

**Response from the College of Occupational Therapists  
Social Services and Well-being (Wales) Bill  
15.3.13**

The College of Occupational Therapists (COT) is the professional body which represents over 29,000 occupational therapists, support workers and students from across the United Kingdom and over 1500 in Wales. COT is pleased to respond to the stage 1 consultation of the Social Services and Well-being (Wales) Bill.

Occupational therapists (OTs) work in the NHS, local authority social care services, housing, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services. They play a vital role every day in the delivery of care and support services, working with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties.

OTs<sup>1</sup> assist those requiring care and support with their knowledge and skills in prevention and early intervention; reablement and rehabilitation; reducing the effects of a disabling environment through equipment, minor adaptations and assistive technology – often resulting in recommendations for Disabled Facilities Grants (DFGs) or other adaptation grants; the safe management of certain progressive conditions; and the moving and handling of people, by utilising their specific understanding of hoists and slings<sup>2</sup>.

Despite their small numbers (occupational therapists make up 1.5% of the social care workforce in Wales (Riley 2012)), occupational therapists are reported as handling over 35% of the referrals for adult social care services and their skills have been identified as key to the delivery of policies in Wales (Riley 2007). Occupational therapists are therefore a critical part of the social care workforce, and in order to reflect their pivotal role they need full recognition within the legislation.

The College welcomes the following in relation to the Bill namely

- The definition of well-being. This is clear and explicit. In particular we congratulate the Welsh government in achieving a definition which incorporates access to work, play, education and leisure activities among others. An additional statement of the importance of participating in meaningful activities would be welcome.
- The duty to provide or arrange for preventative services given that occupational therapists are the profession skilled in prevention and early intervention.
- The intention to drive person centred services and give citizens real voice and control;
- The promotion of integration, which the College has supported for many years and,
- The promotion of social enterprises

There are however a number of areas where further interpretation and clarification is required. Many of the matters raised are underpinned by the lack of clarity in relation to whether the Chronically Sick and Disabled Persons Act 1970 is repealed. COT broadly welcomes the Social Services and Well-being (Wales) Bill, but recommends that a number of issues in the following areas are carefully considered:

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<sup>1</sup> OTs are regulated by the Health and Care Professions Council (HCPC)

<sup>2</sup> This is by no means an exhaustive list. We would refer you to our College of Occupational Therapists Position Statements: The value of occupational therapy and its contribution to adult social services and their carers (2010); and Occupational therapy in social care in the UK: Future Focus and Potential (2012).

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- a) Clarification on the provision of equipment and adaptations currently provided by Social Services organisations (clause 20)
  - b) Guidance on the relationship between the draft Bill and the Housing Grants, Construction and Regeneration Act 1996, relating to the provision of Disabled Facilities Grants
  - c) Clarification on charging and financial assessment (clauses 43-52)
  - d) Clarification on the inclusion of equipment and adaptations in direct payments
  - e) Clarification on the portability of equipment and assistive technology (clause 40)
  - f) Clarification on the continuation of registers for disabled people
  - g) The potential conflict of interest in carrying out an assessment on an individual and their carer by the same person.

## **Consultation Questions**

### **General**

**1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

The current legislation in relation to local authorities' duties to enable people who need support to live fulfilled lives is complex and disparate. This Bill offers an opportunity to make the duties more coherent. COT believes there is an opportunity to ensure that partners work together in achieving that aim which is not yet fully realised in this Bill

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

We welcome the purpose and intended effect of the Bill but are concerned that these are not always realised in the current drafting of the Bill:

### **Promoting well-being**

The definition is excellent and we welcome the intention. However, it is not clear whether this places a duty on local authorities for the whole population, only for those identified as needing 'care and support' or whether this includes people accessing preventative services. We believe the duty needs to be more clearly delineated.

### **Preventative Services**

COT proposes that universal access to preventative initiatives including equipment, aids, falls prevention and reablement for those in need continue to be provided free of charge before the eligibility criteria is applied. Charging for preventative initiatives (clause 7(3)) may be counterproductive, costly to implement and may not deliver the intended outcomes.

### **Eligibility for Services**

COT proposes there is a tension between the proposal for National Eligibility Criteria and the intention to drive person centred services. It is difficult to see how and where the person or carer will have voice and control if local authority assessments are driven by definitions of eligibility.

### **Integration of services**

COT welcomes the proposal to improve integration of services and has encouraged such integration for many years. Integration offers the opportunity for more person centred services, reduced gaps and duplication, including over assessment and better use of resources. However, the Bill only refers to duties on Local Health Boards to integrate. There is a missed

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opportunity to recognise the vital impact adaptations and other housing services have on people's health and well-being. Indeed Housing is explicitly excluded in section 31. Further, section 17 allows joint assessments but does not appear to allow the local authority to delegate assessments to a partner in an integrated service. This may not achieve the desired effect (Explanatory memorandum, p100 paragraph 50) of avoiding duplication of assessment.

### **Meeting needs**

Clause 20(1-2) sets out some examples rather than a clear list of what should be provided by a local authority to meet an individual's need. We feel that not having a clear, definitive list does not provide clarity for either disabled individuals or healthcare professionals. We acknowledge that this list is not exhaustive, but remain concerned that the repeal of Section 2 of the Chronically Sick and Disabled Persons Act 1970 will result in confusion and variable practice across the country in terms of how equipment and adaptations will be provided in the future.

Clause 20 (2) should also include occupational therapy services, reablement, and rehabilitation as well as counselling, advocacy and other types of social work.

Therefore, and in order to achieve one of the core objectives of the Bill, *"to make provision about improving the well – being outcomes for people who need care and support"*, COT proposes that:

- Given their vital importance within care and support services, equipment and adaptations are included separately in the list in clause 20(1-2); and
- Clause 20(2) also includes occupational therapy services, reablement, and rehabilitation as well as *"counselling, advocacy and other types of social work"*.

The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; what is the difference between when a person 'needs' some targeted intervention to prevent them needing care and support and the point at which they are deemed to have 'care and support' needs. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences for this Bill.

Thus, the Bill needs to be explicit about social services' duties to:

1. Provide universal/self management/'normal' community support (information, advice, signposting or generic services accessible to the general population)
2. Provide targeted/preventative interventions (what makes a person 'eligible' for these? These should be before financial and eligibility tests as they must be provided to people who are traditionally 'low' priority or they will not achieve their intended effect)
3. Undertake full integrated assessment and provision of support for complex needs and thus entry to significant services, which should attract financial assessment given the potential for making a contribution to care costs (and what makes a person 'eligible' for these?)

**3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

COT is disappointed that the Bill does not further the stated intention of previous strategies for a multi professional social services. If services are to meet needs, local authorities will have to

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have access to a range of skilled staff who can deliver different targeted interventions and complex care and support.

The intention of the bill to drive improved integration of services is excellent. Sustainable social services will only be achieved by transforming the way in which public services work together and by improved early intervention. As identified above this could be stronger. One example of a potential issue is that of charging. Provisions allowing charging for preventative and care and support services maybe counter- productive to the aims of the Bill and could create a barrier to integrated services as the NHS is free at the point of delivery. How would integrated reablement services for example be affected by any charging policy of the local authority?

### **National Eligibility**

National Eligibility Criteria will assist the reduction of differences between authorities. COT would very much like consideration given to the model outlined in Better Support Lower Cost (Social Services improvement Agency 2011), whereby information and advice plus targeted interventions such as; equipment and adaptations, falls prevention etc are provided before the eligibility test is made. This would reduce some of the charging issues for equipment and prevention that could hamper an individual's realising their potential. However given that the National Eligibility Criteria will not be known until the relevant regulation is made receipt of services will continue to differ during this interim period. It is also not clear to what extent local authorities can vary their levels (clause 19, 4b).

### **4. How will the Bill change existing social services provision and what impact will such changes have, if any?**

- a) Clarification on the provision of equipment and adaptations currently provided by Social Services organisations (clause 20)

A key responsibility for occupational therapists is the assessment of the potential of a disabled individual. They then work with the disabled person to achieve agreed goals and assist them with access to facilities within their home, making it easier to undertake daily living activities that were previously problematic. This may involve the provision of equipment and adaptations, or changing the way in which the task is approached.

The assumption is that Section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDP) is repealed and that this Bill will replace some of the duties contained within the CSDP Act, which sets out the support a local authority has a duty to provide in order to meet the needs of disabled individuals. The list of services referred to in Section 2 of the act are clearly in need of updating, but the Welsh Government must clarify where the central duty to provide equipment and adaptations now lies in the Social Services and Well-being (Wales) Bill.

- b) Guidance on the relationship between the draft Bill and the Housing Grants, Construction and Regeneration Act 1996, relating to the provision of Disabled Facilities Grants

Within the Housing Grants, Construction and Regeneration Act 1996 there is a duty to consult the welfare authority on facilities for access to, and within, a disabled person's property to determine whether the proposed adaptations are "*necessary and appropriate*" for a DFG. 95% of assessments are carried out by OTs, and their recommendation forms the basis for the disbursement of a DFG.

Similarly, under the Chronically Sick and Disabled Persons Act 1970, many authorities in Wales have continued to top-up or contribute to a service user's assessed financial contribution for a DFG. Given the uncertainty of the continuation of the responsibilities of the CSDP Act in Wales, it is not clear whether this practice will continue under the new legislation or the impact that it may have on DFG funding.

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c) Clarification on charging and financial assessment (clauses 43-52)

COT requests further clarification regarding charging and financial assessment for equipment and adaptations. The Bill refers to a financial assessment for care and support, but does not make clear whether the proposed financial assessment will include the provision of equipment and adaptations. There is currently no charge for equipment and adaptations provided by local authorities to individuals, but it not clear whether this will remain the case.

In addition, COT is particularly concerned about how the draft Bill relates to the Health and Safety Executive Manual Handling Regulations 1992, and the protection of staff in the workplace. Currently, the social care workforce can ask for a risk assessment (often performed by an OT) under the Health and Safety Executive Manual Handling Regulations 1992, if they feel that they need equipment to be provided to enable them to safely perform their job (e.g. hoists, supports, specialist beds or chairs). If equipment is deemed necessary to protect the health of the worker, it must then be provided free of charge by the employer (for example, a care home or local authority).

It is not clear in the draft legislation whether equipment provided as part of a manual handling assessment will now be financially assessed, but COT suggests that it should not be either financially assessed or included in direct payments, because it is part of the organisational responsibility of the employer to protect staff in their work.

Occupational therapists consider preventing the need for ongoing care and support in all assessments. Therefore, we propose that OTs should be more involved in designing and planning services. This may mean re-focussing the occupational therapy workforce in areas where they can contribute more fully to prevention and early intervention.

d) Clarification on the inclusion of equipment and adaptations in direct payments

While COT welcomes the move towards direct payments, there are two issues that need clarification:

- Under section 2 of the Chronically Sick and Disabled Persons Act 1970, funding is provided for adaptations. COT seeks clarification on whether minor adaptations, including equipment, will be included in direct payments;
- Guidance will need to be provided on ownership and servicing of equipment funded via a direct payment.

e) Clarification on the portability of equipment and assistive technology (clause 40)

The Bill provides an opportunity to clarify that within the continuity of care set out in clause 40 of the bill, individuals will be able to move equipment between local authorities where feasible. There is currently variable practice relating to the transfer of equipment or assistive technology between local authorities when individuals move house, as the local authority is the legal owner of the equipment. There are currently no guidelines on the transfer of equipment or assistive technology, and a lack of clear process often causes unnecessary distress for individuals and could easily be clarified. COT proposes that there is a straightforward process to transfer ownership of equipment between local authorities, and that further consideration is given to how this will work between the four UK nations.

f) Clarification on the continuation of registers for disabled people

Whilst the need to retain registers for the blind and partially sighted is understood, it is less clear why the need for registers of the disabled should still remain in modern social care law reform. In practice these registers are not currently used with any rigour and some people are uncomfortable that this undermines the social model of disability approach that the Welsh Government espouses.

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- g) The potential conflict of interest in carrying out an assessment on an individual and their carer by the same person.

Consideration needs to be given to how these assessments for both an individual and their carer are undertaken in order to achieve a fair approach and understanding of the situation that is confidential. There can be occasions when the needs of individual and their carer are in opposition.

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

COT suggests that the main barrier will be costs. It is of great concern that the Regulatory Impact Assessment identifies the only cost as that of training social services employed social workers. COT suggests that **all** staff in social services, including occupational therapists, will require training and it is highly likely that many staff in the NHS will also need to understand the new duties and expectations of them.

**6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.**

A significant amount of detail is left to regulation. This makes it difficult to analyse the true impact of the Bill and the extent to which it will deliver the intended vision and impact. COT recognises that the Bill must be sufficiently flexible to last in the long term and to meet future needs. However, there is a strong case for placing a set of clear principles on the face of the Bill which makes explicit the intention to

- promote well-being
- enable independent living
- place a duty on public bodies to provide services which enable and enhance people's ability to live meaningful, fulfilled lives
- give people a voice and control in the style and type of intervention they receive

The Law Commission's recommendations for Adult Social Care also offer a list of factors to consider before making decisions about services for an individual. These could also provide principles to enhance the vision of the Bill. Such principles would show the intended effect of and for any future regulation.

**Powers to make subordinate legislation**

**7(a). What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

COT is concerned that much that is left to regulation is not yet clear. We strongly recommend that these regulations should be timely, and be published before the end of stage one scrutiny of this Bill.

**Financial Implications**

**7(b). What are your views on the financial implications of the Bill?**

In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill. 6

Please see our response to question 5.

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In addition, COT believes there will be additional cost in delivering the transformational change envisaged by the Welsh government. For example, the cost of developing preventative services which are not currently available across Wales (although these *may* deliver savings in the long term); the cost of developing new Boards and bodies such as National Safeguarding Board. We also believe there may be significant cost implications depending where the level of the new National Eligibility Criteria is set.

**Other comments**

**8. Are there any other comments you wish to make about specific sections of the Bill?**

COT is concerned there is no detail about paying for care nor the continuation of the important charging limit in the Bill as detailed in our answers to question 4.