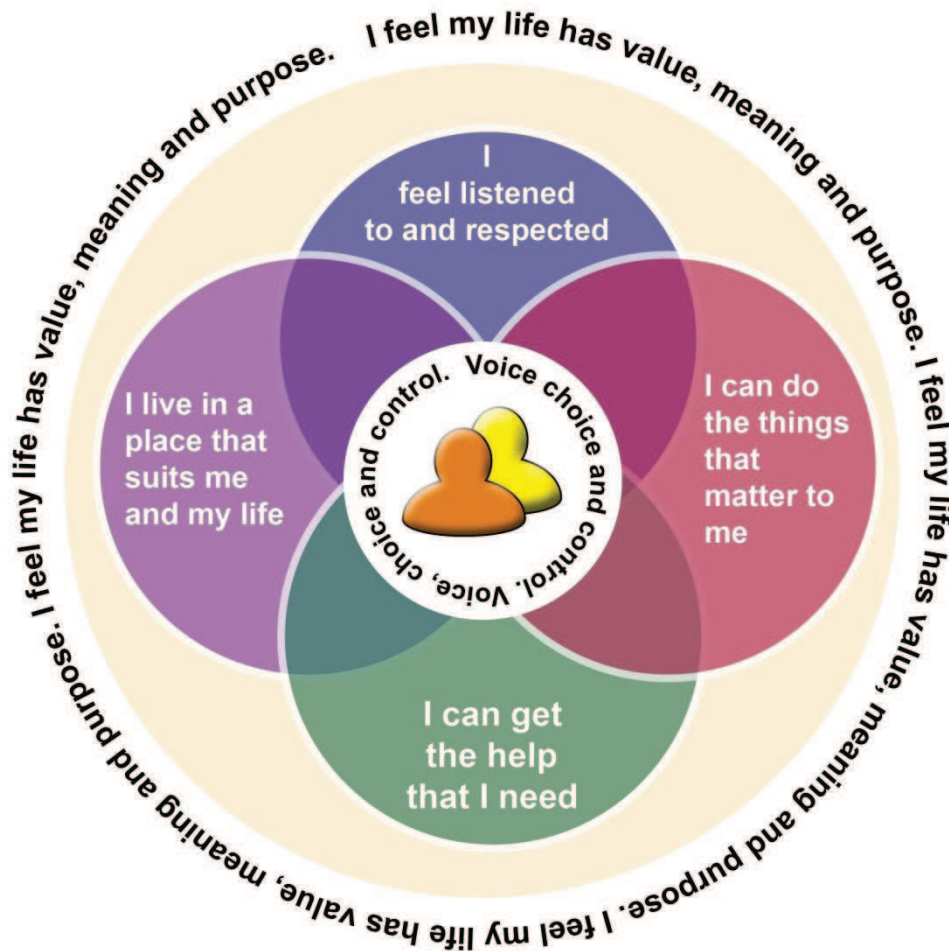
3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

I have strongly and publically welcomed the renewed focus on wellbeing in the draft Bill. The inclusion of 'domestic, family and personal relationships' and 'contribution to society' within the definition of wellbeing strongly resonates with the issues that older people often tell me matter to them. Issues such as loneliness and isolation have a huge impact on physical health, as well as quality of life, yet older people tell me that they don't feel these issues are taken seriously, or given priority by providers of public services. The new duty on service providers under the general functions of the Bill to promote social and economic wellbeing as well as physical wellbeing is therefore welcome.

It is my view that the Bill needs to strengthen its definition of wellbeing and place it in a context that is more outcome focused and more closely aligned towards the intent of the legislation rather than services or systems.

I will shortly be publishing my own four year Framework for Action which focuses around four key themes that older people have told me are central to their wellbeing, or to living a life that has value, meaning and purpose, based around effective voice choice and control. These are:

- I feel listened to and respected
- I can do the things that matter to me
- I get the help I need, when I need it, in the way that I want it
- I live in a place that suits me and my life



These themes have a strong alignment to the wellbeing outcomes referred to in Part 9 of the draft Bill. I have already shared my own approach to wellbeing outcomes with members of the Health and Social Care Committee who found this approach to definition very useful, and suggested that it would be helpful if this was replicated in the next draft of this Bill. Further work is currently underway by my office in respect of how this model could be integrated.

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

I strongly welcome the Bill's ambitions to shift the balance of social care more firmly towards prevention. This will, if properly executed, increase older people's independence and help shift the balance of service provision in favour of early intervention rather than supporting people once they have already reached crisis point. This is a significant step forward, and one which I strongly welcome as a means to enhancing older people's wellbeing and quality of life.

The Bill contains some excellent proposals in relation to prevention, in particular the proposed duty on local authorities to provide (or arrange the provision of) a range of services to meet the public's need in relation to prevention), within which I see a strong role for the Third Sector.

One exception and an area of concern for me relates to potential charges for preventative services. The over-arching objective of the Bill in this regard is to expand access to prevention and to ensure that local authorities are providing services which can prevent an individual's need from escalating. However, the Bill also states: "*Regulations may make provision about charges for... information, advice or assistance*" (p39, lines 32 and 34).

Whilst I accept that charging for preventative services may be necessary, it seems impossible to reconcile the ambition of expanding access to prevention with making provision for authorities to charge for information and advice which might signpost individuals towards those services. I am deeply concerned that this measure would actually reduce the likelihood of older and vulnerable people seeking support rather than widening access.

Older people frequently tell me that some information and advice on a timely basis is often all they are looking for, and that getting the basics of this right would make a huge difference to their experiences of public services. There should not be any question of authorities being allowed to charge for information and advice services, which are critical in directing individuals towards preventative service. This needs to be made clear in the Bill.

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

One of the stated aims of the Social Services and Wellbeing Bill is to transform the way social services are delivered, promoting people's independence to give them stronger voice and control. However, I am concerned that, as it stands, the realisation of this is missing in the Bill and there is a risk that the Bill will not deliver on one of its key aspirations.

The current draft of the Bill does not recognise the vital importance of advocacy, in particular independent advocacy, and fails to make any legal provision for independent advocacy in a social services context. This is a significant omission. Current definitions of advocacy in law are restricted to the Independent Mental Capacity Advocacy, Independent Mental Health Advocacy, proposals in the Mental Health Measure and Community Health Council complaints advocacy

Independent advocacy, as part of a spectrum of advocacy provision, is required for individuals in key situations of vulnerability, where information and advice is not sufficient or where there are no family or friends to stand up and speak out on their behalf. Independent advocacy, at times of major decision making such as hospital discharge or entry into residential care, can be essential in supporting a person to express their views and wishes, pursue their rights, make their own informed decisions, and to explore and understand the options available to them. It is also particularly important when an older person is at risk of harm.

I would strongly encourage the Health and Social Care Committee to consider the impact of failing to include advocacy, and in some circumstances independent advocacy, for people in situations of vulnerability, on the face of the Bill. It is my view that the legislation would be significantly enhanced, and would go much further towards meeting its aims of increasing choice and control, by the inclusion of a legal duty to assess the need for independent advocacy for people in particular situations of vulnerability and to provide this when such a need is found to exist.

Another significant potential barrier relates to the capacity and capability of social services departments to respond to the duties within the new legislative framework. Linked to this, the level of formal partnership working and collaboration between health and social services needs to be much stronger if the Bill is to deliver its intended outcomes. CSSIW's annual report for 2011-12 published recently stated that,

The viability and prospects for the success of the partnership with health services was assessed by CSSIW as a significant risk in more than a third of the councils in Wales.

Current problems largely stem from the difficulties of different systems working together. The present regime for continuing healthcare funding is just an example of this, whereby perverse incentives exist to cost shift from one sector to the other. It is evident that effective partnership working will not be achieved simply through legislation, and if the ambitions of the Bill in this area are to be realised, a whole range of leadership, cultural and governance issues across health and social care organisations need to be considered alongside legislative drivers.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

The Explanatory Memorandum accompanying the Bill makes it clear that a significant proportion of the legislation will be subject to supporting regulations, delegated to Welsh Ministers. Whilst I am aware of the rationale for this approach, in my view there are some potentially 'high risk' areas that are being devolved to regulations, and are therefore of particular concern to me.

Whilst I welcome for example, the proposals for common eligibility criteria, and believe that in principle, this will help reduce inconsistencies across local authority areas (an issue which is often raised with me by older people) I am strongly of the view that eligibility must be dealt with much more explicitly in the Bill. Without seeing the detail of proposals around

eligibility, it is impossible to comment on them in any meaningful way.

I would strongly urge the Committee to seek more details on the proposed eligibility criteria from the Welsh Government. Without this information, there can be no meaningful discussion on the potential impact. The Welsh Government needs to outline openly its proposals on eligibility (or at the very least give an indication of the desired direction of travel) and explain how this links to the proposed duty on preventative services.

The final position on eligibility must be open to strong and critical scrutiny and robust impact assessment. This is an area that as Commissioner I will be taking an ongoing interest in.

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

The provisions within the Bill for Welsh Ministers to make subordinate legislation are numerous and wide ranging. I understand the intention behind this approach in that it will allow Ministers to develop legislation that is flexible, responsive and that will be fit for purpose over a long time period. However as my response to the previous question indicated, there are significant risks associated with this approach and my overriding concern is that provisions that are subject to subordinate legislation will not be subject to the same level of scrutiny as the overall Bill.

As Commissioner, I will be taking a strong interest in the extent to which regulations, orders and directions are considered by the National Assembly and the openness and transparency of this process. It is imperative that all subordinate legislation is subject to robust scrutiny and proper impact assessment and not simply 'nodded through'.

7. Other Comments

I strongly support the aspirations of the Bill to strengthen powers for safeguarding adults at risk, so that vulnerable people older people in our society can be protected more effectively. I believe the Bill sets out the right direction of travel in this respect and I welcome many of the functions laid out in Part 8 of the draft legislation. However, a number of the specific safeguarding functions must be further strengthened if the Bill is to offer sufficient protection to adults at risk.

The definition of 'adult at risk' still relies too heavily on the previous definition that defined vulnerable adults as those in receipt of social services. It currently reads that *because* a person has care and support needs they cannot protect themselves from harm; whereas the true situation is that *because* a person cannot protect themselves from harm they have care and support needs.

Under the current drafting, a local authority has no duty to make enquiries unless they suspect a person may be an adult at risk. In many situations it will be impossible to determine whether or not a person is an adult at risk *until* enquiries have been made.

In relation to the duties on Safeguarding Boards to co-operate, the current wording states that Safeguarding Boards *may* co-operate with each other; this should be changed to say *must* unless the legislation envisages the National Independent Safeguarding Board enforcing requests to co-operate from regional Safeguarding Boards (i.e. a vertical duty to the NISB). The same point applies to the sharing of information between Safeguarding Boards.

I support the introduction of adult protection and support orders and these directly reflect our advice to the Government in as far as they go. There remains a question around what would be done if a person is under the psychological control of another and is unable to take the step of leaving an abusive situation. It is likely that in the majority of cases such a situation would also fall under the definition of domestic abuse and there may be solutions via the police; however, I do not think the legislation goes far enough and would support an additional order that allows a social worker to remove someone to a place of safety against their will in

rare situations where a Justice of the Peace can be convinced that such a court order is necessary in order to protect a person who cannot protect themselves.

My final point relates to the quality of the equality impact assessment that has been undertaken. The Bill must ensure that it reflects and takes into account the needs of all older people, as defined by the Equality Act 2010. I am not currently convinced that sufficient scrutiny has been afforded to the Bill in line with the public sector equality duties. My office has already begun some more detailed work on this and I will be happy to share this with you over the summer.

I look forward to giving further evidence to the Committee to support the Bill's progress through the detailed scrutiny process.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Sarah Rochira

Older People's Commissioner for Wales

Agenda Item 7

Health and Social Care Committee
Social Services and Well-being (Wales) Bill
SSW 84 – The Welsh NHS Confederation

Social Services and Well-being (Wales) Bill Consultation

Introduction

- The Welsh NHS Confederation, on behalf of its members, welcomes the opportunity to respond to the Health and Social Care Committee's call for evidence on the Social Services and Well-being (Wales) Bill.
- By representing the seven Health Boards and three NHS Trusts in Wales, the Welsh NHS Confederation brings together the full range of organisations that make up the modern NHS in Wales. Our aim is to reflect the different perspectives as well as the common views of the organisations we represent.
- The Welsh NHS Confederation acts as an independent voice in the drive for better health and healthcare through our policy and influencing work and by supporting members with events, information and training. Member involvement underpins all of our various activities and we are pleased to have all Local Health Boards and NHS Trusts in Wales as our members.
- The Welsh NHS Confederation and its members are committed to working with the Welsh Government and its partners to ensure there is a strong NHS which delivers high quality services to the people of Wales.

Overview

- The Welsh NHS Confederation, on behalf of its members, welcomes the publication of the Social Services and Well-being (Wales) Bill and the opportunity of increased alignment of national strategy and policy aimed at supporting seamless integrated provision of assessment and delivery of care.
- The Welsh NHS Confederation and its members welcome a number of the Bill's requirements:
 - The duty to provide or arrange for preventative services. This complements the strengthening role of Public Health and establishes a robust platform for joint working.
 - The intention to drive person centred services and give citizens real voice and control. People can only be supported in managing their own health conditions in the context of accessing person centred services.
 - The promotion of integration, as this underpins locality working arrangements underway in a number of Health Boards.
 - Partnership with third sector services, as partnership working is a growing area which provides exciting opportunities to provide community support in a more flexible, creative way.
 - The clear recognition of the role and value of carers in delivering effective community care.

Consultation Questions

Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

- The principles behind the Bill are to give the people who use social services, including carers, a strong voice and real control over the services they may receive by focusing on the personal outcomes that people wish to achieve. It will also enable earlier intervention and prevention for people who need care and support in order to improve their well-being, and for their carers.
- The current legislation in relation to local authorities' duties and functions has been built up over time through a range of legislation. Whilst partnership working and to some extent integration of public sector services should not require legislation in order to protect the most vulnerable and to improve the well-being of people who are in need of care and support, it can be complex



and challenging for organisations working in partnership to combine responsibilities and deliver cohesive integrated services.

- In addition, whilst the importance of improving well-being is increasingly being recognised by both local authorities and partners, it is still a relatively new concept in terms of service priority and delivery. We therefore welcome the intention to provide for a single Act for Wales that brings together local authorities' duties and frames partnership responsibilities in relation to improving well-being of people who need care and support and carers who need support.
- We do believe that it would be helpful if some aspects were considered in greater detail in order to ensure reliable interpretation.
- The fact that recognition, support, voice and equity for carers are central to the proposed Bill is encouraging. It has been argued consistently that carers need to be identified at an early stage in their caring journey so that they are better equipped to deal with the complexities and difficulties they are likely to face. Services need to be reconfigured towards earlier preventative support so that carers, and the people they look after, are able to maintain their health, well-being and sustain lives of their own.

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

- The Bill, as drafted, does address the objectives of addressing well-being, prevention and early intervention, promoting a stronger voice and control for people in need, and simplifying and clarifying duties alongside the development of nationally consistent systems.
- However, given that there is still much detailed work to be done through the drafting of Regulations, including the development of the national eligibility framework, the outcomes framework, Codes of Practice etc. it is difficult to assess at this stage whether the Bill will deliver its intended objectives.
- Whilst legislation can provide the statutory framework for further integration, it must be recognised that success will nevertheless depend on local leadership and drive to deliver, as well as the scale of the changes required and the complexities of addressing barriers, including financial risks.
- The development of integrated services does not necessarily depend on the existence of formal partnerships and pooled budgets. Rather they are dependent on a shared vision, agreed priorities, trust, and open and accountable partnership working. Formally imposed partnerships could undermine locally developed joint solutions and meeting the needs of local citizens through effective collaboration with the right partners. It is important to remember that pooled budgets and formal partnerships are tools to support the effective governance of joint working, rather than the route to delivering better integrated services.
- All public services in Wales are facing a number of challenges and going forward it will be essential for all public services to work together effectively. The delivery of effective integrated services and collaborative arrangements will be key to ensuring our public services are fit for purpose in the future. Although integration is particularly important for health and social care, this is not exclusively the case, and wider partners and other local authority services, such as housing and education, will also have a key role to play.
- Whilst health promotion and ill-health prevention are quite rightly a key focus for the NHS in Wales, local government also has a critical role in supporting and sustaining a healthy population and preventing escalating ill-health. Going forward, it will be crucial for local authority colleagues to recognise this role they play whilst also responding to all levels of need with their communities.
- In addition, the definition of 'well-being' for example is extremely broad and with regard to the duty to maintain and enhance the well-being of people in need, it will not be possible for any one agency alone, either in the statutory or third sector to achieve this. Contributions from



many organisations as well as communities themselves will be needed, which is not currently reflected in the drafting of the Bill.

- The Welsh NHS Confederation and its members welcome the focus on empowering people that is highlighted in the Bill, as being enabled to have a stronger voice and greater control over their lives are core factors in improving well-being in everyone.
- It is important to note the significant contribution of providing independent advocacy in improving well-being and control. Although this is mentioned in relation to some aspects of the provision (i.e. in reference to complaints), this could be considerably strengthened as part of core service provision.
- In relation to the sections of the Bill giving Ministers powers to make regulations specifying partnership and integration arrangements (sections 147-150), we would welcome further clarity as to under what circumstances such action might be taken and to which service areas they might relate.
- In addition, it must be recognised that there is a need to avoid a nationally prescribed approach and that there will still be flexibility to meet local needs that will differ across Wales. From an LHB perspective, a diversity of local approaches amongst many local authority partners is not without challenge. As variations in approach may indeed be helpful at a local level, we do not think there should be conformity across the range of delivery methods. We do however think that common principles, as adopted through the Gwent Frailty Programme for example, would help.
- It is also important to recognise that partnership working in general is currently in a phase of change and consolidation. The Bill provides a useful direction for the unique contribution of social services for meeting the needs of vulnerable individuals, but also for the wider well-being of the population. However, it would be useful to be more explicit in defining social services' leadership role and accountability in relation to well-being, considering the contribution of other local authority services, and the wider health and third sector. For example, this could be described in the context of the remit of Local Service Boards, and the significant opportunities for more joint planning and commissioning which will exist as LSBs mature.
- There are many lessons which can be learned from innovative and sustainable models of social services provision. This is especially important for meeting the wider well-being needs of the population in general and vulnerable groups in particular, such as individuals whose needs don't meet eligibility criteria for accessing core services. There are numerous examples of such services delivered across Wales, often in partnership with third sector providers, linking with areas/themes such as ageing well, lifelong learning, volunteering, supporting access to the labour market, and social enterprises. It must be noted that social services would need to strengthen links with other local authority departments in order to access and maximise the available expertise and opportunities, such as European funding, which are available across the whole system.
- Throughout the Bill, but particularly in relation to Part 6, consideration needs to be given to linkages and alignment with other legal frameworks and legislation. The development of plans for 'Looked After Children', for example, should be viewed in collaboration with the Mental Health (Wales) Measure which has a requirement for children and adults who access secondary care to have a Care and Treatment Plan. In addition, there is also a need to ensure alignment with the proposed Sustainable Development Bill with regard to its proposals for LSBs.
- In relation to Part 7 of the Bill (Safeguarding), there is welcome legislation for the protection of vulnerable adults. More generally, however, the development within a legal framework of the National Independent Safeguarding Board that includes a remit to 'advise Ministers on the adequacy and effectiveness of safeguarding arrangements' does call into question the role that regulators/inspectors such as HIW and CSSIW will have in relation to review and assurance.
- Also in relation to Part 7 (Safeguarding and Protection Boards), the Bill does not give sufficient detail to deal adequately with governance mechanisms and the Regulations may provide this



level of detail. It is however important to recognise that the pace with which the current safeguarding arrangements are being steered to change in line with the general principles of the Bill does incur some risk regarding effective governance and scrutiny arrangements.

- The proposed National Outcomes Framework is a key provision in the Bill, and has the potential not only to provide robust assessment of the effectiveness of the provisions within the Bill, but also has the potential to be a powerful driver in its own right. Of particular importance is the opportunity for the development and implementation of Performance Indicators shared by all the partners who have a contribution to make to population well-being, along with social services providers themselves. Shared accountability for the achievement of shared Performance Indicators will be a powerful catalyst to partnership working.

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

- The Welsh NHS Confederation and its Members welcome the intention to deliver sustainable social services. In addition, we agree with the general proposals to base the legislation on the concept of promoting the well-being of people in need which builds on the work already underway.
- We believe that consideration should also be given to a requirement for delivering reliable services. In rural areas there are ongoing difficulties in recruiting care staff to private agencies as well as social care. This continues to impact on the viability of people remaining in their own homes. A requirement to confirm reliable access to services may lead to more creative and proactive solutions.
- Delivering preventative services in the context of eligibility and means testing may be challenging and we believe consideration may need to be given to the infrastructure for this area of responsibility. Free preventative services may lead to greater savings in the delivery of care costs than a preventative service with charges, which has a more limited uptake.

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

- Given the scope of the Bill and the number of proposed changes, there will be a range of implications for social services, for example the number of people who potentially will need to be supported to improve their well-being compared with the much smaller number of people with higher levels of assessed need.
- Local authority colleagues will be able to provide a more detailed response of how the Bill will change their existing provision, the impact and how far changes will assist in sustainability. Resource implications in terms of workforce and finance will remain key factors and the Explanatory Memorandum makes it clear that it is not yet possible to fully assess all of these issues.
- There are a number of areas that are open to interpretation and may risk causing tensions in providing joint agency services. For example, there is a lack of clarity in relation to equipment provision which is currently described for social services in the Chronically Sick and Disabled Persons Act 1970. Responsibilities relating to equipment are not described explicitly in the Social Services and Well-being (Wales) Bill.
- Both access to equipment and home adaptation impact on the capacity of vulnerable adults to remain in their own homes and function independently with dignity. Should these services be restricted further than the constraints of current provision, then the health and well-being of those people needing to access this type of support risk being compromised. Hospital services have historically been used as a safety net for the frail elderly who have breakdown of social



support. As LHBs look to modernise their services and provide strengthened health and social care community services, the provision of community equipment and home adaptation is part of this network of care.

- For integrated services, even minor changes in social services eligibility criteria can have a significant impact on the balance of care available. We believe guidance regarding eligibility should be developed in partnership with the NHS to support the establishment of reciprocal/integrated community support systems.

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

- As outlined above, evidence of successful health and social care integration schemes to date shows that whilst legislation can provide the statutory framework for further integration, successful integration depends on local leadership and drive to deliver. In addition, financial, legal, governance and employment regulations can be key barriers to integration which will not be addressed by the proposed legislation.
- The additional clarity and action of simplifying and streamlining arrangements including a single set of powers will be helpful to ensure consistency and a national standard. However, national guidance and parameters must not stifle local initiatives and flexibility where appropriate but rather provide a constructive framework. The overall objective of strengthening partnership working and keeping the citizen at the centre of service delivery must guide the arrangements, keeping them less onerous and bureaucratic.
- In the current economic climate, costs continue to be a challenge. This challenge is particularly acute for the health service in Wales in the context of limited financial flexibility and when service change is required, which may require up front capital investment and double running of services.
- We also have concerns about the lack of clarity regarding some responsibilities between local authorities and their partners which is likely to generate dispute between agencies and could delay effective implementation.
- The Explanatory Memorandum gives considerable consideration to the financial implications and training requirements for social services. However, no consideration seems to have been given to the training and resources needs of the health service and other partners, and we would urge urgent consideration to be given to these areas.
- Impact assessment methodologies may be useful in informing elements of the legislation, and its implementation, going forward. This is especially true in engaging all stakeholders around the wider issues that impact on health, well-being, and equity.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

- Whilst recognising that flexibility and ‘future-proofing’ of the legislation is required, clearly a significant amount of detail will be defined by Regulations. This makes it difficult to analyse the practical implications of the Bill and give a clear view on its efficacy and the extent to which it will deliver the intended vision and impact.
- Clearly the successful implementation of the Bill will be heavily dependent on the drafting of the Regulations, a key element of which will be to ensure that there is rationalisation of other existing arrangements which contribute to both population health and well-being and the provision of service to those most in need, whether these are provided by social services or other service providers.
- Key to delivering the improvement and expected outcomes is the extent to which the Regulations are:
 - Clear and accessible to service users and the wider community
 - Understood and owned by social services and partners



- Clear in terms of accountability and fit with the wider strategic well-being landscape
- Building on the development of the Regulations will require continued engagement with all stakeholders, including the workforce and, first and foremost, those who need and experience services.
- We also have concerns that a significant proportion of the Regulations will be subject to the negative resolution in the National Assembly which raises concern about the amount of scrutiny and debate which will be afforded to these important pieces of secondary legislation. We believe further consideration should be given to whether the affirmative resolution would be a more appropriate mechanism to ensure there is an opportunity to enable challenge and scrutiny in any further developments to ensure the best development of the legal framework into practice.

Powers to make subordinate legislation

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

Please see above.

Financial Implications

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

- We welcome the opportunity of the Bill to simplify the legislative and regulatory framework. However concern remains about the financial implications of the Bill on all partners and we have concerns as to whether the proposed approach will be cost neutral. Clearly the challenging financial situation across the public sector requires a clear commitment to partnership working to protect the vulnerable and those at risk to ensure the public can achieve the best value for money.
- Due to changing demographics, local evidence shows that there is increasing demand for social care services. In addition, as a result of the Bill's proposed requirements to undertake a local needs assessment, encourage integrated provision of services and provide information and advice etc., it is likely that demands for social care services will increase.
- There will be a need for a clear lead partner and recognition that it could take some time before additional costs are mitigated. Costs saved for some agencies, for example preventative measures resulting in fewer intensive services being needed, can lead to additional cost pressures on another service. Whilst recognising the importance of investment in the preventative agenda to reduce costs in targeted services, resources may need to be invested differently within and between agencies to avoid additional pressures being felt disproportionately.
- The ability to develop and provide early intervention and preventative services, in a context of increasing demand and reducing resources, provides a particular challenge. This will require political and professional leadership, at a national and local level, to divert resources from traditional health and social care services to develop new models of care.
- In relation to the integration of health and social care services, evidence from schemes already in place shows that different organisational arrangements and different approaches to commissioning, purchasing and providing services can make working together and the flexible use of resources more difficult, and can be key barriers to further integration. It seems unlikely that the Bill, as drafted, will offer any mechanisms to address these important areas of concern and we would like to see further consideration given to this area.

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

**Health and Social Care Committee - Scrutiny of Social Services and Well-being (Wales) Bill:
Response to consultation.**

15 March 2013

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.¹ In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).² The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and they may also make representations to the Welsh Ministers about any matter affecting the rights and welfare of children in Wales.³

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.⁴

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This response is not confidential

¹ Section 72A Care Standards Act 2000

² Regulation 22 Children's Commissioner for Wales Regulations 2001

³ Section 75A (1) Care Standards Act 2000

⁴ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasuresrightsofchildren>.

1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

As Children's Commissioner for Wales I have concerns related to provision that brings together duties and functions in relation to the well-being of people who need care and support and carers who need support into a single Act whether they are a child or an adult.

The Declaration of the Rights of the Child, states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly in 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children.

The Children and Young Persons (Wales) Measure 2011 seeks to implement an approach to law and policy-making in Wales which focuses on the rights guaranteed by the UNCRC. Welsh Ministers must, when exercising their functions, have 'due regard' to Part 1 of the UNCRC. The Explanatory Memorandum that been issued in relation to the Social Services and Well-being (Wales) Bill clearly states that the intended effect of the legislation is to 'as far as is possible, integrate and align arrangements so that there is a common set of processes, *for people*' (2013:7). This statement of intent suggests that the proposed changes are introduced for the purpose of aligning procedural arrangements for adults and children and not on the basis of an approach which focuses on the rights guaranteed by the UNCRC.

The introduction of legislative change designed to introduce a 'common set of processes' across ages is contrary to article 3 of the UNCRC that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. There is no supporting text to explain the ways in which the proposed change to a single Act across children and adults provision and the replacement or restatement of parts of existing legislation relating to children will promote the best interests of the child in compliance with article 3 of the UNCRC.

A clear example of failure to demonstrate the application of the due regard duty and compliance with the Convention is contained within Section 144 of the Bill. This section makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). The Explanatory Memorandum accompanying the Bill states that 'these amendments are made to ensure that the existing duty in the 2004 (Children) Act to make arrangements to promote co-operation to improve the well-being of children **is aligned with** the new duty in section 146 of this Bill (arrangements to promote co-operation – adults with needs for care and support and carers)' (2013:137). The decision to amend the existing duty towards children contained in the 2004 Act should be based on a consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. In this case an assessment should be made of the impact of such a change in relation to compliance with:

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all legislative and administrative measures.

The intent set out in the Bill here does not relate to an application of consideration of the due regard duty with particular reference to article 3 of the UNCRC. One example of non-compliance in relation to the need for special care for children in promoting the best interest principles is the introduction through the Bill of a National Independent Safeguarding Board to consider safeguarding arrangements for both children and adults. In the annual report I published in 2011, I set out my vision for an independently chaired national safeguarding board to set the remit for local safeguarding children boards and child protection issues. I remain convinced that there are strong arguments for the establishment of a separate National Independent Safeguarding Board for children and I am concerned that the proposed joint Board will be consumed with issues related to the new statutory framework for vulnerable adults. I have made my support for appointment of an independent chair clear in the past and this position has not changed.

The clearest breach of the 'best interests' principle is contained in Section 13 of the Bill in relation to refusal by a child of a needs assessment. In my response to the White Paper I set out the issue of parental consent to assessment of need as the single most important issue that needed to be addressed. Provision under the Children Act 1989 sets out that a child in need referral under section 17 can only be made where parental consent is sought and granted. I stated my concerns that children and young people can be denied the right to an assessment on the basis of identified need if their parents refuse consent for such an assessment to take place. The system through which referral without consent can only be achieved in relation to child protection concerns runs counter to central principles of the Bill - early intervention, prevention and the promotion of wellbeing. I called for the Bill to be used as an opportunity to address this and to provide for the referral for assessment of any child or young person identified as in need as of right and without the need to secure parental consent in line with the best interests principle. However not only does the Bill provide that the duty on the local authority to assess does not apply if anyone with parental responsibility for a child under 16 refuses an assessment (section 14), it also introduces provision that the local authority is not obliged to carry out an assessment if a child refuses. The Explanatory Memorandum states that this provision is introduced as this 'recognises the importance of ensuring children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs' (2013:98). While article 12 of the UNCRC provides that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them this right to be heard should support rather than undermine the application of article 3 (best interests) and article 19 (protection) of the UNCRC. I have already referred to the international instruments that set out the need to extend particular care to the child. The introduction of provision through which a child can refuse the assessment of their own need does not take account of the requirements of article 3 of the UNCRC. In practical terms the proposals contained in section 13 also ignore the potential impact of normalization of detrimental experiences, anxiety related to state intervention in family life and processes of control on the capacity for children to recognize their own need for support.

The Bill also contains proposals related to the conditions that must be met for a local authority to be under a duty to meet the care and support needs of a child in its area (Section 23). This section is derived from but in effect replaces the duties contained under section 17 and Schedule 2 of the Children Act 1989. For the purposes of section 17 of the Children Act 1989 a child shall be taken to be 'in need' subject to a number of criteria including *C) he is disabled*. However section 23 of the Bill provides for a duty to meet care and support needs of a child where:

(1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met.

(2) Condition 1 is that the child is within the local authority's area.

(3) Condition 2 is that—

(a) the needs meet the eligibility criteria, or

(b) the local authority considers it necessary to meet the needs in order to protect the child from—

(i) abuse or neglect or a risk of abuse or neglect, or

(ii) other harm or a risk of such harm.

The Bill removes the status of 'child in need' and the associated support connected to that status as afforded to disabled children under the Children Act 1989. Information on what will constitute 'eligible need' under the Bill has yet to be developed and will be the subject of regulation.

Article 23 Paragraph 2 of the UNCRC states that:

States Parties recognize the right of the disabled child to special care and shall encourage and ensure extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

The changes contained in the Bill in relation to those children to be included as subject to the duties imposed upon local authorities represent retrogression in relation to compliance with article 23 of the UNCRC. The United Nations Committee on the Rights of the Child issued General Comment No. 9 on the rights of children with disabilities in 2006. The General Comment states that in the application of paragraph 2 of article 23 States Parties should 'effectively implement a comprehensive policy by means of a plan of action ... Which ensures that a child with disability and her or his parents/or others caring for the child do receive the special care and assistance they are entitled to under the Convention' (2006:4). The inclusion of a disabled child under criteria to qualify as a 'child in need' under section 17 and Schedule 2 of the Children Act 1989 affords protection in relation to the right to 'special care and assistance'. The changes introduced on the face of the Bill in relation to which children are entitled to support for their care and needs omit specific reference to disabled children and weaken regard to article 23 of the UNCRC as described in the General Comment No. 9 on the rights of children with disabilities. The omission of such a fundamental provision that is currently afforded in statute, with insufficient safeguards on the face of the Bill to guard against any retrogression is of itself grounds to question the validity of the Bill within the context of children's rights.

When the First Minister made a statement on the legislative programme on July 17th 2012 he stated that the planned introduction of a Children and Young Persons Bill to build upon the introduction of the Rights of Children and Young Persons (Wales) Measure 2011 was to be lost from the legislative programme. Further the First Minister in his statement said that the Social Services Bill would provide the vehicle to 'strengthen our approach to supporting looked-after children' as well as other issues.

However the Bill actually does very little to alter the existing legislation in relation to looked after children in Wales. The Explanatory Memorandum accompanying the Bill states that ‘the obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act have been included in this Part (6). The provisions have been 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 clarify duties in relation to care leavers may lead to improvements the Bill has not been used as a vehicle to strengthen the approach to supporting looked-after children in Wales or to promote a rights-based approach to policy relating to looked-after children in-line with the spirit of the duty of due regard to the UNCRC on Welsh Ministers. The Bill could have been utilised as a legislative tool to strengthen arrangements in relation to looked after children with regard to article 20 of the UNCRC (entitlement to special protection and assistance for a child temporarily or permanently deprived of his or her family environment) , the application of the other articles of the UNCRC in line with the principle of non-discrimination under article 2 and the United Nations framework: Guidelines for the Alternative Care of Children(2009).

The Bill does include some additional considerations in relation to children. The definition of well-being as it applies to a child includes: (a) physical, intellectual, emotional, social and behavioural development and (b) welfare (as interpreted in the 1989 Children Act) in addition to the 7 domains included in the definition for all ‘people’. The duty to assess the needs of carers for support (section 15) includes direction on the consideration by the local authority in carrying out a carers assessment of whether a child carer is actually a child with care and support needs in their own right who should be assessed under section 12. While I welcome the recognition of the need for additional considerations in relation to the well-being of children and in relation to child carers these in themselves are not sufficient to address the concerns I have raised.

There is clear danger that the paramountcy principle (which reflects the article 3 duty) may be diluted by the introduction of a single Act and I regard this change as potentially contrary to the best interests of children in Wales.

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

2.1 Improve the well-being outcomes for people who need care and support and carers who need support

I welcome the intention to build on the definition of wellbeing introduced in the 2004 Children Act through the addition of item (e) *securing their rights*. I am aware that this reflects the definition of wellbeing set out in the Government of Wales Act 2006. However in meeting the intention (p90:7.9) that the legislation should build upon the Rights of Children and Young Persons (Wales) Measure 2011 a more detailed statement on securing rights is needed. I would like to see an amendment to the definition of well-being to include a direct reference to the United Nations Convention on the Rights of the Child in relation to securing the rights of children and young people. This will provide clarity for those subject to the duty to promote wellbeing. There is evidence that the duty to promote the welfare of children and young people as contained in the 2004 Children Act has had limited impact on the lived experiences of children and young people. Robust measures are needed to ensure that there is accountability in relation to the implementation of this general duty. I have already stated my concerns about the decision to amend the existing duty towards children contained in the 2004 Act on the basis of the need to ‘align’ procedures with new duties related to adults and about a failure to demonstrate a

consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. The Bill does not set out the Code of Practice or National Eligibility Framework and it therefore not possible to assess if those charged with the delivery of social services will be clear in relation to their specific statutory duties towards children and young people.

The White Paper appeared to suggest that the introduction of the general ‘well-being’ duty for local authorities and their partners would ensure earlier and easier access to support for children in relation to their well-being support needs. Children and young people deserve the support they need to enjoy the levels of well-being experienced by their peers and in order that their rights under the UNCRC are realised. The case for identifying problems in families early and intervening to prevent their occurrence or escalation has been strongly presented at the UK and Wales levels over the last decade. Analysis shows that early intervention can be highly cost effective as well as meeting the primary objective of securing better outcomes for children.

However the contents of the Bill suggest additional gate-keeping in relation to the provision of statutory services to children. The omission of disabled children in section 23 of the Bill as compared to section 17 of the Children Act 1989 that I have set out above is one example of this. Section 19 of the Bill provides that an assessment will be needed to conclude if there are care and support needs or support needs to be met, once it is concluded that there are needs to be met the local authority must then determine whether the needs meet the eligibility criteria. Section 23 states that the application of the eligibility criteria will be the principle means of determining the child’s needs for care and support (condition 2). The eligibility criteria is not provided on the face of the Bill, this makes any assessment of the likely impact of the Bill on the well-being of children in need of care and support impossible. Section 23 also provides that the duty to meet the care and support needs of a child exists where a child does not meet the eligibility criteria but where the:

- (b) the local authority considers it necessary to meet the needs in order to protect the child from—*
 - (i) abuse or neglect or a risk of abuse or neglect, or*
 - (ii) other harm or a risk of such harm.*

The duty to investigate children at risk is already contained in section 47 of the Children Act 1989 (and restated in section 108 of the Bill). The Bill does not however address the processes that will be in place to meet the needs of those children who have an assessment that identifies that they have care and support needs, are not considered at risk and do not meet the eligibility criteria.

In the absence of information about eligibility criteria and procedures for meeting the needs of those assessed as having needs but not meeting eligibility criteria within the Bill, it is difficult to assess if the intentions to improve well-being outcomes are likely to be met. More information is also needed in order to assess the degree to which the Bill introduces additional gate-keeping to statutory services or can be said to be compliant with promoting Article 19 Paragraph 2 of the UNCRC:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The potential for the Bill to deliver on the intention to improve the well-being of children and young people in Wales would be considerably strengthened if the issue of equal protection was addressed on the face of the Bill. The proposed Children and Young Persons Bill provided a statutory vehicle to provide for equal protection for children in Wales, however this Bill has now been lost from the legislative programme. Welsh Government must take action on the issue of equal protection for children and young people if it is to provide a clear

message to children and young people that they have the right to be safe. In England and Wales, Section 58 of the Children Act 2004 removed the defence of 'reasonable chastisement' for those with parental responsibility but replaced it with one of 'reasonable punishment'. While section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family. Where a parent hits a child, they are able to claim a justifying defence – one that would not be available were the victim over the age of 16. As such, children are denied the equal protection of the law. It is lawful for parents to use 'reasonable punishment' as long as it does not leave more than a 'transitory mark' on the child.

The current lack of equality of protection with adults cannot be justified because:

- even the mildest smack sends children the message that hitting people is acceptable behaviour;
- research shows that escalation from mild smacking to serious assaults is an inherent (albeit not inevitable) feature of physical punishment;
- physical punishment invades children's physical integrity, making it a potential pathway to sexual abuse;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children do not complain about something they are told is permitted and justified;
- those witnessing violence to children have no confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- Section 58 of the Children Act 2004 fails to protect children from painful, dangerous, humiliating or frequent assaults;
- It is a human rights obligations to respect the physical integrity and human dignity of children.

To fulfil those obligations properly, children must be given the protection of the law against assault. The Bill offers a means of providing equal protection to children in Wales in support of the intentions to improve well-being and safeguard children.

2.2. Simplifying the web of legislation that currently regulates social care in Wales

I do not believe that the Bill assists in simplifying the web of legislation that currently regulates social care for children in Wales. The Bill includes sections which restate existing legislation from the Children Act 1989 and the Children Act 2004 and other relevant legislation, sections which alter parts of the provision already contained in those Acts and introduces changes in relation to provisions contained in those Acts as they apply to children. As I have already stated many of these changes appear to be have been made in order to align arrangements for children with those introduced for adults through the Bill, rather than on the basis of decisions related to promoting right-based policy for children in Wales in line with the duty of due regard to the UNCRC.

The Committee may wish to consider the approach that has been adopted by the Scottish Government in their Children and Young People Bill. The Scottish Bill is intended to bring together earlier plans for separate legislation on children's services and children's rights into a single, comprehensive framework that will underpin work to realize the Scottish Government's ambitions towards children. Their proposals seek to embed the rights of children and young people across the public sector in line with the UNCRC into one piece of legislation. The approach of introducing changes to align adult and children's social care and well-being services in the Welsh Bill does not afford the same level of protection to the distinct needs and rights of children.

2.3. Providing people with a stronger voice and greater control over services they receive

Section 8 of the Bill places a duty on local authorities to secure the provision of an information, advice and assistance service. The purpose of the service is set out as to provide people with information and advice relating to care and support and to provide assistance to them in accessing it. The Bill does not address the need for such a service to meet the needs of children in terms of age appropriate and fit for purpose information and assistance for children so that they understand the care and support that is available to them and their families and get appropriate assistance in accessing advice on their care and support.

Article 13 of the UNCRC provides that:

The child shall have their right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

I have drawn attention in the past to evidence contained in reports and reviews undertaken by my office such as 'Telling Concerns' (2003), Lost After care (2011) and Missing Voices (2012) that demonstrates the particular barriers for children and young people using social care services in accessing information and advice on their statutory entitlements. The Bill does not currently address this issue, promote article 13 or offer the potential for children to be involved in choices about the care and support they receive in an informed way.

My review of independent professional advocacy services (2012) for children and young people with a statutory entitlement has highlighted the considerable improvements that are needed in supporting access to assistance for children and young people.

Advocacy plays a critical role in enabling children and young people to safeguard themselves by exercising their rights as outlined in the UNCRC and specifically in relation to having their voices heard in line with article 12. Section 159 of the Bill replicates the provision in section 26A of the Children Act 1989 in relation to assistance for persons making representations but does not refer to independent professional advocacy services specifically.

The Scottish Government is seeking to put in place legislation that ensures:

- all children and young people from birth up to leaving school have access to a Named Person;
- all relevant services cooperate with the Named Person in ensuring that a child's and young person's wellbeing is at the forefront of their actions.

The approach proposed in Scotland, in conjunction with the provision of independent professional advocacy services for children making representations would provide a much stronger offer in relation to the exercise of a stronger voice and real control for children in line with the promotion of rights based policy. The Bill as it is currently drafted does not deliver on the intention to provide a stronger voice and real control for children in need of care or support.

2.4 Ensuring people receive the help they need to live fulfilled lives.

In my opinion providing children with the help they need to live fulfilled lives requires the provision of a Bill that brings together proposals to embed the rights of children and young people across the public sector in line with the UNCRC. The Bill as it is drafted does not provide for this and does not sufficiently demonstrate the

application of the duty to have due regard to the UNCRC contained in the Children and Young Persons (Wales) Measure 2011.

2.5 Stronger national direction with clear local accountability for delivery.

The Bill is weighted towards enabling the provision of regulation and at this time it is not clear if this regulation will provide stronger national direction with clear local accountability for delivery. The Bill in itself does not currently provide stronger national direction in relation to provision for children supported by policy which focuses on the rights guaranteed by the UNCRC. Furthermore the Bill does not specify the provision that local authorities may or must provide (section 20). This is intended to 'provide flexibility and encourage innovation' (2013:101, Explanatory Memorandum). While I understand the need for innovative services that can respond flexibly to local needs I do have concerns that this may lead to further inconsistencies in relation to the ways in which the care and support needs of children are met, dependent on where they live.

The Bill provides that the Welsh Minister must issue and from time to time revise a statement relating to the well-being of people who need care and support and carers who need support. I have already welcomed the proposal to create a coherent and transparent framework of outcomes and standards across social services and social care agencies. The proposed duty on Welsh Ministers to encourage improvement in social services and social care services and to publish and review statements of national outcomes are important mechanisms for supporting on-going improvements in services. I would hope that such an approach would help to reduce incidents where standards at the local authority level slip to a point where there are concerns about the ability of services to promote the welfare of and safeguard children and young people. The usefulness of a National Outcomes and Standards Framework as a means of securing implementation and holding services to account should be informed by the lessons learnt through the process for delivery of the NSF for Children, Young People and Maternity Services (2005). The fact that duties to scrutinise delivery on the standards was left to those responsible for delivery has arguably had an impact in relation to weak implementation of NSF Standards. The development of wellbeing outcome statements which focus on the individual is important and I welcome the intention to look at the distinct ways in which wellbeing can be said to have been achieved for children in different circumstances. The outcomes statements and measures will also need to be informed by the UNCRC. I understand that at this time the issue of agreeing a set of high level outcome statements for 'people' irrespective of age is problematic in terms of ensuring that regard to the UNCRC is reflected in the way these outcome statements relate to children. There is a need to be more specific within the Bill about the processes that will be introduced in relation to monitoring implementation and progress against the outcomes frameworks, without this it is difficult to assess if the proposed changes will support a process of robust accountability in the best interests of the child.

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

There is some evidence that at the point of service delivery integrated services can deliver better outcomes for children. The language of joint working, pooled resources and integrated services has been with us for some time however implementation is inconsistent. My Investigation and Advice team are often involved with cases where children and young people are let down while agencies argue over responsibility and funding to meet the needs of the child or young person.

However in defining regulations and guidance for the development of formal partnerships attention must be given to stronger drivers towards shared national population outcomes across delivery partners. The use of two separate definitions of 'wellbeing' in the Bill and the Mental Health Strategy for example demonstrates the

barriers to integrated working and shared outcomes for local services. Welsh Government will need to develop integrated strategic guidance that is informed by duties and priorities across policy areas in order to provide local partners with the regulations and guidance they need to deliver integrated services. These developments are likely to be seriously hindered where the strategic drivers for different agencies do not 'talk' to each other. All agencies must have a common understanding of their role in addressing need, whether it is statutory or non statutory support. Having ascertained the relevant information, all agencies should discuss what their contribution will be to address the needs of this cohort of the population which, provided with appropriate early intervention and support, may not reach a stage so grave as to require a statutory social service or health assessment.

Article 18, paragraph 2 of the UNCRC provides that:

For the purposes of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Services for children who need care and support must be delivered on the basis of need and in compliance with the provisions of article 18 of the UNCRC and not on the basis of policy that aims to reduce demand.

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

AND

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

Addressing questions related to the impact of the changes proposed in the Bill and the potential barriers to implementing the provision of the Bill is challenging in the absence key pieces of information that will impact directly on the implementation of the Bill, such as the eligibility framework, code of practice and outcomes statement. However the responses I have provided to earlier questions above illustrate the fact that I have a number of concerns related to the implementation of the Bill. Central to these concerns is the need for changes to the Bill to better reflect the Welsh Government commitment to implement an approach to law and policy-making for children in Wales which focuses on the rights guaranteed by the UNCRC.

I am also concerned about the lack of detail in relation to key issues, for example in relation to new safeguarding arrangements on the face of Bill. The National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards (LSCBs) was undertaken in 2010. The Committee recommendations focus on the need for greater direction in requirements related to collaborative partnership working across agencies and better accountability in relation to safeguarding responsibilities of agencies beyond social service departments. The Committee also recommended the development of a national funding formula for LSCBs and consideration of the need for an amendment to current guidance to specify that agencies 'will contribute' rather than 'may contribute'. The Committee also recommended that guidance should be issued to meaningfully involved children and young people as relevant to the work of the LSCB. I believe that the Bill provides an appropriate vehicle for the implementation of the recommendations made by the Committee in line with promotion of article 19 paragraph 1 of the UNCRC through which:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The requirements set out on the face of the Bill (section 111) in relation to Safeguarding Children Boards provides for regulation to be made specifying the areas in Wales where there are to be Safeguarding Children Boards. While the Bill provides that each of the following is a partner of a Board: a local authority, a chief officer for a police area, a LHB and NHS Trust, the lead partner who will have responsibility for establishing each Board is to be provided for in regulation. The Bill provides that Boards 'must' publish annual plans and reports (section 113). However the Bill provides only that a Board 'may' ask a person to body to provide information. Similarly section 115 of the Bill states that a Board partner 'may' make payments towards expenditure incurred by the Safeguarding Board. The face of the Bill does not therefore address the recommendations made as a result of the National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards or provide strong national leadership on the effective provision of Boards to deliver on the article 19 of the UNCRC and other relevant articles. I am also concerned that the Bill does provide for Welsh Minister to amend this part of the Bill (section 117) to require that a Safeguarding Children board and a Safeguarding Adult Board combine creating a single Board. Should this provision within the Bill be applied it will be contrary to a commitment to policy that focuses on the rights guaranteed by the UNCRC.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

Whilst overall there appears to be a reasonable balance on the face of the Bill and powers conferred by regulations I have significant concerns regarding two specific elements of the Bill. Left undefined there is a danger that the stated intentions of the Bill will not be met. Eligibility criteria under section 23 of the Bill is not defined on the face of the Bill and requirements in relation to Safeguarding Boards are not set out in the Bill. These are fundamental issues that undermine the intention to provide leadership, coherence and clarity through the Bill.

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

Regardless of whether the affirmative or negative procedures are undertaken it is essential given the level of potential impact on individuals lives that robust and extensive consultation processes are in put in place. Whilst I note that major areas of the Bill's implementation from children's perspectives appear to be appropriately the subject of the affirmative procedures, I would not wish to fully commit to that position in the absence of further examination.

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

In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Article 4 of the UNCRC provides that States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources. I would expect that in order to exercise their duty of due regard to the UNCRC Welsh Ministers will ensure that a child's rights impact assessment is conducted to evaluate how the allocation of budget is proportionate to eth realization of the legislation introduced through the Bill.

Submission by:

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is underlined with a single horizontal line.

Keith Towler
Children's Commissioner for Wales

Agenda Item 9

Health and Social Care Committee

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

Meeting date: **Thursday, 18 April 2013**

Meeting time: **09:00 – 15:33**

This meeting can be viewed on Senedd TV at:

<http://www.senedd.tv/archiveplayer.jsf>
<http://www.senedd.tv/archiveplayer.jsf>

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Wales



Concise Minutes:

Assembly Members:

Vaughan Gething (Chair)
Mick Antoniw
Rebecca Evans
William Graham
Elin Jones
Lynne Neagle
Gwyn R Price
Lindsay Whittle
Kirsty Williams

Witnesses:

Gwenda Thomas, Deputy Minister for Children and Social Services
Julie Rogers, Welsh Government
Steve Milsom, Welsh Government
Mike Lubienski, Welsh Government
Emily Warren, Welsh Local Government Association
Martyn Palfreman, Head of Directorate, Welsh Local Government Association
Phil Evans, Director of Social Services, Vale of Glamorgan and President of ADSS Cymru, Association of Directors and Social Services
Gwen Carrington, Director of Social Services, Isle of Anglesey County Council, Association of Directors of Social Services
Professor Ray Jones
Constance Adams, Wales Council for Voluntary Action
Mario Kreft, Care Forum Wales
Mary Wimbury, Care Forum Wales
Peter Tyndall, Ombudsman for Wales
Elizabeth Thomas, Public Service Ombudsman for Wales

1. Introductions, apologies and substitutions

- 1.1 The Chair welcomed Gwyn Price as a new Member of the committee.
- 1.2 Apologies were received from Darren Millar. There was no substitute.

2. Social Services and Well-being (Wales) Bill: Evidence Session 1

- 2.1 The Committee took evidence from the Deputy Minister for Social Services.

3. Social Services and Well-being (Wales) Bill: Evidence Session 1

- 3.1 The Committee took evidence from the Welsh Local Government Association and the Association of Directors of Social Services.

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

- 4.1 Members agreed the motion

5. Social Services and Well-being (Wales) Bill: Evidence Session 1

- 5.1 Members held a discussion with Professor Ray Jones on his paper and views on the Bill, as drafted.

6. Social Services and Well-being (Wales) Bill: Evidence Session 1

- 6.1 The Committee took evidence from the Welsh Council for Voluntary Action and Care Forum Wales.

7. Social Services and Well-being (Wales) Bill: Evidence Session 1

- 7.1 The Committee took evidence from the Public Services Ombudsman Wales.

8. Papers to note

- 8.1 The papers were noted.

TRANSCRIPT

View the [meeting transcript](#).

Health and Social Care Committee

Meeting Venue: **Committee Room 3 – Senedd**

Meeting date: **Wednesday, 24 April 2013**

Meeting time: **09:30 – 10:28**

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_400000_24_04_2013&t=5&l=en

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Wales



Concise Minutes:

Assembly Members:

Lynne Neagle (Chair)
Rebecca Evans
William Graham
Ann Jones
Elin Jones
Darren Millar
Gwyn R Price
Jenny Rathbone (In place of Vaughan Gething)
Lindsay Whittle
Kirsty Williams
Mark Drakeford
Mick Antoniw

Witnesses:

Committee Staff:

Gwyn Griffiths (Legal Advisor)
Steve George (Clerk)
Olga Lewis (Deputy Clerk)

TRANSCRIPT

View the [meeting transcript](#).

1. Election of the Temporary Chair

1.1 As apologies were received from the Chair of the Committee Vaughan Gething AM, Lynne Neagle AM was elected Temporary Chair

2. Introductions, apologies and substitutions

2.1 Apologies were received from Vaughan Gething AM (Jenny Rathbone AM substituted) and Mick Antoniw AM (Ann Jones AM substituted).

3. Recovery of Medical Costs for Asbestos Diseases (Wales) Bill: Stage 2 – Consideration of Amendments

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

Sections 1 – 21

Schedule 1

3.2 The Committee considered and disposed of the following amendments:

Section 1:

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

Section 2:

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

Section 3:

Amendment 9 (Darren Millar)

For	Against	Abstain
Elin Jones Lindsay Whittle Kirsty Williams	Lynne Neagle Rebecca Evans Gwyn Price Jenny Rathbone Ann Jones	William Graham Darren Millar
3	5	2
Amendment 9 was not agreed to.		

Amendment 10 (Darren Millar)

For	Against	Abstain
William Graham Darren Millar	Lynne Neagle Rebecca Evans Gwyn Price Jenny Rathbone Ann Jones	Elin Jones Lindsay Whittle Kirsty Williams
2	5	3
Amendment 10 was not agreed to.		

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

Section 4:

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

Section 5:

Amendment 11 (Mark Drakeford)

For	Against	Abstain
William Graham Darren Millar	Lynne Neagle Rebecca Evans Gwyn Price Jenny Rathbone Ann Jones Elin Jones Lindsay Whittle Kirsty Williams	
2	8	0
Amendment 11 was not agreed to.		

Section 6:

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

Section 7:

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

Section 8:

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

Section 9:

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

Section 10:

Amendment 4 (Mark Drakeford) was agreed to, in accordance with Standing Order 17.34 (i).

Section 11:

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

Section 12:

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

Section 13:

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

Section 14:

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

Section 15:

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

Section 16:

Amendment 12 (Darren Millar)

For	Against	Abstain
William Graham Darren Millar Elin Jones Lindsay Whittle	Lynne Neagle Rebecca Evans Gwyn Price Jenny Rathbone Ann Jones Kirsty Williams	
4	6	0
Amendment 12 was not agreed to.		

Amendment 1 (Mick Antoniw) was agreed to, in accordance with Standing Order 17.34 (i).

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

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

Amendment 13 (Darren Millar) was withdrawn.

Section 17:

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

Section 18:

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

Amendment 2 (Mick Antoniw) was agreed to, in accordance with Standing Order 17.34 (i).

Section 19:

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

Section 20:

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

Amendment 14 (Darren Millar) was withdrawn.

Section 21:

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

Schedule 1:

No amendments were tabled to Schedule 1, therefore it was deemed agreed to.

3.3 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 will commence from 25 April 2013.

3.4 Under standing order 26.27, Members agreed that the Member in Charge should prepare a revised Explanatory Memorandum.

4. Papers to note

4.1 Paper: HSC(4)-13-13 – Paper 1 – Letter to the Chair from Mick Antoniw AM

4a.1 The Committee noted the letter from the Member in Charge to the Chair providing a supplementary note in response to recommendation 5 of the Committee's Stage 1 report on the Bill.