Credwch mewn plant
Believe in children

Barnardo's Cymru

Title **Written contribution to Stage 1 scrutiny of the Social Services and Wellbeing (Wales) Bill by the Health and Social Care Committee of the NAfW**

From: Tim Ruscoe
Development Officer

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E-mail: tim.ruscoe@barnardos.org.uk

Tel: 01639 620945

Address: Barnardo's Cymru
Policy and Research Unit
South West Wales Office
1st Floor
4a Queen Street
Neath SA11 1DL

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

1. Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run diverse services across Wales, working in partnership with most of the 22 local authorities, supporting in the region of 8,500 children, young people and families last year.

2. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation.

3. Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

4. In addition to the delivery of social care services Barnardo's is one of only two Third Sector adoption agencies in Wales.

Introduction

5. Barnardo's Cymru welcomes both the underlying principles and the aims of the Bill as they represent a demonstration of a Government willing to take brave decisions and actions that will promote and protect the rights of the population, require a more strategic approach to addressing individual need and raise levels of wellbeing through appropriate and earlier interventions.

6. Furthermore, Barnardo's Cymru understands the need for the Bill to achieve a balance of prescription and flexibility to deliver many of the changes through future developments in regulation. Our response is offered in the spirit of achieving as much positive change as possible within a single Bill.

7. However, in reading the Bill we have identified a number of significant overall concerns in relation to the principles and aims,

as well as more specific comment contained in our answers to the consultation questions.

Principles and Aims

8. Firstly, we believe that the balance on the face of the measure and the implied delivery of intent through regulation is not what is required to deliver the aims or hold to the principles of the Bill. As the Bill is presented, it requires a considerable leap of faith in regards to implementation. This leap would be more comfortable with a safety net provided by a greater degree of clear explicit requirement on the face of the Bill. It would also be beneficial in this regard if the Regulatory Impact Assessment suggested more frequent application of the affirmative procedure.

9. Secondly, it appears that a particular motivating influence is the need to address issues of services struggling to deliver effectively within a creaking system without additional funding. The difficulties and issues around social care and welfare provision have long been known: consequently, the timing of the Bill, linked to our earlier concern, might appear to be significantly driven by financial considerations rather than improving levels of wellbeing.

10. Thirdly, we could see the logic in building adult safeguarding and advocacy built upon models used in children's provisions if there were no fundamental problems with them. The reality is that LSCBs currently operate without core funding and are reliant on partnership funding without a formula. The uncertainty or inconsistency of funding for both day to day and specific focused work such as Child Practice Reviews presents a significant obstacle.

11. Similarly, all is not as well as it could be with advocacy for children and young people. The Children's Commissioner for Wales report "Missing Voices" highlights that whilst there are examples of good advocacy practice, in reality too many of the experiences of children and young people's advocacy indicate poor awareness, leadership and accountability systems. There are inconsistencies and a predominance of perception that advocacy is a young people's service rather than including younger children.

12. Barnardo's Cymru is very welcoming of the intent to simplify and clarify the legislation, powers and duties, reducing the pressures of navigation through a complex framework. In this respect, we also feel that the Bill, as tabled, does not match the aim. Experiences of the benefits of receiving care and support services must not diminish as a result of new legislation. We also know the

acceptable minimum standards that services are expected to meet currently. Additionally, we know where there are inconsistencies in receiving services, frequently referred to as postcode lottery. As this is the case we would hope that there would be greater clarity of what regulation "must" ensure, complemented by what regulation "may" also achieve.

13. For example, Section 86 **Review of cases and inquiries into representations** subsection (2) (a) to (j) some of which refers to a number of things that we know are critical in ensuring proper provision, safeguarding considerations and individual wellbeing. In our opinion, 86 (2) should read: *The regulations must make provision* - and be followed by the addition of (3) *The regulations may also, among other things, make provision* -.

14. We also have concerns in relation to the published principles and aims in the areas of Voice and Control, service delivery across agencies and the financial impacts.

15. Notwithstanding the work of officials in carrying out a due regard analysis in relation to the UNCRC, it could be argued that rather than applying the duty in a way that evaluates how the Bill will enhance children's experience of their rights, where it fails to do so, remedial actions or justifications should be noted. It appears that the analysis was delivered to support the Bill rather than measure it against the UNCRC.

16. Possibly as a consequence, the element of voice and control in relation to services for children in their own right or services for their family could be stronger. The face of the Bill could carry more explicit requirements as to the place of children and families in their service design and delivery, evaluation and review, as well as developing their outcomes. Additionally, under the requirement in section 5 to jointly assess needs locally, there appears to be no explicit requirement for the involvement of individuals or communities in the process. Finally, in regards to voice and control the Bill appears to remain as a service led model rather than need led, reinforced by the apparent application of the medical rather than social model of disability.

17. The requirement of delivering services across a broad spectrum of providers and sectors is also welcome; although we know from experience that this has sometimes proved problematic and would benefit from greater clarity on the face of the Bill. Even if clarity is achieved, there could well be some fundamental issues to resolve such as the possible collection of charges for some services. Would the application of a charge preclude Health providers who

are required to ensure services that are free at the point of delivery?

18. Our final overall concern would be the reality of a move towards services that could be seen as universal without universal budgets. The Bill requires cross sectorial working but only considers the financial impact on Social Services budgets.

19. Section 30, **Exception for persons subject to immigration control**, leads to a disappointment rather than concern. We understand that both benefits and immigration are not devolved and realise the difficulty that could arise from not including this exception, however exempting this group does not sit easily with the notion of a Government with aspirations to evidently promote and protect Human Rights. This section removes the duty to support people whether they are individuals, in a family with or without children, from receiving services when they are destitute because of their status. In our opinion people, are frequently forced into this state of destitution for fear of returning to their country of origin or having insufficient means to do so.

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.

20. As stated earlier, we welcome the commitment in bringing clarity to the legislative framework. However, we have reservations about the Bill delivering this aim. The short but conditional answer therefore would be yes.

21. Although the current situation is undeniably complicated, it is in place, there is considerable experience of operating within it and there is scope to amend or further regulate the raft of legislation that exists. Maintaining this approach, however, would limit the scope of desired development outlined in Sustainable Social Services and would fail to offer a distinct Welsh approach or provide Welsh Ministers with the powers within the Bill.

22. We, therefore, believe that it is appropriate to provide the legislative framework for social care through a single Welsh act. It is an opportune time to simplify and clarify what is currently

provided, develop further provision, drive change and ensure strategic assessment and provision. As already noted by Government this would also enhance the understanding of entitlement, purpose and process which, in itself, contributes to a positive sense of wellbeing.

23. In considering this, it might have been helpful if, perhaps within the explanatory memorandum, there was clear reference to the effect of the Bill on current legislation in order to build confidence that issues are being addressed and not lost and that development will indeed lead to an obvious improvement for people requiring services.

24. Additionally, it should be apparent in the Bill how other policy and legislative developments in Wales relate or are likely to relate to, and link with the Bill, particularly those which have an evident effect on wellbeing such as the Independent Living Framework, Additional Needs and Domestic Violence. It is understood that it is not possible to fully accommodate future considerations or legislation; however, where likely developments are known or presumed, account should be taken and reflected in the Bill by way of recognising powers to regulate.

25. Similarly, there has been much work on developing outcomes in relation to Mental Health services. Although there may be much collaboration between departments, divisions and drafters, evidence of collaboration and consequently shared learning is hard to identify in the Bill as drafted or the explanatory memorandum.

26. In order for the Bill to address the significant barriers in identifying and meeting community and individual need across sectors it must enable the workforce to "buy into" the required change. As such, there should not only be greater clarity and direction in service delivery, a stronger voice for service users but also a clear recognition of the role of the workforce in planning and delivering change.

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.

27. Once again we welcome what appears to represent positive aspiration but again are concerned that the Bill is not drafted in a way that will achieve them.

28. In particular regard to the wellbeing of children, there seems to be insufficient weight given to the importance of education. The place of education in enabling children to develop and achieve their potential is well known, however the Bill seems to give little specific regard to the role of education. This is particularly important given that the statutory changes to SEN legislation stress how assessment for support must be undertaken jointly between education, health and social services.

29. The objectives of chapter 3 represent the laudable policy intent of Sustainable Social Services: A Framework for Action. Achieving them will require the development of a very different environment through legislation. Too frequently the draft Bill appears to represent a rewriting of what is there, rather than what is required to carry forward the required change.

30. We welcome the ambition of population outcomes and services but have difficulty in seeing how the Bill will provide the appropriate starting point to achieve it. However, as an organisation well versed in outcome planning and delivery, we would suggest there is benefit in the creation of more pragmatic rather than high level aspirational outcomes.

31. Contrary to the published policy intent, the Bill appears to outline a service led model similar to that which currently exists. We also have no clear view about how the vision might currently be reached without significant increases in investment and long periods of evolutionary transition building from improved pragmatic specified services for Children, Families, Adults and Older People to unified services for a population.

32. As drafted, the Bill currently has the potential to address some of the gaps in services for adults and older people, introduce some portability of assessments except for carers and introduce a National Eligibility Criteria. As drafted it also has the potential to fall short.

33. Whilst welcoming the benefit that a National Eligibility Criteria might bring, and recognising the central role of the criteria in delivering the intention of the Bill, without knowing what the criteria will be it is difficult to conceive how the objectives might be achieved. As the criteria are as yet unpublished, it is also difficult to comment on this critical aspect which must be produced in a way to enable the proper and appropriate provision of care and support rather than primarily manage resources. We also have concerns regarding how eligibility criteria may affect the balance of preventative services and specialist services and the

extent to which people can access each of these types of interventions.

34. A similar criticism might be made of the proposed 3 stage assessment process. Assessment of Need followed by eligibility and financial assessment points more readily to resource management. If this is the case, the increase in known yet unmet need could well rise uncomfortably particularly in families with children.

35. The Bill makes positive movement towards achieving a broader access to assessment by right, particularly in promoting the status of carers' assessments. It is surprising therefore that paragraph 46, page 12 of the explanatory memorandum and the Minister,s response to William Graham when tabling the Bill, indicate the denial of portability in carers care and support plans. Section 40 of the Bill does not make explicit reference to carers' care and support plans, yet we would not envisage significant transfer of resource issues if carers' care and support plans were to be portable until the point of review by a new authority.

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.

36. We believe that the Bill as tabled will not meet this aim without significant amendment or undue faith in regulation.

37. It should be made clear how the single act repeals or amends current legislation. Local authorities and their partners frequently deal in complex issues. However, the Bill or Explanatory Memorandum could be clearer in relation to this so local authorities, partners and providers can more easily see how functions will remain, evolve or transition. It will also provide reassurance that those vulnerable people currently receiving appropriate services will not face a situation that leads to diminishing support.

38. The aims of the Bill require improvement within partnerships at all levels to deliver the change. While illustrative of the desire for delivery across a broad spectrum of services and sectors, the Bill appears not to recognise the difficulties experienced in this. It does not address some of the fundamental issues of funding and leadership as well as sectorial budgets and priorities. In this

regard it is our opinion that greater prescription is required whether through regulation or on the face of the Bill. Sufficient prescription will allow social care service partnerships to remain locally made ensuring adequate funding and membership without relying on goodwill. Furthermore, our practitioners have a worry that the "little voice" can be lost when there is too much distance between service user, practitioner and decision makers.

39. Barnardo's Cymru believes that the ability to charge for services is right. There are some services that might lend themselves to this; however, charging should not impose upon or limit access or availability.

40. We do, however, have some concerns as to the possibility of charging for information. As information is critical to service access, an inalienable human right specifically mentioned in the UNCRC and central to the Equalities Objectives, we would welcome some additional explanation.

41. Effective early preventative services will be a fundamental building block of sustainable social services into the future, particularly for children and families. There is a welcome emphasis on this as it represents significant potential for improving wellbeing and reducing the remedial, often expensive crisis interventions when needs have escalated. However, once again, we fear the Bill, as drafted, will not lead to implementation. It is obvious from discussions that the Bill is sufficiently vague as to promote many perspectives of what preventative services might be.

42. We believe that preventative services should be provided in the first instance as a result of local needs assessment. These might be seen as universal services. These might include library, leisure and youth services. In ensuring this level of provision, the necessary infrastructure (e.g. transport) would need to be factored in.

43. A second level of preventative services might be established on a community need such as parenting groups; carers support groups or engagement groups. These, although established on an identified need, would also be open access with voluntary commitment. They would require frequent evaluation to ensure their continued fit.

44. We also believe there is a third level of preventative services that is based on assessment of individual need requiring an individual tailored response rather than an "off the shelf" solution. This

would not be seen as a long term care and support plan but an individual preventative intervention.

45. It is possible that this or something similar is intended; however, there needs to be more clarity on the face of the Bill and a more detailed description and requirement through regulation in order for the aims to be achieved.

46. Notwithstanding the lack of an adequate definition of wellbeing within the Bill, we would again reinforce our support for preventive services as the best means of improving long term wellbeing outcomes.

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

47. In some parts the Bill represents a rewrite of what currently exists. However, we feel mostly supportive that this is largely the case with Part 6 Looked After and Accommodated Children. In some respects, the Children's Act 1989 represents a landmark shift in children's services. The 1989 Act has largely worked and the addition of sections 67 and 68 (care and support plans) in this Bill are welcome. However, we would welcome explicit reference to the possibility of foster carers having the right to a carers' assessment. Additionally, there could be a case for other foster children or the foster parents' own children to request carers' assessments.

48. The Bill does not, however, address some of the current shortcomings. In delivering looked after services, it rightly continues to emphasise the importance of foster care yet there is insufficient capacity now and the financial assessment makes no reference to the considerable investment required in recruiting and preparing foster carers in the numbers or to the levels required.

49. We were expecting to see the inclusion of the "When I am Ready" scheme in Part 6. This scheme for care leavers would also have had an impact on foster care capacity. We presume by the fact that it is omitted that it will be considered as a pioneer project in the future.

50. In relation to adoption, it is our opinion that the Bill makes appropriate amendment to the Adoption and Children's Act 2002 affording powers to direct local authorities into joint arrangements for adoption services. The explanatory memorandum is clear that this power will also extend to the creation of a national adoption

support service. In principle we are fully in favour of a single national support service. We are pleased that the regulatory impact assessment for the powers through amendment will require consultation with affected authorities. We presume that this requirement will extend to the development of a national adoption support service and that Third Sector adoption agencies will be fully involved in any consultative processes.

51. Realising the aims, principles and policy intent of "Sustainable Social Services; a Framework for Action" requires significant change in social services provision. However, in reality the most significant changes will be seen in Adult Safeguarding, Adult Advocacy and National Eligibility. The changes for children and families will largely depend on subordinate legislation. The adult lobby has rightly advocated for necessary change but achieving equity without diminishing children's provisions will be a significant challenge.

52. Improving access and uptake of Direct Payments is welcome. It is our opinion that they have a valid place in transition developments for disabled children and young people. In particular, Learning Disabled young adults are under represented in the take up. It is well documented that access to direct payments enables disabled people to have increased lifestyle choices and independent living options. We would welcome a strengthening of access to direct payments given that Wales currently has in the region of a 5% uptake of direct payments by disabled people compared to over 50% in the other countries of the UK. We also feel that this section should be cross referenced with the Framework for Action on Independent Living and also be proofed for children's welfare to ensure that it does not focus upon a mainly adult agenda.

53. The development and inclusion of Cooperatives, Third Sector and Social Enterprise models is welcome and should impact in particular on the variety and nature of preventative provision. It must also be recognised here that this developing capacity will require additional inspection and regulatory capacity; this again should be recognised within the financial assessment.

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

54. We have highlighted a number of issues throughout this document that could represent barriers to implementation. In short they are:

- Simplicity and Clarity. The Bill must match the bravery of the aims and principles. The Bill is entirely dependent on local operational commitment and decisions. In order for this to happen consistently, it would be helpful if the Bill was not ambiguous or as dependent on substance through subordinate processes.
- The practical implementation of the Bill should better reflect the person centered rights approach clear in the policy intent.
- Both the UNCRC Duty of Due regard and the Equalities Impact assessments seem to have been less comprehensive than we would expect.
- We do not believe the financial assessments consider all of the costs likely to be incurred against a social services budget or the costs to other budgets.
- The Bill does not seem to address by duty the issues of joint working. As drafted the current issues for joint working are likely to continue.

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.

55. We will not restate all of our arguments that appear throughout: however, Barnardo's Cymru does not believe that the balance is right. As previously stated, we believe too much is left to regulation that may lead to change and there is not enough necessary direction. We would welcome a more balanced use of regulation "must" rather than the predominant regulation "may" and clear duties, particularly in relation to shared and partnership working and funding formulas for Safeguarding Boards.

Powers to make subordinate legislation

7. 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.

56. As in our answer at 6 above, we will not restate our earlier argument entirely. However, whilst recognising the need to afford some flexibility through powers for Ministers to make future regulations, we feel that the proportion of delivering the Bill's

intent is weighted too much towards subordinate legislation with too little suggestion of the affirmative procedure.

57. Additionally, we have concerns that the reliance on regulation without adequate description will impinge on members' ability to take a fully informed position when required to vote.

Financial Implications

8. 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.

58. We have referred to financial considerations throughout; however, in short, in regard to partnerships, the financial assessment appears insufficient. It refers only to expenditure within Social Services' budgets. It recognises the probability of additional transitional training cost for Social Services only and expects a reduction in both administration and litigation costs. The financial analysis should factor in the need to run some services concurrently during transition and indicate costs more broadly across other sectors. It is difficult to envisage cross sector delivery without consideration of effects across multiple budgets.

59. We would question the assessment predicting no increase to expenditure with the do nothing option, when we are sure that it would continue to provide increased budgetary demand. It would be helpful if the financial assessments were more comprehensive throughout.

Other comments

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

60. As a member of the Committee's Third Sector Advisory group, in addition to having had sight of, or discussions about, other contributions to this consultation including that of Disability Wales, Barnardo's Cymru is in agreement that:

    - The Bill does not uphold a social model of disability but rather, reinforces a medical model.

- The Bill has little focus upon re-ablement but instead focuses on passive recipiency. As such it could be a step back rather than fulfilling the policy aims by taking a brave step forward.
- If social services are to be transformed there is a need for culture change. This should be at the heart of the voice and control section.
- Independent living should be enshrined within the wellbeing aspect of the Bill.
- The Bill needs to allow for different models of direct payments. For example, some disabled people are forming co-ops to pool their payments enabling access to niche support or interests e.g. drama coaching.
- There needs to be a duty to provide access to equipment and adaptations. This is currently provided under the Chronically Sick and Disabled Persons Act 1970 due to be repealed at Westminster. If this is not enshrined in Welsh law, there will be no duty to provide these services.
- By not having any delegated assessments, people in need may be back in the position of having repeated assessments for the same needs because social services are unable to delegate them.
- The benefit brought to children and young people of the Children in Need (Section 17 of the Children's Act) should be maintained within a People in Need process.
- The Bill, in particular Part 6, lacks reference to or fails to make provision for disabled children when in respite or alternative care.
- Greater reference should be made within the explanatory memorandum to the expected impacts of welfare reform. It appears inconceivable that the cumulative impacts will not lead to significant additional burdens on social service budgets.

Equal protection for children in relation to common assault

61. Barnardo's Cymru is a founder member of the Children are Unbeatable (CAU) Alliance Cymru and we would like to confirm our full backing for the Alliance's consultation response on the need for Government to address the issue of equal protection of children from assault at this stage of the Bill. We would refer the Committee to the Alliance's response for a comprehensive critique on why the Government should act now on this issue.

62. Successive Welsh Governments for more than ten years have supported a call to repeal Section 58 of the Children Act 2004 which currently permits the defence of "reasonable punishment" if a parent hits a child. There is no such defence in law regarding

assaults on adults and it is surely incongruous (and some would say perverse) that children, the most vulnerable members of society, have less protection than adults in common assault cases. In our view this is a long standing anomaly that the Government clearly now has the opportunity to correct. The First Minister has confirmed that the Assembly now has sufficient legislative powers to repeal this section of the law and we feel the Government should, therefore, honour its long-standing commitment to this issue by including the reform in the Social Services and Wellbeing Bill.

63. As referred to above, the CAU response provides a detailed outline for the case for reforming the law on this issue in Wales. To emphasise the need for change we would wish due consideration to be given to the following points which are expanded upon in the CAU response:

- The Assembly now has the legislative powers to bring about this reform.
- The Social Services Bill is the most obvious legislative vehicle in the Welsh Government's programme to include the change in the law.
- In changing the law, the Welsh Government would be presenting a consistent approach to children's rights and be complying with its own duty of due regard to the United Nations Convention on the Rights of the Child.
- Reforming the law on this issue is fundamental to children's status in Welsh society as well as to their wellbeing, safety and protection.
- In addition to the human rights imperative to ban physical punishment, research findings increasingly show that all the elements of children and young people's wellbeing defined in Section 2 of the Bill would be improved by legal reform.
- Consultations with children and young people on the issue of smacking consistently tell us that they find the experience humiliating, distressing and painful.
- Within the European Union, 17 states have banned completely and a further 6 are also committed to a ban. This leaves the UK as only one of four member states not to make such a commitment. Legal change in those countries has not led to any significant increase in the numbers of parents being prosecuted for assault (safeguards are in place so that prosecutions cannot be pursued for example unless it would be in the best interests of the child) but it has led to comprehensive changes to the culture of how children are raised and how they are shown to be worthy of greater protection and respect within society. Research shows that

once a ban is enacted, parental support for, and use of, physical punishment rapidly diminishes. In short, a change in the law directly and quickly results in a change in behaviour.

64. In launching its five year action plan "Getting it Right" in 2009, the Welsh Government stated as one of its priorities "Working to make physical punishment of children and young people illegal in all situations." We strongly urge the current Government to be unequivocal in its support for legal reform and to honour that earlier pledge.

Barnardo's Cymru
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