

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