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WLGA • CLILC

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

Dear Vaughan,

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

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

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

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

Yours sincerely,

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**CC Phil Evans, ADSS Cymru  
Emily Warren, WLGA**

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

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

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## 1. Resource implications

1. The WLGA and ADSS Cymru have set out our position on resources in both our written evidence and the 'State of the Nation' document submitted to the Committee prior to our initial oral evidence session. We are absolutely clear that at a time of considerable pressure on the public purse and changing expectations of service users and carers, we must transform services, achieve efficiency savings, and where appropriate increase the pace of collaboration. The co-production of a Local Government Implementation Plan for Sustainable Social Services (which commits to an ambitious programme of local, regional and national collaboration in a number of service areas including Mental Health, Learning Disabilities, commissioning and procurement of placements and adoption) demonstrates our active commitment and collective action towards this aim.
2. However, we have significant concerns around the viability of implementing a Bill so extensive in scope, with no additional resources, at a time when Local Government has faced an 8% real terms reduction in spending power since 2008. The Spending Round announcement due on 26 June 2013 is likely to presage further reductions in the Welsh Block in both 2014-15 and 2015-16 at a time when demographic pressures will continue to rise and welfare reforms will start to impact on local services.
  - We have stated consistently that the Bill, by the nature of its scope, and the extent of new duties (as opposed to discretionary powers) which will be conferred on Local Government will involve new burdens and will not be cost neutral.
3. The Regulatory Impact Assessment (RIA) provided in the Explanatory Memorandum is weak, The opening paragraph acknowledges that '*The accurate prediction of costs and benefits to effect such a major change will be realised over time.....and there is a measure of uncertainty about some of the costs and benefits provided in this RIA*'. We are particularly concerned that this remains the only substantive evidence presented by Government to justify the costing of the Bill.
4. Whilst we recognise it may be difficult to project the costs of new duties, prior to implementation, it is not impossible. Since devolution the Welsh Government has been able to undertake financial modelling to project the costs of many new responsibilities. Forecasts can be done centrally using recognised econometric techniques and this can be triangulated by asking Councils and the NHS to validate the results. Latent demand for services is very difficult to estimate, as demonstrated by the difficulties which Welsh Government has encountered in funding the First Steps initiative. However, there are many experts working in the field who can make credible estimates. For example, Professor David Bell of Stirling University

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

5. Officials have been quite open in stating that they have not gone out to Local Authorities and the NHS before the Bill was published to ask if it could be costed. As a result, the RIA does not seek to determine the costs of much of what will be determined by regulation. However, during scrutiny, officials have accepted that there *'will be choices that will have fairly substantial cost options'*. We remain concerned that the limited scope of the RIA will prove to be exceptionally misleading in that it underestimates the financial impact of proposed change.
6. As presented, the RIA provides analysis around only the redirection of the existing training budget, reduced cost of litigation and potential administrative savings. This may be an accurate assessment of these particular savings but they will not offset the increased demand driven by new duties imposed on Local Government.
7. The vision set out in 'Sustainable Social Services for Wales: A Framework for Action' and reflected to a lesser extent in the Bill, around which there is broad consensus, envisages increased access to services and a greater menu of preventative services, thereby reducing demand and costs. As stated in our submissions, we do not believe there is any genuine evidence to support this assumption. Prevention may delay or reduce demand but it will not release significant savings, as evidence from the Gwent Frailty Project has demonstrated. In addition, there is a question as to how Local Authorities will fulfil new duties to provide for a single right of assessment and greater access to information, advice and services, if additional funding is not forthcoming.

### **WLGA/ADSS Cymru Research**

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

#### Analysis of existing department spend per authority

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

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

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

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

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

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

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

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

### **Areas of specific concern**

10. Whilst our analysis is not yet complete, it is clear that there are some headline findings from our analysis. The current position reflects that 17 of 22 Local Authorities are overspending on Social Services, the total overspend across Wales fairly evenly split between Adults and Children's Services.
11. Local Authorities are already remodelling services to deliver improved outcomes for service users. These include a range of preventative services such as reablement. We are not seeing significant savings from such transformational change. This is consistent with predictions put forward by Professor John Bolton in connection with his work on Older People's Services in Wales and other programmes across the UK.

12. Other calculations suggest:

- Based on the returns received to date, the average cost of providing the Family Information Service is £65,000 per Local Authority. The requirement on Social Services to provide additional Information, Advice and Assistance as set out in the Bill will have an estimated cost across Wales of £1.43 million
- Assessment – if the Bill extends the right of assessment, this would potentially lead to an increase in the number of social workers/support workers employed. The average cost of a Social Worker is £40,000 and the average cost of an assessment is £770. On this basis, an additional 1000 assessments would cost £770,000 per year
- The introduction of the Vulnerable Adults and Protection Act in Scotland was supported by an additional £15 million funding per year to Local Authorities.

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

1. Given the focus in Social Services on working with families to meet their members' needs for care and support, there is merit in close alignment between legislation that deals with children and young people and with adults. Additionally, this makes easier the role of the statutory Director in ensuring a unified approach, maximising the benefits of shared values and common core processes such as assessment and case management.
2. In our opinion, however, it is difficult to deduce from the current Bill where the Welsh Government stands on issues such as the benefits and limitations of 'genericism' for service users, carers, partner agencies and professional staff – issues which have been debated ever since the Seebohm reforms of social work in the early 1970s. Within the written evidence provided to the Committee, there is a strong consensus about the difficulties and challenges involved in approaches which seek to be age neutral.
3. In reality, considerable differences in practice have emerged, partly to deal with the fact that policy characteristically differentiates between how the state intervenes in the lives of children and adults. In Children's Services, most referrals relate to concerns about safeguarding and 36% are from the police. In adult services, self-referrals or referrals from carers predominate and they focus primarily upon meeting need for care and support.
4. As the Children's Commissioner makes clear, Social Services legislation and must demonstrate how it incorporates a rights perspective. Adults and children have different rights and need different safeguards (in areas other than abuse). Protecting children often means ensuring that their developmental needs in terms of health and social development and education are met. For adults, there is a key concern about capacity for making decisions in their own right. Children can be removed from their families, sometimes permanently, and the state will take over responsibility for making significant decisions on their behalf.
5. The provision of integrated services also has a different dimension, with the primary partnership for adult services involving the NHS and for children's services involving Education. Only if their joint responsibilities with Social Services are clearly defined for each 'category' of service user will the systems and services operate effectively across organisational and professional boundaries. This is the basis for developing good practice based upon 'team around the child' or 'team around the family' approaches which depend upon integrated working by the significant agencies involved with families.

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

1. Welsh Government recognised the need to address the issue of transition in the Bill in respect of Children with Disabilities. We would ask that it is much more transparent about how agencies should carry out responsibility for assessing needs and providing services as these young people make the often challenging journey between childhood and adulthood (between the ages of 14-25 years).
2. Where unavoidable delays in children's physical, emotional and mental development means that their capacity for greater independence is significantly compromised, the Bill should make explicit the provisions for ongoing support from the NHS, Education and others. This is a prerequisite to putting integrated, multi-disciplinary support on a sound footing. It needs to be more specific also about entitlement to transition support, with close collaboration between children's and adult services to help young people bridge the gaps and adjust to new rights and responsibilities. Social Services have tried to make this support available but the costs of extended entitlement are proving prohibitive.

## **4. Portability**

1. We acknowledge that there can be difficulties when people in need move across administrative boundaries but, in our experience, these occur in relatively few cases and the problems may not be susceptible to legislative requirements in respect of portability.
2. We know that families want consistency and continuity. However, Local Authorities rarely question assessments carried out elsewhere. Delays and disputes arise most readily when people move across national borders or from urban to rural areas where the menu of services and the way in which need is met justifiably differ.
3. Some work has been done to see how many people are likely to be covered by the portability duty. It was very few. An analysis of sample cases, following their move, demonstrated that they often had very complex care and support needs which involved a range of agencies (especially the NHS). The relationship with a principal carer had also changed as a consequence of moving home. Hence, the relevant package of care and support still had to be recreated and re-negotiated.
4. In other cases, especially those which involve safeguarding concerns, good practice dictated that early reassessment was essential to ensure that risks were being managed appropriately.
5. In our opinion, the mechanisms set out in the Bill are more likely to produce unnecessary challenge and complaints than increased service user satisfaction. Similar unintended consequences would arise from extending the portability right to carers.

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

1. The WLGA and ADSS Cymru fully support the principle of maximising opportunities for users and carers of social care services to contribute actively to the identification of individual outcomes and the shaping of services to meet the needs and aspirations of the individual and deliver those outcomes.
2. 'Sustainable Social Services for Wales: A Framework for Action' includes the following commitment from the Welsh Government: 'We will work with all stakeholders, and in particular with service user interests, to develop a model of self-directed support that is consistent with our principles for social care - including a stronger infrastructure of support for those who choose these routes.'
3. We are disappointed, therefore, that there are no specific provisions around the development of a model for Wales within the Bill. Paragraph 24 of the Explanatory Memorandum states that: 'Across the 'spine of the Bill' the provisions are designed to promote an individual's voice and control in relation to access, assessment and eligibility for services'. We recognise that there is an implied requirement for Councils and partner agencies to give users and carers a voice in respect of these aspects of service, for example in (1) providing sufficient information and advice to enable them to make plans for meeting their needs for care and support, (2) engaging with them in identifying personal outcomes and (3) promoting social enterprises, cooperatives, user led services and the third sector.
4. However, there is no indication on the face of the Bill as to how a model of self-directed support will be implemented in Wales, a crucial step in delivering the Welsh Government's commitment to avoid a 'market-led model of consumer choice'. We believe this is a missed opportunity in an area which requires strong leadership and direction from the national Government and which has been promoted as a key objective in transforming Social Services in Wales.
5. We would look for clear principles being included in the Bill or in the regulations, without prescription over specific models. These would need to reflect existing effective practice in Wales, accommodate a range of approaches including but not limited to Direct Payments, and be founded on the principles of co-production, namely shared learning and growth of trust based on experience. Responsibilities for developing and implementing such approaches need to extend beyond Social Services, reflecting the wellbeing context articulated in the Bill. Local Government would look to contribute towards the development of these principles,

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

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

## **6. Independent Advocacy**

1. Local Government is committed to ensuring all users of our service have increased voice, choice and control. Whilst provision of independent advocacy is only statutory for certain client groups, such as those with mental health needs, there is a commitment within Local Authorities to secure wider access to this type of advocacy, where it is appropriate. This was reflected in the Framework for Services for Older People, in a good practice compendium for Fulfilled Lives Supportive Communities and as a key priority within our Local Government Implementation Plan for Sustainable Social Services.
2. We support the provisions in the Bill, recognising the value of advocacy for the citizen where appropriate, but we do not believe in a broad duty enshrined in law for all service users. Advocacy needs to be viewed as part of a wider framework for strengthening voice and control for citizens. We believe it is right for this approach to be determined through policy as part of work to support a National Outcomes Framework.
3. We believe that independent advocacy is a critical tool but should be viewed as part of a wider suite of services that should be developed into a Welsh framework around voice, choice and control. As such, we would welcome the opportunity to discuss how we can contribute to this debate and maximise powers in the Bill to deliver an appropriate framework for citizens – one which is appropriately resourced but avoids legislation which demands a 'one size fits all approach' that may not be responsive to individual circumstances or account for the wishes of the service user.
4. The WLGA and ADSS Cymru believe that independent advocacy has an absolute value, alongside a range of other advocacy mechanisms such as Citizens Panels and Member Champions, and the Sustainable Social Services agenda provides a real opportunity to determine how this wider framework could be developed, and ensure appropriate resources are provided from the centre.

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

1. The WLGA made clear in its written evidence to the Committee its view that social enterprises, cooperatives and user led services have a role to play in developing and delivering responsive social care and wellbeing services to people in need of care and support. The potential contribution of such models to strengthening the voice and control of service users and carers is recognised, although we would emphasise that this is not the only route to securing this goal.
2. Our concern is that a specific provision on the face of the Bill requiring Councils to promote the development of new models of service using these approaches is contrary to existing statutory commissioning guidance for Social Services and wider competition law. It also raises questions regarding the long term viability of existing contracts between Councils and providers from other sectors, notably the independent sector. Furthermore, we think that 'singling out' specific models of delivery in this way has the potential to harm existing and future relationships with the independent sector.
3. There are examples of cooperatives and social enterprises providing social care and wellbeing services in Wales and the feasibility of such arrangements is being actively pursued in other areas. Examples include 'Menter Fachwen' in Gwynedd, a social enterprise providing work experience and training for local people with a range of disabilities, and exploratory models such as the Community Interest Company proposed by Cardiff Council. However, we would contend that there remains a need for considerable development of this sector. This is undoubtedly one reason why the duties to promote these are included in the Bill. Developing social enterprises and cooperatives within local communities will take some time. It is imperative in the mean time that Councils and other statutory agencies work with other sectors to build and sustain vibrant and diverse local markets for social care which have the capacity to deliver current and new models of care. The Local Government Implementation Plan for Sustainable Social Services contains a series of commitments in this regard, including the establishment of a National Commissioning Board working directly with cross-sector provider forums to facilitate the improvement of services and development of new service models, and equipping Councils to analyse local markets and identify where improvements are needed to guarantee sustainability into the future.
4. We think that the inclusion in the Bill of a duty specifically to promote social enterprises and cooperatives might distort this productive activity and have an ultimately detrimental effect on services. We would call for it to be replaced by a more general duty to promote sustainable local markets including a range of different deliver models.

## 8. Direct Payments

1. We are working hard to increase take up of Direct Payments but they should be seen as one way of ensuring that care and support are citizen directed. The Bill does not establish this overall direction or make clear what other methods should be used if service users exercise a right of choice and decide against Direct Payments. On 26th April, ADSS Cymru and the Social Services Improvement Agency ran a joint summit to discuss the role of Citizen Directed Support (CDS) in Wales and to examine the range of options. The record of the event can be made available to the Scrutiny Committee in due course.
2. We acknowledge that there are unacceptable differences in the use made of Direct Payments by different Local Authorities and by different categories of service users. These differences are the product of many factors (including the influence of local cultures, social care markets, cross-border issues and long-term contracts with service providers) which are persistent in their effect. If Welsh Government adopts a very prescriptive role in seeking to overcome such barriers, there is a risk that Local Authorities will become non-compliant because of factors outside their control. In our opinion, additional support for change programmes would be a more effective response. There has been some research and piloting of the mechanisms which would increase use of Direct Payments such as Managed Accounts, National/Local Personal Assistant matching services and the extension of brokerage services. However, there are resource implications and there is concern that prescription may be used as an alternative to an effective funding regime.
3. The Bill does not deal adequately as yet with the potential impact of the Direct Payments provisions on the service commissioning role of Local Authorities. At present, this is heavily prescribed by detailed statutory guidance. One consequence of compliance with the current guidance is to encourage large scale block contracts with service providers. It is possible that greater use of Direct Payments would involve giving up these opportunities for efficiency savings. We do not know how far such costs would be balanced by the savings that can accrue from providing more individually tailored care and support. Additionally, it is anticipated that Local Authorities and the Direct Payment support organisations which they fund would need to invest considerably in the provision of training, financial advice and other 'infrastructure' to provide an effective service to increased numbers of Direct Payment users.
4. The current Bill does not deal effectively enough with the need for the NHS to align delivery of Continuing Health Care, joint packages of care and support and pooled budgets with the mechanisms which underpin Direct Payments. This should include the duty to provide funding toward a social care package where this clearly benefits the NHS in terms of best value.

5. ADSS Cymru supports the proposal that Direct Payments could be used to purchase services delivered by Local Authorities as well as other providers. This is consistent with the principles of strengthening choice and the voice of citizens. It would contribute also to the availability and development of sustainable services and new delivery options while increasing service options for citizens. In some areas, the independent and third sectors are not sufficiently robust to provide sufficient choice; in the short term, this means increased dependence on Local Authority provision.
  
6. It should be noted that the need for registration under the Care Standards Act can restrict Direct Payments users when they set out to find collective or social enterprise solutions to the provision of services. This demonstrates also the need for aligning properly the safeguarding/service quality assurance and the service provision/commissioning roles undertaken by Social Services.

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

1. The WLGA and ADSS Cymru support the concept of a National Outcomes Framework and see this as an opportunity to properly assess the impact of services on people's lives, rather than focusing on systems and processes as a means of assessing the effectiveness of services.
2. Part 9 of the Bill states rightly links outcomes to the wellbeing of people in need of care and support. Assuming this incorporates the range of services, including preventative services, it is crucial that a National Outcomes Framework and the statements informed by it span Local Government and other services, such as those provided by Health and the third sector. Indeed the Explanatory Memorandum makes this point. The Framework should align with other outcomes methodologies being developed within Local Government's performance improvement framework and in relation to single integrated planning under the auspices of Local Service Boards.
3. We are concerned therefore, that the recent Wellbeing Statement by the Deputy Minister refers to a 'National Outcomes Framework for people who need care and support and carers who need support'. In our view this immediately limits the scope and impact of the Framework and diminishes its applicability to the wider wellbeing agenda. Conversely, the supporting outcomes and measures are very broad (for example including 'I have safe and healthy relationships'. A possible – if unintended – consequence could be the assumption that it is the responsibility of Social Services on their own to deliver these outcomes for people. This lack of clarity should in our view be addressed, and the opportunity taken through the Bill to require the establishment of a genuinely cross-sector Framework.
4. In addition, we are not clear about how the delivery of nationally-set outcomes can be aligned to those identified for individuals – a crucial element of user voice and control. We look to Welsh Government to engage with a range of stakeholders in further exploration of an appropriate relationship between the two levels.
5. Finally, we have some concerns about the provision in the Bill for Ministers to issue a code to help achieve national outcomes, in particular 'imposing requirements on Local Authorities in relation to provision of that kind'. We would want further clarification and discussion as to what such requirements might be. Any imposition of standards, measures and targets would need to be proportionate, balanced and agreed with Local Government. We also question why similar requirements are not proposed for other agencies.

## 10. Codes of Practice

1. The WLGA and ADSS Cymru are keen to ensure an appropriate balance between national and local direction. We have placed on record our concerns, during our recent evidence session that the tendency in this Bill is to vest a greater level of power in Welsh Ministers to direct authorities than any previously seen.
2. Section 125 highlights this stating that '*The Welsh Ministers may direct the Local Authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the exercise of functions by the authority in accordance with the requirement in the relevant code.*' This provision is in addition to those powers of intervention by central Government prescribed in provisions 126-134.
3. As such we are not persuaded by the current drafting of the Bill in relation to the broad powers conferred on Welsh Ministers to direct authorities and to issue codes. Additionally we are concerned about the prescribed powers in section 138(3) (4) to identify measures within codes which relate to standards, measures, targets, and specification of categories. We would advocate for clarity from the Welsh Government, around the specific areas for which they intend to issue codes, and for a dialogue around how any performance measures, standards or targets enshrined within codes would align to existing performance measures. Only in this way can we avoid a disproportionate level of regulations.
4. Our written evidence calls for the Bill to simplify legislation and reduce bureaucracy, in accordance with the stated aims set out in the explanatory memorandum. As currently drafted provision 138 risks creating additional and unnecessary legislation and bureaucracy, and would directly undermine the evidence in the Munro Report and Law Commission reviews, both of which strongly advocated simplifying processes.