

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2013-14

**COMMUNITY & CHILDREN'S SERVICES
SCRUTINY COMMITTEE**

9TH OCTOBER 2013

**REPORT OF THE GROUP DIRECTOR,
COMMUNITY & CHILDREN'S SERVICES**

Agenda Item 6

SOCIAL SERVICES AND WELLBEING (WALES) BILL – REPORT ON COMMITTEE STAGE 1

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1. PURPOSE OF THE REPORT

To update Members on progress being made with the passage of the Social Services and Wellbeing (Wales) Bill in the Welsh Assembly and in particular the deliberations at Stage 1 of the Health & Social Care Committee.

2. RECOMMENDATIONS

That Members note the information contained in the report, and in particular the WLGA position on elements of the Bill.

3. BACKGROUND

3.1 The Welsh Government published the Social Services and Wellbeing (Wales) Bill in January 2013, for pre legislative scrutiny. Scrutiny is led by the Health & Social Care Committee of the National Assembly and comprises four stages.

3.2 The first stage, which has now been completed, includes agreement of broad principles of the Bill prior to proceeding to Stages 2, 3 and 4 where amendments to the Bill may be proposed - but only by Assembly Members.

3.3 The Committees Stage 1 report was published in July 2013. The report provides a detailed set of over 60 recommendations by the committee, which they wish to see accepted by the Deputy Minister, and reflected in the Bill through amendments introduced at Stage 2.

3.4 All Members of the National Assembly will have an opportunity to vote on the Stage 1 report in early October, during a plenary debate. It is in this debate that the Deputy Minister will set out her response to the Stage 1 report, and if Members of the Assembly are content with this response to the Stage 1 report recommendations, the Bill will proceed to Stage 2 scrutiny.

3.5 The Stage 1 report provides over 60 recommendations relating to all aspects of the Bill including:

- General Principles
- Statutory Principles
- Cost Implications of the Bill
- Wellbeing
- Preventative Services
- Assessment & Eligibility
- Safeguarding & Protection
- Integration with Health
- Children

This brief report summarises some, but not all, of the key elements of the Committee's recommendations, highlighted by WLGA, which may be of interest to Members. The committee report itself is some 199 pages.

3.6 General Principles

The committee state that they *'note and agree with the views of witnesses 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.'*

WLGA have welcomed this conclusion on the basis that the Bill at present is too broad in scope, and in a number of areas, such as Eligibility, it remains too vague.

In evidence provided by the WLGA and ADSS Cymru to the Committee, it was proposed that the following principles be recognised in testing and improving the legislation:-

- Simplifying legislation
- Streamlining bureaucracy
- Clarifying the functions of social services
- Achieving a balance between national consistency and local autonomy
- Requiring greater partnership working with key partner such as health
- Providing social services with a core leadership role around wellbeing
- Recognising the contribution of the wider public services, and third sector partners in developing and delivering preventative service

3.7 Statutory Principles

The Committee recommended that statutory principles should be included on the face of the Bill, and propose a draft set. WLGA have suggested that statutory principles may not be appropriate for a Bill so broad in scope, and that in

ensuring clarity for practitioners in implementing new duties, the Bill should be redrafted where appropriate to provide this within the existing provisions. As proposed the statutory principles could be difficult to implement, and would significantly reduce the flexibility of local authorities to interpret the Act. WLGA believe the principles could lead to increased judicial review, litigation, and reflect that through their very need, the Bill could be perceived to be badly drafted in aligned areas.

3.8 Cost of Implementation

The WLGA, in partnership with many other stakeholders, has consistently raised concerns about the total cost of the Bill to local authorities. There is broad agreement across sectors that the Bill is not cost neutral, as was advocated by Welsh Government and that the Regulatory Impact Assessment, which provides an analysis of expected costs, was seriously inadequate.

Members may wish to note that the WLGA, working with the Society of Welsh Treasurers and the NHS Confederation, has commissioned the Institute of Public Care to produce an evidenced cost benefit analysis of the Bill. This objective analysis will inform WLGA and others about both the resource implications of the Bill, and implications for local government and others on an appropriate phasing of implementation taking account of available resources, ensuring that citizens across Wales have access to the best possible social care and wellbeing services.

3.9 Well-being Duties

The Bill confers overarching duties, on local authorities, to seek to improve the wellbeing outcomes of those people with a care and support need.

There is a view that this is too broad a duty and the Committee supported this view, and stated *'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. We acknowledge the concerns 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'*

The Committee also recognised that the links between wellbeing and eligibility remain unclear in the Bill.

3.10 Preventative Services

The WLGA argue that policy, rather than new statutory duties placed on local authorities would be more appropriate to support improved and more coordinated approaches to delivery of preventative services, and in collaboration with the wider public and voluntary sectors.

In addition, as drafted, the Bill places greater legal responsibility on Local Authorities, rather than other public service partners such as Health.

The Committee recognised this and have recommended the duty is equalised. The committee state *'We share witnesses' concerns that the preventative duty is weaker on health services than local authorities and recommend that the duties on LHB's to have regard to the importance of achieving the purpose of preventative services should be strengthened to equate with the duties on local authorities.'*

WLGA welcome the Committee's recognition of this and would support an amendment to this effect.

3.11 Assessments

The Committee recognised that assessments need to be flexible and proportionate. There is a view that the Bill is too prescriptive around assessment and also risks placing a heavy emphasis on the assessment process, at the risk of service delivery. There is no doubt that, through policy. Welsh Government must reform and modernise the current assessment framework.

3.12 Portability

The WLGA have fully supported the new principle introduced by the Bill to ensure portability within the system and welcome the committee's recommendations that a clear definition should be in the Bill which states that it is the care plan that is portable, rather than the portability of care and support. This definition recognises the appropriate autonomy of local authorities to determine what services will look like in their local area, whilst ensuring a degree of consistency around entitlement to a service, for the user.

3.13 Eligibility

The Bill proposes the introduction of a national eligibility framework, to determine what constitutes an 'eligible need' for care and support services.

In written and oral evidence, the WLGA & ADSS Cymru have stated clear concerns, that there is an inevitable conflict between the objective of providing voice and control – necessarily implying a significant degree of flexibility and variation across Wales and within local areas – and the provision within the Bill to introduce a National Eligibility Framework through Regulations. There is a concern about how the stringent application of national criteria can co-exist with the stated need for Councils to take individual needs, views and aspirations about the nature and level of services they wish to receive.

The Committee concluded that

'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. The lack of detail and thus clarity makes it difficult to assess or scope out the implications for local authorities.'

'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.'

WLGA do acknowledge the written statement issued by the Deputy Minister on July 19th, which indicates encouragingly that in developing the 'Assessment and Eligibility Framework' she accepts the view of the SSIA report 'Access to Care and Wellbeing in Wales' which states that the key features of any framework should be:

- *Better access to good information, advice and assistance to engage the citizen, with links to the resources available in the community to enable people to exercise their voice and control and make informed decisions.*
- *A wide spectrum of proportionate community-based support which citizens who have well-being needs can access without having to rely on a complex assessment and care package.*
- *More targeted help to assess individuals and families with significant and enduring needs, and to organise and secure the care and support they require.*

3.14 Information, Advice and Assistance

The WLGA support the Committee's view on the provision of Information, Advice and Assistance, where they state

'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''

3.15 Charging

The Bill provides powers for local authorities to charge for information and advice, and in specified circumstances to charge 16 and 17 year olds for preventative services.

The Committee state that:

'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.'

The Committee has recommended the provision to charge 16-17 be removed, and WLGA support this recommendation.

3.16 Direct Payments

The WLGA welcome the committee's conclusions that

'the majority of Committee Members did not wish to see direct payments as a default method of service provision'.

Importantly, the WLGA are working with the All Wales Direct Payments Forum to ensure improved promotion, and take up of Direct Payments, remains a priority for all local authorities.

From a wider policy perspective the WLGA believe that Direct Payments are a crucial part of a wider model of citizen directed support, and local government are leading work through the SSIA in this important area, demonstrating the commitment and leadership within local government towards empowering service users. Work is being led by the SSIA, in partnership with the Citizen Directed Support Learning and Improvement Network to develop local and innovative models of citizen directed support.

3.17 Safeguarding

WLGA welcome the committee's recommendations around safeguarding, supported by ADSS Cymru including:

- Separate Adults and Childrens boards at a regional level
- Either separate national boards or a clear statement of operation to ensure agendas are not diluted
- National Funding Formula
- Regionalisation but not on the model of six
- Refined definition of Adults at risk
- Further consideration around the powers of removal

3.18 Cooperation and Partnership Working

Part 9, Chapter 2 of the Bill provides that local authorities must make arrangements to promote cooperation with partner bodies, to improve the wellbeing of those people, with an identified care and support need. The intention of the Bill is to strengthen legislative provisions around:

- Partnership working
- Provision of information
- Promoting the integration of care and support with health related provision

At present this section of the Bill focuses on the relationship between health and social care.

WLGA in its evidence restated the importance of establishing a public service approach to improving wellbeing, rather than what risks becoming a silo approach, with responsibility levied primarily on social services departments.

In terms of unblocking barriers across local authorities and health, WLGA argue that a focus on improved collaboration, rather than structural integration is critical. The WLGA supports the Deputy Minister's position, that structural change is not an option, and that social services remain a core function of local government.

WLGA would not endorse the view of the committee that

'We are persuaded by the evidence received in favour of fully integrated health and social care'

WLGA would also not support the Committee's conclusion that they,

"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'.

WLGA argue that the principle behind this recommendation, in that significant further work and scrutiny is required in Part 9, if it is to be effective in practice and unblock the many barriers that currently exist.

WLGA propose that this debate be reframed in the context of 'Collaboration' rather than 'Integration', which perpetuates misunderstandings and leans to an understanding that integration refers to structural change

4. NEXT STEPS

There is provision for three more stages of discussion and Bill amendment, but expectation remains that the Bill will complete all its stages in 2014.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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ITEM: Social Services and Wellbeing (Wales) Bill – Report on Committee Stage 1

Background Papers

- Social Services and Wellbeing (Wales) Bill published in January 2013
- Committees Stage 1 report was published in July 2013
- SSIA paper - Access to Care and Wellbeing in Wales

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