National Assembly for Wales / Cynulliad Cenedlaethol Cymru
Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol

The Care and Support (Eligibility) (Wales) Regulations 2015/ Rheoliadau Gofal a Chymorth (Cymhwystra) (Cymru) 2015

Evidence from – CSR 04 Wales Alliance for Citizen Directed Support / Tystiolaeth gan Cynghrair Cymru ar gyfer Cymorth a Gyfarwyddir gan Ddinasyddion – CSR 04

Health and Social Care Committee

Scrutiny of the Care and Support (Eligibility) (Wales) Regulations 2015: Consultation

Consultation questions

Question 1a – What are your views as to whether the draft Regulations and Code of Practice as drafted will achieve the desired aims of the Act?

1a.1 The Citizens and Providers Network of the Wales Alliance for Citizen Directed Support (WACDS) welcomes this opportunity to provide evidence to the Health and Social Care Committee. Information about the Alliance and our definition of Citizen Directed Support (CDS) can be accessed at http://www.disabilitywales.org/?p=4618. Briefly,

> *"Citizen Directed Support is a set of ideas to help us build good relationships with people who support us to achieve our goals and live our lives as we choose."*

1a.2 WACDS' overall perspective on the Act, and on the eligibility and meeting needs sections in particular, is determined by the extent to which we believe that the Regulations and Codes of Practice will guide local authorities and other agencies to implement CDS in practice.

1a.3 We articulated a number of concerns in our response to the consultation on the regulations and Code of Practice in relation to Parts 3 and 4 of the Act (1). Although we believe that subsequent drafting of the regulations on eligibility and the Code of Practice on meeting needs could have gone further, the progress that has been made does alleviate some of these concerns.

1a.4 For instance, paragraph 2.11 in the Code sets out a rationale for the approach to assessment of need for social support, which we endorse, and regulation 6 provides a clear statement on individuals' ability to meet need. Taken together, we believe that these provide a sound basis for local authorities to approach the tasks of assessment and meeting need – as long as "need" is understood to mean "need for support" and not "special need" (see advice on use of terminology at 1c.6 below).

1a.5 However, we remain concerned that the "can, and can only" test set out in paragraph 2.20 of the Code remains open to interpretation by local authorities. Our understanding is that the intention behind the test is to ensure that local authorities only act within their legal powers and duties, with 'can' meaning that the required social support is within the authority's legal powers and/or duties, and 'can only' meaning no other body has powers or duties to provide this support.

1a.6 We understand that a secondary intention was to link to the Section 16 duty to promote social enterprises, co-operatives etc. This should encourage provision of earlier intervention and preventative support that enables people to achieve their wellbeing outcomes without formal social support arrangements with the local authority. Without complete clarity about the purpose of the 'can and can only' test there is a risk that eligibility could become a barrier in itself.

1a.7 We are concerned that the requirement for individuals to exhaust all possible family- and community-based options for support before becoming eligible for statutory services could widen the gaps that people can fall through. We do not wish to see people being expected to 'prove' that they have made every attempt to overcome the barriers to them achieving their wellbeing outcomes within family and community resources before being listened to. We would therefore like to see guidance that discourages this.

1a.8 We understand that the original intention was to incentivise local authorities to build preventative and community based support provision in order to increase availability of 'low level' options for citizens to access themselves and to reduce demand for more costly local authority provision. We are concerned that this vision has been diluted and strongly advise that it is reinforced in the Codes to prevent potentially life threatening gaps appearing in eligibility and provision.

Question 1b – Do you believe that the draft Regulations and Code of Practice are appropriate to ensure the right access to care and support for people who require it in Wales?

1b.1 We are pleased that the Code of Practice requires local authorities to adopt a pro-active and innovative approach to direct payments and makes it clear that they are a means to achieving individual well-being outcomes. However, we are concerned that some local authorities may continue to interpret the guidance less than adequately.

1b.2 We would like to see clearer guidance to encourage local authorities to adopt a light-touch approach to monitoring and to deter micro-managing individuals' Direct Payments budgets.

1b.3 We remain concerned that the Act is weakened by its failure to provide a legislative basis for direct payments in continuing health care. We urge Welsh Government to reconsider its position on this at the earliest opportunity, to ensure that Welsh citizens have parity with English direct payment recipients.

Question 1c – Do you believe that the draft Regulations and Code of Practice sufficiently address any concerns previously raised?

1c.1 'Independence' is still conflated with 'independent living'. Independence does not mean living alone in isolation or coping without help. The definition of 'independent living' adopted by Welsh Government in its Framework for Action on Independent Living is that:

> *Independent Living enables us as disabled people to achieve our own goals and live our own lives in the way that we choose for ourselves.*

1c.2 The right to independent living is enshrined in Article 19 of the UN Convention on the Rights of Disabled People (UNCRDP). Despite having equal status with the UN Convention on the Rights of the Child, and higher status than the UN Principles for Older Persons, reference to the UNCRDP has until recently been omitted from the Codes.

1c.3 We are pleased to note, however, that the draft Code of Practice on Parts 4 and 5 of the Act states:

> 4.2 Welsh Government policies for social care and support aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, *taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities.*

1c.4 This is welcome recognition that local authorities must give due regard to the UNCRDP. We now wish to see this incorporated as a consistent message throughout the Codes of Practice to ensure that local authorities are fully aware of their responsibilities under the UNCRDP. In the Code of Practice on Part 3, the UNCRDP should be referenced alongside the UN Convention on the Rights of the Child and the UN Principles for Older Persons in section 1.5.

1c.5 The definition of well-being in the Act should specify enjoyment of the right to independent living. In our consultation response we highlighted that this has been addressed in the guidance to the Care Act in England.

1c.6 There is a need for clear guidance on the correct use of terminology within the Codes. There continues to be confusion about what is meant by ‘care’ and ‘support’. When accessing social services, people require professionals to assist them to put in place the support they require to achieve their chosen well-being outcomes; they do not require ‘care’, which by the definition in the Act, can <u>only</u> be provided by unpaid family or friends.

1c.7 The Code for Part 10 replaces the term ‘needs’ with ‘barriers’. We would like to see this repeated throughout the Codes to fully reflect the Social model ethos of the Act. The term ‘needs’ is still equated with ‘impairments’, but the impetus in the Act towards citizens directing the support they require leaves no place for this; the promise of a ‘barriers and assets’ model should now be realised in these Codes.

1c.8 The importance of advocacy in guaranteeing citizens’ choice and control is recognised in the consultation on Part 10 of the Act. The references to advocacy in the Code of Practice on meeting needs are welcome. We wish to see advocacy as a “golden thread” running throughout the Codes and believe that this would strengthen the Act’s transformative potential considerably.

Question 2 – What are your views as to whether there are likely to be any barriers to the implementation of the provisions?

2.1 We wish to see the CDS values and principles embedded into working practice. This requires significant organisational culture change through transformational leadership. Agencies and professionals must commit to genuinely equal partnerships with the people they serve to address the power imbalances which cause problems in the current system. We are not convinced that the necessary infrastructure is being introduced to ensure that organisations deliver genuine voice, choice and control to citizens.

2.2 We are particularly concerned that whilst extensive training on the Act is being made available to professionals, there are currently no plans in place to replicate this for support recipients and the wider public. To be able to engage effectively in empowering conversations with professionals, citizens must have at least a basic understanding of the Act and some of its key concepts, such as well-being, outcomes and co-production.

2.3 We would like to see a stronger statement by Welsh Government on the importance of co-production as “the way that we do public services in Wales”. By co-production we mean *enabling citizens and professionals to share power and work together in genuinely equal partnership.*

2.4 In particular, the Codes of Practice should place a stronger emphasise on the expectation that assessment and support planning is to be conducted co-productively. The assessment Code identifies five considerations that must be taken into account to ensure a holistic approach. This must be integrated with the eligibility system and other sections of the Act (e.g. population needs assessments, prevention, social enterprise and cooperatives) to ensure that people are enabled to use their skills and capacities to improve their own lives and work together co-productively with others for mutual benefit, whilst being clear about local authorities’ responsibilities and duties in this regard. We suggest that these sections of the Act must be linked more closely if positive transformation is to become reality.

Question 3 – What are your views on the likely consequences of the draft Regulations and Code of Practice for current and future service users and carers?

3.1 As the entire Act is designed to transform the way that social services are designed and delivered in Wales, we are optimistic that it will lead to a radical new approach which will be of significant benefit to future recipients of support and services. In particular, we hope to see a fundamental change in the nature of the relationship between citizens and professionals, with citizens having as much, or as little, control over their support as they wish to have.

3.2 Much will depend on the extent to which the vision of the Act is implemented in practice. We believe that it is vital to monitor and evaluate implementation over time.

3.3 We are not aware of any proposals for comprehensive and consistent grassroots monitoring and evaluation of working practices from support recipients' and carers' perspectives. It is vital for citizens to have access to such systems to enable long-term evaluation of the success, or otherwise, of local authorities and service providers efforts to implement the Act.

REFERENCES

1. *Disability Wales and WACDS joint consultation response on Parts 3 & 4 of the Social Services and Well-being (Wales) Act 2014*

http://www.disabilitywales.org/wordpress/wp-content/uploads/SSWb-Act-FinalPart3and4consultation.doc

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