

## **The Care and Support (Eligibility) (Wales) Regulations 2015 – Joint response on behalf of the Association of Directors of Social Service (ADSS) Cymru and the Welsh Local Government Association (WLGA)**

### **Introduction**

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and three fire and rescue authorities are associate members. It seeks to provide representation for local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
2. The Association of Directors of Social Services Cymru (ADSS Cymru) is the professional and strategic leadership organisation for social services in Wales and is composed of statutory Directors of Social Services, and the Heads of Service who support them in delivering social services responsibilities and accountabilities; a group of 80 or so social services leaders across the 22 local authorities in Wales.
3. ADSS Cymru and WLGA have previously responded to the Welsh Government consultation on the proposed code of practice and regulations in relation to Eligibility, a copy of the response can be found at: <http://www.wlga.gov.uk/social-services-consultation-responses/wlga-adss-cymru-consultation-response-regulations-and-code-of-practice-part-34-sswb-wales-act/>

### **Will the draft Regulations and Code of Practice achieve the desired aims of the Act?**

4. The WLGA and ADSS Cymru have previously communicated our broad support for the Act's vision and the ambitious principles that it sets out. We welcome its timely nature in the face of increasing pressures on social care services, both within local government and across our partners in NHS and the third sector.
5. We continue to endorse the analysis from 'Better Support at Lower Cost' (SSIA, 2011) that fundamental to achieving those two outcomes, i.e. better support and lower cost, is a cultural shift in professional and organisational practice and policy. There needs to be a move towards people being offered opportunities to take more control over their own lives and over how they make flexible use of the care and support that is available, with a shift in focus away from a concentration on process, towards a determination to consider and deliver better outcomes.
6. The approach to eligibility outlined holds to the principles of the Act, with eligibility based on a judgement that encompasses needs, outcomes, barriers, risks and resources, all of which connect to the Act's ambitions. The approach has the added advantage that it complements the highly regarded work undertaken by Prof. Eileen Munro in England on children's services safeguarding and protection, with her recommendation that the focus should shift to 'doing the right thing' and away from 'doing things right', in other words away from process and towards outcomes. This helps to emphasise that in Wales a system is being developed that is equally applicable for adults and children, and that is another principle of the Act. It also accords with the evidence in the memorandum that this approach is closer to the current arrangements in Children's Services for determining the thresholds for assessment and providing a service.
7. The eligibility test is a significant change, away from eligibility criteria being used predominantly to gatekeep and 'say no'. The 'can and can only' test is not a simple and unambiguous test, as, inevitably and appropriately, it leaves space for professional judgment

to be exercised, leading to potentially different interpretations being made. Whilst professional judgment will and should always be a consideration, the search for consistency may be a difficult objective to achieve and this may need more thought and testing out with users and carers in particular.

8. It is important to recognise that the proposed model for eligibility is new and untested. Whilst this approach may reduce the number of people who require a care and support plan by introducing opportunities to help people retain independence and access early intervention and prevention services without the need for a formal plan this is a long term vision and currently remains an aspiration. There are many elements to the Act which are inter-related and dependent on each other – the desired aims and vision for eligibility can only be achieved if there are appropriate preventative and early intervention services in place. Our previous consultation responses to the Act highlight the very real challenges being faced in providing preventative services – if the necessary preventative services are not available, and in fact face being cut, then this is likely to have a detrimental impact on social services as an increasing number of people will become eligible for a care and support plan with lower needs than would have been previously seen as the necessary services are not available in the area. The role of preventative and early intervention services, as well as the greater focus on people's well-being, are not aspects that social services can manage on their own and so it is vital that the wider Council and partner organisations, e.g. health, are fully aware of their responsibilities under the Act and held to account for supporting delivery.
9. Many elements of the Act, including assessment and eligibility, will take time to implement in full, with clear training needs for staff or additional resources required. Whilst local authorities are working on the development of many elements of the Act, including assessment and eligibility, IAA services, promotion of social enterprises and an increasing focus on outcomes, experience has taught us that we need to allow time for their proper and healthy development. As such we need to be clear about the expectations from April 2016 and be realistic in agreeing what is achievable in this timeframe, to ensure new practice is sustainable.
10. Eligibility is dependent on assessment and so it is important that both are considered at the same time. We agree that the approach is simpler than the current assessment arrangements for adults and children. A single assessment process for everyone, children and adults, is a major shift, but one to be welcomed. We do believe that more work needs to take place to ensure that the tools that currently support assessment in both children's and adult services are tailored to meet the aspirations of the Act, if possible, without imposing additional burdens on front-line workers to abandon what currently works well.
11. The aim to reduce bureaucracy is welcome, but that will need energy and resources devoted to tackling the inevitable complexity associated with a much easier and simpler process for 'consented' sharing of information, not the least of which will be ensuring that IT systems and a revitalised shared commitment make this possible.
12. We are less sure about whether the approach will be simple to apply, as it requires a very different approach and thereby challenges some of the practice that has inevitably become embedded in people's daily work. Once again it highlights the need for careful, yet robust training and staff development, so that no-one is left in any doubt about the expectations for a fundamental change in the nature of the relationship between users/carers and the workers who are leading and/or involved in their assessment. Many members of the public

look to professionals to solve their family problems and meet their needs and a prudent approach to social care will need to be promoted alongside the prudent healthcare message.

13. It will be vital to review progress as this new approach is implemented and it is positive to see that the Welsh Government intends to commission an evaluation to enable the impact of the new model of assessment and eligibility to be considered. Both ADSS Cymru and WLGA would want to play a full part in this work, as we are all committed to ensure the aspirations of the Act deliver for people with care and support needs.

**Are the Regulations appropriate to ensure the right access to care and support for people who require it in Wales?**

14. The Explanatory Memorandum (EM) recognises that there is no precedent for the proposed new model and the evidence is based on data that has not been fully tested. We need to allow for a period of time to allow the changes to be implemented and ensure that the new approach is kept under review and tested to ensure that it achieves the ambitions of the Act and provides the right access to care and support for people who require it in Wales.

**Do the Regulations and Code of Practice sufficiently address any concerns previously raised?**

15. It is positive to see that the code of practice is being further refined in order to reflect and integrate the key principles and guidance from the Framework for the Assessment of Children in Need and their Families as it is important that the current strengths of Children's Services are built on. It is also helpful that the ambiguity between 'simple' and 'complex' assessment has been clarified and we welcome the removal of these terms.
16. The EM looks at the costs associated with each of the eligibility options that were considered. The graphs set out in the EM are helpful, but at this stage may not offer any conclusive evidence about the likely financial impact in particular of option three, the chosen approach. Graph 2 shows the 'spend per head of the adult population on local authority services' for each of the 22 councils. We believe that it is important to understand the socio-economic context for each of the councils, currently operating to both 'low' and 'moderate' criteria. Only one council is operating to 'low' and that council, as shown in graph 1, is spending less than the average per head on adults receiving local authority services and is in the mid-range (i.e. 14th out of 22) on graph 2. Similarly of the four councils operating to 'moderate', three are indeed spending less than the Welsh average on local authority social care or head of adult population, but the fourth is the second highest spender (council 7).
17. It may be that there are characteristics, in relation to the socio-economic context, that are similar for these five councils that could explain these spending positions, potentially suggesting that their use of 'low' and 'moderate' eligibility criteria is not a significant factor in their spending position. Welsh Government may find it helpful to commission a cost benefit analysis across Wales, to compare service profiles and outcomes achieved, when the changes under the Act have had time to bed down.
18. Another factor that should be considered in relation to the demographic trends, that are now well understood, is the ambition within the Act for early intervention and prevention to play a much bigger role in the offer that is made to people. This could mean that increasingly people over 85 will access a wider range of preventative services and facilities, thereby removing the inevitability of that growing population receiving treatment, care and support through public sector services at a critical and acute level. The Act requires that, through the provision of good quality information, advice and assistance, opportunities will be created for older people, in particular, to learn about and access community and neighbourhood facilities, some of which will be in place which do not require a referral but simply an

introduction. These may be simply extending what third sector and community organisations are currently offering, or it may be that the encouragement of cooperatives and social enterprises will see the development of facilities that people experience as meaningful, local and in which they can play a part. The development or extension of these different kinds of facilities will not be without the need for support, both financial and practical and third sector agencies regularly demonstrate their ability to develop and extend support with relatively small amounts of resource. The role of WCVA and Community Voluntary Councils is critical in sharing best practice and supporting third sector agencies to attract new funds that are not available to Local Authorities.

19. The EM makes reference to significant savings that could be achieved by reducing the expenditure on assessment and care management. Whilst savings may be possible through a more proportionate response we do need to be mindful of the increased responsibilities local authorities have in relation to carers and the likely increase in demand as a result of carers requesting assessments. Demographic changes also mean that there will be higher numbers of older people and people with long term conditions, who will create new demands on the current workforce. Additionally the code of practice on assessments sets out that as part of the provision of advice and assistance through the IAA service an assessment will be required that takes into account the five elements to determine eligibility – this will require experienced and highly skilled staff to be able to have a meaningful conversation with a person at their first point of contact to be able to undertake these responsibilities and so we need to be clear on what impact this will have, particularly on existing IAA services.

**Are there likely to be any barriers to the implementation of the provisions?**

20. We have previously outlined our concern that the Act will increase pressure on local authorities and that staff training and workforce development remains the highest priority. As such the Delivering Transformation Grant and the additional resources to support workforce development are welcomed. This will need to be kept under review to ensure that adequate resources and support are available to ensure that the work required to successfully implement the Act can be achieved.
21. As highlighted above no part of the Act can be looked at in isolation as there are many inter-dependencies – whilst assessment and eligibility sit firmly with local authorities many of the services that will be accessed following assessment will sit outside local authority control. This is not something that local authorities can do on their own and so we need to ensure that all partners are aware of their responsibilities and are held to account for delivery of the Act.
22. We have also stressed that whilst the aim is to provide a consistent response across Wales the 'can and can only' test is not a simple and unambiguous test, as, inevitably and appropriately, it leaves space for professional judgment to be exercised, leading to potentially different interpretations being made. In addition we will also have situations where in one area someone will become eligible for a care and support plan as there are no services available in their community that meet their needs, whilst in another area there may be services in place, so someone with very similar needs may find themselves not eligible. This highlights the fact that finding a consistent response may not be possible as it will be determined by what services are available in any given area. This is particularly pertinent as we rely more on third sector and social enterprises, which will not be uniform across Wales but will reflect the geographical and population differences at locality level, as well as the aspirations and priorities of service users, if we are true to our ambition to develop service user led support and services.