

Gwenda Thomas AC / AM  
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol  
Deputy Minister for Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref LF/GT/0534/13

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

// June 2013

*Dear Vaughan,*

Thank you for your letter dated 7 June where you ask for responses to three issues discussed during my evidence session with your Committee on 6 June. I set them out in turn below:

**In response to concerns raised around section 31(4) and (5), which specifically forbids local authorities from meeting care and support needs by 'providing or arranging for the provision of nursing care by a registered nurse', you made reference to a Law Commission Report which outlines problems that can arise from allowing local authorities to meet care and support needs in this way. The Committee would welcome further clarification on the report and the problems being referred.**

It is important to understand that creating a distinction in law between the kinds of services which Local Health Boards, or other health bodies, provide and the kinds of service which local authorities provide in the exercise of their Social Services functions, is entirely different to the issue of how those two bodies should work together at an operational level to ensure that services for individuals are well planned and coordinated. It is clearly important that there is a clear delineation in law between the services which the citizen can expect to receive from the health service and those which they expect to receive from social services. Failure to do this would create confusion. The Law Commission in its 51<sup>st</sup> recommendation, said that the existing prohibition in relation to nursing be maintained alongside the prohibitions in relation to other services which are required to be provided under the NHS (Wales) Act 2006. Section 31 provides for that clarity. The issue of how services are coordinated on the ground, and in the care plans for individuals in need, is very important but is a separate matter. The Bill places clear duties on health partners to co-operate with local authorities in discharging their functions to assess and meet the care and support needs of an individual as well as assessing and planning for their population's needs (Sections 145 and Section 5 of the Bill refer).

**In questioning the eligibility framework Members sought clarity on the transitional arrangements for those currently in receipt of services and queries whether there was a risk of individuals finding themselves no longer eligible for services under new arrangements. You agreed to provide the Committee with a detailed written response on this matter.**

In line with any new law, at the switch over point there is a period of transitional protection owed to an individual (Section 165(2)). For example, this will ensure that for a person who is in receipt of support following an assessment under Section 47 of the NHS and Community Care Act 1990, the local authority duties under those arrangements would continue to apply until the local authority reviews the persons care through a re-assessment to take into account their changing circumstances and needs over time. The current arrangements under *Creating a Unified and Fairer System for Assessing and Managing Care* (in Section 2.54 of that guidance) require the local authority to review an adult's care as follows:

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*"At a minimum, there should be an initial review within three months of services first being provided. Thereafter, reviews should be scheduled at least annually, or more often if individuals' circumstances appear to warrant it or upon request from service users, providers of services and other appropriate individuals or agencies"*

On review the local authority will have to consider with the individual how best to meet the need for care and support under the new arrangements. This will require the local authority to consider whether the persons need for care and support can be met through their duties to provide Information, Advice or Assistance (Section 8) or through preventative services (Section 6) that the local authority facilitated by the Local Health Board must provide or arrange for people with care and support needs in its area.

The transitional arrangements will provide for a period of re-adjustment, so that any change in an individual's care is carefully managed. I am committed to ensuring sufficient time and assistance is given to people to enable them to maintain their quality of life and independence. The continuity of care for people over the transition must be a clear priority for local authorities. I am however clear that people have no absolute forever right now to services. There may well be people whose needs change now and who would lose the service now. We cannot give a blanket guarantee to an absolute forever right to a service under the new law any more than we can with existing law.

I have advised the Committee of my plans to make an announcement later this month on the next steps in the ongoing co-production of the core processes of the Bill with local authorities and their partners. Ensuring that there are appropriate transitional arrangements will be a key priority for the ongoing work to implement the Bill.

**You also agreed to clarify your rationale on the issue of adult protection and support orders and provide further evidence outlining your views on calls for the power of entry for adults at risk to be extended. If the power of entry is a matter where competence is an issue please can you confirm whether you expect this to be resolved before Stage 2.**

During the White Paper consultation on the Bill proposals last Spring, the view was expressed that the Welsh Government did not intend to use the Bill to introduce intervention powers in adult protection. This is because we were not convinced there was a need for further powers in this area. However, the responses to that consultation showed overwhelming support to introduce powers to ensure that practitioners could access adults suspected of being abused or neglected. I have acted on the strong views expressed and the Bill provides for Social Services to apply to the court for an Order granting them access to a person they suspect of being at risk, in the absence of a third party who may obstruct access.

I am aware of calls for this provision to go further and provide for a person experiencing abuse to be removed to a safe place. However, I am clear that in keeping with the general principles of this Bill, the wishes of an adult at risk with capacity must be key to any support given. There are also equally strong arguments in relation to not overriding individuals' human rights. Should it be clear following the use of an Order that an adult is in need of further support, it would be the role of Social Services (and their partners) to persuade and negotiate with the person to accept appropriate assistance and support, even those who are reluctant.

There is agreement, including by the UK Government that the provision providing for new Adult Protection and Support Orders is within the legislative competence of the National Assembly. My officials have however sought to engage with Whitehall Departments, primarily the Ministry of Justice, in relation to the development and implementation of arrangements for these new Orders to be processed. I hope these discussions can be completed quickly.

Yours sincerely



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