

RESPONSE TO THE CONSULTATION – SOCIAL SERVICES AND WELL-BEING (WALES) BILL

Care Forum Wales is the leading professional association for independent sector social care providers in Wales.

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.

Care Forum Wales is broadly supportive of the Bill as drafted. We feel that a consolidation of the legislation in this area as Wales seeks to modernise its provision of social services is welcome. We also support the direction of travel and focus on individual well-being. However, we are concerned that since we assume the National Assistance Act 1948 and other underlying legislation still applies, there may be some confusion.

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.

Because of the entirely reasonable desire to ensure this legislation stands the test of time, much of the detail of the implementation will be left to regulation and we would expect to be consulted on these in due course. We are particularly pleased to see the commitments to portability of assessments for individuals and joint working between local authorities and health boards. We understand the desire to develop new models of delivery through social enterprises etc., but would also emphasise the importance of that quality provision that already exists in Wales. We would see this as a move towards a balanced ecology of provision including third and private sector providers and commissioners, where there is recognition of what each can bring to the table.

This is a large Bill (even before the regulations which will follow) which appears to overlay an existing and longstanding legislative framework. Whilst CFW supports the general objectives, it is not possible at this stage, without significant legal analysis, to comment on whether the Bill 'works'.



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.

We feel the Bill offers an appropriate framework. However, we remain concerned about commissioning capacity within both the NHS and local government and need to see an understanding and commitment from every commissioning organisation that responsible commissioning does not always mean the lowest cost provision and recognition that there is a link between cost and quality. The recognised increase in numbers in the very elderly dependent population is likely to mean an increase in overall costs even if the cost per individual decreases. We do not wish to see this lead to a weakening of the quality of services commissioned.

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

As we said above much of the detail of the implementation of the changes is dependent on secondary legislation and we look forward to being consulted on that. However, we think the broad framework should move social services provision in the right direction.

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

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We would like to see more partnership working in terms of planning the provision of such services in line with the Welsh Government's Memorandum of Understanding *Securing Strong Partnerships in Care* and the Commissioning Guidance *Fulfilled Lives, Supportive Communities*. We believe the structure outlined in the Memorandum is essential to engendering a partnership approach between commissioners and providers, which is needed to deliver this step change in purpose.

There is an overall lack of long term strategic planning for frail and dependent older people across all agencies in Wales. This is leading to a fragmented service in each local authority area and an increase in dependency for those who have not had their care needs addressed at a lower level thereby preventing them reaching 'critical'. Similar concerns apply to children's services where the requirement to identify the future need and type of services can only be achieved by commissioners talking with providers in order to be able to consider how we can improve outcomes for children and young people by exploring the potential to do things differently. We would welcome a direction from Welsh Government to ensure all partners including the independent sector are engaged with all future planning strategies.

It is also very noticeable that whilst the Welsh Government have advised, recommended and even informed Health and Local Authorities that they must work together, in some areas this has not been the case. We believe it is time for these agencies to be forced to work together (maybe even as one statutory agency) to commission



and provide community services and that they should work with the independent sector to deliver a seamless care and support service.

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.

We feel the balance is not unreasonable PROVIDED the Welsh Government and any future government continues to consult widely before making regulations, guidance or Codes of Practice.

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.

There are large numbers of decisions left to regulation the vast majority of which will be made by the negative procedure. Again this does not seem unreasonable provided we continue to see appropriate consultation. However, we do have a specific concern about the regulation of direct payments. We support direct payments being used to give services users a stronger choice and control over their services. However, unfortunately, we too often see cases where direct payments are used not for this purpose but to cut



costs. Domiciliary care agencies regularly report clients approaching them to provide a service identical to that commissioned by the local authority but at a lower hourly rate. This is not sustainable.

At the moment there is no proper framework for clients who want to spend their direct payment on a mixture of personal purchases and agency provision. This particularly comes to ahead where the local authority has contracted with an agent or broker to manage purchasing care on behalf of services users and the agency or broker contract does not satisfy the needs of the agency contract. In some instances this has been used to deny direct payment recipients their choice of care.

Domiciliary care agencies are, quite reasonably, heavily regulated. Currently we are seriously concerned that Personal Assistants are unregulated and outside safeguarding arrangements.

The focus in all cases should be on those needing and receiving care, how to ensure the best outcomes for them and making the monitoring of that a key part of the process.

Financial Implications

7. 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.

We are pleased to see recognition in the consultation that there will be some additional costs, but are concerned that the assumption of savings is heavily reliant on there being a compression of morbidity, on which the evidence is mixed. The recognised increase in numbers



in the very elderly dependent population is likely to mean an increase in overall costs even if the cost per individual decreases.

We also understand that part of the cost is to be met by a re-direction of the Social Care Workforce Development Partnership grant, which may have an impact on the current level of support offered for training and qualifications.

Other comments

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

Whilst there is rightly an emphasis on keeping looked after children close to their homes we must recognise that there are circumstances where this is not the most appropriate solution. We would also like to see recognition by commissioners that children's homes should not just be viewed as a last resort but also in some cases as an appropriate earlier intervention.

We are absolutely committed to the importance of safeguarding. However we are also concerned that sometimes safeguarding allegations against care workers can be false, or even malicious. Obviously the allegations need to be investigated in order to establish this but the time taken to do so can often be excessive. This can lead to members of staff being suspended for long periods of time, causing pressure on them, on other staff, who need to cover, and the provider who need to pay them. We would like to see a reasonable deadline

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introduced for the agencies investigating establishing whether there is a case to answer. We know of too many cases where social care workers have left the profession following the pressure from allegations which were later found to be false. All investigations should be proportionate.

We would also seek clarification about the intention of clause 34R in Schedule 3 of the Bill:

Action is also to be treated as action taken by a care home provider if

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(a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

We are not entirely clear what this means and what it is meant to achieve.