National Assembly for Wales
Health and Social Care Committee

Social Services and Well-being (Wales) Bill

Stage 1 Committee Report

July 2013

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

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The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the physical, mental and public health of the people of Wales, including the social care system.

Current Committee membership

David Rees (Chair)
Welsh Labour
Aberavon

Leighton Andrews
Welsh Labour
Rhondda

Rebecca Evans
Welsh Labour
Mid and West Wales

William Graham
Welsh Conservatives
South Wales East

Elin Jones
Plaid Cymru
Ceredigion

Darren Millar
Welsh Conservatives
Clwyd West

Lynne Neagle
Welsh Labour
Torfaen

Gwyn R Price
Welsh Labour
Islwyn

Lindsay Whittle
Plaid Cymru
South Wales East

Kirsty Williams
Welsh Liberal Democrats
Brecon and Radnorshire

During the course of the Bill's scrutiny, the following Members were also members of the Committee.

Mark Drakeford
Welsh Labour
Cardiff West

Vaughan Gething
Welsh Labour
Cardiff South and Penarth

Ken Skates
Welsh Labour
Clwyd South

Contents

Summary of Recommendations and Conclusions

General Principles

Conclusion 1. We note and agree with the views of witnesses in welcoming the general principles of the Bill and the need for legislation. However, we also recognise concerns in the evidence that the policy objectives of the Bill may not be realised in practice.

Statutory Principles

Recommendation 1. We agree with the views of witnesses that statutory principles should be included on the face of the Bill. We believe that such principles would assist practitioners and service users in understanding the ethos of the Bill. Whilst we accept that Codes of Practice are important, we believe that statutory principles on the face of the Bill would help create a framework for delivery against Codes of Practice.

We sought advice from our Legal Expert Adviser on the drafting of statutory principles and a suggested draft is appended at Annex A. We recommend that the Deputy Minister considers these draft principles and either brings forward an amendment to put them on the face of the Bill or takes them into account in bringing forward her own set of statutory principles.

Definitions

Recommendation 2. We understand the reasons outlined by the Deputy Minister for using the definition of disability from the Equality Act 2010. We note the Deputy Minister's view that the social model definition of disability is a concept and we question how effectively it could be articulated in legislation. We believe there is a risk that clarity around access to care and support could be diluted as a result of using the social model of disability, which may not translate readily into service provision.

We also note the Deputy Minister's support for and commitment to the principles of the social model and question how these principles will be realised in practice without reference to the model in the Bill.

We recommend that the Deputy Minister give consideration to how the social definition of disability could be embedded in practice, for example through regulations or codes of practice, to place those principles into context and to set out how services should be designed and delivered to reflect them.

Recommendation 3. We have considered the views of witnesses and we agree that the current definition of 'adult at risk' is too narrow. We recommend the Deputy Minister to give consideration to an alternative definition, such as that used in section 3 of the Adult Support and Protection (Scotland) Act 2007 as suggested by some witnesses.

We also note concerns raised by Age Cymru that the definition of 'adult at risk' should address the issue of coercive control. We recommend that the Deputy Minister extends the definition to include the issue of coercive control.

Well-being Duties

Conclusion 2. We have considered the inclusion of an overarching well-being duty in the Bill and whether the nature of the duties and responsibilities resulting from its implementation are sufficiently defined. We believe that the definition provides consistency for this Bill.

The concept of well-being permeates the whole Bill but we are unclear as to how this definition interacts with other duties in the Bill, such as the requirement to determine eligibility for services.

We note the Deputy Minister's statement on well-being. However, we believe that there remains a need for greater clarity on how the various elements of well-being will be applied in practice and by whom. For example, we acknowledge the concerns raised by some witnesses that the definition as drafted could be interpreted as placing responsibilities on local authorities for ensuring the economic well-being of individuals. We believe that assurances are needed that the duties will be workable in practice.

Recommendation 4. We discussed in detail the definition of "well-being" and considered carefully whether the definition should be included on the face of the Bill. Our discussions on this matter were difficult, leading us to seek advice from our expert legal adviser on the definition of "well-being". A legal advice note is appended at Annex B. Having considered this advice the majority of the Committee preferred option A, which would require decision makers to 'have regard' to a number of factors when considering an individual's well-being.

We recommend that the Deputy Minister considers option A in the appended legal advice note and, should she be minded to accept this option, we recommend that she brings forward the necessary amendments to section 2(2).

Recommendation 5. We recommend that any definition of "well-being" should be accompanied by a Code of Practice setting out how the individual components listed in the definition of 'well-being' interact with each other and with other duties in the Bill.

Recommendation 6. We recognise the profound impact housing can have on well-being, and have considered the views of witnesses calling for the inclusion of housing in the definition of well-being. If the Deputy Minister accepts our recommendation to amend the Bill in line with our preferred option A, housing would be encompassed in '(f) standard of living'. However, if our recommendation is not accepted we recommend that the existing definition of well-being should make reference to suitable housing and independent living.

Preventative Services

Recommendation 7. We share witnesses' concerns that the preventative duty is weaker on health services than local authorities and recommend that the duties on LHBs to "have regard to the importance of achieving the purpose" of preventative services should be strengthened to equate with the duties on local authorities in section 6 (1).

Recommendation 8. We note the need for greater clarity about what is meant by preventative services but do not believe that a detailed definition of preventative services is desirable on the face of the Bill, since this may limit local flexibility and innovation. However, we recommend that guidance or code(s) which set out the ways in which these duties should be discharged by local authorities and their partners, and how this relates to other duties, would provide the clarity that is needed.

Recommendation 9. We recommend that there should be a duty on local authorities and their partners to publish a statement on preventative services and how these services may be accessed, which would enable both professionals and service users to understand the scope and purpose of such services.

Assessments

Recommendation 10. We are content with the Deputy Minister's intention to simplify the assessment process. We are concerned that there may be duplication of assessments and believe that assessments should be undertaken by the most appropriate person irrespective of whether those services are to be delivered by health or social services. There should not be any legislative barriers to assessment being undertaken by that appropriate person, and while the duty to assess must be clear, there needs to be flexibility around undertaking assessments.

We therefore recommend that the Deputy Minister considers bringing forward amendments to sections 10 (1) and 17 (5) (a) of the Bill to facilitate the delegation of assessments to the most appropriate person. We also considered section 18 of the Bill, which sets out regulations on the conducting of needs assessments and outlines the requirements which could be imposed. We recommend that these regulations are necessary and that a national standard for assessments should be set out in these regulations.

Recommendation 11. We have considered the views of witnesses calling for a definition of proportionate assessment. We agree with concerns that if left undefined there could be restricted access to appropriate assessments, since such assessments may not always identify all of a person's needs. We recommend that the Deputy Minister considers providing further clarity on the definition of 'proportionate assessment' in regulations and detail of how she envisages they will work in practice.

Refusal of Assessment

Recommendation 12. We are broadly content with provisions in the Bill that enable adults to refuse an assessment although we are concerned about how these provisions deal with cases whereby adults may be coerced into refusing an assessment, for example in cases of abuse. We recommend that the Deputy Minister gives further consideration to this concern.

Conclusion 3 We discussed in detail section 14 of the Bill and the refusal by a parent of a needs assessment for a child. A range of views were expressed, with some Members calling for the removal of this section from the Bill, although on balance we agreed that it would be better to retain this section.

Recommendation 13. We also considered the evidence from Barnardo's Cymru that section 14 should include the words 'best interest of the child'. However, we are mindful of how the United Nations Convention on the Rights of the Child (UNCRC) and the 'best interest of the child' interacts with Article 8 of the European Union Convention on Human Rights which relates to the right to respect for private and family life. Therefore we recommend that this section of the Bill be undertaken in the 'best interests of the child' but in a manner that is in accordance with Article 8.

Recommendation 14. We recommend that the circumstances in CASE 1 in section 14 (2), in which the local authority retains its duty to undertake an assessment, despite a refusal, should be amended to place the onus on local authorities to have '*reason to believe*' rather than *'suspect'* that the child is experiencing or at risk of abuse, neglect or other kinds of harm. We also recommend that CASE 2 in section 13 (2), be amended accordingly.

Portability of Assessments

Recommendation 15. We welcome provisions in section 40 (2) of the Bill which requires an authority, to which an eligible person moves, to meet the care and support needs set out in the person's existing care plan until it completes its own review and assessments.

While we believe that this provision will help to ensure gaps in care are avoided, we note that it is only to be used as an interim measure and involves reassessment or review by the receiving authority. We also believe that the transfer of information between authorities needs to be done in a timely manner and recommend that an amendment to section 40 (1) (b) be brought forward to reflect this.

Recommendation 16. We believe there is potential for section 40 (2) (d) of the Bill to be misinterpreted in that a person moving from one authority to another would have to restart the assessment process from the beginning. Therefore, we recommend the Deputy Minister brings forward an amendment to redraft the wording of section 40 (2) (d) to read:

> "(d) assess, *reassess or review* whether the person has needs for care and support, and, if the person does, what those needs are, have in regard in particular to any change in the person's needs for care and support arising from the move".

Recommendation 17. In further considering the evidence on portability we are concerned that there is scope for section 40 of the Bill to be misinterpreted. We believe that there is risk of raising expectations on what this section of the Bill will deliver in practice. For example, we believe there is potential for the expectation that an existing care package provided by the sending authority would be replicated in the receiving authority. To address this concern and add clarity to the intention of this section, we recommend that the title of this section be amended to read ‘portability of care plans’ rather than ‘portability of care and support’.

Recommendation 18. We are unclear about cross border portability, since the Bill only applies to portability within Wales and not those coming into Wales. Therefore we recommend that the Deputy Minister clarifies the arrangements for individuals coming into Wales before the end of Stage 2.

Recommendation 19. We welcome the Deputy Minister’s reconsideration of her position on the inclusion of portable care plans for carers in the Bill and recommend that she bring forward an amendment to this effect.

Eligibility

Conclusion 4. We are not content with the information that has been made available on the planned national eligibility framework. Some members of the Committee felt that this lack of clarity was a fundamental weakness of the Bill, as it is crucial in understanding how the Bill will operate in practice and to whom it will apply.

We understand the reasons outlined by the Deputy Minister for not including details of eligibility on the face of Bill and accept that an eligibility framework needs the flexibility of regulation.

Recommendation 20. We note the Deputy Minister’s commitment to bringing forward a major policy statement on eligibility and recommend that she supplements this with an oral statement in Plenary before the end of Stage 2. Eligibility is central to the success of the Bill and therefore we believe that this Committee should have the opportunity to robustly scrutinise the draft regulations on eligibility with sufficient time to review, question the Deputy Minister, and report as a Committee on the draft regulations before Stage 3 proceedings take place in early 2014.

We recommend that regulations relating to eligibility criteria are subject to a super affirmative procedure.

Recommendation 21. As a Committee, we also considered whether regulations on eligibility criteria should be accompanied by Codes of Practice. We believe that Codes of Practice are more accessible and easily understood by practitioners and service users. We recommend that should the Deputy Minister accept our recommendation to include statutory principles on the face of the Bill (recommendation 1), any future regulations setting out the national eligibility criteria should cross reference to these principles.

Recommendation 22. In relation to 'passporting' we welcome the Deputy Minister's inclusion, on the face of the Bill, of the circumstances where some individuals will be passported to having an eligible need. We recommend that the Deputy Minister sets out how these amendments will secure the rights as currently set out in section 17 of the Children Act 1989.

Recommendation 23. With regard to the introduction of a national eligibility framework, we are concerned about the impact this may have on those currently in receipt of services, who may find themselves no longer entitled to these services under the new arrangements. We recommend that the Deputy Minister sets out more clearly how transitional arrangements will work.

We believe that those currently in receipt of services should not find themselves worse off under the new arrangements. We remain concerned that without having further detail about the eligibility criteria we are unable to quantify the scale of the potential problem. We recommend the Deputy Minister considers the potential impact arising from the transition from existing eligibility criteria to a new national eligibility framework.

Conclusion 5. We note the Deputy Minister's commitment to undertaking a full consultation with stakeholders on the development of a national eligibility framework. We look forward to the Deputy Minister fulfilling this commitment and providing further explanation of her proposed consultation process.

Duty to meet care and support needs of a child

Recommendation 24. We share the concerns expressed by Children in Wales about the potential for the duty on local authorities to meet a child's needs for care and support to focus on abuse and neglect and to overlook preventative services. We recommend that the development of the eligibility framework takes full account of the need for early intervention to promote the wellbeing and welfare of children.

Charging

Recommendation 25. We have considered Part 5, specifically sections 44 (2), (3) and (4) of the Bill, which set out *Persons upon whom charges may be imposed,* and the concerns raised in evidence that charging of 16 and 17 year olds goes against the ethos of the Bill. We share this view and do not think that it is appropriate to charge young people. We recommend that the powers to charge 16 and 17 year olds should be removed from the Bill.

We have similar concerns about section 54 (1) (b) which makes provision for regulations for charges to be made for information, advice and assistance under section 8 as well as section 6 preventative services. We are concerned that such charges could deter people from accessing services and we also question the appropriateness of charging for information and advice. We recommend that the Deputy Minister provides greater clarity on the circumstances in which charges would be imposed for these services.

Transition from Children to Adult Services

Recommendation 26. We welcome the Deputy Minister's development of the '*When I'm Ready'* scheme and that there are three pilot schemes currently in place. We look forward to receiving further detail on the evaluation of these pilots and anticipate a legislative solution if this approach has not been shown work. In such an instance, we recommend that an amendment is brought forward to place a clear statutory duty on the face of the Bill that will set out clear duties for local authorities and other partner bodies in managing the transition process.

Information, Advice and Assistance

Recommendation 27. We are generally content with the duties set out in section 8 of the Bill but have listened to the concerns of witnesses regarding the need for information to be fully accessible. We believe that information should be available in a variety of formats and languages reflecting the needs of all Welsh citizens. We recommend that the Bill is amended to include reference to 'accessible' information.

Independent Advocacy

Recommendation 28. We note the Deputy Minister's written statement and her commitment to include provisions in the Bill to extend provision for statutory advocacy. We recommend detail on who will be entitled to receive independent advocacy is provided before the start of Stage 2.

Recommendation 29. We welcome the Deputy Minister's commitment that these provisions will be subject to regulation and inspection, which we hope will provide robust quality monitoring arrangements. However, we would not wish to see these arrangements impacting on peer advocates. We recommend the Deputy Minister considers the need for appropriate quality assurance and provides detail on how this will operate in practice before the end of stage 2.

Direct Payments

Recommendation 30. We considered the differing views of witnesses on whether direct payments should become the default method of service provision and these were reflected in a range of views within the Committee. We did not reach a unanimous view on this issue but the majority of Committee Members did not wish to see direct payments as a default method of service provision.

Recommendation 31. We welcome the policy intent of this part of the Bill and the choice for users of social care that the Deputy Minister wishes to promote. We believe that direct payments have been poorly promoted by local authorities in Wales, denying service users genuine opportunities for greater voice and control. Having considered the evidence, we recommend that the Deputy Minister considers amending section 34 to place a duty on local authorities to promote direct payments.

Recommendation 32. We have considered section 34 of the Bill and are concerned about the breadth of sections 34 (3) (c) (i) and 34 (4) (d) (i) which provide that local authorities may not be required or allowed to make direct payments if they are not satisfied that this would be an appropriate way of meeting needs . We consider these sub sections allow local authorities too much discretion to decide whether to provide direct payments and we therefore recommend that they are removed.

However, in strengthening the promotion of direct payments we would expect the Deputy Minister to put in place provisions for safeguarding users of direct payments against the misuse of the money by others.

Recommendation 33. We have considered the potential for the Bill to provide the NHS with the ability to offer direct payments in certain circumstances. We recommend that the Deputy Minister considers extending the provision of direct payments to people in receipt of joint health and social care packages.

User and Community controlled Providers

Recommendation 34. We have considered the scope of the duty on local authorities in section 7 of the Bill and welcome the duty to promote and develop social enterprises, co-operatives, user-led services and the third sector to provide care and support and preventative services. We recommend that the Deputy Minister brings forward an amendment to section 7 (1) (d) to either include the independent sector or remove reference to ‘third sector organisations’.

Recommendation 35. We recommend that the Deputy Minister provides guidance on the governance arrangements for social enterprises to ensure they are managed in a robust manner that is consistent with the aims of the Bill.

Adult Protection and Support Orders

Recommendation 36. We welcome the Deputy Minister’s intention to bring forward an amendment to include powers of removal in the Bill should the issues of consent be resolved with the UK Government. However, if these matters remain unresolved we recommend that the Deputy Minister does not repeal section 47 of the National Assistance Act 1948.

Regional Safeguarding and Protection Boards

Recommendation 37. We did not receive any external evidence to suggest that the merging of regional adult and children safeguarding boards would improve safeguarding. The majority of the Committee was in favour of removing these powers from the Bill. We recommend that the Deputy Minister remove powers in the Bill allowing the merging of regional adult and children safeguarding boards.

If the Deputy Minister is not minded to remove powers to combine regional safeguarding boards we recommend that she provides further information on the rationale for including powers in the Bill to merge such boards and detail on the procedure for merging boards. We also recommend that any decision to merge boards should be subject to a super affirmative procedure.

Recommendation 38. We note that the Deputy Minister’s decision to include powers to combine safeguarding boards stems from advice in a report from the Wales Safeguarding Children Forum. We recommend that this report is re-published and the Deputy Minister makes an oral statement to plenary on this issue before the end of Stage 2 proceedings.

Recommendation 39. We note that section 111 (2) of the Bill lists safeguarding boards partners but omits mention of the probation service.

We recommend that this section is amended to include reference to the probation service.

Recommendation 40. We note the Deputy Minister’s intent to develop safeguarding policies on six geographical footprints. We recommend that she provides further information on the footprints and the rationale behind her intent.

National Independent Safeguarding Boards

Recommendation 41. Having considered the evidence we are of the view that there should be separate national safeguarding boards for adults and children. We recommend that the Deputy Minister brings forward an amendment to this effect.

If the Deputy Minister is not minded to accept this recommendation we recommend that as a minimum there should be one national safeguarding board with two elements to it, one representing adults and the other representing children.

"Due Regard" to the United Nations Convention on the Rights of the Child (UNCRC)

Recommendation 42. We have carefully considered the Children’s Commissioner for Wales’ claim that the Bill contravenes the UNCRC and undermines the paramountcy principle under Article 3. We note his concerns that this is contrary to the best interests of children in Wales but we do not agree with his interpretation.

We also note the distinction the Deputy Minister makes regarding the application of the paramountcy principle by the Courts and by Local Authorities and her view that there is no risk to the rights of the child arising from this Bill. We are not convinced by this interpretation of the matter.

In considering evidence from children’s organisations on this matter we accept the view that the Bill does not necessarily contravene the UNCRC convention. However, we recommend that the Deputy Minister makes a statement, prior to the end of stage 2, on how the scheme of legislation accompanying this Bill will include regulations and codes of practice will promote and protect the underpinning principle of the best interest of the child throughout the Bill.

Case for Separate Legislation

Recommendation 43. We note the views of children's organisations that they did not have a preference as to whether separate legislation was required for children in the area of social services. However, they were all in agreement about the importance of taking this opportunity to legislate on this important area at this time.

We have carefully considered the arguments for and against legislation being 'people focussed' as opposed to separate legislation for adults and children. The majority of the Committee support the people focussed model of legislation but a minority would prefer to see separate legislation for children. However, the Committee was unanimous in the view that an unintended consequence of the Bill should not be a dilution of the rights of either adults or children. We are keen to ensure that the principle of a people focussed approach is realised in practice.

We also recognise the importance of a people focussed approach in overcoming and prevent problems during an individual's transition from child to adult social services and we refer to this issue in further detail in paragraphs 164 - 173.

We recommend that the Deputy Minister issues an oral statement, before the end of stage 2, detailing the rationale for moving from having a separate Bill for children to a people focussed Bill.

Section 88: Young People entitled to support under sections 89 to 94

Recommendation 44. We share the concerns of witnesses regarding the use of categories 1-5 in reference to care leavers and are uncomfortable with such terminology being similar to that used within the criminal justice systems. We recommend that alternative terminology should be used.

Disabled Children

Recommendation 45. We note the intention of the Deputy Minister to include on the face of the Bill those people who will be 'passported' to services and welcome the inclusion of severely disabled children. However, we are concerned that the repeal of section 17 of the Children Act 1989 could lead to a diminution of the existing rights of disabled children and recommend the Deputy Minister provides an oral statement on how such rights will be preserved in the Bill.

Recommendation 46. We also recognise the importance of protecting the rights of disabled children who may need to access services in the future and recommend that section 12 (1) be amended to read 'that a child may need care and support by virtue of being ***disabled*** *or otherwise*'. In order to reflect the 'people' model promoted in the Bill we recommend that section 10 (1) be amended accordingly to provide the same assurance for disabled adults. We believe the effect of this would be to include specifically disabled children in a duty to assess, and thus enable their need for services to be assessed by the local authority.

Removal of the 'reasonable punishment' defence

Conclusion 6. We note the strong views of witnesses in making the case for the removal of the 'reasonable punishment' defence to be included in this Bill. We held a range of views on as to whether such a provision should be included in this Bill or not. The majority of the Committee did not believe that this Bill is the right vehicle to pursue this issue.

Adoption Services

Recommendation 47. We are concerned that there are gaps in post adoption support and would welcome a duty to provide this support through the proposed National Adoption Service. We recommend that the Deputy Minister make a clear policy statement, prior to the end of stage 2, setting out how post adoption support services will be delivered.

Codes of practice and National outcomes framework

Recommendation 48. We note that section 122 of the Bill provides for Welsh Ministers to issue and publish a code of practice, on the exercise of social services functions under the Bill. We also note that section 123 enables a local authority to depart from requirements in codes but in doing so must follow the procedure set out in this section of the Bill, notify the Welsh Ministers of its reasons and to set out its alternative policy or proposed course action.

We are concerned that these provisions could enable a local authority to depart from any codes of practice relating to the national eligibility criteria. We believe this could undermine the rationale of having such criteria that is intended to provide equitable service provision across Wales. We recommend that in departing from codes, local authorities must publish a policy statement on the eligibility criteria they are proposing to use and receive agreement from Welsh Ministers to depart from the code.

Recommendation 49. We note the duty set out in section 122 (1) of the Bill that relates to Making, approval and revocation of codes, that Welsh Ministers ‘must consult such persons as they think fit on a draft of the code (or revised code)’. We recommend that the Deputy Minister sets out how stakeholders will be involved in the development of draft codes prior to this consultation taken place.

Cooperation and Partnership Working

Recommendation 50. We are persuaded by the evidence received in favour of fully integrated health and social care and believe that a separate Bill on integrated care, such as the legislative approach currently being considered in Scotland, would provide a better opportunity to address barriers to integrated working. We recommend that the Deputy Minister considers bringing forward a separate Bill on this issue.

Should the Deputy Minister not be minded to accept our recommendation calling for a separate Bill, we recommend that sections 147, 148 and 149 be strengthened by amending all references in these sections from ‘may’ to ‘must’.

Barriers to co-operation and partnership working

Recommendation 51. We note and agree with the views of witnesses calling for the removal of barriers to integrated working set out in sections 31 (4) and (5) of the Bill, that forbid a local authority from meeting a person’s need for care and support, under sections 21 to 29, by providing or arranging for the provision of nursing care by a registered nurse. We believe that local authorities should have the ability to employ professionals with both health and social care competencies, and recommend that the restrictions set out in sections 31 (4) and (5) are removed.

Recommendation 52. We note the provisions in sections 147 – 150 which provide for partnership arrangements between local authority social services departments and with health services to be prescribed through regulations. We recommend there is a need for such regulations to outline details of professional governance arrangements in order to prevent disputes between partners on how such arrangements should operate.

Collaboration and Pooled Budgets

Recommendation 53. We note the views of witnesses that for the Bill to succeed there needs to be a greater sharing of resources between local authorities and local health boards. We believe that the greater use of pooled budgets would assist partnership working and promote seamless cooperation as called for by health and social care partners.

Our recommendation 50 reflects our view that provisions in section 148 of Bill, which provides that a local authority and local health board may pay towards the establishment and operation of partnership arrangements by making payments directly or in to a 'pooled fund' and by providing staff, goods, services, accommodation and other resources', should be strengthened.

Complaints and representations

Conclusion 7. We note the Public Sector Ombudsman for Wales' call for a power enabling him to make investigation reports completely confidential on occasions he considers necessary. However, we do not agree that such a power is needed and believe that the Ombudsman's reports should be in the public domain.

Recommendation 54. We agree with the Ombudsman that the process for handling complaints when multiple agencies are involved should be simplified. We recommend that the Deputy Minister give consideration to this matter and we request further clarification on her proposals for the management of complaints.

Conclusion 8. We note the Ombudsman's views on the role of independent advocacy in the complaints process and agree the importance of independent advocacy in providing assistance to those who need it in presenting their complaints effectively. We discuss and make recommendations about independent advocacy in Chapter 4 of this report.

Total cost of the Bill

Recommendation 55. We are not satisfied with the information that has been made available on the total cost of the Bill and have not received any evidence to convince us that the Bill will be 'cost neutral' in the long term. However, we are mindful that the size and complexity of the Bill make it extremely difficult to cost. We also recognise the concerns of witnesses with regard to the current challenges facing public sector funding which will shape the context within which this Bill is delivered.

Funding Transformational Change

Recommendation 56. In considering the funding of transformational change we do not believe we have sufficient information upon which to make a judgement. We note the Deputy Ministers views on the possibility of phased implementation so that costs are offset by benefits and her commitment to providing further information on this prior to this Committee having to vote on the Bill. We recommend that the Deputy Minister make this information available prior to the end of stage 2 and provide clarity on how phased implementation will work in practice.

Training

Recommendation 57. We welcome the Deputy Minister's commitment to allocating additional funding for work force training but are concerned about the lack of detail made available on this funding. We are concerned that such funding is only provided for local authorities and that the Regulatory Impact Assessment pays insufficient regard to other partners especially the NHS. We would also be concerned if the diversion of funds from the social care workforce development grant adversely affected training for homecare and other social care staff. We recommend that the Deputy Minister give further consideration to these matters.

Conclusion 9. We believe a clear strategy and timetable for workforce training will be required and we ask that the Deputy Minister make available her strategy for workforce training, including information on the impact of this training on services, and the timeframe for delivery.

Conclusion 10. We are also concerned that in current practice statutory training is not consistently delivered. We believe that adequate professional training will be important for the effective implementation of the Bill and that its provision should be monitored. We ask that the Deputy Minister gives consideration to this matter.

Resource implications from assessing and meeting the needs of carers

Recommendation 58. We support the extension of the definition of carer and accept that, if the Bill is to improve services for carers, this will incur costs, both in terms of additional assessments and services. We believe that further details of these costs are needed and that is not reflected in the information made available to date. We recommend that the Deputy Minister provides further information on this matter prior to the end of stage 2.

Secondary Legislation

Conclusion 11. Throughout our consideration of the Bill we have expressed concern about the lack of detail provided in respect of draft regulations to accompany the Bill. We agree that in parts of the Bill the balance between provisions on the face of the Bill and those in secondary legislations is correct. However, whilst we accept that it is not possible to include detail of all provisions on the face of the Bill, there are parts of the Bill where we do not believe the correct balance has been struck and we have commented on those parts in the relevant sections of this report.

Repeals

Conclusion 12 We welcome the Deputy Minister providing us with a Table of Repeals detailing where existing legislation would be repealed by this Bill and a table of destinations outlining where repealed legislation is encompassed by the Bill. This information is helpful but we believe that such information should have been made available to us at the start of the stage 1 process to allow more detailed scrutiny of the Bill.

Conclusion 13. We note the information detailed in the Table of Repeals and the Table of Destinations and recognise that the Bill will repeal existing legislation and replace it with provisions in the Bill or accompanying regulations. We expect this to be a seamless process in which replacement provisions are in place before existing legislation is repealed.

Recommendation 59. With regard to specific repeals we are concerned about how the Bill will provide for aids and adaptations given that the Deputy Minister has confirmed that sections 1, 2 and 28A of the Chronically Sick and Disabled Persons' Act 1970 are to be repealed in Wales. We note that current legislation makes specific reference to 'aids and adaptations' and we are concerned how this will be captured in this Bill. We recommend that a specific reference to ‘aids and adaptations’ is added to the list set out in section 20 (2).

Recommendation 60. We recommend that section 20 (2) of the Bill should be amended to make it clear that the list ‘*should include but is not an exhaustive’* list of examples of what may be provided or arranged to meet needs under section 21 to 29.

Recommendation 61. We note the Deputy Ministers evidence that the Bill will replicate the provisions in the Carers Strategies (Wales) Measure 2010, given the Welsh Governments intention to repeal the measure. We welcome this but recommend the Deputy Minister provide further assurances that the repeal of the Carers Strategies (Wales) Measure 2010 will not undermine the existing rights and entitlements of Carers.

Introduction

1. At its meeting on 22 January 2013, the National Assembly's Business Committee referred the Social Services and Well-being (Wales) Bill ('the Bill') to the Health and Social Care Committee ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 21 June 2013. At the meeting of the Business Committee on 19 March 2013, this deadline was extended to 5 July 2013 and subsequently on 18 June 2013, it was further extended until 19 July 2013. We would like to express our gratitude to the Business Committee for considering our requests for extensions favourably.

2. On 28 January 2013, the Bill and Explanatory Memorandum were introduced and Lesley Griffiths AM, the then Minister for Health and Social Services made a statement in Plenary[1] the following day.

Terms of Scrutiny

3. At our meeting on 30 January 2013, we agreed to consider the general principles of the Bill and the need for legislation that aims to make provision for:

I. consolidated Welsh legislation that simplifies and clarifies duties that would aid the efficient delivery of social services and reduce the time and effort required to understand the current legal framework;

II. new legislation that would restate the Welsh Government's commitment to integrated social services for both adults and children and their carers with a Director of Social Services responsible for both. The Bill allows for a Director to be responsible for social services in more than one local authority. Provisions in the Bill aim to promote partnership and closer, more integrated working between local authorities and between local authorities and other bodies, including NHS providers. Joint working provisions in the Bill would facilitate the reform of adoption services;

III. the strengthening of national direction and increased consistency of access to and provision of social services across Wales and to introduce and enhanced prevention and early intervention (and wellbeing) role for local authorities and their partners to prevent or

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[1] A full meeting of the National Assembly for Wales

delay the need for care and support; and

IV. the promotion of the empowerment of service users – enhancing voice and control.

The Committee's Approach

4. We issued a consultation and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annex C.

5. We took oral evidence from a number of witnesses on the Bill. A schedule of oral evidence sessions is attached at Annex D.

6. The Assembly's Outreach Team undertook work to engage with service users to gauge their views on specific elements of the Bill and produced a paper summarising its findings.[2] We also considered the views of an Advisory Group, which was set up by third sector organisations to co-ordinate advice drawing on their various areas of expertise.

7. We appointed Professor John Williams of Aberystwyth University as an expert legal adviser and Professor Ray Jones of Kingston University, London, as an expert policy adviser. We are grateful to both of them for their advice and guidance.

8. The following report represents the conclusions and recommendations we have reached based on the evidence received during the course of their work.

9. We would like to thank all those who have contributed.

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[2] HSC (4)-18-13(ptn12), 6 June 2013

1. Background

The National Assembly's legislative competence to make the Bill

10. The National Assembly for Wales has the legislative competence to make the provisions in the Social Services and Well-being (Wales) Bill by virtue of the following paragraphs of Schedule 7 of the Government of Wales Act 2006; 15 (social welfare), paragraph 14 (public administration), paragraph 9 (health and health services) and paragraph 12 (local Government).

Explanatory Memorandum

11. The Explanatory Memorandum accompanying the Bill states that:

> "The purpose of the Bill is to specify the core legislative framework for social services and social care in Wales. It gives effect to the policy stated in the White Paper *Sustainable Social Services for Wales: A Framework for Action.*"[3]

12. It also explains:

> "The Bill affords enhanced duties on local authorities and Local Health Boards (LHBs) to take steps to prevent and reduce the needs for care and support of people in their area."[4]

13. It goes on to state that:

> "The Bill will cover social care services for children, adults and their carers and will, as far as it is possible, integrate and align arrangements so that there is a common set of processes, ***for people***. 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. All other UK statutes continue to treat these groups of people separately."[5]

14. The Explanatory Memorandum adds that:

> "In addition, the Bill will strengthen collaboration, provide a framework for integration of key services (to be specified by Welsh Ministers) and place new duties on local authorities, LHBs and other

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[3] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 13

[4] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 15

[5] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 16

> public bodies to improve the wellbeing of people (at population and individual level) with care and support needs. It also provides for Ministers to prescribe a new national outcomes framework and to intervene in the exercise of social services functions by a local authority following the issue of a warning notice."[6]

Competence and Consent of UK Secretaries of State

15. In her statement on the introduction of the Bill in Plenary on 29 January 2013 the then Minister for Health and Social Services, Lesley Griffiths AM stated:

> "The Bill that we have introduced is within competence. It has been slightly modified to take account of the fact that we have not yet secured all of the necessary consents from two Whitehall departments. We will continue to pursue this and will seek to reintroduce the small number of deleted provisions at Stage 2. However, we have to express our disappointment that the UK Government did not prioritise the strengthening of safeguarding."[7]

16. In commenting on the issue of competence in additional written evidence provided to us on 20 May 2013 the Deputy Minister for Social Services, Gwenda Thomas AM, stated:

> "With regards to competence, I am confident that this legislation is within the competence of the National Assembly. On the issue of consents, to enable us to include provision which imposes or modifies functions of Ministers of the Crown, we continue to liaise with the UK Government. Obtaining Ministerial consent will allow us to re-instate some of the provision about safeguarding boards and cooperation which was amended prior to introduction. The main sticking point is the funding model for safeguarding boards which UK Ministers will not countenance. Committee members will recall that the Bill I introduced was not dependent on these consent issues being resolved. If, as I anticipate the issues around UK Minister consent are resolved, I am pleased to say that I intend to bring forward minor changes to the Bill by Government amendments for consideration at

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[6] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 17

[7] Record of proceedings (RoP), 29 January 2013
(NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Health and Social Care Committee)

> stage 2. I plan to provide the Committee with a detailed update on this when I come before you again on 6 June."[8]

17. In oral evidence on 6 June 2013 the Deputy Minister provided us with an update on on-going discussions between UK Government Officials and Welsh Government Officials regarding consents. She stated that:

> "There is no final agreement on one aspect. There was a meeting on 10 April between our officials and Whitehall, and I believe that it was a positive meeting. However, there is a sticking point, although I must reiterate that I believe that our Bill is fully within competence. With regard to the funding of the safeguarding boards, however, there is not full agreement. The Bill provides that we could require the police to contribute to the funding of the safeguarding boards, and I had a very positive meeting earlier in the week with the offices of the commissioners of police, and there was a willingness to co-operate. However, there is that one sticking point on the actual funding.
>
> "I would like to say to committee, though, that the Western Bay safeguarding board has now been set up, and the police are contributing to that board, which augers well, because they did not contribute to the separate boards of Neath, Bridgend and Swansea before. So, there are some positive things, but not a final settlement with Whitehall."[9]

18. The Deputy Minister also reaffirmed her view that the Bill is fully within the competence of the National Assembly.[10]

Our View

We note the progress made to date with regard to Welsh Government discussions with UK Government Ministers and areas of unresolved UK Ministerial consent. We are concerned that unsolved issues remain at this stage and are disappointed that this is the case. We note the Deputy Minister's commitment to bringing forward amendments at stage 2 following resolution of these issues.

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[8] HSC(4)-18-13(ptn13), 6 June 2013

[9] RoP, paragraphs 13 – 14, 6 June 2013

[10] RoP, paragraph 13, 6 June 2013

2. General Principles and the Need for Legislation

General Principles

19. The Social Services and Well-being (Wales) Bill forms a key part of the Welsh Government's reforms for social services, along with the non-legislative elements of the 2011 White Paper, *Sustainable Social Services*.

20. In addition to implementing the Welsh Government's policies the Bill aims to consolidate and clarify social care law and create a specifically Welsh legal framework for both children and adults in line with the Welsh Government's aim of achieving integrated adult and children's social services.

Evidence from Witnesses

21. The majority of witnesses agreed with the general principles of the Bill and the need for legislation, although some expressed concerns about how the policy vision will be achieved in specific areas. Most witnesses commented on the need for the Bill to simplify legislation and ensure that Wales has a social services system which is fit for purpose.

Our View

We note and agree with the views of witnesses in welcoming the general principles of the Bill and the need for legislation. However, we also recognise concerns in the evidence that the policy objectives of the Bill may not be realised in practice. These issues are dealt with in the remainder of this report.

3. Overarching Issues

Statutory Principles

Background

22. Statutory Principles are not set out on the face of the Bill. The report of the Law Commission on adult social care, which has been influential in the framing of the Bill, recommended including statutory principles on the face of the Bill. It stated:

> "Statutory principles are intended to give legislative expression to the underlying purpose of the statute in question, and to guide decision makers acting under the legislation. Social welfare statutes that include a statement of fundamental principles include the Children Act 1989[11] and Mental Capacity Act 2005[12]".[13]

Evidence from Witnesses

23. Some witnesses have called for the inclusion of statutory principles on the face of the Bill. In written evidence, the Older People's Commissioner for Wales stated:

> "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 wellbeing duties currently included in the draft Bill (to promote the wellbeing of people who need care and support and of carers who need support are not statutory principles."[14]

24. She also commented that:

> "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

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[11] Children Act 1989

[12] Mental Capacity Act 2005

[13] The Law Commission (LAW COM No 326) Adult Social Care May 2011

[14] SSW 31, Written Evidence

> lack of statutory principles will significantly undermine the impact of the Bill."[15]

25. Similar views were shared by Age Cymru which also set out a checklist of factors that it felt should be considered before a decision is made in relation to an individual. It stated that:

> "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 recommendation 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 wellbeing, 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 wellbeing 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."[16]

26. The Advisory Group also commented on the Law Commission's recommendation, stating in written evidence that:

> "We note that the first two points of the Law Commission principles have been adopted, using different wording, in clauses 4(2) and 4(3)

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[15] SSW 31, Written Evidence

[16] SSW 66, Written Evidence

> of the Bill. Therefore, it seems anomalous that the Bill does not include the remaining five points also advocated by the Law Commission. We believe the other points are equally important and should be included. We would particularly draw attention to the fourth point around involvement of the person, which we believe is not realised in the Bill as drafted."[17]

27. The Advisory Group also suggested that a separate set of principles should be developed in relation to children. It stated that:

> "The Bill also deals with children and we believe a comparable set of principles should be discussed and developed. We draw the committee's attention to existing case law in health (Gillick competence) that is relevant in this area."[18]

28. The Public Services Ombudsman for Wales ('PSOW') also commented on the need for statutory principles to be included on the face of the Bill in order to provide clarity on the intentions of Bill. He stated in oral evidence that:

> "One of the great difficulties that you face as an ombudsman, or anyone dealing with complaints, is that if there is not a precision about what somebody's entitlement is, then there is always a great possibility of misunderstanding. Therefore, the provider, on the one hand, can take a view that they are meeting the requirements, whereas the recipient could have read the legislation in an entirely different way. A lot of the time, the way to address any problems of that kind is through guidance—particularly statutory guidance—that lays out in much more detail precisely what an entitlement might be. As well as that, you get a build-up of casework over time. From our perspective, this is very widely-drawn legislation and we will come to some of the areas where that mode might pose particular issues for us in understanding what the intentions of the legislation are."[19]

29. In contrast, other witnesses expressed reservations about the inclusion of statutory principles on the face of the Bill. In oral evidence, the Welsh Local Government Association ('WLGA') stated:

> "…We have concerns that statutory principles would place unnecessary restrictions on us and introduce risks of increased

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[17] HSC(4)-18-13(ptn20), 6 June 2013
[18] HSC(4)-18-13(ptn20), 6 June 2013
[19] RoP, paragraph 405, 18 April 2013

> litigation. We recognise that some of our partner stakeholders have a very strong view on this and we are in dialogue with them about how we might be able to find a way of achieving what the broad aims of the statutory principles are without putting them on the face of the Bill."[20]

30. The Association of Directors of Social Services Cymru ('ADSS Cymru') shared this view, commenting that:

> "We are not saying that they are not helpful, because decision making in social services is problematic and contested. It is sometimes useful to establish the basis on which conclusions have been reached by practitioners so we can refer back to that and say, 'These are the aspects that we have taken into account in reaching those conclusions'. So, I do not think that we would rule out the need for agreed principles. What we would want to see is something that is co-produced across social care and that everybody signs up to that, not just local authority social services."[21]

Evidence from the Deputy Minister

31. In responding to a question about the inclusion of statutory principles on the face of the Bill, the Deputy Minister stated:

> "We have considered this and I am aware of what the Law Commission said, but I believe that these principles are permeating their way right through the Bill, and I believe that it is better to have that, and to have that thematically right through the consideration and development of the Bill, rather than confining ourselves to a list of services. That is the reason behind that."[22]

32. An official accompanying the Deputy Minister provided further clarification, stating:

> "There is a potential conflict between having principles that strive to put the rights of the individual at the highest point, versus the need for a local authority to ensure that it meets the needs of all citizens who are eligible or who may need services in a fair way. That is a far more difficult thing to do in this sort of Bill, which is doing both of those things. So, for that reason, the idea of principles versus

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[20] RoP, paragraph 162, 18 April 2013

[21] RoP, paragraph 163, 18 April 2013

[22] RoP, paragraph 12, 18 April 2013

> purpose clauses has not been abandoned entirely. What this has been reduced to is the content of section 4, expressed as overarching wellbeing duties, which are like principles. We feel that this is the best way to strike a balance between the issues that I have mentioned without causing potential conflict with how the law is interpreted in the future."[23]

Our View

We agree with the views of witnesses that statutory principles should be included on the face of the Bill. We believe that such principles would assist practitioners and service users in understanding the ethos of the Bill. Whilst we accept that Codes of Practice are important, we believe that statutory principles on the face of the Bill would help create a framework for delivery against Codes of Practice.

We sought advice from our Legal Expert Adviser on the drafting of statutory principles and a suggested draft is appended at Annex A. We recommend that the Deputy Minister considers these draft principles and either brings forward an amendment to put them on the face of the Bill or takes them into account in bringing forward her own set of statutory principles.

Definitions

Disability

Background

33. The Bill defines 'disabled' in section 3:

> (5) A person is "disabled" if the person has a disability for the purposes of the Equality Act 2010,[24] subject to provision made under subsection (6).
>
> (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.

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[23] RoP, paragraph 34, 18 April 2013

[24] Equality Act 2010

Evidence from Witnesses

34. The definition of disability in the Bill has received considerable comment from witnesses, with many calling for the replacement of the current medical model definition of disability used in the Bill with a social model definition.

35. In written evidence, the Partner Organisation co-ordinated by Disability Wales asked the Committee to consider seeking an amendment to the Bill to replace the current medical model definition of disability with a social model definition. It stated:

> "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."[25]

36. The Wales Mental Health Alliance told us that:

> "…adopting the social model of disability should be one of the principles set at the beginning of the Bill, so that wherever that development sits, if it is in the principles, the detail can come elsewhere. However, it will not be something that people choose to do or choose to ignore pragmatically, because there is a principle that permeates the whole of the legislation and the secondary legislation that sits underneath it."[26]

37. The Partner Organisation co-ordinated by Disability Wales re-emphasised its view on the importance of the social model definition of disability being used in the Bill by stating that:

> "…this could be an opportunity for the Welsh Government to really take a lead. I can understand what they have done—they have taken a definition off the shelf. Many people would assume that the definition

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[25] SSW 15, Written Evidence

[26] RoP, paragraph 38, 2 May 2013

> of disability in the Equality Act would have it sussed. However, it still is a medical-model definition, and what we would like to see is the Welsh Government developing a social-model definition of 'disabled person' that would then be the core guiding principle running throughout the Bill. From that, a lot of the issues that we have been talking about around citizen-directed support and self-assessment and the right to take up direct payments would follow".
>
> […]
>
> "…we propose a definition of a social-model version of disability as the loss or limitation of opportunities to take part in society on an equal basis with others due to institutional, environmental and attitudinal barriers. That is a very different model to what the Bill is currently based on. If we were to introduce that—and it would be fantastic if the Welsh Government was to pioneer provision of a legal definition of a social model of disability—it would radically alter the way that we do social services in Wales."[27]

38. Other witnesses suggesting using the social model definition of disability included Diverse Cymru,[28] the Citizens Panel for Social Services[29] and Grwp Mynediad Arfon Access Group[30].

Evidence from the Deputy Minister

39. In explaining the reasons for using the definition of disabled from the Equality Act 2010, the Deputy Minister told us that:

> "We have used the Equality Act 2010 because that is the most recent Act that we have. I fully support and understand what is being said about the social model; I have always supported the social model. However, we have to be clear that the social model is a concept. It has no basis in law. Therefore, with regard to the requirement of the Bill, we need to have a legal basis for the definition, but I am prepared to consider further whether we could add to the definition in the Equality Act 2010."[31]

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[27] SSW 15, Written Evidence

[28] SSW 32, Written Evidence

[29] SSW 38, Written Evidence

[30] SSW 43, Written Evidence

[31] RoP, paragraph 91, 18 April 2013

Our View

We have considered carefully the views of those advocating the redrafting of the Bill to replace the medical model definition of disability with the social model definition.

We understand the reasons outlined by the Deputy Minister for using the definition of disability from the Equality Act 2010. We note the Deputy Minister's view that the social model definition of disability is a concept and we question how effectively it could be articulated in legislation. We believe there is a risk that clarity around access to care and support could be diluted as a result of using the social model of disability, which may not translate readily into service provision.

We also note the Deputy Minister's support for and commitment to the principles of the social model and question how these principles will be realised in practice without reference to the model in the Bill.

We recommend that the Deputy Minister give consideration to how the social definition of disability could be embedded in practice, for example through regulations or codes of practice, to place those principles into context and to set out how services should be designed and delivered to reflect them.

Adult at Risk

Background

40. Section 104 of the Bill defines an 'adult at risk' as a person experiencing or at risk of abuse or neglect, who has care needs and, as a result, is unable to protect themselves against abuse or neglect. The definition is therefore limited to adults with care needs.

Evidence from Witnesses

41. A number of witnesses have been critical of what they believe is a limited definition of an 'adult at risk' and wish to remove the requirement around social care needs. For example, in oral evidence, a representative from the Office of the Older People's Commissioner for Wales suggested that the wording of section 104 should be amended by reversing subsections (b) and (c) so that it would read:

> "An 'adult at risk' for the purposes of the Part is an adult who—
>
> (a) is experiencing or is at risk of abuse or neglect,
>
> (b) is unable to protect himself or herself against the abuse or neglect or the risk of it,
>
> (c) as a result, has needs for care and support."[32]

42. Other alternative definitions of an adult at risk were offered by a representative of the Betsi Cadwalar University Health Board, who stated that:

> "Section 104 of the Bill talks about where an adult is experiencing or is a risk of abuse or neglect. It then goes on to refer to 'needs for care and support'. Part of my thinking was whether it is 'and' or whether it is 'or', and it could be either/or. They could be adults at risk who do not need any care, but who need support in a different way, but they may also be an adult whose care, lifestyle or needs are not being met for whatever reason and who fits into that category. You then have a caveat, because you have 'and…as a result of those needs.' I would not put 'those needs' in there; I would say, 'as a result, is unable to protect himself or herself against abuse.' I have gone through that on many occasions."[33]

43. She added that:

> "The care and support element feeds through the whole Bill. If you lose that, you potentially lose the function of the adult safeguarding board. We do not want it to go back, in the case of children, to an area child protection committee, or to adult protection—it is about safeguarding. We need to start working on preventative activities, such as moving in early, early identification and early intervention. We will not, then, have adults who are experiencing abuse or are at risk of abuse."[34]

44. Age Cymru also called for the definition of adult at risk to be extended and told us that:

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[32] RoP, paragraph 442, 2 May 2013
[33] RoP, paragraph 550, 2 May 2013
[34] RoP, paragraph 551, 2 May 2013

> "We very much think that it should be extended, because the definition of an adult at risk is quite a narrow definition. We feel that adults at risk are sometimes at risk because of the abuse itself, and that needs to be brought into the equation. Without the abuse, they may have no care and support needs. We also think that the issue of coercive control is one that needs to be included in the definition."[35]

45. Our expert legal adviser commented on the definition of adult at risk in a legal memorandum to us on the Bill. He stated that:

> "The definition of 'adult at risk' retains the link with a need for care and support. An alternative approach is that found in section 3 ASP(S)A 2007 [Adult Support and Protection (Scotland) Act]. Section 104 (1) could possibly be redrafted to include (a) in its current form, followed by (c) renumbered as (b), which would read 'is unable to protect himself against the abuse or neglect or the risk of it, and', and then (c) which would read 'as a result is in need of care and support under this Part."[36]

46. Our expert legal adviser also noted that self-neglect is not included in the definition of adult at risk.

Evidence from the Deputy Minister

47. In commenting on the issue of definitions, the Deputy Minister stated:

> "On the development of the definitions, we have definitions of some things such as 'adult at risk'. If the committee is not clear as to what we are saying, section 166, on the general interpretation and index of defined expressions, defines 'abuse'. 'Adult at risk' is also defined, as is 'care home', 'children's home' and a whole list of terms. If the committee is concerned and thinks that there are definitions that it wants us to consider, I would be glad to hear from you."[37]

Our View

We have considered the views of witnesses and we agree that the current definition of 'adult at risk' is too narrow. We ask the Deputy Minister to give consideration to an alternative definition, such as that

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[35] RoP, paragraph 193, 2 May 2013

[36] Social Services and Well-being (Wales) Bill – Legal Memorandum,

[37] RoP, paragraph 93, 18 April 2013

used in section 3 of the Adult Support and Protection (Scotland) Act 2007[38] as suggested by some witnesses.

We have considered this definition and note that it includes a reference to adults who are engaging (or are likely to engage) in conduct which causes (or is likely to cause) self-harm. As drafted, the Bill does not contain a reference to self-harm. While we recognise that the Scottish Act offers an alternative definition, we have reservations about its inclusion of adults engaging or likely to engage in self-harm, as we question the impact this may have on the rights of an adult to make choices about how to live their lives. However, we acknowledge that this power may rarely be used in practice.

We also note concerns raised by Age Cymru that the definition of 'adult at risk' should address the issue of coercive control. We recommend that the Deputy Minister extends the definition to include the issue of coercive control.

Carer

48. Most witnesses welcomed the definition of 'carers' in the Bill and many specifically welcomed the breadth of that definition. In oral evidence Carers Wales informed us that:

> "Carers Wales would like to welcome the definition of carers, and certainly the prominence of the status of carers throughout the Bill. In particular, there was an issue in the previous draft of the definition of 'carer', so I would like to have it on record that we very much support the current definition. There is a slight issue there with regard to a clause that says that local authorities have some flexibility in whom they can define as a carer. We can see the benefit of a bit of flexibility there, but it is important to maintain the distinction between unpaid carers and paid-for carers, which was the issue previously."[39]

49. Commenting on the definition of 'carer', Age Cymru stated:

> "From Age Cymru and Age Alliance Wales's perspective, we welcome the broadening of the definition. Our key concern is resources and

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[38] Adult Support and Protection (Scotland) Act 2007

[39] RoP, paragraph 39, 2 May 2013

> ensuring that carers get what they need through having the expanded definition, and that is a resource issue."[40]

50. Local Government representatives also raised concerns regarding the resource implications arising from the breadth of the definition of 'carer'. ADSS Cymru stated:

> "From our perspective, the principle is unarguable; the problem comes with the resource implication, in terms of extending the definition. There is also a risk that we would be assessing increasing numbers of carers but that, when it came to the point of potential service provision, we would be in difficulty, because there are resource implications at two points."[41]

Evidence from the Deputy Minister

51. The Deputy Minister has not commented on the definition of 'carer'.

Our View

We are content with the definition of 'carer' as drafted in the Bill. We have commented on the resource implications of widening this definition in the chapter of this report on the financial implications of the Bill.

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[40] RoP, paragraph 125, 2 May 2013

[41] RoP, paragraph 126, 2 May 2013

4. Access to Services

Well-being Duties

Background

52. Section 4 creates overarching wellbeing duties for persons "exercising functions under this Act" which includes Welsh Ministers, local authorities, local health boards ('LHBs'), and other statutory agencies. The duty relates to people who need care and support and carers who need support. Well-being is defined in section 2 of the Bill.

Evidence from Witnesses

53. Most witnesses welcomed the principle of addressing the well-being of people who need care and support and carers who need support. However, some witnesses suggested that the definition should be expanded to reflect definitions used in other legislation. For example, the Advisory Group stated:

> "We recognise that the Mental Health Measure 2010 has a definition that includes eight 'areas of life' with regard to wellbeing. We would welcome the current definition of wellbeing in the Bill being expanded to reflect the eight 'areas of life' in the Mental Health Measure 2010. This means a 'safe home or accommodation' would be included – and may go some way towards allaying fears about the right to aids and adaptations, which could be lost through repeals of provisions in the Chronically Sick and Disabled Persons Act 1970. It might also address the absence of housing in the Bill and contribute to a practical definition of a social model (i.e. making an accessible home environment)."[42]

54. Age Cymru called for housing to be encompassed within the definition of well-being stating:

> "…we welcome the fact that wellbeing is at the heart of the Bill. We have similar concerns around the consistency of having definitions of wellbeing in many different places, so we would like to see those broadly aligned. I know that colleagues of mine are concerned that, as currently drafted, there is no mention of housing, so we would like to see some mention of housing in the definition. We are also concerned about the outcomes. We welcome the fact that wellbeing is

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[42] HSC(4)-18-13(ptn20), 6 June 2013

> at the heart of it, but, like everybody else, how you translate that principle into outcomes for the client groups is crucial to successful implementation."[43]

55. Community Housing Group Cymru also suggested that the definition of wellbeing should include a reference to housing, in order to reflect its impact on health, wellbeing and independence.[44]

56. Similarly, those representing disability and mental health organisations called for the inclusion of independent living within the definition of well-being. For example, the Partnership Organisation co-ordinated by Disability Wales asked us:

> "…to consider seeking an amendment to the SSW Bill to incorporate enjoyment of the right to Independent Living into the meaning of wellbeing."[45]

57. Some witnesses have suggested alternative definitions of well-being, including the New Economics Foundation's 'Five Ways to Wellbeing' model. In oral evidence, the Wales Mental Health Alliance said:

> "We see the Bill as an ideal opportunity to look at the wider social and community partnership work across local health boards and the third sector. In looking at the wider determinants of health and wellbeing, we consider that a useful model for the committee to consider might be the New Economics Foundation's 'Five Ways to Wellbeing' model. It is quite a good model on which to base those partnerships, and we have done a little exploratory work on how that might work. There is evidence from across Wales of the 'Five Ways to Wellbeing' model being used, the mantras of which are 'notice', 'get connected', 'be active', 'keep learning' and 'give'. Work is happening in pockets across Wales to develop those approaches to collaborative working. We think that it would be a useful model for the committee to consider in moving work forward on wellbeing."[46]

58. In responding to a question as to whether it felt the 'Five Ways to Wellbeing' model should be on the face of the Bill, the Wales Alliance for Mental Health stated that:

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[43] RoP, paragraph 122, 2 May 2013
[44] SSW 47, Written Evidence
[45] SSW 15, Written Evidence
[46] RoP, paragraph 6, 2 May 2013

> "It is about trying to embed a principle that gets reflected in practice. If the code of practice that is to go alongside the Bill is robust enough, evidence and examples of how it could work could sit in there. However, if there is some reference to it in the Bill at some point that is hooked into more detail in the code of practice that would be sufficient provided that the code of practice has similar robustness to the code of practice for Wales in terms of the Mental Health Act 1983, for example. So, if people deviate from the code, they have to give a very robust reason as to why they deviate. If it is just guidance, it is not strong enough, but if it is a really strong code, the detail could go in there. It would also be useful to have some examples of how it is working in different parts of Wales, so that people can see that it is not that difficult to do if you get your heads together around a table and work collaboratively to a co-produced model."[47]

59. On a different issue the WLGA and ADSS Cymru were critical of what they perceived as a lack of clarity in the provision for well-being in the Bill. In oral evidence, they raised concerns that well-being duties would fall predominately on social services, stating:

> "…we recognise that there are duties in the Bill on local government corporately—it is not just about social services—but our fear is that this is a social services and wellbeing Bill. The very strong implication is that the burden of those duties, and all of the resource implications that go with that, will fall predominantly on social services. That is, obviously, of concern to us."[48]

60. ADSS Cymru added that:

> "To summarise and crystallise, we welcome the principle, but it needs further refinement and clearly the expectation is for all public service not just for social services, because otherwise it will become unsustainable and lead to confusion of expectation."[49]

61. NHS witnesses highlighted that health services have a well-being duty that extends beyond people in need of care and support and suggested that a clearer understanding is needed of the role of all partners in promoting well-being. In written evidence, the Welsh NHS Confederation said:

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[47] RoP, paragraph 8, 2 May 2013
[48] RoP, paragraph 118, 2 May 2013
[49] RoP, paragraph 168, 18 April 2012

> "…whilst the importance of improving wellbeing 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 wellbeing 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."[50]

62. They also commented on the breadth of the definition of well-being:

> "In addition, the definition of 'wellbeing' for example is extremely broad and with regard to the duty to maintain and enhance the wellbeing 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."[51]

63. Some witnesses raised concerns about public understanding of the term 'well-being'. The WLGA stated that:

> "I think citizens will struggle to make sense of what it means for them and it will not help in terms of the dialogue with staff within social services. People do not come to us and say, 'I have problems with wellbeing'. It makes the start of the dialogue, which is really important, problematic. It has to be a mutually understood term and I think it would require a lot of explaining to our service users and carers exactly what it means in practice."[52]

64. Some witnesses questioned the feasibility of including well-being duties in several pieces of Welsh legislation without ensuring consistency, for example in the proposed Violence Against Women Bill and the Sustainable Development Bill.[53] The WLGA pointed out that local authorities already have

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[50] SSW 84, Written Evidence
[51] SSW 84, Written Evidence
[52] RoP, paragraph 172, 18 April 2013
[53] RoP, paragraph 174, 18 April 2013

a power to improve well-being in the Local Government Act 2000 and asked for clarity on how that definition and power will be superseded.[54]

65. Similar views were shared by Children in Wales which told us that it was unclear about the interface of the Bill with other legislation that includes well-being provisions. It told us that:

> "…the key is where other bits of legislation are cross-referenced and go back into the wellbeing pot. In the children's field, we have the child wellbeing monitor, which is very useful in trying to measure exactly where children's wellbeing in Wales is, and that is internationally comparable. We are, therefore, very strongly advocated for wellbeing, but there is a lot of work to get Government guidance and legislation to go in the same direction so that everybody knows their place."[55]

66. In commenting specifically on the drafting of the 'Meaning of well-being" in section 2 (4) (b), the Wales Alliance for Mental Health highlighted that the reference to 'participation in work' should be a reference to work that is positive for well-being, matching needs, skill and capacity, and therefore should also include access to meaningful activities.[56]

67. The Advisory Group also commented on the drafting of section 4 (2) of the Bill relating to overarching well-being duties and suggested an amendment to strengthen the involvement of individuals in accessing social care services. With reference to section 4 (2) it stated:

> "…a local authority in exercising its wellbeing functions "must have regard to the individual's views, wishes and feelings, in so far as doing so is reasonably practicable". We strongly recommend an amendment to ensure the individual should be 'enabled' and 'involved' rather than 'regarded."[57]

Evidence from the Deputy Minister

68. In a written Cabinet statement, the Deputy Minister outlined her policy intent with regard to well-being. She stated that:

> "I have made it clear that our policy is all about the wellbeing of people who need care and support and carers who need support. It is

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[54] RoP, paragraph 173, 18 April 2013
[55] RoP, paragraph 120, 2 May 2013
[56] SSW 57, Written Evidence
[57] HSC(4)-18-13(ptn20), 6 June 2013

> about people having control over their daily lives, supporting them in what matters to them. With this in mind, the Bill sets out a definition of wellbeing for people. This is at the heart of the transformation we are delivering through the Sustainable Social Services for Wales programme.
>
> "Wellbeing is a core theme in our Programme for Government across portfolio areas. Wellbeing is everyone's right and everyone's responsibility. We need to work together across Welsh Government, across sectors and agencies to promote wellbeing. My statement focuses on the wellbeing of people who need care and support and carers who need support. This is about giving people a stronger voice and greater control over their lives, and ensuring people get the care and support they need to lead fulfilled lives."[58]

69. In oral evidence the Deputy Minister commented on the suggestion that the inclusion of a 'safe home or accommodation' and 'independent living' should be included in the definition of well-being in the Bill. She stated that:

> "I believe that having a safe home is fundamental to wellbeing. The Bill will provide the framework for delivery of social services in Wales and that aspect will be developed through regulations and the code of practice. I welcome the suggestion that you make, however I am not minded to change the definition of wellbeing on the face of the Bill. That definition is grounded in the Children Act 2004 and that is well understood. However, I believe that extending these rights and entitlements to adults is the way forward. In relation to the inclusion of independent living, I would say that it is a service model and what we are developing is the legal framework. So, the Bill provides for independence and I believe that that will cover people's rights to independent living and their rights to independence. I would not envisage that being excluded in any way."[59]

70. With regards to the issue of whether the definition of well-being that appears in more than one piece of legislation should be harmonised, the Deputy Minister assured us that:

> "As far as this Bill is concerned, we are dealing with people's need for care and support, and carers' needs for support. That is what this Bill is about, but I am mindful that we need to work across portfolios,

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[58] Cabinet Written Statement, 16 April 2013,

[59] RoP, paragraph 51, 6 June 2013

> given that wellbeing is a responsibility for nearly all portfolios. I am working hard with my colleagues and ensuring that what we are doing in our Bill will complement what is being done across the Welsh Government."[60]

Our View

We have considered the inclusion of an overarching well-being duty in the Bill and whether the nature of the duties and responsibilities resulting from its implementation are sufficiently defined. We believe that the definition provides consistency for this Bill.

The concept of well-being permeates the whole Bill but we are unclear as to how this definition interacts with other duties in the Bill, such as the requirement to determine eligibility for services.

We note the Deputy Minister's statement on well-being. However, we believe that there remains a need for greater clarity on how the various elements of well-being will be applied in practice and by whom. For example, we acknowledge the concerns raised by some witnesses that the definition as drafted could be interpreted as placing responsibilities on local authorities for ensuring the economic well-being of individuals. We believe that assurances are needed that the duties will be workable in practice.

We discussed in detail the definition of "well-being" and considered carefully whether the definition should be included on the face of the Bill. Our discussions on this matter were difficult, leading us to seek advice from our expert legal adviser on the definition of "well-being". A legal advice note is appended at Annex B. Having considered this advice the majority of the Committee preferred Option A, which would require decision makers to 'have regard' to a number of factors when considering an individual's well-being.

We recommend that the Deputy Minister considers option A in the appended legal advice note and, should she be minded to accept this option, we recommend that she brings forward the necessary amendments to section 2 (2).

We recommend that any definition of "well-being" should be accompanied by a Code of Practice setting out how the individual

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[60] RoP, paragraph 53, 6 June 2013

components listed in the definition of ‘well-being’ interact with each other and with other duties in the Bill.

We recognise the profound impact housing can have on well-being, and have considered the views of witnesses calling for the inclusion of housing in the definition of well-being. If the Deputy Minister accepts our recommendation to amend the Bill in line with our preferred option A, housing would be encompassed in ‘(f) standard of living’. However, if our recommendation is not accepted we recommend that the existing definition of well-being should make reference to suitable housing and independent living.

Preventative services

Background

71. Section 6 of the Bill makes provision for preventative services to be available across local populations with the intention of making such services available to a much wider section of the population than those who have had any assessment of need for care and support.

72. Section 6 (2) sets out the purposes of preventative services and subsection (6) requires that a local authority make use of the range of existing services for the purposes of prevention.

Evidence from Witnesses

73. Although most witnesses welcomed provisions in the Bill relating to preventative services, some commented on the need for greater clarity of the definition of preventative services, with some suggesting that a definition is required on the face of the Bill.

74. In written evidence, Age Cymru informed us that it would welcome a clearer definition of preventative services on the face of the Bill, stating:

> “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."[61]

75. It added to this point in oral evidence, stating that:

> "From the perspective of the Bill, however, we need a lot more clarity on what we are talking about when we are talking about prevention, because much of it depends on what we mean by 'prevention' and what it is we are trying to prevent. I do not think that we get that clarity from the Bill as it is currently drafted. We are not clear about what we are trying to prevent and how you would access those preventative services.
>
> "We also think that section 6 is very process-driven, rather than looking at the individual in need. So, there is quite a lot of work that we need to be doing to identify the outcomes that we are looking for from prevention—probably even before we get to who delivers those preventative services. There is probably quite a big piece of work to do on prevention."[62]

76. In its report to this Committee, the Children and Young People ('CYP') Committee restated the need for more detail to be included on the face of the Bill with regard to preventative services, stating:

> "The Committee draws the attention of the Health and Social Care Committee to our view that it is essential that more detail be provided to Members about the type of services which could be included in the definition of preventative services before the Bill reaches the latter stage of the legislative process."[63]

77. In commenting on this issue the Advisory Group stated that it would not wish to see a prescriptive list of preventative services on the face of the Bill, although an indicative list (with a caveat of "including but not limited to") may be helpful.[64]

78. Some witnesses were concerned about the requirement to avoid disproportionate expenditure, as detailed in section 6 (6) (c) of the Bill, which

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[61] SSW 66, Written Evidence
[62] RoP, paragraph 187, 2 May 2013
[63] HSC(4)-15-13(ptn7a), 8 May 2013
[64] HSC(4)-18-13(ptn20), 6 June 2013

they felt may fail to take account of the long term savings that preventative services may offer. Others were concerned about the capacity and resource implications of the prevention duty.

79. On this matter Mind Cymru stated in written evidence:

> "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."[65]

80. Expanding on this point during oral evidence, it stated:

> "It is almost like a get-out-of-jail clause, in effect, if services are considered in isolation in terms of cost, and not seen in the context that we have discussed of looking at investing to save, that is, that investing some small amount of money in prevention now can save a huge amount further down the line. I can quote an example that comes out of the Friedli and Parsonage report from 2009; that research was done for the all-Wales mental health promotion network. It is a specific example with regard to conduct disorder in children. It says that the estimated saving in lifetime costs of prevention is about £150,000 per case, or potential benefits to Wales of £247.5 million. So, if you were to look at section 6(6)(c) and think, 'It's going to cost me £150,000 to do that', you would just not do it, but if you look at that in wider context, it could save millions. It is about not having the opportunity to think short-term and to be blinkered. So, we would want to see that removed, so that there is not that sense of, 'Yes, it will all be really wonderful; we want to do prevention, but on an individual case-by-case basis, it is always too expensive, so, we don't have to do it."[66]

81. In conclusion, it said that it would prefer to see 'disproportionate' removed from section 6 (6) (c) or, if not, replaced with 'unreasonable'.[67]

82. Similar views were shared by the Advisory Group which stated in reference to sections 6 (6) (c) and 7 that:

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[65] SSW 57, Written Evidence

[66] RoP, paragraph 65, 2 May 2013

[67] RoP, paragraphs 66 – 71, 2 May 2013

> "We are not convinced that this clause is necessary, given that local authorities are generally required to avoid expenditure that is 'disproportionate' and are held to account by their electorate and local scrutiny structures in the expenditure decisions."[68]

83. With regard to concerns about capacity and resource implications, NSPCC Cymru suggested that the universal delivery of preventative services was potentially unrealistic, highlighting:

> "…real concern that the skills of social workers and others in social services departments will be spread too thinly as there is a shift towards early intervention and preventative services, whilst continuing to have to address existing acute/complex need."[69]

84. Barnardo's Cymru expressed concerns about the need for clarity on preventative services and resourcing implications, stating:

> "In terms of prevention to begin with, concern has been expressed by the Welsh Local Government Association about the resource implications. If you were to have such a list, it would be a very long list on the face of the Bill. We need more clarity on what we mean by prevention. We need to have that information, whether it is on the face of the Bill or in accompanying regulation.
>
> "If we do invest in a preventative service it is an investment, and that is why I query whether this can actually be cost-neutral. Prevention does cost money, and, when you are moving from one way of delivering a service to another, and investing in prevention, that will be costly. There is research available that mentions savings in the long term, but they are in the medium to long term rather than initially.
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> […]
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> "So, we would advocate strongly for prevention, but, in terms of children's organisations and local authorities, there is a nervousness from local authorities about what prevention could cost us. So, a lot more work needs to be done on what we would define as prevention within that, and we need some clarity and a definition of it."[70]

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[68] HSC(4)-18-13(ptn20), 6 June 2013

[69] SSW 74, Written Evidence

[70] RoP, paragraph 33, 8 May 2013

85. On a different matter, the Advisory Group questioned how prevention fits into the care pathway that people will take and argued that preventative services should follow an assessment. In its paper it suggested that the following criteria could be applied:

> "1) For a person with non-eligible needs they may receive preventative services if their needs might escalate or become more acute.
>
> "2) For a person with eligible needs they may receive preventative services if their needs could be reduced. For example, a person with recent severe sight loss might be socially isolated because they do not have the confidence or mobility skills to leave their home alone and travel safely. A preventative service could be mobility training to build the person's confidence, familiarity with a journey and training in the use of a long cane or guide dog to enable or reable the person into accessing local opportunities to socialise."[71]

86. During oral evidence we referred to section 6 (1) of the Bill, which places a general duty on local authorities to provide or arrange the provision of services (generally referred to as "preventative services"). The Bill states that:

> "A local authority must provide or arrange for the provision of a range and level of services".

87. During our considerations of the Bill we noted that section 6 (5) of the Bill places a duty on Local Health Boards (LHBs) to consider the importance of the purposes in subsection 2 when exercising their functions. The Bill states that LHBs must:

> "…have regard to the importance of achieving the purposes".

88. We are concerned about the differences between these sections in almost giving the local authority the lead role in preventative services and the role of the NHS being more supportive. We asked witnesses whether they thought there was a need for those duties to be different, or whether the NHS should have the same duties as local authorities, in that they must provide and arrange for preventative services.

89. In commenting on this issue a representative from Hywel Dda Health Board stated:

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[71] HSC(4)-18-13(ptn20), 6 June 2013

> "What is difficult is the difference in the definitions. Within the Bill, 'preventative' means reducing the risk of people deteriorating who are in a vulnerable group. In the NHS, that would probably be classified as community rehabilitation or community support. It is part of the NHS move to strengthening community services, to reduce dependency on hospital services. So, it is a shift that the NHS is already making. What is challenging is that, unless people take a significant amount of time going through the detail of the Bill, they will not understand what the preventative partnership is in the NHS, because we are already doing it."[72]

90. A representative of Powys Teaching LHB added:

> "Having parity means that we are all working to the same duty. It also aids collaboration. We are very clear about common objective."[73]

91. Concluding on this point, the Welsh NHS Confederation stated:

> "We are clear about common objective. It hinges on the definitions and the need for clarity. We also need to bear in mind the linking with other legislation; public health, for instance."[74]

Evidence from the Deputy Minister

92. In response to calls for a definition of preventative services to be included on the face of the Bill, the Deputy Minister said:

> "The preventive services are an important aspect of the Bill. We have to bear in mind local government will be required to look at the need within their communities and to respond to that need. This builds upon that. I believe that preventative services could differ from area to area and from one local authority to another as they respond to local demand. It is important that they have the freedom to consider local need."[75]

93. The Deputy Minister and her officials also explained that:

> "…an implementation code of practice will come before the Assembly under the 'affirmative procedure' but that this will not be available before stages 3 and 4 of the Bill

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[72] RoP, paragraph 140, 16 May 2013
[73] RoP, paragraph 143, 16 May 2013
[74] RoP, paragraph 144, 16 May 2013
[75] RoP, paragraph 132, Children and Young People Committee, 25 April 2013 (pm)

[…]

> "However, there will be an implementation code—and it is important that we bear in mind that there will be an implementation code to support the Bill—and this will be better than having one Minister providing guidance, because the implementation code will have to come before, and be discussed by, the Assembly. I believe that the implementation code is the best place to get to grips with explaining and providing examples of preventative services and, through that, to ensure that there is also freedom locally."[76]

94. Commenting on the issue of the differentiation of sections 6 (1) and 6 (5), the Deputy Minister stated:

> "The preventative services of local authorities are covered in the Bill, and it is suggested that there will be due regard for preventative services in the NHS. I think that there will be a difference between what will be preventative in the NHS, although we say in the Bill that we would look to people to look after their own health with regard to preventative services. However, the preventative services that we talk about in the Bill are based—officials will correct me if I am not right—on a Schedule on preventative services to the Children Act 1989. We would want to enact that Schedule for adults as well, but I will elaborate on that, as I said in the letter to the Chair on 20 May. I will bring more details forward in the autumn with regard to preventative and early intervention services, but the committee might want to consider that Schedule."[77]

Our View

We share witnesses' concerns that the preventative duty is weaker on health services than local authorities and recommend that the duties on LHBs to "have regard to the importance of achieving the purpose" of preventative services should be strengthened to equate with the duties on local authorities in section 6 (1).

We note the need for greater clarity about what is meant by preventative services but do not believe that a detailed definition of preventative services is desirable on the face of the Bill, since this may limit local flexibility and innovation. However, we recommend that guidance or code(s) which set out the ways in which these duties should be

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[76] RoP, paragraph 132, Children and Young People Committee, 25 April 2013 (pm)

[77] RoP, paragraph 131, 6 June 2013

discharged by local authorities and their partners, and how this relates to other duties, would provide the clarity that is needed.

We recommend that there should be a duty on local authorities and their partners to publish a statement on preventative services and how these services may be accessed, which would enable both professionals and service users to understand the scope and purpose of such services.

Assessments – adults, children and carers

Background

95. Part 3 of the Bill is concerned with assessing the needs of individuals. The Bill provides for a single right to assessment for all groups of service user i.e. adults, children and carers, with a different emphasis for each group. For example, there is a focus on developmental needs in the case of children.

96. Section 17 provides for the integration of assessments across service areas, for example with health services. Section 18 states that regulations will be used to define the shape of the assessment process.

Evidence from Witnesses

97. Witnesses have emphasised what they see as the importance of developing person-centred approaches to assessment and service provision. In written evidence, Carers Wales stated:

> "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.
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> "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."[78]

98. Similar views were expressed by Disability Wales, which stated in oral evidence:

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[78] SSW 23, Written Evidence

> "We would like to see what we call citizen-directed, outcomes-focused and supported self-assessment. It is an awful mouthful, but it states what we are looking for. The first part of that, 'citizen-directed', is just to highlight the difference between something that is citizen-directed and something that is citizen-centred. A lot of what happens at the moment is citizen-centred or service user-centred, where the person is at the centre of a lot of professionals' attention. However, we want to see that reversed so that citizens are actually directing the process themselves. The rest kind of falls out of that. There is no problem with 'outcomes-focused'; there is a very strong element in the Bill about that. There is also 'supported self-assessment', which, again, implies a shift from social workers doing the assessment process for people to supporting the citizen to do it for themselves. So, there is a clear distinction there."[79]

99. On a different issue the Advisory Group has commented on the need for a definition of 'proportionate assessment' stating that:

> "We are anxious to ensure the concept of 'proportionate assessment' is defined. We are concerned that if left undefined or poorly defined 'proportionate assessment' could lead to restricted access to an appropriate assessment. We recognise the potential to reduce bureaucracy and improve access to lower level support with proportionate assessment."[80]

100. During discussions on co-operation and partnership working the issue of barriers to the delegation of powers and responsibilities between health and social services was raised in the context of assessments.

101. In oral evidence, a representative of Hywel Dda Local Health Board stated:

> "The other issue is one that we have certainly been discussing, and it is the possibility that we can look at the delegation of powers or responsibilities. One of the things that we talked about was duplication in the assessment process. The Bill does not support the delegation of assessment between agencies. So, it may well be that two people will go in and do exactly the same assessment, because

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[79] RoP, paragraph 16, 2 May 2013
[80] HSC(4)-18-13(ptn20), 6 June 2013

> one is not allowed to fill in a certain pro forma. It could therefore go a lot further in allowing us flexibility."[81]

102. Section 17 of the Bill allows local authorities to undertake assessments on behalf of other bodies but evidence from health boards suggested that there is no reciprocal power.[82]

Evidence from the Deputy Minister

103. In oral evidence, the Deputy Minister referred to the need for proportionate assessments, stating that:

> "I also think that we need proportionate assessment. In other words, if there is a low degree of need, then why do we need complicated assessments in order to decide on meeting that need? In the middle, however, there are the people with complex needs and we need to develop those eligibility criteria and get them right. I believe that this process of consulting is extremely important and that work, as I said, is on-going."[83]

104. Commenting on section 17 of the Bill and the concerns raised by witnesses that it allows local authorities to undertake assessments on behalf of other bodies but there are no reciprocal powers for health boards,[84] the Deputy Minister stated:

> "This Bill is about social services, and the assessment process—the development of it—is work that is in hand. We are developing our thinking on that. You give examples—and I have had examples—of where there have been delays in assessing people's needs when they are in hospital. I believe that that has to be a multidisciplinary assessment for which all parties should be present when it is made—health and social services should participate in that assessment.
>
> […]
>
> "I do think that it needs to be a multi-agency comprehensive assessment of the need of that person, throughout social services and health, in order to develop that care plan."[85]

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[81] RoP, paragraph 26, 16 May 2013
[82] RoP, paragraph 58, 16 May 2013
[83] RoP, paragraph 32, 6 June 2013
[84] RoP, paragraphs 60 – 61, 6 June 2013
[85] RoP, paragraphs 120 – 121, 6 June 2013

Our View

We are content with the Deputy Minister's intention to simplify the assessment process. We are concerned that there may be duplication of assessments and believe that assessments should be undertaken by the most appropriate person irrespective of whether those services are to be delivered by health or social services. There should not be any legislative barriers to assessment being undertaken by that appropriate person, and while the duty to assess must be clear, there needs to be flexibility around undertaking assessments.

We therefore recommend that the Deputy Minister considers bringing forward amendments to sections 10 (1) and 17 (5) (a) of the Bill to facilitate the delegation of assessments to the most appropriate person. We also considered section 18 of the Bill, which sets out regulations on the conducting of needs assessments and outlines the requirements which could be imposed. We recommend that these regulations are necessary and that a national standard for assessments should be set out in these regulations.

We have considered the views of the witnesses calling for a definition of proportionate assessment. We agree with concerns that if left undefined there could be restricted access to appropriate assessments, since such assessments may not always identify all of a person's needs. We recommend that the Deputy Minister considers providing further clarity on the definition of 'proportionate assessment' in regulations and detail of how she envisages they will work in practice.

Refusal of Assessment

Background

105. Section 13 of the Bill allows for a refusal of an assessment by 16 and 17 year olds or a child under the age of 16 with sufficient understanding, unless the person lacks mental capacity and an assessment would be in their best interests; the person is experiencing or at risk of abuse; or an assessment would be in the child's best interests. Under section 14 a parent can refuse an assessment of a child under the age of 16 years unless the child is at risk; the parents lack capacity; or the child disagrees with the parents and has sufficient understanding. Section 16 provides for refusal of assessment by carers.

Evidence from Witnesses

106. The Children's Commissioner for Wales said that in his view, by allowing for a refusal of assessment, the Bill fails to uphold the best interest principle in Article 3 of the United Nations Convention on the Rights of the Child ('UNCRC') by constraining the powers of intervention of professionals. In written evidence he stated:

> "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."[86]

107. Explaining this point further in oral evidence, a representative from the Children's Commissioner for Wales' office stated:

> "In relation to the context of social services and prevention, should a professional make a referral in relation to a child who is aged 15 or five because of concerns about parenting capacity, the child is not necessarily well-placed to understand that, that, parenting capacity might be problematic if that is the parent with whom the child has grown up and whom the child understands. That is where it is different from Gillick competency in relation to healthcare, where a medical intervention can be explained to a child and a medical professional is involved in the decision-making process. So, on the point of refusing an assessment, there may be problematic parenting capacity, for example, which, from the child's perspective, is not

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[86] SSW 58, Written Evidence

> problematic, because that is what they have grown up with, but we would still want to intervene in their best interests."[87]

108. NSPCC Cymru questioned the need for a section in the Bill that allows for parental refusal and said that allowing for refusal would make early intervention for children and families more difficult. In oral evidence it stated that:

> "We need a catch-all clause that enables professionals to intervene if they make a judgment about the best interests of a child. It is about strengthening that, really."[88]

109. It added that:

> "We see sub-section [13] (3) as a potential barrier to local authorities, and that is why we think it needs strengthening."[89]

110. On this point, Barnardo's Cymru commented that:

> "Broadly, we do not agree with the Commissioner's strong position. We think that there is a great deal in the Bill, as was stated in the evidence session with the Commissioner, about thinking that, actually, most of the bases are covered. The right to refuse is an important rights position, and the duty remains with the authority when the refusal is made. The reason a refusal is made really bears investigation. What is it about that refusal? Does it say something about the quality of service and does it say something about how people believe that the intervention will be made and what it will mean to their family? It probably suggests an implication about the quality of the services that they will receive.
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> […]
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> "In relation to the parental refusal of assessment, it would be better to include the words 'best interest of the child' in that section also, rather than risk neglect."[90]

111. In commenting on the issue of early intervention and the degree to which it is right to intervene in family life, ADSS Cymru stated that:

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[87] RoP, paragraph 589, 2 May 2013
[88] RoP, paragraph 44, 8 May 2013
[89] RoP, paragraph 45, 8 May 2013
[90] RoP, paragraphs 47 – 48, 8 May 2013

> “The dilemma that you have is always around the degree to which it is right to intervene in family life. There are competing discourses around that, are there not? People take very different ideological stances about the extent to which that is permissible. Currently, it is defined on the evidence of risk—the risk of significant harm. That gives us a proper right of intervention in order to safeguard children. It is more problematic when you apply that right of intervention to issues around development and need. These are almost an agreed construct, are they not? Opinions will differ considerably and opinions change over time about what is and is not right in terms of helping children to meet their developmental needs. It would lead to considerable confusion among families and professionals about whether it is proper to intervene if you are doing so in order to promote developmental needs.[91]
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> […]
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> “This is the bread-and-butter work of the staff that we have working around us every day in terms of how you define that need; it is a very difficult and challenging question. From experience, I have found that one of the big issues is the access that these families have to preventive services. It is not only about the fact that the services are in place, but about how accessible they are in terms of the families’ ability to engage with them and the targeted prevention work. That is an issue. We may have a great many preventive services, but I question at times how much targeted prevention we have for some of these more challenging families. The question of how we do that is something that we work with daily. It is a question of walking through this Bill from a child’s perspective and that of a family, and really working out whether the Bill supports or hinders the end outcome of getting the right kind of support to those families in those tricky situations.”[92]

112. On the basis of the evidence it received, the CYP Committee expressed concerns that section 14 needs strengthening to ensure more appropriate thresholds for overriding parental refusal of a needs assessment and said that the same threshold should apply to all children up to the age of 18.[93]

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[91] RoP, paragraph 290, 18 April 2031

[92] RoP, paragraph 291, 18 April 2013

[93] HSC(4)-15-13(ptn7a), 8 May 2013

Evidence from the Deputy Minister

113. In commenting on the parental refusal of an assessment, the Deputy Minister informed us that:

> "I think that this is all about the safeguarding and protection of children. We will, of course, give mature young people the right to refuse an assessment. That will be their right unless, of course, that is over-ridden by safeguarding and protection issues. I believe that children sometimes have to be protected from parents. We all know that. I think that the Bill will set out more coherently when a refusal can be made."[94]

Our View

We are broadly content with provisions in the Bill that enable adults to refuse an assessment although we are concerned about how these provisions deal with cases whereby adults may be coerced into refusing an assessment, for example in cases of abuse. We recommend that the Deputy Minister gives further consideration to this concern.

We have considered the issue of the right of a parent to refuse an assessment and the circumstances set out the Bill that enable this refusal to be overridden. In doing so we have carefully deliberated on the balance between the need for early intervention and prevention, parental rights and the appropriate point at which the state should intervene.

We discussed in detail section 14 of the Bill and the refusal by a parent of a needs assessment for a child. A range of views were expressed, with some Members calling for the removal of this section from the Bill, although on balance we agreed that it would be better to retain this section.

We also considered the evidence from Barnardo's Cymru that section 14 should include the words 'best interest of the child'. However, we are mindful of how the United Nations Convention on the Rights of the Child (UNCRC) and the 'best interest of the child' interacts with Article 8 of the European Union Convention on Human Rights which relates to the right to respect for private and family life. Therefore we recommend that this section of the Bill be undertaken in the 'best interests of the child' but in a manner that is in accordance with Article 8.

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[94] RoP, paragraph 73, 6 June 2013

We recommend that the circumstances in CASE 1 in section 14(2), in which the local authority retains its duty to undertake an assessment, despite a refusal, should be amended to place the onus on local authorities to have '*reason to believe*' rather than *'suspect'* that the child is experiencing or at risk of abuse, neglect or other kinds of harm.
We also recommend that CASE 2 in section 13 (2), be amended accordingly.

Portability of Assessments

Background

114. The Bill makes provision for those with eligible needs to have a care and support plan which would, except in the case of carers and those plans drawn up using discretionary powers, be 'portable' across local authorities in Wales.

115. Section 40 provides that local authorities must inform the 'receiving authority' about people who move and are receiving services under sections 21 or 23 and provide a copy of the care and support plan and other information. The receiving authority must provide information to the person/carer and assess their needs. If there is any delay the receiving authority must implement the existing care plan as far as is 'reasonably practicable'.

Evidence from Witnesses

116. Some witnesses were concerned that portability applies only to local authorities, despite the increasing provision of care and support through partnerships with other providers.

117. In commenting on this issue, the Wales Alliance for Mental Health stated that:

> "…portability at the moment, as it is worded, is local authority to local authority. It does not take account of partnerships, and if we are going to look at duties around partnerships with health boards, then it would need to be amended to reflect that. Although it might be the duty of the local authority to spearhead that, there should be something on the face of the Bill that says that it must take into account the agents that are working across the eight domains of life,

> so that it is not just in isolation, or one person talking to another individual; it needs to be more holistic than that."[95]

118. Disability Wales also commented on this issue, adding:

> "…Disability Wales has been advocating for portability for a long time, so we are absolutely delighted to see that the Welsh Government is taking this forward. I am mindful that we are already overrunning, but to answer one of your earlier questions, which we failed to do at the time and which was about co-production being on the face of the Bill, I think it should be ideally, along with a definition and a duty on local authorities and all public bodies to work in a co-productive manner, so that everyone is working together on an equal basis for culture change and improved outcomes."[96]

119. Local Government witnesses questioned the practicality of replicating services across diverse local authorities, for example between urban and rural areas, and suggested that transitions are already managed effectively in many cases.[97] In oral evidence, they questioned whether provisions for portability were needed, stating:

> "We question whether it is needed. In our principles on the way we deliver care, we have already committed to doing this; we do it anyway. We exchange information, collaborate and share documentation. There is also the ease of IT and portability of assessment electronically between authorities. The challenges are not in the intent, but in the practical challenges that we have as social care agencies."[98]

120. Some witnesses have been critical of the exclusion of carers from the 'portability' provisions in the Bill. In written evidence, Age Cymru stated:

> "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.

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[95] RoP, paragraph 105, 2 May 2013
[96] RoP, paragraph 106, 2 May 2013
[97] RoP, paragraph 280, 18 April 2013
[98] RoP, paragraph 283, 18 April 2013

> "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 Commission."[99]

121. On this matter Carers Wales told us that:

> "…there is certainly an anomaly with regard to carers. One quite clearly stated aim of the Bill is that carers are treated in the same way as the person cared for—this is the case throughout the Bill—but then carers are explicitly exempted from the portability section. I am not entirely sure of the rationale for that, but I do not really see why it needs to be there. I think there are obviously complications, such as carers living in different counties from the cared-for person et cetera, but that really should not hold us back. We would recommend that carers are fully included in that section."[100]

122. Children in Wales commented specifically on the need to include young carers under the provisions for portability, stating:

> "Basically, we would like children to have portability if they are young carers. That comes in to the early intervention remit of services. There are not that many. The numbers are not as large, in terms of resources, as for other populations, but it is very important that they continue to get continuity of service."[101]

Evidence from the Deputy Minister

123. In commenting on the rights of carers to have their assessments made portable across local authorities the Deputy Minister informed us that:

> "It was not an intention of the Bill originally and it is not there at the moment. I have listened and felt this myself, but I have not been able to rationalise in my mind why a care plan should not be portable. I have asked officials now to bring me further advice and a potential amendment so that the Bill does include the right of portability of care plans for carers."[102]

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[99] SSW 66, Written Evidence

[100] RoP, paragraph 103, 2 May 2013

[101] RoP, paragraph 135, 2 May 2013

[102] RoP, paragraph 69, 6 June 2013

Our View

We welcome provisions in section 40 (2) of the Bill which requires an authority, to which an eligible person moves, to meet the care and support needs set out in the person's existing care plan until it completes its own review and assessments.

While we believe that this provision will help to ensure gaps in care are avoided, we note that it is only to be used as an interim measure and involves reassessment or review by the receiving authority. We also believe that the transfer of information between authorities needs to be done in a timely manner and recommend that an amendment to section 40 (1) (b) be brought forward to reflect this.

We believe there is potential for section 40 (2) (d) of the Bill to be misinterpreted in that a person moving from one authority to another would have to restart the assessment process from the beginning. Therefore, we recommend the Deputy Minister brings forward an amendment to redraft the wording of section 40 (2) (d) to read:

> **"(d) assess, *reassess or review* whether the person has needs for care and support, and, if the person does, what those needs are, have in regard in particular to any change in the person's needs for care and support arising from the move".**

In further considering the evidence on portability we are concerned that there is scope for section 40 of the Bill to be misinterpreted. We believe that there is risk of raising expectations on what this section of the Bill will deliver in practice. For example, we believe there is potential for the expectation that an existing care package provided by the sending authority would be replicated in the receiving authority. To address this concern and add clarity to the intention of this section, we recommend that the title of this section be amended to read 'portability of care plans' rather than 'portability of care and support'.

We are unclear about cross border portability, since the Bill only applies to portability within Wales and not those coming into Wales. Therefore we recommend that the Deputy Minister clarifies the arrangements for individuals coming into Wales before the end of Stage 2.

We welcome the Deputy Minister's reconsideration of her position on the inclusion of portable care plans for carers in the Bill and recommend that she bring forward an amendment to this effect.

Eligibility

Background

124. Section 19 of the Bill allows for eligibility for social care following assessment to be determined by a national eligibility framework, to be set out in regulations, although a need for protection from abuse or neglect could override eligibility criteria. It also provides that a local authority must determine whether any support needs identified in an assessment meet a 'national eligibility criteria' or whether they call for the exercise of any power or duty under the Bill or under the Children Act 1989.

125. A 'national eligibility framework' will be developed and regulations under a affirmative procedure will provide the detail of the eligibility criteria in terms of the specification of the levels of eligibility.

Evidence from Witnesses

126. There has been widespread concern from witnesses about the lack of information concerning the 'national eligibility framework' and there appears to have been no involvement, of the stakeholders we asked, in the process of developing the framework.

127. In the absence of further information on the national eligibility framework some witnesses have expressed concerns that, were eligibility criteria to be set too high, it is not clear how people with care and support needs that do not meet those criteria would be helped, which would undermine the prevention and early intervention ethos of the Bill.

128. In oral evidence, Age Cymru stated:

> "We welcome the national eligibility framework. At the moment, our difficulty is that we are unclear about what that will look like. That strikes at the heart of the issue: it is very difficult to comment when we do not know what the levels will be, or even if they are going to be near existing levels. So, it is very difficult to comment at this point. Our underlying principle is that we think that nobody should be worse off as a result of these reforms. We think that there is a lot of difficulty in bringing in the prevention element, and whether the eligibility levels will be the same for preventative services as they are

> for other care and support needs. We need more information on the face of the Bill than we have as it is currently drafted."[103]

129. Similar concerns were shared by the Wales Alliance for Mental Health which told us that:

> "We would say that, as it currently stands, there is a lack of clarity about where the bar will be set. Our concern would be that setting the bar too high in terms of eligibility is counterintuitive to having a wellbeing and early intervention and prevention approach. So, there does need to be some sort of clarity around what is meant by that, either in the Bill or in secondary legislation. However, it must absolutely take account of the importance of the wellbeing of the whole population, early intervention and preventive services, so that it does not become, by default, a secondary-type care piece of legislation. That is, it should encompass all of the needs of the diverse population of Wales."[104]

130. Carers Wales also commented on the lack of clarity on what will be contained in the eligibility criteria framework, stating:

> "First, we are quite concerned about the lack of clarity regarding exactly what will be contained in the eligibility criteria framework. It is quite hard to say exactly what we support or do not support when we have not quite seen it yet. So, first, we are concerned that we do not quite know what is being proposed. Generally, and tying this back in with the initial stage assessment, we are quite concerned at the moment about the way that the Bill reads and, perhaps, with the drift back to a more narrow, service-led approach. It looks like there will be a three-stage assessment: the initial assessment, the eligibility criteria stage, and then a subsequent financial test. We would be quite concerned that this would lead to an increased gate-keeping approach by local authorities. Things are difficult enough under the current legal system, so we would be quite concerned that, if we were not careful, we would be continuing that type of gate-keeping approach by authorities, rather than having a fully inclusive equal footing assessment process, where adults and children who are carers are fully involved in the whole process."[105]

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[103] RoP, paragraph 229, 2 May 2013
[104] RoP, paragraph 19, 2 May 2013
[105] RoP, paragraph 21, 2 May 2013

131. The British Association of Social Workers Cymru ('BASW Cymru') raised concerns around the lack of clarity about the point at which eligibility will apply, stating:

> "I just wish to say that we are a little confused regarding at what point the eligibility criteria will apply. Will that be at the point where people seek an assessment, thereby screening them out of an assessment, or will that be following an assessment about their level of need? That is something that needs to be teased out and made a bit clearer. In making my second point, I bear in mind all of the comments that have been made about the charging issues and the financial impact of the Bill on local authorities. At whatever point the eligibility criteria apply, they could be used as a further method of gate keeping. They could work in reverse to the preventative direction and could push people more towards the higher level end of critical need before accessing services, thereby forcing people into crisis and away from preventative services."[106]

132. In written evidence the Children's Commissioner for Wales stated that the Bill does not set out the national eligibility framework, and said:

> "… it is therefore not possible to assess if those charged with the delivery of social services will be clear in relation to their statutory duties towards children and young people."[107]

133. The Welsh NHS Confederation emphasised the interconnectedness of health and social services in terms of demand for services arising from any changes to eligibility criteria. It informed us that:

> "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."[108]

Evidence from the Deputy Minister

134. In oral evidence to the CYP Committee on 25 April 2013 the Deputy Minster stated:

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[106] RoP, paragraph 238, 2 May 2013

[107] SSW 58, Written Evidence

[108] SSW 84, Written Evidence

> "The eligibility framework needs the flexibility of regulation. As we develop it and as we design services, this is a Bill for a generation. In that time, I foresee that some of the principles in the criteria will need to be changed. The flexibility that regulations provide is of utmost importance in this regard. So, we will develop those criteria through regulations, but this will be very much part of the outcomes framework that we are developing. I am being reminded that I will be making a statement on this, and that I will be providing further information on this before the Health and Social Care Committee on 6 June."[109]

135. Responding to questions from us on the detail of future eligibility criteria, including whether it is likely to operate along the lines of the current policy on the basis of low, moderate, substantial and critical access to care, the Deputy Minister stated:

> "On those four levels, it is time for them to go. There has been inconsistency with the low, moderate, significant and critical levels and sometimes they served to lock people out of services rather than to bring them in. I believe that the inconsistency that has developed between one authority and the other in the interpretation of the four levels is not sustainable."[110]

136. Responding to the Deputy Minister's comments, in written evidence the Advisory Group stated that:

> "Eligibility criteria serve as a 'rationing' tool to decide who receives or does not receive a service. On April 18 the Deputy Minister said: "It is time for [the four level model] to go" and that "Sometimes it served to lock people out of services rather than bring them in". However, removing the current four level Fair Access to Care Services (FACS – low, moderate, substantial and critical needs with an eligibility threshold) model will not remove the need to 'ration' services between needs that will be met and needs that will not be met by the local authority."[111]

137. The Advisory Group added:

> "We are also anxious to ensure that the new eligibility system has a requirement for local authorities to justify decisions using clear

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[109] RoP, paragraph 145, Children and Young People Committee, 25 April 2013 (pm)
[110] RoP, paragraph 98, 18 April 2013
[111] HSC(4)-18-13(ptn20), 6 June 2013

> nationwide criteria. People with needs must be clear about why a local authority will not meet their needs. Therefore, we are concerned about how the new system would be designed."[112]

138. In a letter to the Committee, dated 20 May 2013, the Deputy Minister referred to the 'passporting' of individuals to care and support needs stating:

> "I have taken the bold step to include on the face of the Bill circumstances where individuals will be passported to have an eligible need: those at risk and looked after and other accommodated children. In such cases, the local authority will have a duty to meet the care and support needs and the outcomes that individuals wish to achieve. The national assessment and eligibility framework (through Regulations and the Code(s) of Practice) will define the circumstances in which other individuals who are determined as eligible needs."[113]

139. The Deputy Minister also stated that:

> "I can give my assurances that I am giving great care to the planning and implementation of care and wellbeing of this area including the need to ensure continuity of care for individuals in relations to the transition of the current system to the application of the new law. Transformation on this scale and the impact it holds for many people is significant and it is my plan to test these arrangements in advance of their implementation."[114]

140. In oral evidence to this Committee on 6 June 2013 the Deputy Minister provided an update on the planned national eligibility framework, including the timetable for publishing a draft framework. She stated that:

> "The meeting today provides me with a good opportunity to say that I plan to make a major policy statement on the eligibility framework later on this year, before you are asked to vote on the Bill. I fully intend to engage with all stakeholders and partners. Indeed, that work has started with stakeholder events. I believe that we have had about 400 people participating already. I fully intend to include local government, the Association of Directors of Social Services and the private, independent and voluntary sectors—all of our stakeholders. I

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[112] HSC(4)-18-13(ptn20), 6 June 2013
[113] HSC(4)-18-13(ptn13), 6 June 2013
[114] HSC(4)-18-13(ptn13), 6 June 2013

> made that clear in a speech this morning to the Westminster policy forum."[115]

141. The Deputy Minister also outlined her plans for consultation on the framework before it is made operational, and assured us that:

> "Regulations will be developed in 2014, following the policy statement. Those regulations will be developed with a full consultation process. They are subject to the affirmative process, so there will be full consultation at that point."[116]

142. The Deputy Minister also made reference to her plans to include on the face of the Bill circumstances where individuals will be passported to have an eligible need including those at risk and looked after and other accommodated children. She stated that:

> "I think that it is a bold step to have put on the face of the Bill some people who will be passported. On the face of the Bill, there will be passporting of eligibility criteria to include children in care, children leaving care, other children who are accommodated and adults at risk. Those will be passported. There is a need for some time to think about whether that passporting can be extended. That is my aim. I believe that some profoundly disabled should be passported as well, and I am using this time to develop that thinking. Stakeholders are contributing to that."[117]

143. In questioning the Deputy Minister on the eligibility framework, we sought clarity on the transitional arrangements for those currently in receipt of services and queried whether there was a risk of individuals finding themselves no longer eligible for services under the new arrangements.

144. In response the Deputy Minister commented that:

> "I have been very mindful about the need for continuity of service through the transition period. I am giving that serious thought. With regard to the transition, we are committed to seamless transition for people needing care. The way that I understand this is that I am not expecting people to need to be reassessed, but existing arrangements provide for reviews of their care plans. Fundamental to that will be the continuity of care, the respect that those people in

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[115] RoP, paragraph 20, 6 June 2013
[116] RoP, paragraph 32, 6 June 2013
[117] RoP, paragraph 32, 6 June 2013

> receipt of care deserve and the way in which we deal with it. There will be transition, of course, as with any change, but I am very mindful that we need to be very careful as to how we handle this period in people's lives."[118]

145. The Deputy Minister provided the Committee with a further response on this matter in a letter dated 11 June 2013. She stated that:

> "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

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[118] RoP, paragraph 138, 6 June 2013

> 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.
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> "I have advised the Committee of my plans to make an announcement later this month on the next steps in the on-going 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 on-going work to implement the Bill."[119]

Our View

We are not content with the information that has been made available on the planned national eligibility framework. Some members of the Committee felt that this lack of clarity was a fundamental weakness of the Bill, as it is crucial in understanding how the Bill will operate in practice and to whom it will apply.

We understand the reasons outlined by the Deputy Minister for not including details of eligibility on the face of Bill and accept that an eligibility framework needs the flexibility of regulation.

We note the Deputy Minister's commitment to bringing forward a major policy statement on eligibility and recommend that she supplements this with an oral statement in Plenary before the end of Stage 2. Eligibility is central to the success of the Bill and therefore we believe that this Committee should have the opportunity to robustly scrutinise the draft regulations on eligibility with sufficient time to review, question the Deputy Minister, and report as a Committee on the draft regulations before Stage 3 proceedings take place in early 2014.

We recommend that regulations relating to eligibility criteria are subject to a super affirmative procedure.

As a Committee, we also considered whether regulations on eligibility criteria should be accompanied by Codes of Practice. We believe that Codes of Practice are more accessible and easily understood by

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[119] HSC(4)-22-13(ptn1), 1 July 2013

practitioners and service users. We recommend that should the Deputy Minister accept our recommendation to include statutory principles on the face of the Bill (recommendation 1), any future regulations setting out the national eligibility criteria should cross reference to these principles.

In relation to 'passporting' we welcome the Deputy Minister's inclusion, on the face of the Bill, of the circumstances where some individuals will be passported to having an eligible need. We recommend that the Deputy Minister sets out how these amendments will secure the rights as currently set out in section 17 of the Children Act 1989.

With regard to the introduction of a national eligibility framework, we are concerned about the impact this may have on those currently in receipt of services, who may find themselves no longer entitled to these services under the new arrangements. We recommend that the Deputy Minister sets out more clearly how transitional arrangements will work.

We believe that those currently in receipt of services should not find themselves worse off under the new arrangements. We remain concerned that without having further detail about the eligibility criteria we are unable to quantify the scale of the potential problem. We recommend the Deputy Minister considers the potential impact arising from the transition from existing eligibility criteria to a new national eligibility framework.

Finally, we note the Deputy Minister's commitment to undertaking a full consultation with stakeholders on the development of a national eligibility framework. We ask that the Deputy Minister fulfils this commitment and provides further explanation of her proposed consultation process.

Duty to meet care and support needs of a child

Background

146. Section 23 sets out 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. The application of eligibility criteria will be the principal means of determining whether a child's needs for care and support must be met by the local authority under this section.

147. However, subsection (3) provides safeguards to ensure that local authorities have a duty to meet a child's needs for care and support if this is necessary to protect the child from abuse or neglect, even if their needs do not meet the eligibility criteria.

Evidence from Witnesses

148. Children in Wales raised concerns regarding the drafting of sub-section 23 (3). With reference to this they informed us that:

> "…it has a narrowing effect, and that it basically focuses the eligibility criteria more around abuse and neglect. The best-interest principles are about promoting the wellbeing and welfare of children. There is more of an emphasis on early support for families."[120]

149. It added that:

> "This is all on the 'harm' end, as opposed to promoting the wellbeing and development of children. It depends how authorities interpret this, but it is a risk, if it is not amended."[121]

Evidence from the Deputy Minister

150. The Deputy Minister has not commented on this issue.

Our View

We share the concerns expressed by Children in Wales about the potential for the duty on local authorities to meet a child's needs for care and support to focus on abuse and neglect and to overlook preventative services. We recommend that the development of the eligibility framework takes full account of the need for early intervention to promote the wellbeing and welfare of children.

Charging

Background

151. Part 5 of the Bill re-states local authorities' power to charge for the provision of care and support for adults and children, and support for carers, and provides that a financial assessment must be undertaken to determine liability for charges. There are some changes to the scope and management of charges. For example a 'brokerage' charge may be made to people with

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[120] RoP, paragraph 232, 2 May 2013

[121] RoP, paragraph 236, 2 May 2013

resources above the charging threshold who seek help from the local authority, and deferred payment agreements, currently applicable only to residential care, would be extended to all services under sections 21-29. Regulations will set out the scope and details of financial assessment.

152. In supplementary written evidence the Deputy Minister confirmed that the charging provisions in the Bill will replace existing provisions and will, for example, remove the current requirement under the National Assistance Act 1948[122] for local authorities to charge for residential care.[123]

153. Charges for non-residential services (e.g. homecare) in Wales are currently subject to the framework provided by the Social Care Charges (Wales) Measure 2010,[124] which includes a £50 per week cap on charges amongst its provisions. The Deputy Minister has confirmed that this Measure is to be repealed.[125]

Evidence from Witnesses

154. Some witnesses raised concerns about the scope of charges provided for in the Bill, and in particular charges for information and advice services. Specifically, concerns expressed in evidence have focused on the power in section 54 of the Bill to make regulations permitting charges for preventative services (provided under section 6) and information, advice and assistance (provided under section 8) since this may undermine the prevention and early intervention ethos of the Bill. In addition, the power to charge 16 and 17 year-olds has attracted criticism.

155. The Partner Organisation co-ordinated by Disability Wales made specific reference in its written evidence to the power in section 54 of the Bill to make regulations permitting charges for preventative services. It stated that:

> "…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

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[122] National Assistance Act 1948,
[123] HSC(4)-18-13(ptn13), 6 June 2013
[124] Social Care Charges (Wales) Measure 2010,
[125] HSC(4)-18-13(ptn13), 6 June 2013

> 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."[126]

156. On the issue of charging, Disability Wales expanded on its concerns in oral evidence, stating:

> "…we have some serious concerns around what appears to be the introduction of charging for preventative services. They refer to information, advice and assistance. It is not clear—certainly in the information that we have had—what that means. So, if people download leaflets from the website or get a pack of information from the local authority of an advice centre, is that charged for? There is a real lack of clarity. We are aware, from our previous involvement with the Social Care Charges (Wales) Measure 2010 and the research that was done on that that local authorities find all sorts of ways to charge for things, and we worry that this could creep back in a new area. It would particularly disadvantage people who have to go to a third party for support, who do not have access to the internet and cannot find out things for themselves or negotiate their own support. So, we are very concerned about the way that charging is addressed in the Bill."[127]

157. Similar views were shared by Age Cymru, which stated:

> "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

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[126] SSW 15, Written Evidence

[127] RoP, paragraph 97, 2 May 2013

> information and advice should be free, independent and accessible as a basic principle, and would welcome clarification on this."[128]

158. On this matter the WLGA made the following comments in oral evidence:

> "We would want to avoid charging, particularly around information and advice, but the truth is that we very much feel at this point in time that unless we have the debate about resources, or identify where they are going to come from, the vision from Welsh Government that local authorities will have the power to charge will stem the resource gap in the new statutory duties that the Bill will introduce. We have some very real concerns about that concept."[129]

159. In relation to the powers in the Bill to charge 16 and 17 year-olds the CYP Committee considered that the rationale which led to the creation of powers to charge young people aged 16 and 17 is no longer relevant.[130]

160. Finally, in commenting on this issue ADSS Cymru expressed a view that the charging of 16 and 17 year olds went against the ethos of the Bill, and said that it was not appropriate to charge the vulnerable young people who come to its attention at 16 and 17 for services.[131] The WLGA shared this view.[132]

Evidence from the Deputy Minister

161. The Deputy Minister made the following points in oral evidence in relation to charging in the Bill:

> "There are examples of where it would be fair for local authorities to charge for preventative services and, perhaps, for brokering a deal between some people and care homes. There are issues of that nature where that might be reasonable. We will develop this thinking and it will be progressed in the way in which we draft the regulation on this issue."[133]

> "The provision of information, advice and assistance will have a statutory base in accordance with the Bill. I do not envisage that, if somebody is popping into a local authority office to ask for advice,

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[128] SSW 66, Written Evidence

[129] RoP, paragraph 273, 18 April 2013

[130] HSC(4)-15-13(ptn7a), 8 May 2013

[131] RoP, paragraph 45, Children and Young People Committee, 25 April 2013 (pm)

[132] RoP, paragraph 48, Children and Young People Committee, 25 April 2013 (pm)

[133] RoP, paragraph 117, 18 April 2013

> they will be charged for that; certainly not. We need to bring clarity to this in the development of the regulation. There will be other examples where it would be reasonable to charge, and the regulation will seek to clarify and define that."[134]

162. When asked by the CYP Committee on 25 April 2013 about provision in the Bill for charging 16 and 17 year olds, the Deputy Minister stated:

> "This is not new. This power exists, and nothing changes with regard to existing powers. We have seen some local authorities thinking about charging children. To my knowledge, I do not know that this has happened. The power of discretion is preserved here, so local authorities will have discretion as to whether they want to charge or not. Not only will this allow for charging and allow for the power to exist for charging; it will also give Welsh Ministers to restrict any charging if charges are introduced, or to ensure that any charges are proportionate. There are two sides to this, and nothing changes. This is a provision that is being preserved."[135]

163. The Deputy Minister re-emphasised her position on the issue of charging in supplementary written evidence to us, stating:

> "I am aware that there has been some concern expressed about the range of the charging provisions and would want to remind the Committee that whilst local authorities will be able to charge for the same range of services under the Bill as they are able to at present, I will also have powers of Regulations and the Code(s) of Practice to set limits or disapply elements of the charging provisions."[136]

Our View

We have considered Part 5, specifically sections 44 (2), (3) and (4) of the Bill, which set out *Persons upon whom charges may be imposed,* and the concerns raised in evidence that charging of 16 and 17 year olds goes against the ethos of the Bill. We share this view and do not think that it is appropriate to charge young people. We recommend that the powers to charge 16 and 17 year olds should be removed from the Bill.

We have similar concerns about section 54 (1) (b) which makes provision for regulations for charges to be made for information, advice and

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[134] RoP, paragraph 119, 18 April 2013

[135] RoP, paragraph 147, Children and Young People Committee, 25 April 2013 (pm)

[136] HSC(4)-18-13(ptn13), 6 June 2013

assistance under section 8 as well as section 6 preventative services. We are concerned that such charges could deter people from accessing services and we also question the appropriateness of charging for information and advice. We recommend that the Deputy Minister provides greater clarity on the circumstances in which charges would be imposed for these services.

Transition from Children's to Adult Services

Background

164. There are no references to the transition from children to adult services on the face of the Bill but the Welsh Government's consultation document on the draft Social Services Bill in 2012 referred to an intention to address the issue of the transition of disabled young people from children's social services to adult services.

165. The disparity between the requirements on and the eligibility criteria applied by local authorities to provide services for disabled children and adults can result in a "dip" in service provision as adult services are accessed. The Welsh Government set out plans to extend entitlements for disabled children with complex needs up to 21 years and to require local authorities to appoint a transition key worker at age 17-18.

166. There is currently no universal definition of "complex needs" and the consultation document proposed that regulations made by Welsh Ministers would specify categories of disabled children with higher levels of need that would be entitled to transitional services and assistance from local authorities up to the age of 21 years.

Evidence from Witnesses

167. Evidence received has suggested that the Bill must address the issue of transition services, particularly for disabled young people, from children to adult services.

168. Panels of young people with experience of transition between services informed us that they have generally found the transition process from care to independent living difficult, and without organisations such as Barnardo's, Drws y Nant and other charities, many 18-year-olds would have found it very

difficult moving from care to independent living.[137] In oral evidence, one young man stated that:

> "…perhaps social services could get more involved by asking the foster parents that you are with, or, if you are in a care home, perhaps they could become more supportive by trying to promote independence by teaching some skills, such as how to cook, how to wash clothes, how to pay the bills, and how to go about picking food, for instance, to get a healthy diet, which I found to be a bit difficult when I left my foster placement. I did not really know what to eat, for instance. If that was put in place from 16 onwards, there would be an understanding of what to expect when you leave care."[138]

169. Evidence from the Citizen's Panel for Social Services suggested that, as drafted, the Bill is trying to address problems arising from the transition between children and adult services, including the barriers to seamless service provision, and prevent services from being abruptly stopped once a person reaches 18 years of age.[139]

170. In commenting on this issue, a representative of the Citizen's Panel for Social Services stated:

> "…if the Bill addresses that need appropriately and with enough of a 'must' behind it, I feel that the services would be addressed within that scope. However, I would need to be certain that there was a 'must' there on that transition, to be sure that the needs of the disabled child were protected."[140]

Evidence from the Deputy Minister

171. In supplementary written evidence to this Committee, the Deputy Minister stated:

> "This Bill legislates for the concept of a 'people model'. The 'people' model is designed to benefit *everyone in need of care and support* and to enable a smooth transition through services at all stages in a person's life. Disabled young people are therefore part of this group. I am content therefore that the provisions for new core processes and portability mean that the transitional arrangements will be improved for disabled young people and that there will be no gap in the law. It

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[137] RoP, paragraphs 418 – 419, 16 May 2013

[138] RoP, paragraph 422, 16 May 2013

[139] RoP, paragraph 380, 16 May 2013

[140] RoP, paragraph 378, 16 May 2013

> should also be remembered that the Regulations and Code(s) of Practice to be developed in this area will help address specific issues of transition which may relate to this group in particular."[141]

172. The Deputy Minister advised us that the provisions in the Bill secure the well-being of disabled people including disabled children. She stated that:

> ". The Bill will strengthen the provision for disabled children and, when we come to the development of the code of practice, that is where we can be absolutely clear and bring in a legislative framework to ensure that we take due regard of disabled children. The strength of the code of practice is that it will have to come forward for discussion by Assembly Members. That is a huge step forward from having one Minister issuing statutory advice or requirements. So, the development of the thinking and of the code of practice will add strength to the Bill and this provision."[142]

173. In a letter dated 14 May 2013, the Deputy Minister provided us with details of how the '*When I'm Ready*' scheme would work alongside the Bill. She stated that:

> "The proposed "*When I'm Ready*" scheme is one of a range of options that will be available to young people who are transitioning to adulthood when they are due to leave care at the age of 18. It is intended as an alternative to 'supported lodgings' and will enable young people to remain with their former foster carers in a familial setting with people who are known to them and who can offer continued support as they grow into adulthood. As you are aware I have agreed to pioneer this in three local authorities areas during 2013/14 (using powers within Part 3 of the Children Act 1989) in order that the experiences of these areas can inform the further development of the guidance to ensure that it will meet the needs of young people and their carers."[143]

Our View

We endorse the views of the Citizens Panel that the intent of the Bill is to address problems arising from transition between children and adult services, but that this may need to be reinforced.

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[141] HSC(4)-18-13(ptn13), 6 June 2013
[142] RoP, paragraph 129, 18 April 2013
[143] HSC(4)-18-13(ptn7), 6 June 2013

We welcome the Deputy Minister's development of the '*When I'm Ready*' scheme and that there are three pilot schemes currently in place. We look forward to receiving further detail on the evaluation of these pilots and anticipate a legislative solution if this approach has not been shown work. In such an instance, we recommend that an amendment is brought forward to place a clear statutory duty on the face of the Bill that will set out clear duties for local authorities and other partner bodies in managing the transition process.

5. User voice and control

General

Background

174. One of the aims of the Bill is to promote the empowerment of service users by giving them a stronger voice and greater control over services.

Evidence from Witnesses

175. Evidence to us suggests that, although there is strong support for increasing user voice and control, some witnesses were unclear as to how this is actually realised in the Bill. For example, a representative of Hywel Dda Health Board stated in oral evidence that:

> "Personal autonomy is the capacity to manage your own life and to make your own choices within that. Certainly, the impression given in the Bill is that social care still has a slightly patriarchal function, rather than allowing people to self-manage."[144]

176. Carers Wales also questioned the extent to which user voice and control is realised in the Bill, stating in written evidence that:

> "The sections of the Bill on voice and control, wellbeing 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."[145]

177. It added:

> "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.
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> "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."[146]

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[144] RoP, paragraph 105, 16 May 2013
[145] SSW 23, Written Evidence
[146] SSW 23, Written Evidence

178. The Advisory Group has suggested that increased voice and control could be realised more strongly on the face of the Bill.[147]

Evidence from the Deputy Minister

179. In supplementary written evidence the Deputy Minister outlined how voice and control is realised in the Bill, stating:

> "Voice and control is realised right the way through the Bill: from the strategic level with the national outcomes framework, to the organisational level with the needs assessment, information, advice and assistance, to the individual when identifying need."[148]

180. In oral evidence on 6 June 2013, the Deputy Minister reaffirmed her view that she is satisfied that voice and control is realised in the Bill and that the National Outcomes Framework would support voice and control. She stated that:

> "At the strategic level, I believe that the national outcomes framework will support user voice and control. It is very important that we shift the emphasis to ensuring that we meet the needs of people, rather than fit people into services. That is very important to me. I believe that adults are the best people to say what their needs are and what outcomes they want for their daily care needs. So, at a strategic level, the outcomes framework will ensure that the outcomes for people are realised and we will have a strong performance framework to measure the effectiveness of the outcomes framework."[149]

Our View

We welcome the clear policy intent of enhancing user voice and control but we do not think the provisions of the Bill are clear in how this intent will be realised in practice. We believe that the inclusion of statutory principles on the face of the Bill and the publication of the outcomes framework will assist in addressing this.

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[147] HSC(4)-18-13(ptn20), 6 June 2013
[148] HSC(4)-18-13(ptn20), 6 June 2013
[149] RoP, paragraph 37, 6 June 2013

Information, Advice and Assistance

Background

181. Section 8 creates a duty on local authorities, assisted by NHS bodies, to provide information, advice and assistance in relation to the care and support systems.

182. Section 54 of the Bill provided that regulations may be made that provide for local authorities to impose a charge for information advice and assistance.

Evidence from Witnesses

183. Most witnesses have welcomed the duty to provide information, advice and assistance. However, the WLGA questioned whether it is needed on the face of the Bill in view of work that is already underway.[150]

184. The Advisory Group has suggested that the Bill is amended so that it refers to ‘accessible’ information, a point also made by the Care Council for Wales in its written evidence.[151]

185. Expanding on this issue in oral evidence, the Care Council for Wales informed us that:

> “To state ‘accessible’ would be quite important and in a Bill that is in Wales currently, given that we have the health and social care Welsh language strategy, a specific reference to the Welsh language would also be important. However, I understand the legal difficulties of doing that.”[152]

186. When asked whether the Care Council for Wales would like to see a specific reference to the Welsh language in the Bill, it stated that:

> “I think that it is disappointing if there is no specific reference to the Welsh language in this legislation, given that this is the first legislation for social services following the strategy, which places such an emphasis on the importance of the Welsh language for health and social services that are more open and accessible to people. A specific reference to the Welsh language, even if we do not want to start listing all the legislation, would be important. If legislation made in Wales does not refer to the responsibilities, it is a missed

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[150] RoP, paragraph 196, 18 April 2013
[151] SSW 30, Written Evidence
[152] RoP, paragraph 243, 16 May 2013

> opportunity, and it puts the Welsh language back to being something that relates only to the Welsh Language Act 1993, rather than expectations on services. I would like to think that there is a way of doing this, but I understand that there is a tension. If there is no reference to the legislation, there should be reference to the importance of the Welsh language either at the beginning of the Bill in the general section, or in the sections that mention specifically essential aspects such as information and assessment."[153]

187. It added that:

> "…the reason that we have the Welsh language strategy is because there is still not enough emphasis placed on the implementation of the Welsh Language Act in those services. If we just leave it to that general duty, given the new strategy, there is a missed opportunity. Citizens would expect there to be some reference. I am not a drafting expert, but I understand that there is a drafting issue in terms of the law."[154]

188. In conclusion, it noted that issues could arise from widening the range of formats in which information could be provided.[155]

189. The Welsh Language Commissioner also commented on the inclusion of references to the Welsh language in the Bill and stated in written evidence that:

> "The Social Services and Wellbeing (Wales) Bill is aimed at ensuring that services are of a high standard, accountable and citizen-focused. With this in mind, we are concerned that there is no reference to the Welsh language on the face of the Bill itself.
>
> "We urge you, therefore, to ensure that drafting officials include an explicit statement regarding Welsh-language provision on the face of this Bill, thus reflecting the Welsh Government's commitment to ensuring that, through enactments, duties are placed on bodies to use the Welsh language and that Welsh is not treated less favourably than English."[156]

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[153] RoP, paragraph 247, 16 May 2013
[154] RoP, paragraph 249, 16 May 2013
[155] RoP, paragraphs 250 – 251, 16 May 2013
[156] SSW 89, Written Evidence

190. From a children's perspective, the Children's Commissioner for Wales suggested that the provision of information, advice and assistance under section 8 of the Bill should be age appropriate for children and fit for purpose. He stated that:

> "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."[157]

Evidence from the Deputy Minster

191. In response to the suggestion that section 8 of the Bill should refer to accessible information, the Deputy Minister stated that it was her expectation that all information would be accessible. She informed us that:

> "I would expect information to be accessible, full stop. It needs to be made available in different formats, such as through face-to-face meetings, using telecommunication and the various modern technologies that we have, in Braille and also by having tapes for the hard of hearing. I would expect that service to be provided and to be accessible to everyone, and to ensure that people with difficulties in communicating or understanding know about this service and can access it."[158]

Our View

In considering this section of the Bill we recognise that for information to be fully accessible it must include reference to the Welsh language.

We are generally content with the duties set out in section 8 of the Bill but have listened to the concerns of witnesses regarding the need for information to be fully accessible. We believe that information should be available in a variety of formats and languages reflecting the needs

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[157] SSW 58, Written Evidence

[158] RoP, paragraph 243, 6 June 2013

of all Welsh citizens. We recommend that the Bill is amended to include reference to 'accessible' information.

Independent Advocacy

Background

192. The Bill places no requirements on Welsh Ministers or local authorities to provide independent advocacy except in the case of complaints about privately arranged or funded palliative care (section 161). Section 154 provides that regulations may be made to require local authorities to assist people making a complaint. Such assistance could include advocacy.

193. Section 159 replicates the Children Act 1989 provisions on the right to access to independent advocacy in making complaints and representations about certain social services.

Evidence from Witnesses

194. There has been a considerable amount of concern about the lack of reference to independent advocacy in the Bill.

195. The Partner Organisation co-ordinated by Disability Wales stated in written evidence:

> "The partner organisations consider the omission of Independent Advocacy and peer support to be a serious weakness of the SSW Bill.
>
> [...]
>
> "We therefore propose that the Bill should include Independent Advocacy and Peer Advocacy for disabled people of working age."[159]

196. The Partner Organisation co-ordinated by Disability Wales also made reference to the Welsh Governments Strategic Equality Objectives, highlighting that these include to: strengthen advice, information and advocacy services to help people with protected characteristics understand and exercise their rights and make informed choices They stated that:

> "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

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[159] SSW 15, Written Evidence

> 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."[160]

197. Written evidence from Age Cymru highlighted the role of independent advocacy in delivering voice and control, stating that:

> "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 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.
>
> [...]
>
> "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."[161]

198. Evidence highlighting the value of independent advocacy was also provided from a children and young person's perspective through the witness panels of children and young people. A young woman informed us that:

> "…because I did not know about advocacy until I was about 15. I had a lot of problems before then, because social services were not

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[160] SSW 15, Written Evidence
[161] SSW 66, Written Evidence

> listening to me. I got involved with advocacy because my social worker did bring it up in the end I did not know that there were people who could be on my side, instead of just on the social services' side."[162]

199. In his written evidence the Children's Commissioner for Wales stated that his review of independent professional advocacy services (2012) for children and young people with a statutory entitlement highlighted the considerable improvements that are needed in supporting access to assistance for children and young people. He further stated that advocacy plays a critical role in enabling children and young people to safeguard themselves and he stated that the Bill does not specifically refer to independent advocacy services. He referred to the Scottish Government seeking to put legislation in place with the aim that all children and young people have access to a named person and that all relevant services co-operate with the named person in ensuring the wellbeing of the child is at the forefront of their actions.[163]

200. However, in supplementary written evidence the WLGA opposed a broad duty in law for all service users.[164] In commenting further on this issue they stated:

> "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. 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."[165]

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[162] RoP, Paragraph 185, 8 May 2013
[163] SSW 58, Written Evidence
[164] RoP, paragraph 183, 8 May 2013
[165] HSC(4)-18-13(ptn3), 6 June 2013

Evidence from the Deputy Minister

201. The Deputy Minister acknowledged concerns raised in evidence to us about the lack of provisions for independent advocacy included in the Bill. She stated that:

> "I can now inform the committee that an amendment to further extend the framework provisions for an individual's right to advocacy is one that the Government will be bringing forward".

202. She added that:

> "I have views as to what that amendment should include. I think that it should enable regulations to place duties on local authorities to make advocacy available in prescribed circumstances, for example in terms of people with complex needs who may not have the capability, or in terms of wider family or community networks being able to advocate on a person's behalf in decisions about their care. There should also be a duty to enable independent support to people when the local authority is investigating a concern of risk or abuse, duties to require local authorities to promote and inform people of their rights to advocacy, including self-funders, and a duty to require registered care providers to inform people in their care about the availability of advocacy services by the local authority."[166]

203. The Deputy Minister also clarified that she believed independent advocacy should be registered and inspected. She stated that:

> "I made my view on that clear. So, yes, I think that they should be registered and regulated. You know that I will soon be bringing forward a White Paper on regulation and inspection. There will be a statement on that soon, before recess, and we aim to introduce the White Paper early in the autumn. However, the statement will include the aspects that we intend to cover, and that will be part of it."[167]

204. On the 12 June 2013, the Deputy Minister issued a Written Cabinet Statement on a Statutory Framework for Advocacy outlining her intention to bring forward Government amendments to the Bill to further extend provision for statutory advocacy.[168]

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[166] RoP, paragraph 44, 6 June 2013
[167] RoP, paragraph 49, 6 June 2013
[168] Cabinet Written Statement, 12 June 2013

Our View

We note the Deputy Minister's written statement and her commitment to include provisions in the Bill to extend provision for statutory advocacy. We recommend detail on who will be entitled to receive independent advocacy is provided before the start of Stage 2.

We welcome the Deputy Minister's commitment that these provisions will be subject to regulation and inspection, which we hope will provide robust quality monitoring arrangements. However, we would not wish to see these arrangements impacting on peer advocates. We recommend the Deputy Minister considers the need for appropriate quality assurance and provides detail on how this will operate in practice before the end of stage 2.

Direct Payments

Background

205. Part 4 section 34 makes provision for direct payments with regulation making powers to determine their scope and administration.

Evidence from Witnesses

206. Most witnesses supported the concept of direct payments but some have advocated for direct payments as the default method of service provision with an opt-out for people who do not wish to use them. Others have argued that a range of options are needed to reflect variable willingness to take on the responsibility of employing staff.

207. Those in favour of making direct payments the default option included the Partner Organisation co-ordinated by Disability Wales, who advocated the approach taken in the Social Care (Self-directed Support) (Scotland) Act 2013.[169] In evidence they called on us 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

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[169] Social Care (Self-directed Support) (Scotland) Act 2013,

> which place control with citizens, including within collective approaches to support provision."[170]

208. In expanding on this point in oral evidence, Disability Wales stated that:

> "The social care self-directed support legislation in Scotland sets out a specific process by which local authorities are required to offer a direct payment to citizens. That is a clear and welcome approach that has been adopted there. We have to ask ourselves in Wales why, despite the Welsh Government's long-term commitment to advancing direct payments, we still have less than 5% who are eligible for a direct payment actually receiving one. Implicit in that is the need for culture change within local authorities. The concern would be that this gets worse as time goes on, as the economic recession, or whatever we want to call it, continues to bite. Resource allocation has to be the primary concern and, of course, that has to be balanced with the individual's right to have choice and control over the services that they were assessed as being entitled to. There is a real need to look at how we change culture in local authorities, and a step in the right direction would be to have some very specific principles and guidance on the face of the Bill, reinforcing regulation and the code of practice, but with a much stronger message coming from the Welsh Government to local authorities."[171]

209. Some witnesses, notably from the Local Government sector, have argued that the provisions for direct payments in the Bill are too prescriptive and may narrow the focus of what should be a broader vision for citizen directed support. In supplementary written evidence the WLGA stated that 'there is no indication on the face of the Bill as to how a model of self-directed support will be implemented in Wales', which it believes is a missed opportunity.[172]

210. They added to this in oral evidence stating:

> "We welcome the emphasis in the Bill on direct payments as one of a number of different opportunities or ways that local authorities can increase voice and control for the service user in terms of what their service looks like, how it is shaped and who they engage in providing that service.

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[170] SSW 15, Written Evidence
[171] RoP, paragraph 34, 2 May 2013
[172] HSC(4)-18-13(ptn2), 6 June 2013

> […]
>
> "the point that I would make—as we have previously made in written evidence to this committee—is that direct payments are one of a range of potential opportunities for increasing that voice and control. One of the things on which we would be looking for more clarity from the Welsh Government is exactly what is its vision for voice and control, which we think are absolutely key and should underpin the Bill. We feel that the emphasis on direct payments solely narrows the spectrum down unnecessarily."[173]

211. ADSS Cymru supported this view stating:

> "We would not like to think that the menu around citizen-directed support would be restricted to direct payments. It needs to be broader than that. We are currently engaged in work to try to contribute towards what the model for Wales might look like, to ensure that there is consistency. We would welcome greater clarity from the Welsh Government about its vision for citizen-directed support. Certainly, it should not just be limited to direct payments."[174]

212. Similar views were expressed by organisations representing the third sector including Age Cymru who informed us that:

> "We welcome the extension of direct payments as a model of citizen self-directed support, but for older people take-up is particularly low. We think that that is because there are probably some ageist assumptions when it comes to providing services for older people. So, we are looking for a future system to iron out that ageism, so that older people are offered the same level of information, so that if a direct payment is right for them, they are in a position to take that up. We want to be clear that we would not want direct payments to become some sort of mandatory system, because it is not going to be right for everybody and people need to have that choice."[175]

213. BASW Cymru shared similar views informing us that:

> "To reiterate again, direct payments is one of a range of options for people. But, for direct payments alone, we would say that there need to be improved support mechanisms to enable people to take those

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[173] RoP, paragraph 141, 2 May 2013
[174] RoP, paragraph 142, 2 May 2013
[175] RoP, paragraph 143, 2 May 2013

> up, and improved accessibility and information about direct payments and what they actually mean for people."[176]

214. Similar views were expressed by Carers Wales who stated:

> "For many carers of adults, disabled children and others, direct payments have been a positive way of increasing flexibility and their control over how they receive their care and support. It is just that it is not for everybody. While we very much support the direction in the Bill in encouraging greater use of direct payments, it is important, first, that people get the right support to administer the complexities, but also that they have a choice of different options."[177]

215. Some witnesses made reference to existing problems regarding the take up of direct payments. In written evidence, Mind Cymru stated:

> "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.
>
> [...]
>
> "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."[178]

216. Evidence from panels of children and young people suggested that there is little awareness of direct payments[179], and the Advisory Group recommended the inclusion in the Bill of a duty to promote access to information about options for voice and control, including direct payments[180].

217. On this point, a Joint response by Sense Cymru, RNIB Cymru, Action on Hearing Loss Cymru, Vision in Wales and Guide Dogs Cymru stated that:

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[176] RoP, paragraph 144, 2 May 2013
[177] RoP, paragraph 29, 2 May 2013
[178] SSW 57, Written Evidence
[179] RoP, paragraphs 202 – 207, 8 May 2013
[180] HSC(4)-18-13(ptn20), 6 June 2013

> "Sections 34-37 (direct payments) need to be amended to fully realise the Welsh Government's aim of voice and control for service users through direct payments. Research by Sense (2008) suggested that almost a third of deafblind people surveyed (31%) in England and Wales did not even know what direct payments were. The research also found there was geographic variation in the hourly rates offered to people with similar circumstances.[181] We think the direct payments sections must require minimum standards to promote awareness of the options that people have and ensure that local authorities offer a full breakdown and indication of the rationale behind the amount offered as a direct payment."[182]

218. Evidence from service users was generally negative about direct payments but there was a general acknowledgement of thea lack of awareness of direct payments.[183] Some service users were opposed to direct payments questioning the ability of older people to manage their own accounts and highlighting that responsibility would inevitably fall to family members.[184]

219. Service users also raised concerns about the lack of regulation and accountability of service providers and the potential for individuals agreeing to contracts which they unable to pay for, that don't provide the service they need, and legally they cannot get out off.[185]

220. On a different matter, some witnesses commented on whether this Bill would be an opportunity to provide the NHS with the ability to offer direct payments. A representative from Powys Teaching LHB stated:

> "I know of a case where the NHS got provision for direct payments. An eyebrow was raised, and the legality was checked on it. It is legal, but it is not a common practice. So, it is an area for further exploration. It is not an easy area, because frameworks need to be in place around safeguarding and competence and the whole nine yards in relation to that. So, it is not an easy area at all. Further work would be required on the benefit that people would find from that."[186]

221. She added that:

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[181] Sense, Deaf blind people and families' experiences of direct payments, 2008
[182] SSW 26, Written Evidence
[183] HSC(4)-18-13(ptn12), 6 June 2013
[184] HSC(4)-18-13(ptn12), 6 June 2013
[185] HSC(4)-18-13(ptn12), 6 June 2013
[186] RoP, paragraph 157, 18 May 2013

> "I know of a case in Wales where a direct payment has been made to enable care. It is in relation to a child and it is funded from the NHS as part of a joint arrangement with the local authority. So, it may be that they are using a different route to achieve that. However, it seems to me that that is a lot of work to get through."[187]

Evidence from the Deputy Minister

222. The Deputy Minister's supplementary evidence acknowledged that the Bill 'broadly maintain[s] the current legal framework' but would allow for improved support for users. For example, regulations would provide for local authorities to act as an agent on behalf of the user of direct payments. The Deputy Minister confirmed that there is no intention to make direct payments the default method of social services provision.[188]

Our View

We considered the differing views of witnesses on whether direct payments should become the default method of service provision and these were reflected in a range of views within the Committee. We did not reach a unanimous view on this issue but the majority of committee Members did not wish to see direct payments as a default method of service provision.

We welcome the policy intent of this part of the Bill and the choice for users of social care that the Deputy Minister wishes to promote. We believe that direct payments have been poorly promoted by local authorities in Wales, denying service users genuine opportunities for greater voice and control. Having considered the evidence, we recommend that the Deputy Minister considers amending section 34 to place a duty on local authorities to promote direct payments.

We have considered section 34 of the Bill and are concerned about the breadth of sections 34 (3) (c) (i) and 34 (4) (d) (i) which provide that local authorities may not be required or allowed to make direct payments if they are not satisfied that this would be an appropriate way of meeting needs . We consider these sub sections allow local authorities too much discretion to decide whether to provide direct payments and we therefore recommend that they are removed.

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[187] RoP, paragraph 159, 18 May 2013

[188] HSC(4)-18-13(ptn13), 6 June 2013

However, in strengthening the promotion of direct payments we would expect the Deputy Minister to put in place provisions for safeguarding users of direct payments against the misuse of the money by others.

We have also considered the potential for the Bill to provide the NHS with the ability to offer direct payments in certain circumstances. We recommend that the Deputy Minister considers extending the provision of direct payments to people in receipt of joint health and social care packages.

User and Community controlled providers

223. Section 7 places a duty on local authorities to promote social enterprises, co-operatives, user-led services and the third sector to provide care and support and preventative services.

Evidence from Witnesses

224. The Wales Co-operative Centre raised concerns that the proposed 'duty to promote' co-operatives in Bill needs to be strengthened to deliver transformational change. In their written evidence they proposed that:

> "…the Bill is amended to insist that local authorities ensure there is provision of services by social enterprises and co-operatives."[189]

225. They suggested the text for such an amendment could be added under section 7 (1) (d) and read:

> "(2) A local authority must secure the provision of care and support and preventative services in its area by social enterprises or co-operative organisations or arrangements."[190]

226. In contrast some witnesses, including local authority representatives, have questioned the rationale for limiting the duty to social enterprises, co-operatives, user-led services and the third sector, and have suggested that the private sector be included.

227. The WLGA, in supplementary written evidence, have preferred that the duty to be 'replaced by a more general duty to promote sustainable local markets including a range of different delivery models'.[191]

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[189] SSW 35, Written Evidence
[190] SSW 35, Written Evidence
[191] HSC(4)-18-13(ptn2), 6 June 2013

228. In supplementary written evidence, Care Forum Wales highlighted that many private sector providers also meet the definition of a social enterprise. It called for a clear statement on the face of the Bill that commissioners have 'a legal responsibility to ensure co-operation with all parts of the system'.[192]

229. In oral evidence, an independent care home provider commented on this issue stating:

> "If the future is a co-operative movement of social care 20 or 30 years from now, so be it, if that is what people want, but we need to be careful how we manage where we are and where we are going. In particular, it is disappointing, and you heard me saying this in the private session recently, that the language is not clear. So, if someone reads the Bill, it is the voluntary or third sector and then it is the independent sector. It would be a lot clearer for everyone if it was the third or voluntary sector and the private sector. Let us know it. Most small and medium-sized enterprises in Wales that provide social care are having the most challenging times that they have ever had. Often, if you look at the definition of a social enterprise, you could read across every single one of them."[193]

230. Evidence from service users indicated a lack of understanding of social enterprises. The majority were concerned about the level of commitment involved with social enterprises and that it could be burdensome, taking up too much time and energy and whether individuals would have the capacity to be involved on an on-going basis.[194]

231. However, service users also expressed positive views about the principle of social enterprises highlighting benefits such as improving the sense of community and giving service users greater control over the services they use.[195]

Co-production

232. There are no references to co-production on the face of the Bill although the Deputy Minister has made positive comments about co-production in the context of preventative services.[196]

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[192] HSC(4)-18-13(ptn15), 6 June 2013
[193] RoP, paragraph 329, 18 April 2013
[194] HSC(4)-18-13(ptn12), 6 June 2013
[195] HSC(4)-18-13(ptn12), 6 June 2013
[196] RoP, paragraph 133, 18 April 2013

233. Some witnesses made the case for developing co-production in social service and have sought reassurances that this would be the preferred method of social services delivery in the future.

234. In written evidence, Diverse Cymru stated:

> "Genuine Co-production must be at the heart of delivering a truly transformed and citizen centred social services across Wales. Co-production should be established as the preferred method of delivering social services in the Codes."[197]

235. Similar views were expressed by the Partner Organisation co-ordinated by Disability Wales, who stated:

> "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."[198]

236. Mind Cymru also informed us that:

> "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 […]"[199]

Evidence from the Deputy Minister

237. In oral evidence, the Deputy Minister said that she would be keen to hear what ideas the Committee has in this area should it be of the view that a duty to promote is insufficient and that the inclusion of these ideas in its stage 1 report would be very welcome. She stated that:

> "I am keen on this development. It is not for the Welsh Government to develop the agencies or whatever; it is for us to develop the environment where it can happen. This is where I would like to ask for the committee's assistance and say that if you have any ideas with regard to this development, I would be glad to hear from you. This is something that we can work on together, bringing co-production to mind as well, which I might have brought into my answer on preventative services, Chair, but it did not strike me at the time. Co-

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[197] SSW 32, Written Evidence
[198] SSW 15, Written Evidence
[199] SSW 57, Written Evidence

> production is important in the development of preventative services, namely that they are co-produced by the service user and that that is an input into their development. I know that a lot of work is going on at the moment in developing the thinking. Social care is ripe for the development of social enterprises or co-operatives, and preventative services would be a good way for that to happen. So, I am open to any suggestions from the committee with regard to that."[200]

238. However, in commenting further, in a letter to the Committee on 14 May 2013, on whether a duty 'to promote' is strong enough to secure effective implementation by local authorities to promote social enterprises, co-operatives, user-led services and the third sector to provide care and support and preventative services, the Deputy Minister stated that:

> "I believe that a 'duty to promote' provides a clear direction for local authorities to follow. It is for local authorities to create the conditions in which these types of services can thrive so a 'duty to promote' is, I believe, the correct language to use. I have been clear on a number of occasions that the current model of delivery is not sustainable and I think local authorities and other partners also recognise this. A key way of moving to a more sustainable model is to involve a wider range of partners who can deliver services in new ways. The Bill provides a framework under which local authorities and their partners will need to determine how best to do this, by increasing the use social enterprises and other initiatives according to their own local experiences and circumstances."[201]

239. In referring to co-production the Deputy Minister stated in oral evidence:

> "…Co-production is important in the development of preventative services, namely that they are co-produced by the service user and that that is an input into their development. I know that a lot of work is going on at the moment in developing the thinking. Social care is ripe for the development of social enterprises or co-operatives, and preventative services would be a good way for that to happen. So, I am open to any suggestions from the committee with regard to that."[202]

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[200] RoP, paragraph 133, 18 April 2013
[201] HSC(4)-18-13(ptn7), 6 June 2013
[202] RoP, paragraph 133, 18 April 2013

Our View

We have considered the scope of the duty on local authorities in section 7 of the Bill and welcome the duty to promote and develop social enterprises, co-operatives, user-led services and the third sector to provide care and support and preventative services. We recommend that the Deputy Minister brings forward an amendment to section 7 (1) (d) to either include the independent sector or remove reference to 'third sector organisations'.

We recommend that the Deputy Minister provides guidance on the governance arrangements for social enterprises to ensure they are managed in a robust manner that is consistent with the aims of the Bill.

6. Safeguarding – adults and children

Overview

240. Part 7 of the Bill is concerned with safeguarding and provides a new legal framework for the protection of adults at risk including a duty on local authorities to investigate suspected abuse and respond accordingly. It provides powers of entry to allow access to a person suspected of being at risk. An existing power under section 47 of the National Assistance Act 1948[203] to remove a person in need of care from their home would be abolished in Wales.

241. Part 7 also provides for children's safeguarding boards and new adult safeguarding boards, including arrangements for possible future mergers of children and adult boards.

Evidence from Witnesses

242. Some witnesses have questioned whether the Bill as drafted meets the Welsh Government's own aspirations and whether safeguarding is too large a subject to put into this Bill. An alternative argument is that it is more coherent to have safeguarding as a part of a wider Bill.

243. In oral evidence, a representative of Betsi Cadwaladr University Local Health Board stated that:

> "Looking at the Bill and the detail in it, in totality, we have seven pages in relation to safeguarding. Personally, I believe that it would be clearly advantageous if it was removed from the Bill and we had separate legislation."[204]

244. Some witnesses have raised concerns regarding the sharing of information in relation to safeguarding. A representative of Betsi Cadwaladr University Local Health Board informed us that:

> "I think that we do need to strengthen the governance around information sharing. I am well aware of other legislation and guidance. Speaking on behalf of the NHS, it is about how we are able to share that information, and about our technology and ability to retrieve data efficiently and quickly to provide that information. However, I do believe that we need to be very clear. Within this, with

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[203] National Assistance Act 1948,

[204] RoP, paragraph 492, 2 May 2013

> regard to information sharing and accountability, I do not see any clear reference to independent contractors from our GPs, as such. Obviously, we are looking at the NHS—it is identified there—but I think we need to be very clear about to whom we are referring and to build independent contractors into the information-sharing governance for safeguarding."[205]
>
> […]
>
> "There is legislation out there, and they are governed by the General Medical Council. Within that, there is clear guidance on sharing information. However, to strengthen that within the safeguarding arena, it needs to be included in black and white and there needs to be a clear reference to it."[206]

Evidence from the Deputy Minister

245. In commenting on the suggestion that safeguarding should be the subject of a separate Bill the Deputy Minister stated in supplementary evidence that:

> "I am strongly of the view that it is just not possible to talk about social care and support without including safeguarding and to this end the Bill will ensure that there is clarity and focus in this area and will ensure that key safeguarding agencies have the statutory tools to work collaboratively to protect people who might be at risk."[207]

Our View

We have considered the suggestion that there should be separate legislation as part of our deliberations on the calls by some witnesses for separate legislation on social services for children. These discussions are detailed in paragraphs 294 – 308 of the report.

We are not convinced of the need for separate legislation on social services for children and for similar reasons we are not convinced that safeguarding should be the subject of separate legislation.

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[205] RoP, paragraph 511, 2 May 2013
[206] RoP, paragraph 513, 2 May 2013
[207] HSC(4)-18-13(ptn13), 6 June 2013

Adult Protection and Support Orders

Background

246. Section 105 of the Bill would give 'an authorised officer' powers to enter premises in order to gain access to, and speak in private with, an adult suspected of being at risk. It would not, however, give powers of removal to a safe place, as is the case in the Adult Safeguarding and Protection (Scotland) Act 2007, and would repeal an existing power in section 47 of the National Assistance Act 1948 to remove persons in need of care and attention (see section 107).

Evidence from Witnesses

247. In evidence a number of witnesses expressed views that the powers in the Bill would not go far enough and that powers to remove the person at risk or experiencing abuse to a safe place, even if rarely used, should be included in the Bill.

248. On this point, Age Cymru stated:

> "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
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> "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."[208]

249. Age Cymru followed up this point in oral evidence commenting that:

> "We have some concerns about the way in which the powers are currently drafted. At the moment, there is a power of entry to speak with the adult at risk. Beyond that, unless there is a criminal offence, there are no powers. We think that that needs to be strengthened. We would support a power of removal so that the adult at risk could be removed from the situation for their own safety. We recognise that you need to balance that with choice and control, and that it very much has to be the individual's decision. We think that the Adult Support and Protection (Scotland) Act 2007 has some quite useful legislative principles on its face, which would be useful specifically in the context of the safeguarding section of the Bill."[209]

250. The Older People's Commissioner for Wales also commented on this issue in written evidence stating that:

> "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

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[208] SSW 66, Written Evidence
[209] RoP, paragraph 205, 2 May 2013

> is necessary in order to protect a person who cannot protect themselves."[210]

251. The Advisory Group provided a clear view on powers of intervention stating that:

> "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 abuse.
>
> "We are not satisfied with the Deputy Minister response in her first evidence session; she said that she assumed that if abuse was identified it would be a criminal matter and picked up by other agencies.
>
> "We accept that some instances of "abuse" such as physical or sexual abuse can (in theory) be clearly picked up by criminal justice agencies as a next step, but other instances may not be as straightforward and we are concerned that in the worst case scenario, an adult known to be at risk will be left in a dangerous environment with their abuser.
>
> "We believe that powers of intervention should include injunction orders and removal powers: the aim of which would be to reduce the risk posed to the adult at risk 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 Assembly to adopt within the Social Services & Wellbeing (Wales) Bill. These principles can provide checks and balances for professional judgement."[211]

252. The Association of Chief Police Officers was the only witness holding the view that further powers of intervention were not needed.[212]

253. On this issue, evidence from service users representing older people, found that those asked felt that social workers should be allowed to enter

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[210] SSW 31, Written Evidence
[211] HSC(4)-18-13(ptn20), 6 June 2013
[212] RoP, paragraph 380, 2 May 2013

premises if they suspect abuse although they should be accompanied by a police officer. Some service users also highlighted that many older people may not call for help in situations where they are being subject to neglect or abuse. The majority of service users when asked were in favour of removing vulnerable adults at risk with police assistance, although some felt it should be the perpetrator that should be removed in such situations. Service users also commented on the importance of removing adults at risk to a safe environment.[213]

Evidence from the Deputy Minister

254. In respect of the power to remove an adult at risk, the Deputy Minister explained in oral evidence that:

> "There is an important balance here in regard to how we approach the issue of possible abuse of an adult. We have to respect an adult's right to take a risk, especially where there is competence, and that issue is exceedingly important. On the other hand, we need the wherewithal to be able to speak to an adult in private if there is a suspicion of abuse, and without a third party present. We have come to a decision that the best way to do that is to be able to apply to the court for an adult protection order. I do not know how a person with competence would always look at the power of entry if that person has the right to his or her own decision as to how they protect themselves. Certainly, we need to be able to respond to any suspicion, and the application to the court is the way that we decided to do that."[214]

255. An official accompanying the Deputy Minister clarified the position stating:

> "…I would just clarify a little about the discussions that we are having with the Ministry of Justice at the moment about exactly how the Orders will work in practice. As the Deputy Minister said earlier on, it is about striking the right balance with the principals in the Bill, in which the adult is the best determinant of their needs, wishes and feelings. It is recognising their human rights and the duty to protect. So, it is a fine balance. We have not included the duty to remove somebody against their will, but as the Deputy Minister said, there are provisions in other legislation that could lead to somebody who is

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[213] HSC(4)-18-13(ptn12), 6 June 2013

[214] RoP, paragraph 139, 18 April 2013

> at significant risk being either persuaded or faced with action taken on a criminal basis."[215]

256. In oral evidence on 6 June 2013 the Deputy Minister clarified that there were unresolved issues of consent surrounding the inclusion of powers of removal in the Bill and discussions were on-going. The Deputy Minister informed us that:

> "I find this very interesting with regard to section 47 and the comments. We had to amend the Bill because of consents and what was decreed to be a non-devolved criminal justice issue with regard to the power of removal. We are still talking about that, and our Bill was amended in order to bring it into the competence of the National Assembly at that point. If there is agreement on consent, we can amend the Bill accordingly.
>
> [...]
>
> "On the issue of the power of removal, a social worker, for example, having talked to a person it is suspected has been abused, will have recourse to the police with regard to any criminal charges that are to be brought in connection with the mistreatment of the person. This is not an issue that has been brought to its conclusion with regard to the power of removal, and the Royal College of Nursing made this point. I have a note here that states that section 105 of the Bill would allow for an order to have access to any adult at risk."[216]

257. A Legal Advisor accompanying the Deputy Minister clarified that:

> "The only point that I was making was that there is a difference, in that section 47 of the National Assistance Act 1948 is about the removal of persons who are living in insanitary conditions, versus the power in section 105 of the Bill to apply for orders of the court to allow access to any vulnerable adult who is at risk."[217]

258. In conclusion, the Deputy Minister wrote to this Committee on the 11 June 2013 clarifying the position stating:

> "During the White Paper consultation on the Bill proposals last spring, the view was expressed that the Welsh Government did not intend to

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[215] RoP, paragraph 144, 18 April 2013
[216] RoP, paragraphs 225 – 226, 6 June 2013
[217] RoP, paragraph 227, 6 June 2013

> 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."[218]

Our View

We welcome the Deputy Minister's commitment to resolving issues of consent surrounding the inclusion of powers of removal in the Bill. We note that discussions with Whitehall on this matter are yet to be finalised.

We welcome the Deputy Minister's intention to bring forward an amendment to include powers of removal in the Bill should the issues of consent be resolved with the UK Government. However, if these matters remain unresolved we recommend that the Deputy Minister does not repeal section 47 of the National Assistance Act 1948.

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[218] HSC(4)-22-13(ptn1), 1 July 2013

Safeguarding and Protection Boards

Background

259. The Bill provides for the establishment of new safeguarding adult boards and safeguarding children boards. Regulations will set out the geography, membership, functions, funding etc. of the Boards and section 111 (3) gives the responsibility to Welsh Ministers to decide who will be the lead partner in the children's and adults' boards.

260. Section 117 of the Bill provides powers to allow for the merging of children and adults' boards by Order.

Evidence from Witnesses

261. A number of witnesses have challenged the rationale for merging children and adult safeguarding boards and have questioned whether merged boards would have the capacity to address the diverse and complex issues of both groups. Witnesses from children's charities called for the removal of section 117 from the Bill.

262. The Children's Commissioner for Wales expressed concerns about the powers under section 117 to merge adult and children safeguarding boards in operation at a local authority level.[219]

263. Written evidence from Hywel Dda Health Board also stated that adopting a common approach to safeguarding (for adults and children) may dilute rather than strengthen the process.[220]

264. Some witnesses were concerned that the merging of children and adult safeguarding boards could result in a loss of focus on both sides. A joint written response from Safeguarding Children's Boards in South East Wales raised concerns stating:

> "There are also concerns from practitioners and managers that merging the Adult and Children's Safeguarding Boards will result in one agenda being dominated by the other leading to a loss of focus on either children and young people or vulnerable adults."[221]

265. This view was shared by ADSS Cymru who informed us that:

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[219] SSW 58, Written Evidence
[220] SSW 49, Written Evidence
[221] SSW 36, Written Evidence

> "We are certainly not at a time where we would consider that merging the two agendas would be beneficial to children or vulnerable adults. We need to recognise and embrace the differences in safeguarding for those client groups. There may be some commonalities around business support mechanisms, but in terms of outcomes around keeping people safe, we need to recognise difference. We would certainly not be advocating the merging of those agendas at this stage."[222]

266. A representative from ADSS Cymru further supported this view drawing on personal experience highlighting that:

> "...As someone who chairs both at the moment, I can confirm that they have very different agendas. There is different emphasis, and they are at a very different point in development. That merging would, in my view, put the agendas of both at considerable risk of not progressing in the way that they need to progress." [223]

267. NSPCC Cymru strongly opposed the merging of adult and children safeguarding boards, stating:

> "We remain opposed to the merger of children and adults safeguarding boards. We note that the most recent SSIW inspection into local safeguarding boards made comments then about their effectiveness and the robustness of their existing arrangements. So, we are concerned about any new arrangements that would pile on additional responsibilities. We are also aware that the ADSS and the WLGA are commissioning workshops for local safeguarding boards in order to look at their effectiveness in terms of being local safeguarding boards just for children in respect of the expanded areas of control. We think that a need clearly has been identified about the effectiveness of the arrangements, as they stand now, in relation to safeguarding children. If those arrangements for safeguarding children just combined with those for safeguarding adults, even though there would be some benefits, we are concerned that the focus on children will get lost. The benefits of this are largely around efficiency and effectiveness, which are, of course, vitally important, in order, for example, to avoid duplication, but I have a concern that there could be a loss of practice. If we focus too much on structure, we will lose the focus on what makes effective

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[222] RoP, paragraph 274, 2 May 2013
[223] RoP, paragraph 275, 2 May 2013

> safeguarding happen and what makes good practice. That is our concern."[224]

268. Probation Trust Wales also commented on the merger of children and adult safeguarding boards stating that:

> "At the moment, we are involved in a range of work in terms of that transition to adulthood experience. It is probably fair to say that it is not just in the safeguarding arena that some work is needed in terms of developing that. That has certainly been recognised by the Ministry of Justice and by other associated bodies. While merging adult and children boards would bring some clarity in terms of safeguarding as a whole, I think that there is a danger, potentially, if that is not managed appropriately. The focus, perhaps, on certain groups may diminish within that approach. I have sat on both adult and children safeguarding boards. Being able to focus on one segment of the population is certainly an advantage; so I think that the members sitting on the boards would need to be very clear and understand absolutely the remit in terms of covering everyone. The Bill certainly gives enough emphasis in terms of ensuring that, but I think that that would need to be monitored, in practice, to ensure that the focus on either adults or children is not lost."[225]

269. The City and County of Swansea welcomed the plans to merge boards adding that staff were positive about the advantages this could bring to the service provided stating that:

> "…front line staff positive about likely "improvements to safeguarding with new powers for safeguarding adults, and the alignment of the safeguarding adults framework with children's safeguarding."[226]

270. Funding for safeguarding boards was also an issue raised by some witnesses who felt that a requirement to contribute to funding needed to be included either on the face of the Bill or in subordinate legislation, although the difficulties regarding non-devolved bodies were acknowledged.

271. Another issue raised by witnesses was whether the chairs of safeguarding boards should be independent. Children in Wales were in favour of independent chairs stating that:

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[224] RoP, paragraph 113, 8 May 2012

[225] RoP, paragraph 375, 2 May 2013

[226] SSW 27, Written Evidence

> "There is something very valuable in having someone independent as long as they are experienced. One of the dilemmas is how much access they may have to the day-to-day work of the authority to gain an understanding of the current hot topics and issues. One of our members, NSPCC Cymru, is very keen on having independent chairs of safeguarding boards, so we would say that, on balance, we believe that it is possible. Over the years, there have been rotating chairs in different authorities; some have worked well and some have worked badly. If big issues have to be dealt with about the lack of working together by agencies, then that independence is very important."[227]

272. This was a view shared by Age Cymru.[228] The WLGA also commented on the resource implications of appointing independent chairs stating:

> "In principle, we think that there would be potential advantages in having independent chairs. We have not done any calculations on this, but if you have a chair that has to chair meetings, but also build local links in-between meetings and network with all the relevant agencies over time, that would be a considerable resource implication. That links with our continued disappointment that we have not sorted out the funding formula for safeguarding boards, despite indications from a range of agencies that forming a voluntary arrangement is not impossible. So, in principle, fine, but we would need to be very cautious about the cost implications".

273. On a different issue, in a letter to the Committee, NSPCC Cymru raised specific concerns about sections 106 and 108 and the potential difference between the duties reporting adults at risk and children at risk. They stated that:

> "Section 106 Duty to report adults at risk (1) requires relevant partners to inform the local authority if it suspects an adult at risk.
>
> "Section 108 Duty to report children at risk omits this duty. We recommend the provision at Section 106 (1) be included for children at Section 108."[229]

274. Section 114 of the Bill provides for the 'supply of information requested by safeguarding boards'. Some witnesses made reference to the importance of information sharing and the need to strengthen this to improve

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[227] RoP, paragraph 211, 2 May 2013

[228] RoP, paragraph 212, 2 May 2013

[229] HSC(4)-18-13(ptn14), 6 June 2013

safeguarding with the need for a clear reference on the face of the Bill to independent health contractors, such as GPs, dentists and pharmacists, in the information-sharing provisions.[230]

Evidence from the Deputy Minister

275. In evidence to the Committee on 18 April 2013, the Deputy Minister stated that there are no current plans to merge adult and children's safeguarding boards.[231] She also confirmed that:

> "The safeguarding proposals are an example of that, where we have clearly defined six geographic footprints. We have made it clear that we will develop the safeguarding policies on the six footprints. That is an example of how the Bill gives us the power to develop regulations that will allow us to define the development of partnership working between local health boards and constituent authorities."[232]

276. In her letter of the 11 May 2013 the Deputy Minister reaffirmed her intention to include the powers to merge the boards but stated:

> "I want to reiterate, therefore, that in the short to medium term there is no intention to use the proposed powers to merge the boards. However this is a Bill for a generation and in that context we have decided to accept the Forum's advice and include the provision. This is because we can see the benefits over the longer term that could arise from considering the safeguarding needs of people as a whole rather than separately as adults and children. However, any proposal to merge would be subject of formal consultation."[233]

277. In expanding on the rationale for providing powers to allow for the merging of children and adult boards the Deputy Minister stated in the same letter to the Committee that:

> "This provision within the Bill flows from the work and final report of the Wales Safeguarding Children Forum".
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> […]

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[230] RoP, paragraph 511, 2 May 2013
[231] RoP, paragraph 124, 18 April 2013
[232] RoP, paragraph 72, 18 April 2013
[233] HSC(4)-18-13(ptn13), 6 June 2013

> "Another aspect of the safeguarding proposals which has caused some concern is that which would allow for the merger of safeguarding children and adults boards. Again this is something which stems from the work of the Forum. Their report concludes, and I quote:
>
> > 'There is a strong case to establish and develop combined Adult and Children's Safeguarding Boards to reflect the National Board proposal. This would strengthen further leadership and accountability for safeguarding and protection at a subnational level. There is a rationale to progress this combined model at the same time as establishing the National Safeguarding Board for Adults and Children. It may, however, be advisable to work toward this, when a more robust statutory framework for adult protection in Wales has been introduced.'"[234]

278. The Deputy Minister also advised us that she has agreed that regulations relating to the merging of regional safeguarding boards should be dealt with via the affirmative procedure.[235]

279. In commenting on sections 106 and 108 and the potential difference between the duties reporting adults at risk and children at risk, an Official accompanying the Deputy Minister informed us that:

> "The Deputy Minister did say when she was at the Children and Young People Committee that she would bring forward a Government amendment in this area, because we realised that the duties were inequitable within the published Bill. So, there will be an amendment on this in order to equalise them."[236]

Our View

We did not receive any external evidence to suggest that the merging of regional adult and children safeguarding boards would improve safeguarding. The majority of the Committee was in favour of removing these powers from the Bill. We recommend that the Deputy Minister remove powers in the Bill allowing the merging of regional adult and children safeguarding boards.

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[234] HSC(4)-18-13(ptn13), 6 June 2013

[235] HSC(4)-18-13(ptn13), 6 June 2013

[236] RoP, paragraph 214, 6 June 2013

If the Deputy Minister is not minded to remove powers to combine regional safeguarding boards we recommend that she provides further information on the rationale for including powers in the Bill to merge such boards and detail on the procedure for merging boards. We also recommend that any decision to merge boards should be subject to a super affirmative procedure.

We note that the Deputy Minister's decision to include powers to combine safeguarding boards stems from advice in a report from the Wales Safeguarding Children Forum. We recommend that this report is re-published and the Deputy Minister makes an oral statement to plenary on this issue before the end of Stage 2 proceedings.

We note the specific concerns raised by NSPCC Cymru about sections 106 and 108 and the potential difference between the duties reporting adults at risk and children at risk. We welcome the Deputy Minister's intention to bring forward a Government amendment to equalise this anomaly.

We note the on-going issues regarding the funding of safeguarding boards and specifically the involvement of non-devolved safeguarding board partners. We welcome the Deputy Minister's on-going work in resolving these issues.

We note that section 111 (2) of the Bill lists safeguarding boards partners but omits mention of the probation service. We recommend that this section is amended to include reference to the probation service.

We have considered the views of witnesses that the chair of safeguarding boards should be independent. However, the majority of the Committee were not convinced that independent chairs would be necessary to achieve the expected outcomes, provide the appropriate lines of accountability and ownership. We are also concerned about the cost implications of appointing independent chairs. We ask the Deputy Minister to take these views into account when developing regulations to accompany this section.

We note the Deputy Minister's intent to develop safeguarding policies on six geographical footprints. We recommend that she provides further information on the footprints and the rationale behind her intent.

National Independent Safeguarding Board

Background

280. Section 109 of the Bill would provide for the establishment of a National Independent Safeguarding Board which would provide support and advice to safeguarding boards, report on adequacy of arrangements to safeguard adults and children, and recommend improvements to Ministers. Section 110 allows for regulations about constitution, membership, proceedings, consultation, reporting etc. of the National Independent Safeguarding Board.

281. The Explanatory Memorandum states that a National Board would:

> "provide national leadership to this agenda; advise Ministers on the adequacy and effectiveness of safeguarding arrangements; and advice on action to help strengthen policy and improve practice."[237]

Evidence from Witnesses

282. Some witnesses, notably the Children's Commissioner for Wales and children's charities, were unhappy that the National Safeguarding Board would be responsible for both adults' and children's issues, and have called for separate boards for each.

283. The Children's Commissioner for Wales suggested that he would like to see separate national independent boards for adult safeguarding and child safeguarding[238] but the Older People's Commissioner for Wales felt that this could be confusing adding that:

> "If you had one board that had two elements to it, that might be a better way to go ahead, because if the board existed as an independent body, as the commissioners' bodies are—we should note as well that if a safeguarding board was set up and was independent, we would need to look carefully at the overlap with bodies like us; we would make sure that we had a memorandum of understanding drafted between us—it would take a big overview of everything that was going on. My understanding is that it would look at how policies and procedures are working, keep things under review and look at cases that come up that are particularly serious, the lessons that can be learned and so forth. If the right people are put on the board, then some people will be able to deal with adult and children's issues, because of their backgrounds, having had

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[237] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 68
[238] SSW 58, Written Evidence

> extensive involvement in both; that would be one way of dealing with it. Another way would be to have some people working on separate matters in relation to children and some in relation to adults. However, having more than one board at a national level would be confusing".[239]

284. ADSS Cymru welcomed the creation of a national independent safeguarding board, but had reservations about the Bill's focus on creating structures for collaborative working at strategic level rather than focusing on safe and effective practices.[240]

Evidence from the Deputy Minister

285. The Deputy Minister did not comment on this issue.

Our View

Having considered the evidence we are of the view that there should be separate national safeguarding boards for adults and children. We recommend that the Deputy Minister brings forward an amendment to this effect.

If the Deputy Minister is not minded to accept this recommendation we recommend that as a minimum there should be one national safeguarding board with two elements to it, one representing adults and the other representing children.

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[239] RoP, paragraph 476, 2 May 2013

[240] SSW 50, Written Evidence

7. Services for Children including looked after/accommodated/adopted children

"Due regard" to the United Nations Convention on the Rights of the Child (UNCRC)

286. In respect of the UNCRC, the Children's Commissioner for Wales refers to the Bill amending existing legislation and states:

> "[…] 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."[241]

287. In written evidence, the Children's Commissioner for Wales suggested that 'a clear example of failure to demonstrate the application of the due regard duty and compliance with the Convention', were 'arrangements to promote co-operation' in section 144 of the Bill (amending section 25 of the Children Act 2004).[242]

288. He also expressed concerns that the driver for change is the need to align existing arrangements for children with new duties in section 146 of the Bill relating to adults. He stated that:

> "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."[243]

289. Furthermore, the Children's Commissioner for Wales stated:

> "As Children's Commissioner for Wales I have concerns related to provision that brings together duties and functions in relation to the wellbeing 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 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

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[241] SSW 58, Written evidence

[242] SSW 58, Written Evidence

[243] SSW 58, Written evidence

> 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".

290. He added:

> "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."[244]

291. In responding to the concerns raised by the Children's Commissioner for Wales, Barnardo's Cymru told us that:

> "We do not think that it [the Bill] necessarily contravenes, but it certainly does not go far enough to promote and protect the underpinning principle of best interests of the United Nations Convention on the Rights of the Child throughout the Bill. If we look at such things as the definition of wellbeing and preventative services that requires a person to have been assessed in terms of care and support need. However, it should include the best interests of the child, that is, in terms of what is available to truly prevent a child from requiring services except in those extraordinary circumstances. That is an example where the Bill could be far more explicit in terms of best interests. Another example might be in relation to direct payments where that does not relate specifically to the best interests of the child. So, there could be a position where a parent is not looking to have their child supported through direct payments, but it might be in the best interests of the child that that is the case. So, there are lots of examples throughout the Bill of where best interests could be better promoted and protected through this piece of legislation."[245]

292. This view was supported by Action for Children who added:

> "We do not necessarily agree that the Bill contravenes it, but there are not sufficient opportunities to really be clear about what 'best interests' means in terms of children specifically. I do not have a

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[244] SSW 58, Written Evidence

[245] RoP, paragraph 11, 8 May 2013

> great deal to add really to what has been said by the other two charities."[246]

Evidence from the Deputy Minister

293. The Deputy Minister, responded to issues raised by the Children's Commissioner for Wales in oral evidence to the CYP Committee, she explained that:

> "…I hope that you will let me be very clear about this; the paramountcy principle in section 1 of the Children Act 1989 applies to courts making decisions about individual children. It does not apply to local authorities in the exercise of their duty to children in the areas generally. There is no risk – no risk – that the changes made by the Bill will affect the paramountcy principle as applied by the courts. So, it is the courts, not local authorities."[247]

Our View

We have carefully considered the Children's Commissioner for Wales' claim that the Bill contravenes the UNCRC and undermines the paramountcy principle under Article 3. We note his concerns that this is contrary to the best interests of children in Wales but we do not agree with his interpretation.

We also note the distinction the Deputy Minister makes regarding the application of the paramountcy principle by the Courts and by Local Authorities and her view that there is no risk to the rights of the child arising from this Bill. We are not convinced by this interpretation of the matter.

In considering evidence from children's organisations on this matter we accept the view that the Bill does not necessarily contravene the UNCRC convention. However, we recommend that the Deputy Minister makes a statement, prior to the end of stage 2, on how the scheme of legislation accompanying this Bill will include regulations and codes of practice will promote and protect the underpinning principle of the best interest of the child throughout the Bill.

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[246] RoP, paragraph 13, 8 May 2013

[247] RoP, paragraph 113, Children and Young People Committee, 25 April 2013 (pm)

Case for Separate Legislation

Background

294. In the Welsh Government's Legislative Programme 2011-16, it was announced that there would be a Children and Young Persons Bill, which would build on the Rights of Children and Young Persons (Wales) Measure 2011[248] and expand the role of the Children's Commissioner for Wales. In the Annual Statement on the Legislative Programme in July 2012, the First Minister said that commitments in this area would instead be taken forward through the Social Services and Well-being Bill although this did not include reference to the powers of the Children's Commissioner for Wales.

295. We heard evidence from number of witnesses have made reference to the breadth of the Bill raising the question of whether the Bill would be better separated into a number of smaller Bills.

Evidence from Witnesses

296. In written evidence, the Children's Commissioner for Wales stated:

> "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 wellbeing services in the Welsh Bill does not afford the same level of protection to the distinct needs and rights of children."[249]

297. In oral evidence to the CYP Committee, the Children's Commissioner for Wales did not clarify whether he believed a separate Bill for children would be preferable in Wales.

298. Evidence from children's organisations suggested that they did not wish to see separate legislation as there was a desire to make progress in terms of legislating and not delay this any further.

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[248] Rights of Children and Young Persons (Wales) Measure 2011,

[249] SSW 58, Written Evidence

299. In referring to the case for separate legislation Action for Children informed us that:

> "We need to take the opportunity that we have and, although you are right that there was a lot of discussion about a separate children's Bill, I think that I speak for all the charities in saying that we are broadly in support of this Bill. This is the legislation that we have in front of us and we want to make it work, so, at this stage, we would not want to do anything that would diminish the power of this Bill. However, there are a number of areas, which we will hear about during this morning, where the position of children needs to be strengthened. In terms of the alignment, the intention was for far more integrated services and we would all welcome that. The concerns are around the definition of 'people' and what that means for children. However, on your specific question, at this stage, we want to use this legislation as best we can, rather than lobby for a separate children's Bill."[250]

300. Similar views were shared by Barnardo's Cymru who told us that:

> "We are broadly in support of the legislation in how it attempts to streamline all the legislation in relation to people generally. However, from a children's organisation perspective, there have been many gains in Wales over the years in children's matters generally—not just in primary legislation, of course; until now, we have not had that opportunity. I think that the Welsh Government can be proud of what it has achieved with regard to the children's agenda over the years. So, for children's organisations, the issue is more about that, while we accept that there are gains here for adults, particularly vulnerable adults, we would not want to see that at the expense of what is available for children and young people. However, we accept that this is the vehicle that we have to work with, and our job is to make sure that the Bill is as robust as it can be for children and young people."[251]

301. This was a view also endorsed by NSPCC Cymru.[252]

302. Other witnesses have raised concerns regarding the Bill being 'people focussed' and that an unintended consequence of this could be the dilution of the rights of adults and children.

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[250] RoP, paragraph 16, 8 May 2013
[251] RoP, paragraph 18, 8 May 2013
[252] RoP, paragraph 20, 8 May 2013

303. Children in Wales referred to this issue in written evidence, questioning the value of a Social Services Bill for both children and adults in stating:

> "…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.
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> […]
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> "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."[253]

And:

> "…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."[254]

304. Similar views were expressed by the Children's Commissioner for Wales who stated:

> "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."[255]

305. However, in oral evidence to this Committee the Children's Commissioner for Wales did not advocate a separate children's Bill stating:

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[253] SSW 77, Written Evidence
[254] SSW 77, Written Evidence
[255] SSW 58, Written Evidence

> "I am not entirely sure that that is necessary."[256]

306. With regard to this issue ADSS Cymru made the following points in oral evidence:

> "I would first like to say that, on a professional basis, we would strongly advocate unified social services directorates within local authorities.
>
> […]
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> "the point [was made] earlier about the need for services to be family-centred, and I think that we have moved away from that somewhat, in terms of always talking about individual assessment. It is seeing individuals within the context of their families that is absolutely crucial."[257]
>
> "We were strongly convinced by the evidence from the British Association for Adoption and Fostering and the Children's Commissioner for Wales that the Bill needs to focus on the rights of children. One thing that we would want to see running through it as a theme is a distinction between children's and adults' services. Adults' services are very much predicated on issues around competence and the ability to make decisions in your own right. Children's services are strongly predicated on issues of development and parental responsibility." [258]

307. On this issue, NSPCC Cymru stated that:

> "We welcome the Bill and its potential to improve the lives of vulnerable children and young people and their carers. However, we call for the rights of children to be clearly stated on the face of the Bill and for stronger provisions for the delivery of the spectrum of preventative and targeted services and structures to safeguard children effectively. Children are people, but they are vulnerable and have particular developmental needs and rights and so need our protection. We are content to have a people approach, but we need to

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[256] RoP, paragraph 629, 2 May 2013
[257] RoP, paragraph 286, 18 April 2013
[258] RoP, paragraph 287, 18 April 2013

> ensure that the rights and needs of children and improving their outcomes are the clear policy intentions of the Bill."[259]

Evidence from the Deputy Minister

308. In a letter the Deputy Minister clarified her views on the case for separate legislation stating that:

> "The Bill is indeed bringing together a range of issues, although I do not agree that these would 'normally be separated'. I have also noted that the suggestion that the Bill is too large arose in evidence provided by the Children's Commissioner and some NHS organisations whilst other stakeholders including the WLGA and ADSS Cymru made reference to the scope making it hard to fully understand what the impact of the legislation would be.
>
> "It needs to be understood however that this is a Bill which seeks to transform care and support provision in Wales and as such requires a system wide approach. The Bill is meant to herald change for a generation, if not longer. If services are to be sustainable, efficient and are to work towards improving outcomes for people, then they need to be considered together in order to offer seamless provision based on people's needs and wellbeing outcomes, rather than by providing a predefined list of services which could never be satisfactorily achieved."[260]

Our View

We note the views of children's organisations that they did not have a preference as to whether separate legislation was required for children in the area of social services. However, they were all in agreement about the importance of taking this opportunity to legislate on this important area at this time.

We have carefully considered the arguments for and against legislation being 'people focussed' as opposed to separate legislation for adults and children. The majority of the Committee support the people focussed model of legislation but a minority would prefer to see separate legislation for children. However, the Committee was unanimous in the view that an unintended consequence of the Bill should not be a dilution of the rights of either adults or children. We are

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[259] RoP, paragraph 4, 8 May 2013

[260] HSC(4)-18-13(ptn13), 6 June 2013

keen to ensure that the principle of a people focussed approach is realised in practice.

We also recognise the importance of a people focussed approach in overcoming and prevent problems during an individual's transition from child to adult social services and we refer to this issue in further detail in paragraphs 164-173 .

We note that during questioning in Plenary, the First Minister was asked, during his statement on the Programme for Government Annual Report, why separate legislation for children was no longer being fulfilled. He said:

> **"…the children and young people Bill, it is true, is not in the current legislative programme, but it is still something that is being looked at."**[261]

We recommend that the Deputy Minister issues an oral statement, before the end of stage 2, detailing the rationale for moving from having a separate Bill for children to a people focussed Bill.

Section 88: Young People entitled to support under sections 89 to 94

Background

309. This section sets out the different categories by which young people designated as 'care leavers' are defined for the purposes of the Bill. These include categories 1 to 5. The Bill aims to simplify (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 who qualifies as a "care leaver".

310. Section 88 therefore, restates existing duties but changes the terminology for categories of care leavers entitled to support to five 'new' categories of eligibility.

311. Following the potential of a Private Member's Bill being brought forward by Ken Skates AM, the Welsh Government took forward the proposal to develop a scheme to enable looked after children to have the opportunity to remain living with their foster family beyond the age of 18. The Welsh

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[261] Record of proceedings (RoP), 4 June 2013 -

Government undertook the consultation on what has become known as the '*When I am ready*' scheme'**.**

Evidence from Witnesses

312. In his written evidence, the Children's Commissioner for Wales referred to the Welsh Government's policy intention to strengthen the approach to supporting looked after children[262] and suggested, the Bill actually did little to alter the existing legislation in relation to looked after children in Wales. He stated:

> "While the intention to clarity 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."[263]

313. In respect of sections 88 to 94 of the Bill, which set out the different categories by which young people who are designated as 'care leavers', the Children's Commissioner for Wales stated that the intention to clarify duties in relation to care leavers may lead to improvements. Other written evidence from British Association for Adoption and Fostering Cymru[264] and from Dr Julie Doughty, Dr Sally Holland, and Dr Heather Ottoway (Cardiff University) call for more suitable terminology in these sections expressing concerns that the use of categories 1-5 is similar to terminology used in the prison service"[265].

314. The WLGA and ADSS Cymru stated that the provisions in sections 88 to 94 did not simplify existing legislation and that it used very pejorative terminology.[266]

315. NSPCC Cymru shared similar views stating:

> "Given the statement that this Bill will not stand in isolation of other statutes, NSPCC Cymru/Wales believes greater clarity is needed as to which parts of existing legislation relating to looked after children and care leavers will remain relevant to Wales. Without this clarification the Bill will not achieve its stated aim of specifying the

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[262] The Welsh Government's Legislative Programme 2011-16, 17 July 2012
[263] SSW 58, Written Evidence
[264] SSW 41, Written Evidence
[265] SSW 45, Written Evidence
[266] RoP, paragraph 61, CYP Committee, 25 April 2013 (pm)

> core legislative framework. They are concerned that certain sections do not "simplify" the legislation but could alter interpretation."[267]

Evidence from the Deputy Minister

In responding to questioning the Deputy Minister clarified her views on whether the Bill should use different language in respect of 'categorising' the entitlement of care leavers in sections 88-94. She stated that:

> "I have some concerns. Whatever you would call this group of people might give them some type of label, but if the committee has any suggestions for a replacement for the word 'category', I would be more than pleased to consider that."[268]

Our View

We share the concerns of witnesses regarding the use of categories 1-5 in reference to care leavers and are uncomfortable with such terminology being similar to that used within the criminal justice systems. We recommend that alternative terminology should be used.

Disabled Children

Background

316. Section 3 (5) of the Bill provides the meaning of 'disabled' as relevant to the Bill. It states:

> (5) A person is "disabled" if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).
>
> (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.

317. Section 3 (6) of the Bill confers powers on Welsh Ministers to further prescribe which categories of people can or cannot be included and that this can be done by negative procedure as 'the subject matter of these regulations is relatively minor detail in the overall legislative scheme'. The Explanatory Memorandum states that:

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[267] SSW 74, Written evidence

[268] RoP, paragraph 239, 6 June 2013

> "The definition of "disabled" is set out on the face of the Bill. This provision enables Welsh Ministers to prescribe further what categories of people can or cannot be included under the definition of 'disabled' for the purposes of this Act. This is suitable for regulations as it provides flexibility in the event that the definition of "disabled" is considered to be too narrow or too wide."[269]

318. Welsh Ministers will also be enabled to prescribe further what categories of people may or may not be treated as deaf, blind or both blind and deaf via the negative procedure.

Evidence from Witnesses

319. In his written evidence the Children's Commissioner for Wales stated that 'the changes in the Bill in relation to children to be included as subject to duties imposed upon local authorities represents retrogression in respect of article 23 of the UNCRC, which in summary states that disabled children should have a right to special care and education.[270]

320. He goes on to say that the content of the Bill suggests additional gate-keeping in relation to the provision of statutory services to children and suggested that the omission of disabled children in section 23 of the Bill as compared to section 17 of the Children Act 1989 is an example of such gate-keeping.[271]

321. Similar concerns were expressed by NSPCC Cymru in their written evidence that it is unclear how this definition of 'disabled' and provisions in this Bill will interface with the definition and provisions in Section 17 of the Children Act 1989 which state that any child who is disabled, is a child in need, and should then be provided with services appropriate to their needs.[272] The Deputy Minister subsequently clarified that section 17 of the Children Act 1989 is to be repealed.[273]

322. In correspondence to this Committee, the CYP Committee asked that their concerns were noted in respect of how the Bill provides for a definition of disabled children and also the potential impact on disabled children of the repeal of Section 17 of the Children's Act 1989. They added that they would welcome further scrutiny of this issue together with the possible secondary

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[269] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, page 27
[270] SSW 58, Written Evidence
[271] SSW 58, Written Evidence
[272] SSW 74, Written Evidence
[273] HSC(4)-18-13(ptn13), 6 June 2013

legislation duty to remove certain people from the definition of disabled contained in the Equality Act 2010.[274]

Evidence from the Deputy Minister

323. The Deputy Minister advised the CYP Committee on 25 April 2013 that the Equality Act 2010 has been used to define disability, because that is the latest legislation that can be drawn upon. She stated that:

> "I believe that certain disabilities remain constant through an individual's life. However, other disabilities can arise that affect the same person, and new disabilities can arise. Therefore, it is important that we should be able to look at whether that definition needs to be changed, and we will do that. We could do that by looking at the periphery, should the need arise. Also, I have always supported the social concept of disability, and it is very important. However, it is a concept, and, therefore, we had to have something on the face of the Bill that depended on legislation, and that is why we have used the Act rather than the concept. However, there is nothing preventing us from drawing on the concept of the social model, and, as we progress with this Bill, I am sure that we will hear more about that."[275]

324. In commenting on the repeal of Section 17 in oral evidence to us the Deputy Minister clarified her position stating:

> "I take this issue very seriously, of course. This Bill is about people with care and support needs and carers with support needs. Children are a key group within the people concept, and the Bill also contains regulation-making powers that can be used to add to the definition of a disabled child over time. I am sure that that power will be used to meet any changing circumstances.
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> [...]
>
> "I am glad of this opportunity to highlight section 17 of the Children Act and to say quite clearly that section 17 of that Act currently provides no automatic right to a service for a disabled child. Instead, a disabled child's entitlement to services depends upon the assessment disclosing sufficient evidence to promote the provision of that service. Section 17 (1) of the Children Act 1989 imposes a duty on a local authority to safeguard and promote the welfare of a child

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[274] HSC(4)-15-13(ptn7a) 8 May 2013

[275] RoP, paragraph 174, CYP Committee 25 April 2013 (pm)

> in need, the definition of which includes a disabled child, by providing a range and level of services appropriate to the child's needs. However, there is no automatic right to that service under section 17. The local authority must determine that a child has needs that can be met by the provision of a service under section 17. There is no guarantee, therefore, that a disabled child will necessarily have a need for services and, if he or she has a need, that the local authority will provide a service to meet that need.
>
> "I am absolutely clear, therefore, that the Bill preserves the entitlement for children that currently exists in law, and the rights that we have created, in fact, go beyond what is provided by section 17 of the Act by creating on the face of the Bill a duty on local authorities to carry out an assessment of children where they appear to need care and support and then a duty to meet those needs that meet the eligibility criteria. Disabled children and young people will also benefit from the new assessment arrangements in the Bill, as all people will have a right to an assessment, and we want the assessment to be proportionate to need to ensure that more energy is focused on delivering solutions and not on bureaucratic assessment processes."[276]

Our View

We welcome the Deputy Minister's view that the Bill preserves current entitlements in law for children and the rights that have been created go beyond what is provided by section 17 of the Children Act 1989. We also welcome provisions in the Bill placing a duty on local authorities to carry out an assessment of children where they appear to need care and support and a duty to meet those needs that satisfy the eligibility criteria.

We note the intention of the Deputy Minister to include on the face of the Bill those people who will be 'passported' to services and welcome the inclusion of severely disabled children. However, we are concerned that the repeal of section 17 of the Children Act 1989 could lead to a diminution of the existing rights of disabled children and recommend the Deputy Minister provides an oral statement on how such rights will be preserved in the Bill.

We also recognise the importance of protecting the rights of disabled children who may need to access services in the future and recommend

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[276] RoP, paragraphs 208 – 210, 6 June 2013

that section 12 (1) be amended to read 'that a child may need care and support by virtue of being *disabled or otherwise*'. In order to reflect the 'people' model promoted in the Bill we recommend that section 10 (1) be amended accordingly to provide the same assurance for disabled adults. We believe the effect of this would be to include specifically disabled children in a duty to assess, and thus enable their need for services to be assessed by the local authority.

Removal of the 'reasonable punishment' defence

Background

325. In response to our call for evidence, the most consistent issue relevant to children and young people that was raised related to calls for the Bill to amend Section 58 of the Children Act 2004[277] which relates to 'reasonable punishment'. Many witnesses requested a provision be included in the Bill to remove the 'reasonable punishment defence'.

Evidence from Witnesses

326. In his written evidence the Children's Commissioner for Wales stated that the 'Bill offers a means of providing equal protection to children in Wales in support of the intentions to improve wellbeing and safeguard children'.[278]

327. NSPCC Cymru shared similar views stating in oral evidence that:

> "This Bill is about safeguarding and wellbeing. We know that the Welsh Government, on successive occasions, has wanted to pass this, but has not had the power. So, we think that this Bill is the vehicle to remove the defence of reasonable punishment."[279]

328. On commenting on this matter in oral evidence, Barnardo's Cymru stated:

> "We think that this Bill gives us the first realistic opportunity to make sure that we remove the defence of reasonable punishment from the legislation. We also accept that there is cross-party support for this, but also a great deal of concern about a challenge to this Bill as it moves forward. So, we are pragmatic enough to accept that, on the one hand, we will continue to campaign for the removal of the

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[277] Children Act 2004,
[278] SSW 58, Written Evidence
[279] RoP, paragraph 25, 8 May 2013

> reasonable punishment defence, and, on the other hand, to recognise that we are hearing arguments about a danger to this Bill's being passed should it include that particular clause or section."[280]

329. This was a view shared by Action for Children.[281]

330. Children are Unbeatable! (CAU!) also commented on this issue in written evidence stating:

> "The Social Services and Wellbeing (Wales) Bill is the first major legislation introduced into the Assembly to address wellbeing and safeguarding; it is the obvious vehicle for fulfilling the long-standing commitment. Now there is a legislative opportunity: we question why should Welsh children wait any longer to have the same level of protection as adults under the law on assault? Children across Europe are already enjoying this equal protection before the law. Within the European Union, 17 states have banned smacking completely and another six are committed to doing so, leaving just four which have neither achieved reform nor committed to it: France, Belgium, the UK and Malta – which shares the same English law defence."[282]

331. They added that:

> "Children are unbeatable! Cymru urges the Health and Social Care Committee to recommend in its Stage 1 Report that the necessary provision to remove the "reasonable punishment" defence should be included in the Bill. This written evidence sets out our arguments for the inclusion."[283]

332. In commenting on the removal of 'reasonable punishment' the CYP Committee in its paper stated:

> "In summary, evidence from a wide range of agencies was given to the Committee making the case for removing the 'reasonable punishment' defence to be included in the Bill. Some Members expressed concern that as this was not a section in the Bill as drafted, there had been no specific consultation on its inclusion or otherwise within this particular Bill. Evidence from the Deputy Minister confirmed that the Welsh Government does not intend to introduce

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[280] RoP, paragraph 26, 8 May 2013
[281] RoP, paragraph 27, 8 May 2013
[282] SSW 22, Written Evidence
[283] SSW 22, Written Evidence

> legislation in this regard within this Assembly. The Committee draws the attention of the Health and Social Care Committee to the evidence we have received in this regard."[284]

Evidence from the Deputy Minister

333. In oral evidence, the Deputy Minister gave a clear view on the Governments position on the removal of the reasonable punishment defence, stating that:

> "I am aware of what has been said on this serious topic. I am thinking about it and reflecting on where we are as a Government at the moment. Our programme for government commits us to working to make the physical punishment of children and young people unacceptable through the promotion of positive alternatives. This option is not available in the Bill at the moment, and we all know how the passage of a Bill can develop."[285]

334. She added that:

> "…while the current and previous Welsh Governments have shown a commitment to legal reform on this issue, I want to see a positive, deep-seated change in Welsh culture that leads to physical punishment, as I have said, being seen as unacceptable. I do not think that we have developed those parenting strategies adequately, and we need an awareness-raising programme on that. You will know that I committed to that when I was Deputy Minister for Social Services and Children. This issue has moved out of my portfolio now, but we have developed and seconded help from Children in Wales to look at the development of parenting, and we have to reach the hearts and souls of people and bring people with us. However, it is not for me to anticipate what will happen during the passage of the Bill. I am strongly of the view that serious thought needs to be given to this."[286]

335. With regard to amendments being brought forward to remove the 'reasonable punishment' defence the Deputy Minister stated:

> "I am advised that, if there were to be an amendment, there could be a serious challenge to our competence, although there will be

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[284] HSC(4)-15-13(ptn7a), 8 May 2013
[285] RoP, paragraph 46, 18 April 2013
[286] RoP, paragraph 46, 18 April 2013

> opinions on both sides. I do not think that it is going too far to say that that would end up seeking resolution in the courts. The provisions in the Bill are urgent. We need this legislation as soon as possible, because contained in the Bill are provisions that could lead to so much improvement that could happen in the lives of vulnerable children that I see my business, at the moment, as ensuring the swift passage of the Bill so that the regulations can be brought into law."[287]

Our View

We note the strong views of witnesses in making the case for the removal of the 'reasonable punishment' defence to be included in this Bill. We held a range of views on as to whether such a provision should be included in this Bill or not. The majority of the Committee did not believe that this Bill is the right vehicle to pursue this issue.

Adoption Services

Background

336. The Bill has a duty to facilitate the reform of adoption services. Section 151 would inset clauses in to the Adoption and Children Act 2002 to direct two or more local authorities in Wales to enter into specified arrangements with each other in relation to the provision of specified services maintained under Section 3 (1).

337. The Bill does not include provisions that refer to post-adoption support.

338. The Explanatory Memorandum states:

> "This section provides for joint working arrangements to be made in relation to adoption services. A section is inserted in to the Adoption and Children Act 2002. The effect is to allow the Welsh Ministers to direct two or more local authorities to work together to provide specified aspects of their adoption service. Such joint arrangements may include the establishment of a pooled fund, specify staffing and accommodation arrangements, establishment of an adoption panel and processes for resolving disputes and complaints."[288]

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[287] RoP, paragraph 47, 18 April 2013

[288] Social Services and Well-being (Wales) Bill, Explanatory Memorandum, paragraph 258

Evidence from Witnesses

339. The Children and Young People Committee published a report on Adoption in November 2012.[289] The Committee's first recommendation was that the direct service delivery role of the National Adoption Service should be significantly strengthened from that currently set out in the Social Services (Wales) Bill consultation document. The recommendation added that:

> "The service should have a central delivery role and employ staff to work on a range of adoption. It should not be 'owned by local authorities' as set out in current proposals. The lead role within the Service should be a senior independent role, reporting to a multi-agency board, and ultimately accountable to the relevant Welsh Government Minister."[290]

340. The Welsh Government accepted this recommendation in principle and the Deputy Minister stated in the response:

> "…I agree that the National Adoption Service must be led by a senior post, with the autonomy to make independent decisions and ensure continued, consistent delivery of improvements across Wales. I believe that it is important this remains the responsibility of local authorities in order to maintain the vital local links, and knowledge of the child, which are paramount aspects of adoption services. It is vital that we do not disconnect adoption and other options for permanence that should be part of the local authorities" consideration for every looked after child as their corporate parent. The new service must address current concerns, but without losing the strengths of the existing system – achieving change without detriment."[291]

341. She continued:

> "I am not ruling out the Committee's recommendation for a more independently run service, but such an arrangement would require the removal of adoption services currently run by the 22 local authority adoption agencies in Wales; with the new service having to be registered in its own right as an adoption agency. Whilst this is

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[289] Children and Young People Committee, Inquiry into Adoption, November 2012
[290] Children and Young People Committee, Inquiry into Adoption, November 2012
[291] Welsh Government Response to The Children and Young People Committee Inquiry into Adoption, 9 January 2013

> possible there is a significant risk of having disconnected services, which could actually be detrimental to the current level of provision.
>
> "I have, therefore, decided to pursue my intentions as detailed in evidence that I have provided to (CYP) Committee, that working with local authorities, independent and the voluntary sector; through strong, effective partnership and collaboration and to consider the operational model currently being developed by the Association of Directors of Social Services and the Welsh Local Government Association which I look forward to receiving in the New Year. I will then inform the National Assembly for Wales of my decision"[292]

342. In their consideration of the Bill, the CYP Committee stated that Section 151 of the Bill needs to go further than currently drafted to provide the necessary safeguards should the proposed service delivery model for the national adoption service not deliver the 'step-change' that (CYP) Committee has previously called for. They also recommended that Section 151 a needs to make explicit reference to the voluntary sector.[293]

343. The CYP Committee report on the evidence it received on the Bill also stated:

> "Based on the extensive evidence we heard during the inquiry into adoption services, the Committee is strongly of the view that the duty to provide post-adoption support should be included in the Bill. The Committee recognises the need to adequately cost any additional duties in this regard. We ask the Health and Social Care Committee to note our views in this regard and the evidence in respect of post-adoption support in the conclusions of the Children and Young People Committee Inquiry into Adoption Services report published in November 2012."[294]

Evidence from the Deputy Minister

344. In response to the calls for a duty to provide post-adoption support to be included in the Bill the Deputy Minister informed us that:

> "The duty to provide post-adoption support will now be the responsibility of the national adoption service. There is a power to direct the service to commission from the third sector any services

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[292] Welsh Government Response to The Children and Young People Committee Inquiry into Adoption, 9 January 2013

[293] HSC(4)-15-13(ptn7a) 8 May 2013

[294] HSC(4)-15-13(ptn7a) 8 May 2013

> that it thinks it needs, and I would see a big role for the third sector in providing after-adoption services. It is clearly set out in the plan that I have circulated to committee that the duty to provide post-adoption services is placed on the national adoption service."[295]

Our View

We recognise the importance of post adoption support and welcome the work the CYP committee has undertaken on this subject area as part of their inquiry into Adoption Services.[296]

We are concerned that there are gaps in post adoption support and would welcome a duty to provide this support through the proposed National Adoption Service. We recommend that the Deputy Minister make a clear policy statement, prior to the end of stage 2, setting out how post adoption support services will be delivered.

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[295] RoP, paragraph 241, 6 June 2013

[296] Children and Young People Committee, Inquiry into Adoption, November 2012

8. Social Services Functions

Codes of practice and National outcomes framework

Background

345. Section 121 in Part 8 of the Bill provides powers to Welsh Ministers to issue codes of practice for social services authorities on the exercise of their social services functions. Such codes must be approved by the Assembly.

346. Part 9, Chapter 1 of the Bill includes a new duty on Welsh Ministers to publish and lay before the Assembly 'national outcome statements' (section 137) setting out the outcomes of the provision of care and support. Codes of practice (section 138) will be issued to help achieve the specified outcomes and may impose requirements on local authorities, including standards, measures and targets. Unlike codes issues under section 121, codes issued under section 138 must be adhered to by local authorities.

Evidence from Witnesses

347. Witnesses were generally supportive of proposals for a National outcomes framework but many commented on how the proposals might work in practice.

348. In written evidence, the Welsh NHS Confederation stated:

> "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 wellbeing, along with social services providers themselves. Shared accountability for the achievement of shared Performance Indicators will be a powerful catalyst to partnership working."[297]

349. Written evidence from the Board of Community Health Councils (CHCs) commented on the need to involve stakeholders in the development of national outcomes, stating:

> "The Bill is right to stress the importance of measuring and monitoring outcomes, and we look forward to seeing the outcomes

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[297] SSW 84, Written Evidence

> framework. We trust these will be developed in partnership with stakeholders, including clients, carers and professionals. We would be pleased to participate in this work."[298]

350. With regard to Codes of Practice, Mind Cymru stated in written evidence:

> "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."[299]

351. In written evidence, the Partner Organisation co-ordinated by Disability Wales stated:

> "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."

352. The Partner Organisation coordinated by Disability Wales recommends adopting the Scottish Talking Points Personal Outcomes Approach to develop a 'citizen-led approach to achieving personal outcomes across social services and health'.

> […]
>
> "We propose that WG should consider incorporating the Talking Points Personal Outcomes Approach, rather than the Results

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[298] SSW 86, Written Evidence

[299] SSW 57, Written Evidence

> Based Accountability Approach, at the heart of the National Outcomes Framework."[300]

353. Children in Wales stated in written evidence:

> "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."[301]

354. In written evidence the Children's Commissioner for Wales stated:

> "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. [...]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."[302]

355. In referring to 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 the Children's Commissioner for Wales further stated:

> "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."[303]

356. He added:

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[300] SSW 57, Written Evidence
[301] SSW 77, Written Evidence
[302] SSW 58, Written Evidence
[303] SSW 58, Written Evidence

> "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."[304]

357. The WLGA expressed concern in its supplementary written evidence that the powers regarding codes 'vest a greater level of power in Welsh Minister to direct authorities than previously seen' and added:

> "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 excercise 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."[305]

Evidence from the Deputy Minister

The Deputy Minister informed us that:

> "The Bill provides the framework to enable joint working; regulations and the codes of practice will develop the details as to how that must

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[304] SSW 58, Written Evidence
[305] HSC(4)-18-13(ptn2), 6 June 2013

> happen, and they will be subject to the affirmative procedure and subject to consultation."[306]

Our View

We note that section 122 of the Bill provides for Welsh Ministers to issue and publish a code of practice, on the exercise of social services functions under the Bill. We also note that section 123 enables a local authority to depart from requirements in codes but in doing so must follow the procedure set out in this section of the Bill, notify the Welsh Ministers of its reasons and to set out its alternative policy or proposed course action.

We are concerned that these provisions could enable a local authority to depart from any codes of practice relating to the national eligibility criteria. We believe this could undermine the rationale of having such criteria that is intended to provide equitable service provision across Wales. We recommend that in departing from codes, local authorities must publish a policy statement on the eligibility criteria they are proposing to use and receive agreement from Welsh Ministers to depart from the code.

We note the duty set out in section 122 (1) of the Bill that relates to Making, approval and revocation of codes, that Welsh Ministers 'must consult such persons as they think fit on a draft of the code (or revised code)'. We recommend that the Deputy Minister sets out how stakeholders will be involved in the development of draft codes prior to this consultation taken place.

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[306] RoP, paragraph 112, 6 June 2013

9. Co-operation and Partnership Working

Background

358. Part 9, Chapter 2, sets out new provisions for co-operation and partnership working in the provision of services.

Co-operation and Partnership Working

359. In the case of adults, section 143 requires local authorities to promote co-operation with identified partners (including other local authorities, police and probation services and health providers, as set out in section 143 (3) and section 143 (6) sets out the types of things partners may do under such arrangements.

360. Sections 147 – 150 provide for partnership arrangements between local authority social services departments and health services to be prescribed through regulations.

Evidence from Witnesses

361. We heard a considerable amount of evidence on the issue of co-operation and partnership working, particularly in relation to health and social care. Although most witnesses have generally welcomed the provisions in the Bill relating to co-operation and partnership some have expressed concerns that it does not create sufficiently strong duties, particularly in the case of health and social services partnerships.

362. Local Government witnesses felt that the duties on co-operation and partnership working should be strengthened. Referring to health and social care, the WLGA stated:

> "As the Bill stands, and I alluded to this earlier, there is a danger in just saying, 'We will have a duty to promote collaboration', as it does not place that duty on us and, in fact, it seems to be even less clear than the current requirements that we have under the National Health Service Act 2006, which requires us to co-operate."[307]

363. The WLGA also believed that requirements to work in partnership with the independent sector also need to be clearer in the Bill.[308] Witnesses from the voluntary and for-profit sectors shared this view.

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[307] RoP, paragraph 227, 18 April 2013

[308] RoP, paragraph 241, 18 April 2013

364. In written evidence Age Cymru stated:

> "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."[309]

365. Care Forum Wales stated in written evidence that social services and health partners should be forced to work together to commission and provide community services.[310]

366. The Care Council for Wales also commented on powers for collaboration stating that:

> "Unless social services have powers to enforce health to become involved or health has a duty to get involved when requested by social services, this will not be robust enough to make any difference."[311]

367. Written evidence from the WLGA and ADSS Cymru made a number of further points about integrating health and social care services, the provisions for which they believe do not go far enough in the Bill. The WLGA stated:

> "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
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> [...]
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> "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

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[309] SSW 66, Written Evidence
[310] SSW 65, Written Evidence
[311] SSW 30, Written Evidence

> provide a stronger mandate than already exists to take integration forward."[312]

368. ADSS Cymru stated:

> "…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."[313]

369. Written evidence from Carers Wales also commented on how integration would work in practice and raised the following issues:

> "We […] 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."[314]

370. Witnesses representing user groups were also concerned about the need to strengthen co-operation and partnership working and cited the Mental Health (Wales) Measure 2010[315] and associated regulations as a successful example of joint working requirements. Other witnesses

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[312] SSW 51, Written Evidence

[313] SSW 50, Written Evidence

[314] SSW 23, Written Evidence

[315] Mental Health (Wales) Measure 2010

emphasised the importance of co-operation and partnership working with other services, notably education in the case of children and young people.

371. However, health service witnesses were less convinced of the need for greater prescription around co-operation and partnership working. The NHS Confederation stated:

> "…the development of integrated services does not necessarily depend on formal partnerships and pooled budgets. We are very clear on that. We are talking about shared vision, agreed priorities, trust, and open and accountable partnership working […]. Very clear outcomes are also part of the vision."[316]

372. They added:

> "We need to avoid a nationally prescribed approach to partnership and integration to ensure that there is still enough local flexibility to meet local needs.
>
> […]
>
> "It goes back to the governance arrangements and those sorts of things."[317]

373. A joint letter from the WLGA, ADSS Cymru and Welsh NHS Confederation clarified their position on the issue of integration and partnership working in stating:

> "As articulated in previous evidence to the Committee, our view is that the current provision on the face of the Bill (s143) dilutes existing legislation in relation to integration and partnership working[318] and appears to be an unambitious response, given the scale of the challenge. Our joint view is that the legislation as currently drafted would do relatively little to facilitate genuine collaborative working on the ground and, whilst intending to be enabling, it could undermine existing statutory duties.
>
> "We believe the Bill needs to provide a clear vision for integration, enabling local authorities, the NHS and other partners to work constructively together whilst recognising their distinctive contributions. It should require local authorities and NHS to work in

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[316] RoP, paragraph 33, 16 May 2013

[317] RoP, paragraph 34, 16 May 2013

[318] National Health Service (Wales) Act 2006 (Part 3, Section 33)

> partnership, through local statements of intent, appropriate joint governance mechanisms, and proportionate shared performance management arrangements.
>
> "As such, we would advocate that the existing provision within the Bill is strengthened by adding provisions that draw on those already enshrined within the Carers Strategies (Wales) Measure 2010[319] and the Mental Health (Wales) Measure 2010[320], in relation to joint strategies or schemes[321]."

374. In written evidence, Dame June Clark, (Professor Emeritus of Community Nursing, Swansea University (retired)) emphasised what she sees as the strengths of the Scottish model of integrated care and stated that Wales should adopt this approach:

> "…in which local authorities and health boards are required to establish Partnership organisations with a pooled budget, a single CEO accountable to both authorities, and the right to employ the full range of staff required to deliver integrated care."[322].

375. She also stated that collaboration between the NHS and local authorities should be mandatory.[323]

376. We asked Dame Clark to further explain her views on the Scottish model and accountability and governance arrangements for pooled budgets including how they should be spent by a Chief Executive Officer who is reporting to two different organisations that have two different structures of accountability and governance.

377. In responding, Dame Clark explained that:

> "My personal position on the issue of accountability is that I am willing to say right up front that I believe that health boards should be elected. Having said that, you asked about the Scottish model. The relevant bit in the Scottish Bill is very explicit: the two authorities are required to set up what they call a partnership board. However, the partnership board is not a committee for talking; it is an organisation

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[319] Carers Strategies (Wales) Measure 2010

[320] Mental Health (Wales) Measure 2010

[321] HSC(4)-18-13(ptn21), 6 June 2013

[322] HSC(4)-18-13(p3), 6 June 2013

[323] HSC(4)-18-13(p3), 6 June 2013

> for delivering services, with a single chief executive officer, who is accountable to both authorities."[324]

378. On this issue Professor Ceri Phillips (Professor of Health Economics at Swansea University) added:

> "One authority and accountability within one agency or authority would be the ideal situation. There are examples of that around the world, such as in Scandinavia, where there are county councils that have health and social care. I think that the Republic of Ireland has health boards. However, we are not contemplating that model. One would like to think that, in drawing up the job specification for the CEO, there would be a clear perspective that he or she would be accountable to a joint body, as opposed to two separate bodies. The organisations need to reflect that, so that it is not just the CEO who has to be accountable, but there is a body that, in a sense, emerges from the two distinct agencies to oversee that."[325]

379. In responding to questioning on whether the Bill sets out the right structure to achieve the desired integration and delivery between health and social care Dame Clark informed us that:

> "The short and frank answer to your question is that I do not believe that the structure set out will deliver on the policy intention. The reason for that is that for the last 25 years, and several times in my working experience, legislation, documents and strategies have required health authorities and local authorities to co-operate and talk about co-operation. However, this has not happened. I believe that, in this Bill, we now have an opportunity to do something about that. I think that there are lessons in the Scottish provision, which is, chronologically, a little ahead of ours, that could be learnt to enable us to achieve what we want."[326]

380. In explaining this view further, Dame Clark informed us that:

> "The simple, but not easy, answer would be: everywhere in the Bill where the word 'may' is used, the word 'may' should be replaced by something stronger like 'require'. That is what the Scottish Bill does. It requires local health boards, health authorities and local authorities to do things. The second thing is that the word 'co-operate' is very

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[324] RoP, paragraph 270, 6 June 2013
[325] RoP, paragraph 273, 6 June 2013
[326] RoP, paragraph 256, 6 June 2013

> soft and ambiguous. I am anxious that we should have something that affects the delivery of service. I remember very well, back in 1990 when the Act came in, I was chief nurse to Harrow health authority, part of its multidisciplinary management team, and we specifically set up, in response to that legislation, a committee—another one—to co-operate. We talked and talked and talked, the services stayed exactly the same and we did nothing. I do not believe that our experience there was atypical in any way. We have had permissive legislation for 25 years. I said in the first part of one of my papers that the select committee's report in 2011 said that we need to move beyond arguing for integration to making it happen. I do not see enough in this Bill, although I welcome it and there is a heck of a lot in it that is really good. However, that bit is just not strong enough. I would be really sad if we missed what I see as a once-in-a-lifetime opportunity."[327]

381. On different matter representatives from the Care Council for Wales were concerned that the magnitude and complexity of the co-operation and partnership working agenda could overshadow the other elements in the Bill.[328] It was suggested by NHS representatives that a separate Bill may be appropriate.[329]

Evidence from the Deputy Minister

382. When we asked whether she was happy that the Bill will deliver the necessary levels of co-operation and partnership working the Deputy Minister stated:

> "Yes, I am. It is section 146, I think, that will ensure that we do have the powers in regulation to ensure that there is integration."[330]

383. The Deputy Minister also stated her belief that regulation making powers are preferable to placing firm duties on the face of the Bill.

384. In supplementary written evidence the Deputy Minister provided a response to the question of whether health and social services should be required to work together:

> "I assume in relation to this issue that the question is raised in terms of partnership working as in relation to integrated working and co-

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[327] RoP, paragraph 260, 6 June 2013
[328] RoP, paragraph 256, 16 May 2013
[329] RoP, paragraph 15, 16 May 2013
[330] RoP, paragraph 61, 18 April 2013

> operation, the provision states that local authorities must exercise the relevant functions. In terms of partnership working, the use of the word 'may' only applies in relation to whether the Welsh Ministers decide to make such Regulations. I fully intend to do so and they will be subject to the affirmative procedure."[331]

385. In response to suggestions that the Bill should be strengthened to ensure integration and partnership working the Deputy Minister informed us the Bill as currently drafted includes powers to require integrated working. The Deputy Minister clarified that such powers are contained in section 147 and would subject to a affirmative procedure. She stated:

> "It is in section 147, 'Partnership arrangements'. Subsection (1) reads:
>
> > Regulations may require specified partnership arrangements to be made by—
> >
> > > (a) two or more local authorities, or
> > >
> > > (b) one or more local authorities and one or more Local Health Boards".
>
> "So, that "may" refers to Welsh Ministers, and not to local authorities and the NHS. Welsh Ministers may require joint working between health and social services."[332]

386. The Deputy Minister also referred to section 146 of the Bill which provides that a local authority must exercise its social services functions with a view to integrating care and support provision with health provision.

Our View

We welcome the shared views of ADSS Cymru, the NHS Confederation and the WLGA as detailed in their joint letter of 3 June 2013. We share their concerns that as currently drafted the Bill may weaken, rather than strengthen, cooperation and partnership working between health and social care.

We are persuaded by the evidence received in favour of fully integrated health and social care and believe that a separate Bill on integrated care, such as the legislative approach currently being considered in Scotland, would provide a better opportunity to address barriers to integrated

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[331] HSC(4)-18-13(ptn13), 6 June 2013

[332] RoP, paragraphs 88 – 90, 6 June 2013

working. We recommend that the Deputy Minister considers bringing forward a separate Bill on this issue.

Should the Deputy Minister not be minded to accept our recommendation calling for a separate Bill, we recommend that sections 147, 148 and 149 be strengthened by amending all references in these sections from 'may' to 'must'.

Barriers to co-operation and partnership working

Evidence from Witnesses

387. Written evidence from Dame Clark stated that 'the exclusive dividing line between NHS care and local authority care' which is set out in the Bill in Part 4, section 31 should be 'removed or entirely rewritten'.[333] She believes that local authorities should have the ability to employ professionals with both health and social care competencies, and that the restrictions set out in the Bill should be removed. Her written evidence stated:

> "Clause 31 sections 4 and 5 specifically forbid "providing or arranging for the provision of nursing care by a registered nurse"
>
> [...]
>
> "I recognise that subsequent clauses do allow exceptions to these restrictions – more scope for variable interpretation, necessity for procedures and protocols for dealing with disputes etc. It is far simpler to remove the restrictions than to try to spell them out in detail along with the exceptions."[334]

388. In responding to questioning on how the Bill can be improved in terms of the assessment, Dame Clarke stated:

> "I think that the answer to your question lies in the concept of pooled budgets. It is not in separate budgets, with two organisations protecting their own and saying, I do not care who pays for this, as long as it is not me. If you talk to district nurses and assessors at the ground level, that culture is there. One can understand it, even if you do not agree with it. So, a pooled budget would be the first thing. Then, in terms of the assessment, if you have a pooled budget, you need only one assessment to discover what the care needs are and

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[333] HSC(4)-18-13(p3), 6 June 2013
[334] HSC(4)-18-13(p3), 6 June 2013

> what is needed by way of a care plan to meet those needs. It is only when that is out of the way that you are in a position to move on."[335]

389. Professor Philips further commented on this issue adding:

> "Under the current system, organisations and professionals are incentivised to switch and shift cost, as opposed to incurring the cost. The positive thing about pooled budgets is that that would not be the case. The issue with assessment is more difficult. Assessment is undertaken by professionals who have their own particular frameworks and their own agendas. It has been shown in oncology, for example, that where you get multidisciplinary assessment, you get better patient outcomes, because the oncologists are working alongside the nurses, the surgeons and others who are involved in the care of that patient. The assessment of the patient is more of a whole-person assessment. What we tend to get in health and social care is that the nurse does an assessment and will think that the particular patient requires the services that the nurse can provide, whereas the social worker will think that the service user will need the services that social services can provide."[336]

Evidence from the Deputy Minister

390. 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', the Deputy Minister made reference to a Law Commission Report which suggests that problems can arise from allowing local authorities to meet care and support needs in this way.[337]

391. In the Deputy Minister's letter of 11 June 2013 she provided further clarity on the issues raised in the Law Commission's report. She stated:

> "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

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[335] RoP, paragraph 265, 6 June 2013
[336] RoP, paragraph 266, 6 June 2013
[337] RoP, paragraph 125, 6 June 2013

> 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 51st 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)."[338]

Our View

We note and agree with the views of witnesses calling for the removal of barriers to integrated working set out in sections 31 (4) and (5) of the Bill, that forbid a local authority from meeting a person's need for care and support, under sections 21 to 29, by providing or arranging for the provision of nursing care by a registered nurse. We believe that local authorities should have the ability to employ professionals with both health and social care competencies, and recommend that the restrictions set out in sections 31 (4) and (5) are removed.

We note the provisions in sections 147 – 150 which provide for partnership arrangements between local authority social services departments and with health services to be prescribed through regulations. We recommend there is a need for such regulations to outline details of professional governance arrangements in order to prevent disputes between partners on how such arrangements should operate.

Collaboration and pooled budgets

Background

392. Sections 143 and 147 provide for the establishment of "pooled funds" by regulation in the case of section 147. Section 151 provides for pooled funds where joint arrangements for adoption services are made.

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[338] HSC(4)-22-13(ptn1), 1 July 2013

Evidence from Witnesses

393. The Committee has received written evidence that for the Bill to succeed there needs to be a greater sharing of resources between local authorities and health boards.

394. BASW Cymru held strong views that budgets should be pooled and that due to too much bureaucracy the pooling of budgets should be a duty. They stated in oral evidence that:

> "We feel that budgets need to be pooled. The question was about health pooling its budgets, I think. BASW Cymru believes that there is too much bureaucracy between the different hoops and hurdles that people have to go through. There are lots of examples across Wales of people having to go to one board and panel and fill out numerous forms to get one part of their care package sorted from one agency and then going through a similar process with another organisation. If we are about being person-centred and person-focused, it is about making sure that the services and the systems fit around the individuals to meet their needs, rather than the individual fitting around the systems. So, we would totally support that. We would need to make sure that that is done properly. There are ways of doing that to some degree at the moment, but it does not happen across Wales. It is sporadic in different places; there is evidence of good practice in some areas, but it needs to be broadened out and become a duty."[339]

395. Age Cymru shared these concerns and suggested that there should be clearer duties in the Bill for health services to pool budgets.[340]

396. In oral evidence ADSS Cymru suggested that with regards to budget pooling the role of community health services working with local authorities and health should be captured on the face of the Bill.

397. On this issue the Wales Alliance for Mental Health informed us:

> "There are examples in Wales where pooled budgets are working quite well; there are examples in the Conwy area, particularly in mental health, where there are joint posts that straddle health and social care. If you look at the mental health Measure and the secondary legislation around that, which talks about regional boards

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[339] RoP, paragraph 168, 2 May 2013

[340] RoP, paragraph 170, 2 May 2013

> and the duties of health boards and local authorities to work together, you will see that there is a lot of learning that could be brought in from that existing legislation. I know that we are saying this again and that we keep referring to the Measure, but that is because it has some good examples of lots of different ways of doing things.
>
> […]
>
> "It is not just about putting it in a piece of legislation; it is about making it a reality. There is an opportunity to have a reference, either in the Bill or in the regulations that sit around it, that takes on board what has happened in the Measure around how local authorities and local health boards work together and include the pooling of budgets. It should be noted that, in the context of the mental health Measure, it is included in secondary legislation because local health boards and local authorities said that they wanted to work together, so there was an appetite there for coming together. On whether it should be on the face of the Bill or in secondary legislation, I am not sure whether putting it in the Bill means that it is stronger, but there could also be the argument that it seems to be working okay sitting in secondary legislation in the context of the mental health Measure, so why not have parity across the two sets of legislation?"[341]

398. The NHS Confederation expressed its opposition to the inclusion of mandatory pooled budgets on the face of the Bill.[342]

Evidence from the Deputy Minister

399. In oral evidence, the Deputy Minister stated that she is happy that the Bill will deliver on co-operation, partnership and integration and gave the following response to a question from Elin Jones AM about pooled budgets:

> "To begin at the beginning, I believe that this principle could operate nationally. I would like to see consistency in the approach to this integration throughout Wales. However, it may also be a matter of local policy development, within the national framework. We know that there will be a national framework on outcomes, and that will be a prominent principle of this legislation. Therefore, both can exist and it could be compulsory to have a national framework and there

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[341] RoP, paragraph 58, 2 May 2013
[342] RoP, paragraph 75, 16 May 2013

> would be flexibility on a local level to develop that as well. I believe that combining budgets is very important and, of course, that is happening."[343]

400. In response to a question as to whether pooled budgets would be considered for inclusion on the face of the Bill, rather than regulations, the Deputy Minister responded stating:

> "The combining of budgets takes place at the moment, of course, and there are excellent examples of that happening. However, I believe that we must be careful how much we put on the face of the Bill because, as I was saying, we must be able to change regulations if required to do so in the future."[344]

401. We raised the issue of combining budgets between the NHS and the local authorities with the Deputy Minister. We asked her whether there was a problem in combing budgets due to NHS services being free at the point of delivery, and Local Government services not always being free of charge to individuals. In response she stated:

> "I am not aware that there is a problem. The Bill does not change the fact that the health service is for free and that social services are not the same. I do not see a problem. The Bill is not limited to social services—it also extends to the health service, and that is clear in the Bill. Although it is called Social Services and Wellbeing (Wales) Bill, it also extends in law to the health service."[345]

402. In commenting on pooled budgets in evidence to the Finance Committee stated that:

> "...an important component in helping us to achieve my commitment to integrated and collaborative working across Social Services and the NHS".

And

> "Paragraph 178 of the Explanatory Memorandum states that we will be developing an implementation plan in parallel with the passage of

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[343] RoP, paragraph 61, 18 April 2013
[344] RoP, paragraph 68, 18 April 2013
[345] RoP, paragraph 70, 18 April 2013

> the Bill and it will be this document that will set out further detail regarding this and other issues."[346]

Our View

We note the views of witnesses that for the Bill to succeed there needs to be a greater sharing of resources between local authorities and local health boards. We believe that the greater use of pooled budgets would assist partnership working and promote seamless cooperation as called for by health and social care partners.

Our recommendation 50 reflects our view that provisions in section 148 of Bill, which provides that a local authority and local health board may pay towards the establishment and operation of partnership arrangements by making payments directly or in to a 'pooled fund' and by providing staff, goods, services, accommodation and other resources', should be strengthened.

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[346] FIN(4)-07-13(p1), 24 April 2013

10. Complaints and representations

Background

403. Part 10 of the Bill provides for the procedures relating to complaints and representation about social services, including children's services.

404. In respect of complaints about Social Services, the Bill re-states the local authority duty to provide assistance to persons making representations of particular children/young person related complaints.[347] Specifically these relate to looked after children or children who may need care and support as outlined in Section 155 of the Bill.

405. The Bill also provides that a local authority is under a duty to make arrangements to provide assistance to children who make representations and also some formerly looked after children.

406. Part 10, chapter 2 also includes powers for the Public Services Ombudsman for Wales to investigate complaints about private social care and palliative care. Section 161 provides for independent advocacy services for complaints about privately arranges or funded palliative care.

Evidence from Witnesses

407. In his written evidence, the PSOW stated that the complaint handing procedure in respect of social care is out of step with the rest of the public service in Wales. He suggested that the social care complaints procedure should mirror that for the health service particularly since many complaints involve both social care and health services. He added that the existing statutory procedure should be modernised to bring it in line with the other complaint processes stating that:

> "Over the past couple of years, arrangements for complaint handling in respect of health and other public services devolved to Wales have been modernised and streamlined…these complaint handling processes now contain only two stages (informal resolution by frontline staff and one formal investigation). Those then remaining dissatisfied after the formal investigation stage can put their complaint to me as the Public Services Ombudsman for Wales for independent consideration.

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[347] Social Services and Well-being (Wales) Bill, Sections 155-157

> "I understand that it [the Welsh Government] is intended to introduce a streamlined two stage approach for social care by regulation rather than through the Social Services and Well-being (Wales) Bill."[348]

408. Diverse Cymru also stated that the complexity of different complaints systems can have a big impact on whether people make necessary complaints.[349]

409. In oral evidence, the PSOW commented that the process for handling complaints when multiple agencies are involved should also be simplified, stating:

> "In other jurisdictions in the United Kingdom and Ireland, health and social care complaints processes are the same; there is not a separate process for both. Increasingly…people with on-going health complaints and those with social care needs tend to be the same group of people and, quite often, they will move from one situation to the other. They are often getting care from a multiplicity of providers. It seems to me that there is no reason why you should not have either a single complaints process that covers all of it, or a set of complaints processes that are so compatible with each other that, from the perspective of the person making the complaint, it feels like a single, joined-up response."[350]

410. During oral evidence, the PSOW also called for a power to enable him to make investigation reports completely confidential on occasions he considers necessary. He stated:

> "At the moment, I have the power to issue an instruction to a body in my jurisdiction not to publicise; that is, to treat my report as confidential. However, that power does not bind any other parties in the case. So, potentially—and we have seen this happen—a complainant can decide to go to the press, even though, in doing so, information about vulnerable individuals can be revealed.
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> […]
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> "However, on some occasions, if we are investigating an adult protection or child protection issue with vulnerable adults involved, there will be very few occasions where it is required, but nonetheless,

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[348] SSW 12, Written Evidence
[349] SSW 32, Written Evidence
[350] RoP, paragraph 412, 18 April 2013

> we should be in a position to say, 'You must treat this report as confidential."[351]

411. On a different matter the PSOW commented on the relationship between independent advocacy and the complaints process stating that:

> "…we are very strong supporters of an expansion of advocacy. A lot of the people we are talking about here are potentially very vulnerable—people with learning disabilities and mental health problems, as well as older people with dementia, so there are a lot of people who are not best placed to argue their own case. It should not just be those whose families are well placed to advocate for them who benefit—it needs to be available to everyone. Often, with advocacy it becomes easier to deal with complaints. An advocate will do a lot of the detailed work in presenting a complaint and so the work for my office is more manageable than it is with somebody who is having difficulty presenting their own complaint."[352]

412. He added that:

> "On balance, we have been strong advocates of advocates, and we have felt that there has been patchy access to advocacy in Wales for many groups, and we would very much like to see more."[353]

Evidence from the Deputy Minister

413. The Deputy Minister has not commented on this issue.

Our View

We note the Public Sector Ombudsman for Wales' call for a power enabling him to make investigation reports completely confidential on occasions he considers necessary. However, we do not agree that such a power is needed and believe that the Ombudsman's reports should be in the public domain.

We agree with the Ombudsman that the process for handling complaints when multiple agencies are involved should be simplified. We recommend that the Deputy Minister give consideration to this matter

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[351] RoP, paragraph 442, 18 April 2013
[352] RoP, paragraph 425, 18 April 2013
[353] RoP, paragraph 426, 18 April 2013

and we request further clarification on her proposals for the management of complaints.

We note the Ombudsman's views on the role of independent advocacy in the complaints process and agree the importance of independent advocacy in providing assistance to those who need it in presenting their complaints effectively. We discuss and make recommendations about independent advocacy in chapter 5 of this report.

11. Financial Implications

Total cost of the Bill

414. Paragraph 132 of the EM states that accurate costs and benefits relating to the Bill are as yet not known. It goes on to say that the regulations when presented will provide a more informed impact assessment of the costs and benefits. It also states that where the RIA does detail some costs and benefits there is a level of uncertainty to their accuracy.

Evidence from Witnesses

415. The Committee has received evidence from a number of organisations challenging the available funding and resourcing for the Bill along with the level of detail in the EM as drafted.

416. In oral evidence the WLGA said they 'fundamentally challenged the financial assumptions in the Bill'.[354] They also wanted to put on record the fact that they had severe concerns about the resource impacts of the Bill and the risk of committing to the duties of the Bill ahead of knowing the resource impacts.[355]

417. In their letter to the Committee on 8 May the WLGA reinforced their concerns stating:

> "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."[356]
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> [...]
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> "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."[357]

418. In their letter the WLGA also commented that they and ADSS Cymru were undertaking work on costing the financial implications of various parts of the Bill and the resulting reports would be submitted to the Committee

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[354] RoP, paragraph 244, 18 April 2013
[355] RoP paragraph 245, 18 April 201
[356] HSC(4)-18-13(ptn 5), 6 June 2013
[357] HSC(4)-18-13(ptn 5), 6 June 2013

once they have been complete[358]. The WLGA also highlighted some costs that are not reflected in the Regulatory Impact Assessment (RIA) including an estimate of £1.43 million to provide additional information, advice and assistance as set out in the Bill and £770,000 if the Bill leads to an additional 1,000 assessments given that it extends the right of assessment.[359]

419. The RIA identifies no costs falling on the NHS as a result of the Bill. The Committee has received written evidence from LHBs questioning whether the Bill will be cost neutral including a response from Cwm Taf LHB which stated:

> "...it is unlikely that the Bill will be cost neutral. Resources may need to be invested differently within and between agencies to avoid additional pressures being felt disproportionately."[360]

420. In written evidence, the Welsh NHS Confederation raised concerns regarding the lack of consideration given to the resource and cost needs of the health service to implement the Bill especially given the current economic climate. In addition they specifically highlighted the lack of funding for the delivery of training to the health service and other partners to implement the Bill.[361]

Evidence from the Deputy Minister

421. On 25 April 2013 in her oral evidence to the Children & Young People Committee on its scrutiny of the Bill the Deputy Minister commented that "we cannot buy our way out of this one" and that there was £3 million for the implementation of the Bill in addition to the training budget of social services staff."[362]

422. In its paper to us the CYP Committee commented on the financial implications of the Bill stating that:

> "We ask the Health and Social Care Committee to note our concerns as to whether the Bill can be cost-neutral. We welcome their further scrutiny of this issue and specifically as it affects services to children, young people and their families."[363]

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[358] HSC(4)-18-13(ptn5), 6 June 2013

[359] HSC(4)-18-13(ptn5), 6 June 2013

[360] SSW 7, Written Evidence

[361] SSW 84, Written Evidence

[362] RoP, paragraph 229, 25 April 2013 (pm)

[363] HSC(4)-15-13(ptn7a), 8 May 2013

423. The Finance Committee wrote to the Deputy Minister on 7 May asking what financial information would be made available at each Stage of the Bill; that it would have been best practice to consult with stakeholders on the cost of the Bill before its introduction and that the Committee intends to return to the Bill once further information is made available.

424. In her letter to the Health & Social Care Committee on 20 May 2013[364] the Deputy Minister draws attention to paragraphs 111, 112, 141, 143 and 144 of the EM where funding for some transitional arrangements and training are addressed.

425. In oral evidence to this Committee on 6 June 2013, the Deputy Minister reasserted that funding would be made available for transition and implementation of the Bill and further information on this matter would be made available in a revised RIA in the Autumn.[365]

Our View

We are not satisfied with the information that has been made available on the total cost of the Bill and have not received any evidence to convince us that the Bill will be 'cost neutral' in the long term. However, we are mindful that the size and complexity of the Bill make it extremely difficult to cost. We also recognise the concerns of witnesses with regard to the current challenges facing public sector funding which will shape the context within which this Bill is delivered.

We are also mindful that until regulations arising from the Bill have been finalised it is not possible to calculate how much the Bill will cost. For example, without a final national eligibility framework, we do not know who will be eligible for services and therefore how much those services will cost to deliver.

We note the Deputy Minister's commitment to making funding available for transition and implementation of the Bill and her assertion that further information on this matter would be made available in a revised Regulatory Impact Assessment in the Autumn. We look forward to considering this as a Committee.

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[364] HSC(4)-18-13(ptn13), 6 June 2013

[365] RoP, paragraph 156, 6 June 2013

Funding transformational change

Background

426. The EM makes reference to a number of areas where transformational change will occur and will be funded as highlighted by the Deputy Minister in her letter to the Committee on 20 May 2013. These include:

- Paragraphs 111 and 139-143 - training of social care staff which will be funded through the redirection of the Social Care Workforce Development Programme grant of £8.4 million and an additional £1.8 million from local authorities.
- Paragraph 112 – leadership and improvement for the social care sector funded by the Welsh Government of £2 million however this is not included in the summary of costs and benefits in the RIA.
- Paragraph 144 – operational implications of the Bill which are not quantified but it is the Welsh Governments intention to re-direct existing grant funding to cover the costs.
- Paragraphs 112 and 155 of the EM state that Invest-to-Save funding will be used to address transitional costs relating to greater collaboration between LAs and Local Health Boards (LHBs).

Evidence from Witnesses

427. The Committee has received evidence that questions whether significant transformational change can be generated without additional upfront investment both capital and double running of services. The WLGA in its written evidence highlighted that long term savings from change are not available to fund the upfront transformation costs.[366] The ADSS also supported this view and questioned where the resources would be found to fund transformational change.[367]

428. Evidence from other witnesses suggested that the EM does not cover all areas where the costs of transformational change will occur. The Welsh NHS Confederation raised the point that funding the double running of services which is required to deliver service change has also not been accounted for in the EM along with any additional upfront capital investment[368] [369].

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[366] SSW 51, Written Evidence
[367] SSW 50, Written Evidence
[368] SSW 84, Written Evidence
[369] RoP, paragraph 161, 16 May 2013

429. On the issue of invest-to-save, a representative of Hywel Dda LHB informed us that under the current financial situation savings were having to be made to retain the status quo and therefore additional savings to pay back invest-to-save investments would be challenging.[370]

Evidence from the Deputy Minister

430. In her oral evidence to the Committee on 18 April 2013 the Deputy Minister accepted that there would be kick off costs but that it was for the WLGA and the ADSS to provide an analysis of these, however she stated that there would be a possibility of phasing the implementation so that costs are offset by benefits and that further information would be made available prior to the Committee having to vote on the Bill.[371]

431. In response to the Finance Committee on their question relating to transitional funding of collaboration the Deputy Minister said that in addition to utilising the Invest-to-Save Fund and the Regional Collaboration Fund she:

> "..would also like to assure Committee members however, that implementation planning will take full account of how to fund any transitional costs."[372]

And

> "Repayments will be met through the release of efficiencies generated by the new delivery approach."[373]

432. The Deputy Minister in her letter to this Committee dated 20 May[374] provided a timeframe for the development of the subordinate legislation in which it shows that implementation planning is scheduled to run from mid-2013 to mid-2014 highlighting that an implementation plan identifying the transitional costs relating to the implementation of the Bill may not be available for some time. The Minister in her oral evidence on 18 April 2013 did however agree to come back to the Committee with resource implications as regulations are developed.[375]

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[370] RoP, paragraph 176, 16 May 2013
[371] RoP, paragraph 103, 18 April 2013
[372] FIN(4)-07-13(p1), 24 April 2013
[373] FIN(4)-07-13(p1), 24 April 2013
[374] HSC (4)-18-13 (ptn13), 6 June 2013
[375] RoP, paragraph 22, 18 April 2013

Our View

In considering the funding of transformational change we do not believe we have sufficient information upon which to make a judgement. We note the Deputy Ministers views on the possibility of phased implementation so that costs are offset by benefits and her commitment to providing further information on this prior to this Committee having to vote on the Bill. We recommend that the Deputy Minister make this information available prior to the end of stage 2 and provide clarity on how phased implementation will work in practice.

Training

Background

433. Paragraphs 139-140 of the RIA state that a one-off training cost of £1.8 million and an opportunity cost of £10.5 million as a result of the staff being away from their desks whilst in training will be incurred.

434. Paragraphs 141–144 of the RIA state that existing grant funding (£8.4 million) will be re-directed from 2014-15 to cover these costs. In their written evidence ADSS Cymru reference that the future of training funds for the social care workforce is currently under review[376] and the City and County of Swansea share concerns that the Bill does not address plans for funding for whole sector workforce training[377].

Evidence from Witnesses

435. Care Forum Wales in their written response raised concerns on the redirection of training grants as this may have an impact on the current level of support.[378]

436. The Welsh NHS Confederation in their written evidence to us highlighted that there is no funding in the RIA for the training needs of the health service and other partners. They said:

> “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

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[376] SSW 50, Written Evidence

[377] SSW 27, Written Evidence

[378] SSW 65, Written Evidence

> training and resources needs of the health service and other partners, and we would urge urgent consideration to be given to these areas.[379]

437. In her oral evidence, the Director of the Welsh NHS Confederation shared her serious concerns that the RIA provided for no funding of training for the health service and asked the Committee to give this their urgent consideration.[380]

438. The Director of Standards and Regulation, Care Council for Wales in his oral evidence shared his concerns that taking a significant amount of money out of the social care workforce development grant as indicated by the Deputy Minister in paragraphs 111 and 141 of the EM may have a potential impact on the training of homecare workers and others.[381]

Evidence from the Deputy Minister

439. The Deputy Minister informed us that additional funds had been set aside for work force training. She stated that:

> "I have issued a statement on training and you have seen the statement on the £8 million that we are already providing, which is topped up to about £11 million by local authorities. Local authorities will need to realign their resources in order to implement the Bill. The training needs will change, but the funding will be there. We are committed to that. I have issued a statement on that very recently."[382]

Our View

We welcome the Deputy Minister's commitment to allocating additional funding for work force training but are concerned about the lack of detail made available on this funding. We are concerned that such funding is only provided for local authorities and that the Regulatory Impact Assessment pays insufficient regard to other partners especially the NHS. We would also be concerned if the diversion of funds from the social care workforce development grant adversely affected training for homecare and other social care staff. We recommend that the Deputy Minister give further consideration to these matters.

We believe a clear strategy and timetable for workforce training will be required and we ask that the Deputy Minister make available her

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[379] SSW 84, Written Evidence

[380] RoP, paragraph 63,16 May 2013

[381] RoP, paragraph 217, 16 May 2013

[382] RoP, paragraph 158, 6 June 2013

strategy for workforce training, including information on the impact of this training on services, and the timeframe for delivery.

We are also concerned that in current practice statutory training is not consistently delivered. We believe that adequate professional training will be important for the effective implementation of the Bill and that its provision should be monitored. We ask that the Deputy Minister gives consideration to this matter.

Resource implications from assessing and meeting the needs of carers

Background

440. Section 15 of the Bill places a duty on a LA to assess the needs and support of a carer and section 26-29 of the Bill details the arrangements for meeting the support needs of carers.

Evidence from Witnesses

441. The Committee received oral evidence on 2 May 2013 from Age Cymru, Children in Wales, ADSS Cymru, BASW Cymru and the WLGA that this extended definition may give rise to an increase in demand for services in addition to the resource implications of assessing a greater number of carers.[383]

442. Age Cymru informed us that:

> "...we welcome the broadening of the definition. Our key concern is resources and ensuring that carers get what they need through having the expanded definition, and that is a resource issue."[384]

443. ADSS Cymru informed us that:

> "From our perspective, the principle is unarguable; the problem comes with the resource implication, in terms of extending the definition. There is also a risk that we would be assessing increasing numbers of carers but that, when it came to the point of potential service provision, we would be in difficulty, because there are resource implications at two points."[385]

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[383] RoP, paragraphs 125-129, 2 May 2013

[384] RoP, paragraph 125, 2 May 2013

[385] RoP, paragraph 126, 2 May 2013

Evidence from the Deputy Minister

444. The Deputy Minister has not commented on this issue.

Our View

We have considered the concerns of some witnesses that the extension of the definition of carer in Section 15 of the Bill along with the duty to meet the needs of carers is likely to give rise to an increase in demand for services not reflected in the Regulatory Impact Assessment.

We support the extension of the definition of carer and accept that, if the Bill is to improve services for carers, this will incur costs, both in terms of additional assessments and services. We believe that further details of these costs are needed and that is not reflected in the information made available to date. We recommend that the Deputy Minister provides further information on this matter prior to the end of stage 2.

12. Secondary Legislation

Background

445. The Bill provides a framework for social services in Wales – many of the detailed provisions will be provided in secondary legislation. Details of the powers to make subordinate legislation in the Bill are set out in pages 27 – 64 of the Explanatory Memorandum.

446. The Bill therefore includes a large number of powers to make secondary legislation.

Evidence from Witnesses

447. Evidence received by us suggests that, in general terms, an appropriate balance between powers on the face of the Bill and matters left to subordinate legislation has not been achieved.

448. In commenting on this issue in written evidence, the Wales Carers Alliance, stated:

> "…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."[386]

449. Similar views were expressed by the WLGA who also raised concerns regarding the logistics of developing and implementing such detailed regulations. They informed us that:

> "We have an additional concern about the balance between what is on the face of the Bill, in terms of provisions, and what will subsequently go into regulations. We recognise that that gives us some opportunities in terms of co-producing some of the details so that we can get clarity and a shared understanding of what the Bill's requirements are and what its impacts and implications are. However, we have concerns that that, just in logistical terms, will be a very time-intensive and resource-intensive process. We are not convinced that having around 30 pages in the explanatory memorandum of secondary legislation is the right balance. We would certainly like to

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[386] SSW 46, Written Evidence

> focus our activity on pinning down the things that absolutely need to be provisions on the face of the Bill."[387]

450. Some witnesses sought assurances that further details of the regulations would be made available to Assembly Member prior to the end of Stage 1. In written evidence Age Cymru stated:

> "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."[388]

451. Age Cymru also raised concerns that too much subordinate legislation was left to negative rather than affirmative procedure. They stated that:

> "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."[389]

452. This was a view shared by the WLGA,[390] Barnardo's Cymru[391] and NSPCC Cymru[392].

453. The NHS Confederation also raised concerns regarding the proportion of subordinate legislation subject to negative procedure and the implications of this on the scrutiny of the Bill. They stated in written evidence:

> "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

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[387] RoP, paragraph 179, 18 April 2013
[388] SSW 66, Written Evidence
[389] RoP, paragraph 179, 18 April 2013
[390] RoP, paragraphs 214-217, 18 April 2013
[391] SSW 60, Written Evidence
[392] SSW 74, Written Evidence

> 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.
>
> […]
>
> "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."[393]

Evidence from the Deputy Minister

454. In additional written evidence provided to us on 20 May 2013, the Deputy Minister restated her belief that the Bill should create a framework for sustainable social services which needs to be flexible enough to accommodate future developments:

> "In these circumstances, therefore, I feel the balance between primary and secondary legislation is not only proportionate, but necessary".

455. She added that:

> "This flexibility cannot be achieved if the fine details are set out on the face of the Bill as this would result in a potentially significant number of changes to the primary legislation in years to come, once the Bill has completed its journey through the Assembly process and has been enacted.
>
> "Instead, allowing the more operational details of the system to be defined through subordinate legislation provides the opportunity to 'future-proof' the Bill, to enable it to remain relevant and appropriate as circumstances and requirements change and as policies and evidence develop and grow over time. It also allows timely reactions to any amendments that may be needed as a result of the UK

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[393] SSW 84, Written Evidence

> Government's legislation and policy changes, which are due to take place during the coming years."[394]

456. In relation to the timetable for the publication of secondary legislation the Deputy Minister's letter of 20 May 2013, which accompanied the additional written evidence, stated:

> "Whilst the Health and Social Services Committee will, I hope, play a role in considering these Regulations as they are developed, I want to be clear that the draft Regulations (and the Code or Codes) themselves will not be available until 2014 although I do intend to sign off the policy intent for the priority subordinate legislation by the end of this calendar year and to share that information with you then."[395]

Our View

Throughout our consideration of the Bill we have expressed concern about the lack of detail provided in respect of draft regulations to accompany the Bill. We agree that in parts of the Bill the balance between provisions on the face of the Bill and those in secondary legislations is correct. However, whilst we accept that it is not possible to include detail of all provisions on the face of the Bill, there are parts of the Bill where we do not believe the correct balance has been struck and we have commented on those parts in the relevant sections of this report.

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[394] HSC(4)-18-13(ptn13) 6 June 2013
[395] HSC(4)-18-13(ptn13) 6 June 2013

13. Repeals

Background

457. A list of repeals has been provided with the Deputy Minister's additional written evidence, which confirms an intention to repeal in Wales Part 3 and Schedule 2 of the Children Act 1989 and sections 1,2 and 28A of the Chronically Sick and Disabled Persons' Act 1970, although the document suggests that agreement has not yet been reached in all cases.

458. In the case of Part 3 of the Children Act 1989 the Deputy Minister has provided a Table of Destinations showing where provision is made in the Bill for each repealed section or paragraph.

459. The Welsh Government also intends to repeal two Welsh Measures in their entirety: the Social Care Charges (Wales) Measure 2010 and the Carers Strategies (Wales) Measure 2010, together with Part 3 of the Children and Families (Wales) Measure 2010.

Evidence from Witnesses

460. Witnesses have expressed concern that it has not been clear whether the parts of existing legislation that the Bill would replace will be repealed, creating a risk of multiple legislative provision and potential confusion. Where existing legislation is to be repealed there is a risk that some important provisions may be lost if the Bill does not comprehensively reproduce them. In this context the most frequently cited legislation has been the Children Act 1989 (Part 3) and the Chronically Sick and Disabled Persons' Act 1970.[396]

461. For example, witnesses have raised concerns regarding the loss of definitions arising from legislation being repealed by the Bill. In oral evidence, Carers Wales stated that:

> "For instance, the current definition of a disabled child under section 17 of the Children Act 1989 will be going. I know that a number of families of disabled children will be quite concerned that that could weaken their ability to access services, because, by definition under current legislation, disabled children, if you pass that definition, are classed as children in need and therefore have access to services by that route. So, we are quite concerned about definitions there. There are similar issues with regard to the read-across from other pieces of

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[396] Chronically Sick and Disabled Persons' Act 1970

> legislation; for example, under the existing Chronically Sick and Disabled Persons Act 1970 with regard to access to the provision of aids and adaptations. There are quite a few pieces of current legislation, and it is about quite how those definitions read across into the eventual Act. I think that we need to look at some of these Acts carefully, to make sure that things do not fall off the edge."[397]

462. Evidence provided to us has also highlighted concern about the loss of the category 'child in need' in section 17, Part 3, of the Children Act 1989 and the access to services that that status confers on, for example, disabled children. NSPCC Cymru stated:

> "We also share a concern around the fact that, as we understand it, section 17 of the Children Act 1989 is repealed, and that gives us a definition of children in need. We are concerned about how a person-in-need definition will translate into something that is useable for children."[398]

463. Witnesses have expressed concern about how the Bill makes provision for aids and adaptations currently made under the Chronically Sick and Disabled Persons' Act 1970. Hywel Dda Health Board suggested, in supplementary written evidence, that there should be an explicit reference to these in the Bill.[399]

Evidence from the Deputy Minister

464. In additional written evidence the Deputy Minister responded to concerns regarding the loss of the category 'child in need' in section 17, Part 3, of the Children Act 1989, by stating that the rights created in the Bill go beyond section 17 by creating a duty on local authorities to carry out an assessment of children who appear to need care and support, and a duty to meet needs that meet eligibility criteria. She stated:

> "It is also worth noting that there is no automatic right to a service for a disabled child under section 17 of the Children Act 1989."[400]

465. In oral evidence on the 6 June 2013 an Official accompanying the Deputy Minister provided details of where the Bill replicates the provisions currently provided for under the Carers Strategies (Wales) Measure 2010,

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[397] RoP, paragraph 40, 2 May 2013
[398] RoP, paragraph 37, 2 May 2013
[399] HSC(4)-18-13(ptn17), 6 June 2013
[400] HSC(4)-18-13(ptn13), 6 June 2013

given the Welsh Governments intention to repeal the measure. He stated that:

> "In part, through the information, advice and assistance provision in section 8 of the Bill and in part, also, through the amendment to section 40 of the National Health Service (Wales) Act 2006, which is provided for in section 5(3) of the Bill; section 40 of the National Health Service (Wales) Act being the section that imposes a duty on local authorities and local health boards to jointly prepare strategies for the well-being of the population in their area."[401]

466. The Deputy Minister also informed us that under the Bill, individual carers would have a right to an assessment, which goes beyond the current provisions of the Carers Strategies (Wales) Measure 2010.[402] With reference to the Carers Strategies (Wales) Measure 2010, the Deputy Minister also informed us:

> "…that Measure will come across in its entirety to the Bill."[403]

467. In commenting on concerns that aids and adaptations have not been specifically included in the Bill, the Deputy Minister stated that:

> "I believe that aids and adaptations will still be available. The Bill will not change that. People will continue to have access to equipment, adaptations and other services that will be accessible in the community and through support provided to people who have eligible needs. We have not listed every service on the face of the Bill, for a number of reasons, and I have explained that. However, I do believe that the right to aids and adaptations will be preserved."[404]

468. The Deputy Minister also made reference to how she believed the Bill would strengthen, rather than weaken, the rights of children when it replaces provisions in Part 3 of the Children's Act. She informed us that:

> "I am glad of this opportunity to highlight section 17 of the Children Act and to say quite clearly that section 17 of that Act currently provides no automatic right to a service for a disabled child. Instead, a disabled child's entitlement to services depends upon the assessment disclosing sufficient evidence to promote the provision of

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[401] RoP, paragraph 65, 6 June 2013
[402] RoP, paragraph 67, 6 June 2013
[403] RoP, paragraph 133, 6 June 2013
[404] RoP, paragraph 71, 6 June 2013

> that service. Section 17(1) of the Children Act 1989 imposes a duty on a local authority to safeguard and promote the welfare of a child in need, the definition of which includes a disabled child, by providing a range and level of services appropriate to the child's needs. However, there is no automatic right to that service under section 17. The local authority must determine that a child has needs that can be met by the provision of a service under section 17. There is no guarantee, therefore, that a disabled child will necessarily have a need for services and, if he or she has a need, that the local authority will provide a service to meet that need."[405]

469. She added:

> "I am absolutely clear, therefore, that the Bill preserves the entitlement for children that currently exists in law, and the rights that we have created, in fact, go beyond what is provided by section 17 of the Act by creating on the face of the Bill a duty on local authorities to carry out an assessment of children where they appear to need care and support and then a duty to meet those needs that meet the eligibility criteria. Disabled children and young people will also benefit from the new assessment arrangements in the Bill, as all people will have a right to an assessment, and we want the assessment to be proportionate to need to ensure that more energy is focused on delivering solutions and not on bureaucratic assessment processes."[406]

Our View

We welcome the Deputy Minister providing us with a Table of Repeals detailing where existing legislation would be repealed by this Bill and a table of destinations outlining where repealed legislation is encompassed by the Bill. This information is helpful but we believe that such information should have been made available to us at the start of the stage 1 process to allow more detailed scrutiny of the Bill.

We note the information detailed in the Table of Repeals and the Table of Destinations and recognise that the Bill will repeal existing legislation and replace it with provisions in the Bill or accompanying regulations. We expect this to be a seamless process in which replacement provisions are in place before existing legislation is repealed.

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[405] RoP, paragraph 209, 6 June 2013
[406] RoP, paragraph 210, 6 June 2013

With regard to specific repeals we are concerned about how the Bill will provide for aids and adaptations given that the Deputy Minister has confirmed that sections 1, 2 and 28A of the Chronically Sick and Disabled Persons' Act 1970 are to be repealed in Wales. We note that current legislation makes specific reference to 'aids and adaptations' and we are concerned about how this will be captured in this Bill. We recommend that a specific reference to 'aids and adaptations' is added to the list set out in section 20 (2).

We recommend that section 20 (2) of the Bill should be amended to make it clear that the list '*should include but is not an exhaustive'* list of examples of what may be provided or arranged to meet needs under section 21 to 29.

We note the Deputy Ministers evidence that the Bill will replicate the provisions in the Carers Strategies (Wales) Measure 2010, given the Welsh Governments intention to repeal the measure. We welcome this but recommend the Deputy Minister provide further assurances that the repeal of the Carers Strategies (Wales) Measure 2010 will not undermine the existing rights and entitlements of Carers.

Annex A

Statutory Principles

The argument in favour of including Statutory Principles was rehearsed by the Law Commission in its Working Paper on the case for reforming adult social care. The idea of a list of Statutory Principles was not included in the Bill, although the argument has been presented that 'well-being' is a statutory principle that permeates the Bill. The counter argument to this is that 'well-being' is not a principle, instead it is a concept or theme that runs throughout the Bill. Statutory Principles would assist practitioners and service user in making sense of the idea of well-being and in decision making under the Bill.

The complicating factor in having Statutory Principles on the face of the Bill is the people approach. It does not necessarily follow that Statutory Principles appropriate for children will be appropriate for adults, and vice versa. For children the key principle is the welfare principle and this has to be preserved. So, any principles under the Bill must not contradict or undermine section1 of the Children Act 1989. However, it is possible to develop generic principles that apply to both children and adults, although individual principles may need to be nuanced in order to reflect their different levels of development.

A suggested list of Statutory Principles is found below which could form a new section1 of the Bill:

Statutory Principles

Section 1(1) In making decisions under this Act the principles in subsection (2) shall apply.

(2) The principles are:

> (a) the welfare of any child in need of care and support shall be the paramount consideration, as stated in the welfare principle in s.1 of the Children Act 1989;
>
> (b) in the case of an adult, anything done under this Act must seek to maximise their independence and autonomy;

(c) decisions made under this Act should promote the dignity, safety and wellbeing of a person in need of care and support, or of a carer in need of support;

(d) a person must be involved so far as is practicable in any decision made in relation to their care assessments, the planning, developing and the reviewing of their care and support, or relating to the support provided in their role as carers, as is appropriate having regard to their level of understanding and willingness to participate, and in addition in the case of a child as is compatible with the welfare principle;

(e) where a person's ability to communicate is impaired through disability, age or otherwise, appropriate support should be provided to enable them to participate indecisions that affect them to an extent as is appropriate in the circumstances and in the case of a child compatible with the welfare principle;

(f) the wishes of any person must be respected and followed wherever practicable, safe and appropriate, and in the case of a child compatible with their level of understanding and the welfare principle;

(g) people have the right to make decisions that to others may appear irrational, unwise or eccentric unless in the case of a child they do not have the necessary level of understanding to make such decisions, or such decisions are incompatible with the welfare principle;

(h) it must be presumed that a person is the best judge of their own wellbeing, except in cases where they lack the necessary legal capacity to make that assessment or in addition in the case of a child, they do not have the necessary level of understanding to make that assessment;

(i) the least restrictive intervention should be adopted when it is necessary to interfere with a person's human rights, in particular but not exclusively their right to family life, private life and home.

(3) With the exception of the welfare principle in subsection 2(a) which in all cases involving children will be the paramount consideration, the above principles are not listed in order of priority nor do they necessarily have equal weight.

Annex B

The definition of “well-being”.

‘Well-being’ features in 72 different Acts of the UK Parliament and 20 Act of the Scottish Parliament. It appears in a number of different contexts – health and wellbeing, children, animals, transport of prisoners, competition law and many others. What is lacking across these is a clear definition of ‘wellbeing’ or 'well-being' in any of these contexts.

The current definition in section 2 of the Bill reads:

'(2) Well-being”, in relation to a person, means well-being in relation to any of the following—
(a) physical and mental health and emotional well-being;
(b) protection from abuse and neglect;
(c) education, training or recreation;
(d) domestic, family and personal relationships;
(e) contribution made to society;
(f) securing rights and entitlements;
(g) social and economic well-being.

> (3) In relation to a child, “well-being” also includes—
>
> physical, intellectual, emotional, social and behavioural development; welfare” as that word is interpreted for the purposes of the Children Act 1989
>
> (4) In relation to an adult, “well-being” also includes—control over day-to-day life; participation in work.'

Any definition in the Bill must specifically preserve the welfare principle.

In its report, Adult Social Care, the Law Commission referred with some approval to the definition of wellbeing in Schedule 5 Government of Wales Act 2006. It reads:

‘well-being”, in relation to individuals, means well-being so far as relating to any of the following—

(a) health and emotional well-being;
(b) protection from harm and neglect;

(c) education, training and recreation;
(d) the contribution made by them to society;
(e) social and economic well-being;
(f) securing their rights;'

Options

A. One possible approach to well-being is that rather than define it, the Bill simply requires the decision makers to 'have regard' to a number of factors in identifying an individual's well-being. Arguably, this is what the Bill intends when it use the term 'in relation'. Each individual's well-being is different and the best that the Bill can do is to provide a framework. For example, the section may read,

'(1) In deciding on the well-being of any individual, regard must be had to the individual's

- (a) cultural and personal values;
- (b) health and welfare;
- (c) right to contribute to and participate in society to the extent that they wish to do so;
- (d) safety and protection;
- (e) social, family and personal relationships;
- (f) standard of living;
- (g) need to have their rights secured.

(2) In relation to a child, "well-being" also includes—

physical, intellectual, emotional, social and behavioural development; welfare" as that word is interpreted for the purposes of the Children Act 1989.

B. Another option would be for the factors listed in (1) a-g in option A above to be recast as a list of factors to be included in a Code of Practice. This would follow the model of the revised Mental Health Act 1983, which lays down a range of factors that the Secretary of State must consider when compiling the Code. It may be that a Code is a more suitable way of capturing this elusive concept.

C. Some thought might also be given to not defining 'well-being' at all, instead relying on a common sense and subjective interpretation. If asked about their well-being, an individual would be able to answer on the basis of their personal circumstances and expectations. Some of those would or should require action under the Bill – not all, given the specific remit of the Bill. However, despite non-definition being the preferred approach in much of the legislation, it may be felt that given its central importance in the Bill a definition is necessary.

D. The Canadian approach may also be adapted and used on the face of the Bill or as prompts for the Code of Practice.

Annex C - Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:
http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=5664

18 April 2013

Gwenda Thomas AM	Deputy Minister for Social Services
Martyn Palfreman	Welsh Local Government Association
Emily Warren	Welsh Local Government Association
Gwen Carrington	Director of Social Services, Isle of Anglesey County Council
Phil Evans	Director of Social Services, Vale of Glamorgan Council
Constance Adams	Wales Council for Voluntary Action
Mario Kreft	Care Forum Wales
Malcolm Perrett	Care Forum Wales
Mary Wimbury	Care Forum Wales
Elizabeth Thomas	Public Services Ombudsman for Wales
Peter Tyndall	Public Services Ombudsman for Wales

2 May 2013

Keith Bowen	Director, Carers Wales and Chair of the Welsh Carers Alliance
Ruth Coombs	Wales Alliance for Mental Health
Ewan Hilton	Wales Alliance for Mental Health
Rhian Davies	Chief Executive, Disability Wales
Paul Swann	Policy Officer, Disability Wales
Victoria Lloyd	Age Cymru
Catriona Williams	Children in Wales
Robin Moulster	British Association of Social Workers Cymru

Parry Davies	Director of Social Services, Ceredigion County Council
Sally Ellis	*Corporate Director of Social Services and Housing, Denbighshire County Council*
Martyn Palfreman	Welsh Local Government Association
Emily Warren	Welsh Local Government Association
Simon Birch	Chief Officer Social Care, Health and Housing, Monmouthshire County Council
Sue Cooper	Head of Adult Social Care, Bridgend County Borough Council
Jenny Williams	Director of Social Services, Conwy County Borough Council
Jeff Farrar	Deputy Chief Constable, Gwent Police
Richard Booty	Governing Governor, HMP Cardiff
Ian Barrow	Director of Operations, Probation Trust Wales
Anna Buchanan	Director of Protection, Scrutiny and Human Rights, Older People's Commissioner for Wales
Michelle Denwood	Assistant Director for Safeguarding Children and Vulnerable Adults, Betsi Cadwaladr University Health Board
Dr Sam Clutton	Policy Officer, Children's Commissioner for Wales
Keith Towler	Children's Commissioner for Wales

8 May 2013

Jan Leightley	Director of Children's Services, Action for Children
Kate Mulley	Head of Policy and Research, Action for Children
Yvonne Rodgers	Director, Barnado's Cymru
Tim Ruscoe	Development Officer, Barnado's Cymru
Vivienne Laing	Policy & Public Affairs Manager for NSPCC in Wales
Des Mannion	National Head of Service for NSPCC in Wales
Abbie	Young person

Caia	Young person
Charlotte	Young person
Kirsten	Young person
Liam	Young person
Meredith	Young person
Neeve	Young person
Zoe	Young person

16 May 2013

Helen Birtwhistle	Director, Welsh NHS Confederation
Sandra Morgan	Head of Occupational Therapy, Hywel Dda Health Board
Carol Shillabeer	Director of Nursing, Powys Teaching Health Board
Carol Lamyman-Davies	Director, Board of Community Health Councils in Wales
Gerry Evans	Director of Standards and Regulation, Care Council Wales
Rhian Huws Williams	Chief Executive, Care Council for Wales
Urtha Felda	Citizen’s Panels for Social Services
Jennie Lewis	Citizen’s Panels for Social Services
Eirian Rees	Citizen’s Panels for Social Services
Graham Williams	Citizen’s Panels for Social Services
Anna-Leigh	Young person
Ieuan	Young person
Kyle	Young person
Luke Sweet	Young person
Rachel	Young person
Richard	Young person
Rob	Young person
Tomas	Young person

6 June 2013

Gwenda Thomas AM	Deputy Minister for Social Services
Dame June Clark	Professor Emeritus of Community Nursing, Swansea University (retired)
Professor Ceri Phillips	Professor of Health Economics and Deputy Head of School (Research), Swansea University

Annex D – List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=5961

Organisation	*Reference*
The British Acupuncture Council	SSW 1
WRVS Wales	SSW 2
Zero Tolerance	SSW 3
Adoption UK	SSW 4
Respect	SSW 5
Gwent Police	SSW 6
Cwm Taf Local Health Board	SSW 7
Global Initiative	SSW 8
UNICEF UK	SSW 9
Welsh Reablement Alliance	SSW 10
Wales Observatory on Human Rights of Children and Young People	SSW 11
Public Services Ombudsman for Wales	SSW 12
Royal College of Physicians	SSW 13
NYAS Cymru	SSW 14
Partner Organisation co-ordinated by Disability Wales	SSW 15
NCMA Cymru	SSW 16
My Care My Home	SSW 17
Isle of Anglesey County Council	SSW 18
Chartered Society of Physiotherapy (CSP)	SSW 19
British Association of Social Work Cymru	SSW 20
St John Ambulance	SSW 21
Children are unbeatable! Alliance Cymru	SSW 22
Carers Wales	SSW 23
Stroke Association	SSW 24

Advisory Group	SSW 25
Sense Cymru, RNIB Cymru, Action on Hearing Loss Cymru, Vision in Wales and Guide Dogs Cymru	SSW 26
City and County of Swansea	SSW 27
College of Occupational Therapists	SSW 28
Coalition on Charging Cymru	SSW 29
Care Council for Wales	SSW 30
Older People’s Commissioner for Wales	SSW 31
Diverse Cymru	SSW 32
NSPCC Cymru	SSW 33
Dewis Centre for Independent Living	SSW 34
Wales Co-operative Centre	SSW 35
5 Local Safeguarding Children Boards in South East Wales	SSW 36
Refuge	SSW 37
Citizens Panel for Social Services	SSW 38
Snap Cymru	SSW 39
Wales Council for Voluntary Action	SSW 40
British Association for Adoption and Fostering Cymru	SSW 41
Dr Meurig Williams	SSW 42
Arfon Access Group	SSW 43
Royal College of Nursing Cymru	SSW 44
Joint response: Dr Doughty, Dr Holland, Dr Ottaway	SSW 45
Wales Carers Alliance	SSW 46
Community Housing Cymru Group	SSW 47
Macmillan Cancer Support	SSW 48
Hywel Dda Health Board	SSW 49
Association of Directors for Social Services Cymru	SSW 50
Welsh Local Government Association	SSW 51
Victim Support	SSW 52
The Vale of Glamorgan Council	SSW 53
Linc Care	SSW 54

NDCS Cymru	SSW 55
Flintshire County Council	SSW 56
Mind Cymru	SSW 57
Children's Commissioner for Wales	SSW 58
Learning Disability Wales	SSW 59
Barnardo's Cymru	SSW 60
National Autistic Society Cymru (NAS Cymru)	SSW 61
Royal College of Psychiatrists in Wales	SSW 62
Scope Cymru	SSW 63
Action for Children	SSW 64
Care Forum Wales	SSW 65
Age Cymru	SSW 66
CARE	SSW 67
Cymorth Cymru	SSW 68
Cardiff Council	SSW 69
Equality and Human Rights Commission	SSW 70
Disability Advice Project	SSW 71
Churches' Network for Non-Violence (CNNV)	SSW 72
Powys Teaching Health Board	SSW 73
NSPCC Cymru	SSW 74
A Joint Response By Welsh Progressive Co-operators and Age Connect Wales	SSW 75
Caerphilly County Borough Council	SSW 76
Children in Wales	SSW 77
Alzheimer's Society	SSW 78
Most Revd Dr Barry Morgan Archbishop of Wales	SSW 79
Tros Gynnal Plant	SSW 80
Save Park Avenue Day Centre (SPADC) Group	SSW 81
Pamela Hughes	SSW 82
Conwy County Borough Council	SSW 83
The Welsh NHS Confederation	SSW 84

Brynawel Rehab	SSW 85
Community Health Council Board	SSW 86
The Law Society	SSW 87
Wales Alliance for Mental Health	SSW 88
Welsh Language Commissioner	SSW 89