

## **Part 6 – Looked after and Accommodated Children – ADSS Cymru and WLGA Response**

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### **Introduction**

This is a joint response on behalf of ADSS CYMRU and WLGA to the consultation on the regulations and code of practice in relation to Part 6 of the Social Services and Well-being (Wales) Act.

The WLGA and ADSS Cymru have previously communicated our broad support for the Act's vision and its ambitious principles. We welcome its timely nature in the face of increasing pressures on social care services, both within local government, in NHS and the third and private sectors. We also appreciate Welsh Government's efforts in working with all stakeholders to influence the development of the draft codes of practice and regulations.

In addition to this joint response the All Wales Heads of Children's Services (AWHOCS) Group has submitted its own response to the proposals outlined in the consultation and we would wish to endorse their detailed and considered views. The AWHOCS response is attached at Appendix 1.

In responding to the consultation on Part 6, a number of key themes have been identified and these should be considered with the proposals set out in the codes of practice and regulations. These include:

**Direction** - The Minister for Health and Social Services has set out a clear policy goal for all practitioners in Wales - to reduce the patterns of intervention in the lives of children, so that more young people cared for and living outside Wales can be brought back closer to home; that more young people looked after away from their own local authority area can be brought back closer to friends and family and to reduce the number of children entering the 'looked after' system in the future. The Code of Practice references those factors that a local authority must take into account, when deciding the best placement for a child and the importance of promoting the upbringing of the child by her/his family, in so far as this is consistent with the child's well-being. However it will be helpful to make specific reference to the Minister's policy goal and other relevant strategies such as the draft document 'Raising the Ambitions and Educational Attainment of Children who are Looked After in Wales', so that everyone, not just social services staff, are clear about Welsh Government's ambitions and expectations in relation to looked after children.

**Kinship Care** - One of the key issues raised by AWHOCS is in relation to kinship care, when children and young people are placed with family members. Social services usually provide some support to enable family members, other than the child's parent/s, to take on responsibility for caring for a child or young person. This accords with both the direction of the Act and the ambition outlined by the Minister. However, because support has been provided by the local authority, these placements result in the child or young person becoming 'looked after'. The Code makes some helpful statements around these types of placements, e.g.

'Informal kinship care arrangements can often prevent a child from becoming looked after'

And under the duty to provide accommodation:

'A local authority must not provide accommodation for any child falling under (b) or (c) if any person with parental responsibility for that child objects and is able to provide or arrange accommodation for the child.'

However it will be important to strengthen these statements so that there is absolute clarity whether supporting a kinship placement leads to a child becoming 'looked after'. If the intention, endorsed by both ADSS Cymru and WLGA, is to support family members, where possible and appropriate, to play a significant role in caring for children and young people, and therefore meaning that kinship placements do not lead to 'looked after' status and the child entering the formal 'looked after' system, it has to be formally recognised with clarity in the Code as to how this can be achieved. There is already case law under existing legislation which will continue to be open to interpretation and so it will be important to involve the judiciary in these considerations, as ultimately the direction provided and the decisions made in court impact on a local authority's decision-making powers.

**Language** - There is a need to look at the language used throughout the Code of Practice. For example, there are a range of terms used in relation to the state of being 'looked after', e.g. 'accommodated child', 'child in care' and 'looked-after child'. Clarity is needed to avoid continuing ambiguity. There are also a number of different plans referred to throughout the code and more clarity is needed on their relationship to the 'care and support plan' and whether the latter has primacy. In addition parts of Children Act 1989 will continue to be in place after 1st April 2016, so the terminology between the different pieces of legislation needs cross-referencing, e.g. the Children Act 1989 refers to 'care plans', whereas under the new Act we have 'Care and Support plans'. Some work will be required to ensure that key stakeholders, particularly the judiciary, understand why there are different terms in place to save any potential confusion.

**Content and Focus** – The Code of Practice has a lot of ground to cover and needs to strike a balance between what should sit in a code of practice and what might be better placed in either further guidance or a good practice guide. It is important that the code is comprehensive, but there are some elements where it goes into far too much detail, e.g. the role of the personal advisor (PA). No other role is discussed in such detail and it is unclear why there is such a particular focus on the PA.

Chapter 4 is focused on the role of the Independent Reviewing Officer (IRO). As a result of the recent LAC thematic reviews undertaken by CSSIW, there is an important opportunity in the code to emphasise IRO's having a focus on long-term outcomes, rather than being process driven. However, the chapter reinforces process, rather than outcomes. We would recommend that this is changed to redress this imbalance.

The Code also places an emphasis on avoiding disruption at key stage 4. Whilst this is an important time in a young person's life, it is also important to recognise that there will be other stages that are equally important, e.g. transition from primary to secondary school. We believe that the emphasis should be on everyone's efforts (social services, education, families and carers) to avoid disruption at all key points of transition.

The Code also sets out a clear preference when looking at placements, for neighbouring Welsh authority areas or any other area of Wales to be considered before looking at placements in England. However, particularly for those local authorities on the border, a placement in England may actually be more beneficial for the child or young person than placing in a Welsh authority, due to distance, cost and quality. It is essential to reflect this in the Code.

It is also worth noting that there are references to the Housing Act 1996 and the Homelessness Code of Guidance 2006, both of which have since been superseded. Page 113 also makes reference to 'two tier areas', though it is not clear where this has come from or what it means.

**Cost Implications** – Much of Part 6 of the Act reflects current duties under the Children Act, however the post-18 living arrangements are clearly a new responsibility being placed on local authorities. Local Authorities see the 'When I'm Ready' (WIR) scheme as a positive development, recognising the fact that not all young people are ready to move to independent living at 18. Three local authorities have already piloted the implementation of the scheme in partnership with the Welsh Government. There have been a number of cost implications identified in the pilots, e.g. training for carers, an anticipated higher take-up rate than supported lodgings and payment rates for foster carers and kinship carers where places move into WIR. In addition a number of areas still need to be resolved, including the relationship between local authorities and Independent Fostering Agencies (IFA) and how they work together with IFA foster carers who want to offer WIR arrangements to a young person currently in their care.

A similar scheme ('staying put') has been implemented in England and funding of over £40 million has been provided over 3 years to support the additional costs to local authorities this would equate to over £2 million as a consequential payment to Wales. At a time when local government is under severe financial pressures in Wales, no additional funding has been identified, even though this is clearly an additional burden. Local government has done a tremendous job in improving efficiency whilst maintaining and even improving the quality of social care over recent years. This has very real limits and the impact of the on-going financial pressures means that if appropriate funding to support new initiatives is not available it is the early intervention and preventative services that we will be relying on to support the ambitions of the Act that will be at greatest risk.

We recognise the difficulties in identifying the specific costs of the scheme, but both ADSS Cymru and WLGA would welcome working with Welsh Government to consider how WIR can be supported, as it is implemented across Wales and the true costs become clearer.

As an indication, the work in RCT towards implementing the pilot scheme, which was reported to Welsh Government through the When I am Ready Steering Group, identified the following estimated costs:

- The total ongoing 'direct' costs of a fully implemented WIR Scheme of approximately £450,000 per annum
- Further indirect and consequential costs of a fully implemented WIR Scheme of £180,000 per annum
- The average 'direct' cost per WIR placement of £10,000 per annum
- The total average cost per WIR placement of £14,000 per annum

# Appendix 1 – All Wales Heads of Children Services Response to Part 6

## Part 6 (Looked After and Accommodated Children)

### Preamble

There is a general and not surprising confusion about the interplay between this Act and the Children Act 1989, not in the specifics, but in relation to whether the well-being and care and support principles replace arrangements for children in need (but not subject to orders). The 'Can and Can Only' test, definitions and plan models, for example, can run contrary to the expectation of courts.

Despite the intended clarification of new terms in the Act (care and support plan, health plan, personal education plan, placement plan), there are several examples of the interchangeable use of terms from this Act (care and support plans) and those with a specific place in the Children Act. We highlight a number later in this response.

The Code of Practice is long (160 pages) and complex. It varies in style from sharp outline of requirements to a lengthy exposition of good practice that appears unrealistic in the current financial climate. This is highlighted in the detailed response.

### Chapter 1: Definitions

Part 6 of the Act **defines children as looked after** if they are 'in care' or 'voluntarily accommodated'. It sets out a **clear hierarchy of placement options** for a child in care: if at all possible, consideration must be given to placement with a parent, person with parental responsibility, or in whose favour a child arrangement order (formerly known as a residence order) has been made.

At the bottom of page 29, it says councils should not provide accommodation if any person with parental responsibility objects and is able to provide or arrange accommodation. Councils prefer not to have children in care when with an extended family member. However courts take a different view.

*It would be helpful if Guidance could say (and the Judiciary recognise) that when this option is confirmed after assessment, local authorities are not responsible for accommodation if they place in these circumstances. If the Act is serious about promoting kinship care options, it should not be treated as a LAC situation so that family member keeps their status as the grandparent, aunt etc. We believe further strengthening of Guidance is required here.*

*Similarly it would help to formally uncouple respite care from looked after status.*

### Chapter 2: Placements

In relation to **out of county and cross-border placements**, it prescribes referral to a panel before a placement is made.

We have a number of observations here:

- Does it include remand placements?
- Panels do not currently have the receiving authority on them on.
- While it is positive to move on from current arrangements, in practice it will prove very difficult.

- It is already hard to get the right people actually present at Panels who have the ability to commit to their share of funding. There is usually reference back to a decision maker (particularly in Health) who may over-ride the Panel decision or query their funding responsibility.
- The Code also says *"The decision of the panel must also be made available to the lead member for children's services within the placing authority. The report of the decision must set out the details and circumstances of the placement, including the reason why the placement has been made."* We disagree with this as Lead Members are not routinely involved in individual case planning/ Current practice is to report for information retrospectively unless it has very major external implications.

In general these proposals do not substantially change the expectations of *Stable Lives Brighter Futures* and we remain optimistic about improving practice. Currently the placing authority does not provide the receiving authority with health and education plans. These requirements would provide an opportunity to check (and challenge) them.

In relation to cross-border placements, for authorities closest to England, it may be preferential and less disruptive to education or health to place in England.

The comments on disruption to Education on pages 49 – 51 seem a little naïve given the circumstances of many young people and we do not understand the heavier emphasis on Key Stage 4 alone. In practice the shift from primary to secondary schools is just as important.

It is in this section that the **language** confusion is highlighted. The Code alternates terms with specific status – in care, accommodated child, looked after – without a rationale for their use. We urge the Code is read carefully to sort out the differences between chapters and sections on language.

This confusion raises concerns about the inter-relationship **with existing expectations** under the Children Act 1989 for looked after children. Does the requirements in relation to *care and support plans* alter the responsibility for *care plans, placement plans* etc.

- Children will get a care order and Courts will expect a care plan. Is this a care and support plan?
- Children in need get a care and support plan
- Child protection arrangements require a child protection plan (not care and support plan)

It is important to **tidy up expectations**. Similarly how will the two sets of requirements mesh into the new **performance framework** from April 2016? A number of areas in the Code started as expectations and are now requirements.

Similarly, in relation to the **style** of the Code, there is a lot of detail and good practice suggestions in some sections (e.g. there is 8 pages on Personal Advisers and 4 pages only on IROs) and comparatively little in others. We would urge an edit to highlight must dos and examples of how things might be.

### Chapter 3: Contacts and visits

In relation to visits (page 63 onwards), the proposals for frequency seem right. However, the expectation of **sharing reports** for all visits (page 67) is unrealistic and disproportionate. There should be scope for discretion here.

**Independent visitors** (page 68 onwards) are not widely used at present so this represents a

strengthening of expectations.

## Chapter 4: Review of cases

The section on **Independent Reviewing Officers** (pages 71 – 74) moves IROs on from a quality assurance role into a parallel practice relationship we think will be difficult to manage.

We feel an opportunity has been missed to follow up on the findings of the thematic review that IROs were insufficiently focused on outcomes. In the spirit of the new Act, this could have helped them have a **longer-term focus**, rather than just ticking boxes on current practice requirements.

The Code suggests significant changes to a review plan can only take place at a review. This denies the reality of placement breakdown and moves to a new school. Again there is language confusion here in relation to the term 'accommodated child'.

## Chapter 5: Leaving care

In **Section 104 of the Act**, while we recognise the need for defining Categories 1 – 6, we would suggest that more child-friendly titles are sought to soften the impact of categorising children and young people. They are bound to fall into common use and we would not want children to be routinely labeled this way.

Specifically **Category 5** needs to allow for Special Guardianship Orders used for younger age groups. The expectations in this section need to clarify that a duty to advise and befriend does not always mean financial support. The arrangements for accommodation and vacation support must also be proportionate – councils should not routinely have to fund gap year trips around the world.

We feel the section on entitlement to **Personal Advisers** needs a heavy edit to strip out requirements from examples of good practice that may change over time and do not belong in a Code of Practice. There is a level of detail on pathway plans in the Code that is not replicated elsewhere on care and support plans for example.

On page 94, it suggests education may be the only reason to end **pathway plans**. There may be other reasons. Similarly there needs to be a consistency of language. A lot of what is referred to relates to in care and support plans will be well-being services.

Examples of **over-specification** in this section are:

- The statement at the bottom of page 95 is too prescriptive: it says "each local authority must have a policy about how reviews for care leavers will be chaired". Young people may either wish to chair it themselves or not have one at all.
- The statement on page 97 that "some visits must take place at the accommodation where the young person is living, so that the PA can assess whether the accommodation remains suitable" cannot be enforced if young people are between 18 and 24.

The reference to **care leavers from overseas** and student fees does not belong in this section or in this Code and should be taken out.

The sections on **disabled young people** (page 100) and child and adolescent mental health (page 102) are weak and unhelpful. It does not reflect or improve the cliff edge between

Children and Adult Services. Its references to transition plans, pathway plans, and care and support plans are confusing. There is no clarification on the relationship of these to the Can and Can Only Test. Page 103 feels like a sop with PAs put in the position of chasing leaving care entitlements and not dealing with wider continuity of care issues.

The section on **unaccompanied asylum seeking children** (page 104 onwards) is generally welcome. However it fails to address the difficulties of age assumptions required in the absence of any supporting paperwork or evidence that can tie local authorities up in knots in relation to these expectations.

In relation to **care leavers in the youth justice system** where specialist provision as alternatives to custody has been provided, it is unclear if responsibilities carry on until 24?

In terms of care leavers, it would be helpful to say that they **cannot be considered as intentionally homeless** during the period the local authority remains responsible for them.

Page 122 requires that a **financial policy** should set out “how the local authority will support young people to enhance their life chances and make a **successful transition to adulthood**, and demonstrate the priorities of the local authority for the young people for whom it acts as a corporate parent”.

- What is adulthood for these purposes? Is it 18 or 24?
- It should link back to well-being outcomes and the asset based model.
- Actions should promote and support independence.
- This list should set parameters for an appropriate and proportionate plan to fit their needs (rather than a checklist of entitlements in every instance).
- It should be based on the judgment – *what would a reasonable parent be expected to do in these circumstances?*

## Chapter 6: Post 18 living arrangements

Section 108 on **Post 18 living arrangements** is laudable but has serious financial implications for councils *as pilots have shown*. It has been deemed not viable in England (additional funding from central government has been provided) and ***as we do not know the true costs for Wales it would be irresponsible to implement it*** in the current financial context.

Page 143 raises a number of detailed questions:

- First and last sentences in the first paragraph on **When I am ready carers** are contradictory.
- It does not have regard to benefits or earnings a young person may have.
- What is the position of relatives or grandparents?
- How does this fit with expectations of private foster care agencies (that they will still be paid at the same rate which would present additional financial burden)?
- There is not enough clarity on the status of foster carers and any arrangements they make directly with young people themselves that the local authority cannot control.



## **Chapter 7: Secure Accommodation/ Chapter 8: Children accommodated in other types of accommodation**

In relation to Chapter 7, **Secure Accommodation**, we highlight the following issues:

- The Code does not specify what happens if the request to Welsh Ministers *is not approved*.
- Similarly, it needs to cover instances where a senior judge makes such an order and the Minister says they should be moved out.
- What are reasonable expectations for councils' briefing Ministers and what is the purpose of these?
- This is a missed opportunity to address mental health needs of this cohort of young people and the role of the NHS. All too frequently they are deemed as not meeting criteria for CAMHS, but are placed and funded by local authorities because of mental health issues.