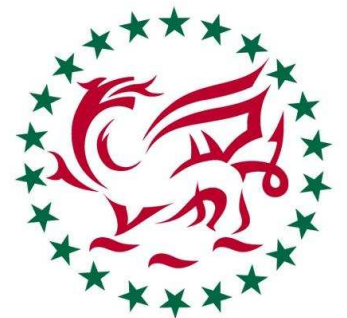


Social Services & Wellbeing (Wales) Bill

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.

