ADSS Cymru
Leading Social Services in Wales
Yn arwain Gwasanaethau
Cymdeithasol yng Nghymru

Social Services and Well-being (Wales) Act 2014 and its interface with Mental Health Legislation in Wales

Practice Guidance

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Social Services and Well-being (Wales) Act 2014 and its interface with the Mental Health (Wales) Measure 2010 and related Legislation

Practice Guidance

When care and support under the Mental Health (Wales) Measure 2010 (the Measure) is being considered, this is the Guidance that should be followed to ensure the requirements of the Social Services and Well-being (Wales) Act are being met.

Introduction

The Association of Directors of Social Services Cymru (ADSSC) Delivering Transformation Programme 2017-18, which is funded by Welsh Government, includes work to enhance practice in respect of Prevention and Early Intervention. One of the aims of this programme is to develop solutions to legislative and practice issues between the Social Services and Well-being (Wales) Act 2014 (SSWBA) and other legislation. This will involve examining how the SSWBA comes into contact with the requirements of other legislation and understand the consequences of potential issues in practice. It was agreed that one priority should be to examine the interplay between the 2014 Act and Mental Health Legislation.

This Guidance is therefore provided on an advisory basis and for a primary audience of service commissioners and Mental Health professionals in Social Care and the NHS. It is also of interest to social workers and managers. It is not intended to be comprehensive but to set out the key issues to be considered and it should be read and considered alongside the details of the relevant Acts, Regulations, Codes of Practice, Guidance and Council requirements. The Guidance was developed through a Workshop and subsequent contributions from a Reference Group that included a range of professionals from Mental Health and Social Services across Wales.

Acronyms used in this Guidance are:

- Social Services and Well-being (Wales) Act 2014 — SSWBA
- Mental Health (Wales) Measure 2010 — the Measure
- Mental Health Act 1983 — MHA
- Mental Capacity Act 2005 — MCA
- Deprivation of Liberty Safeguards — DoLS
- Well-being of Future Generations (Wales) Act 2015 — WFGA

1. Social Services Legislation

The 2014 Act

The SSWBA translates into law much of what is set out in the Welsh Government "White Paper" "Sustainable Social Services for Wales: A Framework for Action". Key themes are that demographic change, higher public expectations and constraints on public spending make traditional ways of providing social care unsustainable. Rather than retrench by restricting help to a smaller number of people, it advocates a new approach which builds on existing strengths, but includes these interlinked key features:

- **Well-being** of the local population and the individual plays a central role throughout the Act. Local authorities have new duties in this respect. See also the Well-being of Future Generations (Wales) Act 2016 (WFGA)
- **a strong voice and real control for the individual:** working with people to find ways to achieve their desired personal outcomes that are strength-based and co-produced, linked to a national outcomes framework, boosting direct payments, supporting greater use of advocacy
- **new models of service:** promoting innovation, mobilising community resources and promoting social enterprises, co-operatives and other user-led organisations
- **preventative services:** a new tier of services to assist recovery and restoration, mobilising community resources and comprehensive information, advice and assistance services to prevent or delay the need for managed care
- **simplicity:** making systems easier and more accessible, reducing complexity, streamlining assessment and care planning arrangements, reducing the burden of guidance, regulation and inspection – see also Regulation and Inspection (Wales) Act 2016
- **integration:** working across professional and organisational boundaries (particularly social services, health and housing) to make best use of resources and help achieve the best outcomes for individuals and families with complex needs
- **professionalism:** ensuring that social services and social care are delivered by a confident, well-trained workforce
- **safety:** strengthening safeguarding arrangements particularly for adults, improving transitional arrangements at key stages of a person's life, extending the role of the Public Services Ombudsman.

Further details about the Social Services legislation are available at the Social Care Wales Information and Learning Hub (the Hub) which is a one-stop-shop for a range of resources about Welsh social care legislation (https://socialcare.wales/hub/home).

The Hub features training materials Social Care Wales have produced and delivered with partners as part of a national training programme to help social care professionals put the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 into practice.

2. Mental Health Legislation

The suite of Mental Health legislation in Wales that is relevant to this Guidance covers the Mental Capacity Act 2005 (MCA), amendments made to the Mental Health Act on Deprivation of Liberties 2007 (DoLS) and access to primary care, care planning and treatment, referral and advocacy – The Mental Health (Wales) Measure 2010 (the Measure). As they predate the Social Services White Paper and 2014 Act there are limited direct references to the detailed social care requirements although the Measure does cover local authority responsibilities and prescribe holistic and co-ordinated care and treatment plans.

The MCA is a principles-led piece of legislation and is intended to be "enabling and supportive of people who lack capacity, not restricting or controlling of their lives". It aims to protect people who lack capacity to make a decision, and also to "maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so".

The Measure is intended to ensure that where mental health services are delivered, they focus more appropriately on people's individual needs. In October 2012, the Welsh Government launched Together for Mental Health, a new, age inclusive, cross-Government Strategy for mental health and well-being. The Strategy set out the Government's ambitions for improving mental health and its vision for 21st century mental health services. It also reinforced the need to promote better mental well-being among the whole population. "Together for Mental Health" builds on the legal requirements of Measure.

A Welsh Government Code of Guidance on the Implementation of the Measure has been published:
http://www.mentalhealthlaw.co.uk/media/Implementing_the_Mental_Health_%28Wales%29_Measure_2010.pdf

Also, a Guide on the Measure for Mental Health Service Users and their Families has been published by Mental Health Wales: http://www.mentalhealthwales.net/mental-health-measure/

3. Interface Between Social Services and Mental Health Legislation – Operational Issues

The purpose of this section of the Guidance is to highlight the key operational issues that relate to the interface between Mental Health and Social Services. In each area, the context is set out, the operational concern discussed and "guidance points" or examples of effective practice provided.

Alignment of SSWBA and the Measure

SSWBA	Measure
Part 2 General Functions includes: Well-being of population and individual, Early Intervention and Prevention Services Information, Advice and Assistance requirements	Part 1 duties to produce a primary care scheme and for the LPMHSS to undertake the 5 functions which include providing advice and information, signposting, assessment, intervention, and support to primary care practitioners including GPs.
Part 3 Assessing the Needs of Individuals and Carers	Part 2 and its planning care co-ordination and review processes.
Part 4 Meeting the Needs of the Individual and Carers including: • Eligibility • Care Planning • Review • Carers	Part 3 as an entitlement to former relevant patients to self- referral for an assessment.
Part 7 Safeguarding and Protection	[Mental Capacity Act]
Part 10 Advocacy including provision of independent professional advocacy for vulnerable people with capacity [Advocacy is cross cutting theme in various parts of the Act as well]	Part 4 as an entitlement to the provision of independent advocacy support for a person in hospital.

A comparison of relevant principles underpinning the SSWBA and the Measure

SSWBA	Measure
Proportionality	Proportionality
Avoiding duplication	Avoiding duplication
Personal outcomes that are strength based and co-produced and "sector blind" - What matters conversation a local authority **must** prepare and maintain a care and support plan or a support plan (for carer) for a person whose needs it is required to meet and that the plans **must** be kept under review	Patients and their carers should be involved in the planning, development and delivery of care and treatment to the fullest possible extent Co-produce a CTP with Service user and where appropriate their carer
Named lead co-ordinator for care and support plan	Right to have a Care Coordinator appointed to work with person to coordinate their care and treatment
Well-being, Prevention and Early Intervention	people with milder or more stable mental health problems may receive primary services from their GPs and other local health and social care services
Integration and Partnership across boundaries	Care and treatment should be integrated and coordinated

Collaboration and Partnership Working

The importance of collaboration and partnership working is emphasised and required through the SSWBA and related Regulations and Codes. This is at leadership, management and practice levels. The need for effective joint working is also include in the Measure. Welsh Government issued a Welsh Health Circular in May 2016 that looked at the implications of the Act for NHS University Health Boards and Trusts. The need for closer integration of service delivery and improved joint working at all levels is essential but especially at practitioner/front-line interface of health and social services for mental health provision.

All areas in Wales have established Regional Health and Social Care Partnerships and are working towards integrated services, however the Acts that we are focussing on in this guidance call for a far greater number, level and intensity of partnerships than just cooperation between Health and Social Services teams. There are many excellent examples of broad effective partnerships between Statutory and Third Sector agencies but this is also an area for further development. Recognition of the Third Sector as an essential partner in delivering integrated care and support should be given greater emphasis.

ADSS Cymru and the NHS Confederation in Wales have produced a series of Case Studies that provides examples of positive joint working between health and social care and the third sector. http://www.nhsconfed.org/~/media/Confederation/Files/Publications/Documents/WB%20Case%20Studies%20-%20E.pdf

Skills for Care have produced a “Principles to Practice” Guide to implementing the common core principles to support good mental health and well-being in adult social care.
http://www.skillsforcare.org.uk/Document-library/Skills/Mental-health/Principles-to-practice---good-mental-health-and-wellbeing-in-adult-social-care.pdf

Information, Advice and Assistance

Information	Advice	Assistance
Leaflets, websites, libraries, CAB, Telephone lines, support groups, one stop shops, front line workers	Telephone lines, one stop shop, walk in centres, assessment team,	Making contact, completing forms, transport, accompanying the person
What does the provision of Information Mean?	**What does the provision of advice mean?**	**What does the provision of Assistance Mean?**
Providing data to the person	Exploring the options with the person	Taking action with the person

The SSWBA and related Code of Practice introduces a duty on local authorities to secure an Information, Advice and Assistance (IAA) service that provides all individuals within their locality with accessible information, advice and assistance to enable an individual to make plans to meet their care and support needs or a carer to meet their support needs now and in the future. The Welsh Government state that IAA is central to the Act and is an opportunity to change the perception of social care and support services in Wales. It will promote early intervention and prevention to ensure that people of all ages can be better supported to achieve their personal outcomes and explore options for meeting their care and support needs. It should be considered to be a preventative service in its own right through the provision of high quality and timely information, advice and assistance.

For Councils, the IAA Service Is the statutory “front door” and should in most cases be the first point of contact with Social Services, with a focus on preventing escalation and promoting well-being. However, IAA is an approach as much as it is a prescribed service. It is essential that:

- Initial and on-going training for IAA staff and managers is in place with tailored/ bespoke follow up plans;
- Understanding and awareness of Mental Health within IAA services is effective with strong and appropriate referral mechanisms in place;
- Further work is undertaken on defining IAA in more detail, specifically in relation to Mental Health and distinguishing between wider “preventative/well-being” community-based IAA and the local authority IAA service;
- Wider awareness and development of community-based IAA options to avoid “pulling people” towards social services is achieved;
- Utilisation of voluntary/third sector IAA experience and systems and development of Neighbourhood or community networks is progressed with sufficient and effective referral points for Mental Health;

Most Local Authorities have adopted a single point of access offering a single postal address, telephone line, twitter account, email address, web-based contact form and even an “app” to contact the Council from everything from recycling, planning applications, safeguarding or a Well-being Assessment. Evaluation of this emerging practice, greater clarity for service users on

choosing which option to use and achieving greater consistency within Regional Partnerships is needed.

> **Guidance point:** Local Authorities have found that front loading IAA services with sufficient mental health expertise as part of the team to be able to identify and signpost inquiries appropriately is helpful. For example, Cardiff Council are considering the provision of mental health awareness training to their front line low level services, and ensuring access to specialist Mental Health professional advice on signposting is available from the first point of contact to reduce the unnecessary referrals to Secondary Care with the aim of reducing delay in persons accessing initial tiers (0, 0.5 and 1) of services that can be found in Primary Care, the Primary Mental Health Support Services, and from the Third Sector, either directly or through Hubs. Systems and interactions must avoid duplication so that the individual is not asked to repeat their story.

Managing the "flow" though the Mental Health Services' "front door" is a particular challenge however as the point of first presentation is most often through the GP and primary Care. A General Practitioner in a ten or twenty-minute consultation may well be presented with the clinical implications, social and domestic issues including housing, poverty, abuse, loneliness, unemployment etc. Whilst they need to address the immediate symptoms, a more sustainable outcome would also include correctly referring or signposting to other "well-being" agencies or services.

> **Guidance Point:** Just as with the other common first point of contact examples, front loading this access point with Mental Health expertise that is aware of the ever-expanding range of psychological therapies and well-being resources is the most efficient way of ensuring the right person gains access to the right resource in a timely fashion. This also improves the efficiency of the Secondary Services who will in turn receive a return on this investment from fewer and better-targeted referrals. There are many examples of this approach having a major impact throughout Wales.

Assessment, Eligibility and Care Planning

The principles that underpin the integrated assessment are:

- Proportionality
- Avoiding duplication
- Reduce multiple assessments
- 1 person as the gatekeeper of certain services
- Focus on what is the purpose of joint assessments – personal outcomes that are sector "blind"
- Include the "What Matters" conversation at an early stage. Put the person at the centre to determine what outcomes are needed and translate this into plan of care.
- Strength-based and co-produced approaches

The Code of Practice under the SSWBA says:

> 11. The purpose of an assessment for care and support is to work with an individual, carer and family, and other relevant individuals to understand their needs, capacity, resources and the outcomes they need to achieve, and then to identify how they can best be

supported to achieve them. At the core of this is a conversation about promoting independence and development by maximising people's control over their day to day lives and helping address difficulties or problems which are stopping them achieving this. It is essential that people are enabled to identify their own personal outcomes, and how they can achieve those outcomes.

12. This is a model of assessment and care planning that requires the assessment process to start with the person themselves and understand their strengths and capabilities and what matters to them, and how their family, friends and local community play a part in their life to help them reach their personal outcomes. It is consistent with the principles that underpin the Mental Capacity Act 2005. It is an approach to assessment and care planning that recognises that needs can be met not only through the provision of services but through active support and assistance to enable people to meet their own needs. For example, by assisting people to access local services themselves or supporting people to develop the skills and confidence they need."

Paragraph 38 of the Code says:

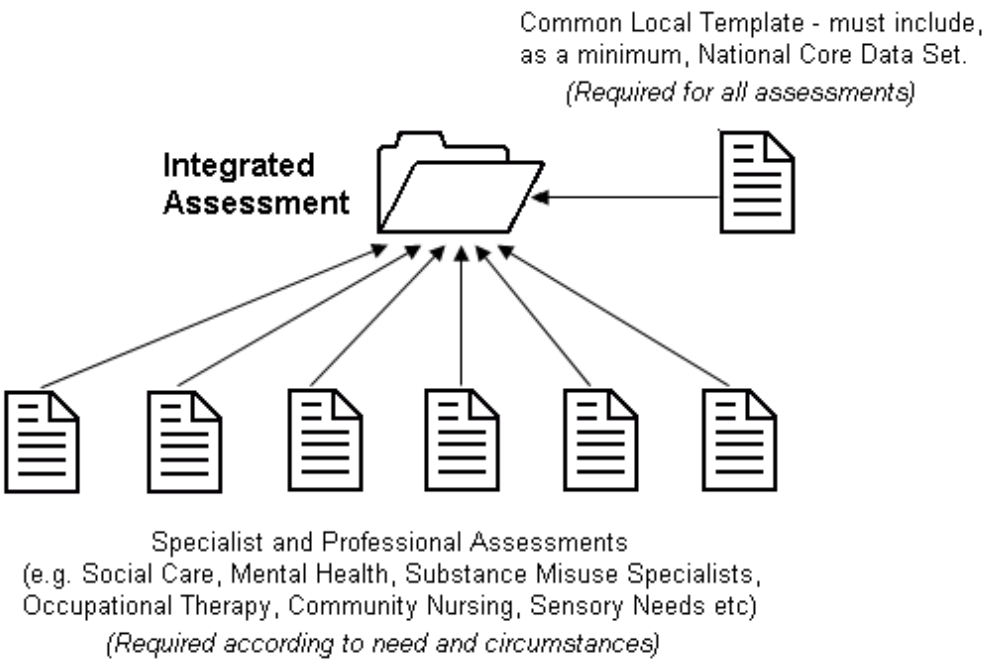
"In order to avoid the duplication of assessments under different legislation being carried out separately, a local authority may carry out a needs assessment under the Act at the same time as it carries out an assessment under other Acts or at the same time as another body carries out an assessment under other Acts. In such cases, the local authority may carry out the assessment on behalf of or jointly with the other body. In cases where the other body has arranged for the other assessment to be carried out jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person."

The Code also says (paras 27-30)

"It will often be the case that where a more comprehensive assessment is required, an assessment of care and support needs may need to comprise a compendium of one or more professional assessments which will supplement the minimum data required in the national assessment and eligibility tool, which is set out in more detail later in this Code."

"Each of these assessments may be from a particular professional discipline and designed to suit the specific assessment task of that professional discipline. This diagram illustrates this:"

Elements of an Integrated Assessment



The SSWBA provides that a local authority must:

- prepare and maintain a care and support plan or a support plan for a person whose needs it is required to meet and that the plans must be kept under review
- ensure that there is a named individual to co-ordinate the preparation, completion, review, delivery and revision of the plan
- Regulations specify the general structure of Plans and the Code of Practice sets out requirements in respect of principles and details of Plans and the Care Planning process. The format of the care and support plan must be agreed by the local authorities and Local Health Board and NHS Trusts and, as a minimum, must be consistent across the regional footprint of the Local Health Board.

Paragraph 98 of the Code of Practice says:

> "Where there are overlapping duties to prepare plans that are nationally or legally prescribed (for example a Care and Treatment (C&T) Plan prescribed under the Mental Health (Wales) Measure 2010 or a 'section 31A plan' prepared for the purposes of Part 4 of the Children Act 1989), and there is a plan that meets the requirements of a care and support plan; the preparation, delivery and review of that plan can be regarded as the way for the local authority to meet its duties to prepare, deliver and review a care and support plan."

Also Paragraphs 100/1 say:

> "Where there are well-being or specialist plans which do not meet the requirements of a care and support plan the local authority must ensure that practitioners have regard to the requirement of the Regulations on care planning and this code of practice but must combine the care arrangements into a single integrated care and support plan. This will include plans relating to the safeguarding of the individual."

The full details of the Regulations and Code of Practice can be accessed here: https://socialcare.wales/hub/sswbact

Assessment and Eligibility Guidance Points:

The intention of the legislation is clear. Assessments must be proportionate, co-produced with the person and any carers; we should strive to avoid duplication and repeatedly asking for the same information from service users. The "What Matters" conversation can and should start at the first contact and develop as the level of need is disclosed, However the language and approach of this dialogue must be strength-based and inclusive of social, familial and community networks.

The number of specialist pathways to meet the needs of certain client groups such as Autistic Spectrum Disorders (ASD), Personality Disorders or Eating Disorders particularly, identify the likelihood of duplication and potential gaps between service thresholds. This can mean that persons in need of a service fail to get help yet remain in need. It is important that practitioners recognise and manage these situations where they arise so that the individual gets the response the legislation requires.

The clinical expedience of specialist pathways for trauma, ASD, drugs and alcohol and learning difficulties (to name but a few) cannot be allowed to fragment the holistic picture of the individuals "What Matters" conversation. Well-being Hubs such as those proposed in Cardiff and Vale UHB, or the workings of Neighbourhood Community Networks in the ABUHB areas must be able to bring specialist opinion into the comprehensive assessment of needs and eligibility.

> **Guidance Point:** Clearly the ideal position would be for a person's records, assessments and information to be collected and collated once, in a modular way that would build if necessary from IAA to a Well-being Assessment or Mental Health Assessment and further to a Care and Treatment Plan. There are many Health Board and Local Authority shared recording and records, although these still fail to achieve the level of integration that would offer a citizen the sort of building block "Integrated Assessment" that would be the gold standard imagined in the legislation. There are numerous examples of Health and Social Services sharing a single (usually Health) system of recording in Integrated Mental Health teams using forms locally designed to meet Mental Health Measure needs, however, where the Well-being Assessments are also required, or specific packages of care, or direct payments are agreed this integration is not yet present. The key point here is that this needs to remain a priority issue for the Regional Partnership Boards.

One potential opportunity to address the risk of overlapping modular records might be to explore a similar concept to the "Red Book" or Child's Personal Healthcare Records, that we have become familiar with in the first few years of a child's life. There are digital versions of the "red book" in some English Health regions. The Data Protection Act, and other privacy orientated pieces of existing legislation, along with clear duties to provide service users with copies of their assessments in both the SSWBA and The Measure provide no obstacle and perhaps positive

encouragement towards the service user themselves holding a framework of their own modular assessment of their needs and their Care and Treatment or other service plan. However, we have not yet heard of any Partnership Board in Wales considering this option. We would welcome a working group that considers the viability and potential for co-production of records with service users.

Care Planning, Review and Co-ordination

Who is a "Relevant Patient"?

The importance of this question is that Part II of the Measure lays certain duties and responsibilities for the care and treatment planning, review, and care coordination of a "relevant patient" and also confers the right to self-refer back to secondary services at any time up to three years post discharge from secondary services (from anywhere in Wales). Section 12 of the Act states:

> *12 Meaning of "relevant patient" (1) For the purposes of this Part, an individual is a relevant patient if a mental health service provider is responsible for providing a secondary mental health service for the individual. (2) An individual who does not fall within subsection (1) is also a relevant patient if – (a) the individual is under the guardianship of a local authority in Wales; or Mental Health (Wales) Measure 2010 (7) 7 (b) a mental health service provider has decided that the individual would be provided with a secondary mental health service if the individual cooperated.*

Guidance Point: The definition in the Measure (above) can give rise to difficulties because it does not supply a definition of "Secondary Care". However, in March 2012 the Welsh Government published further advice entitled "Guidance to assist Local Health Boards and Local Authorities in meeting their duties under the Measure." (http://gov.wales/docs/dhss/publications/120322measureen.pdf) This document clarifies that any person receiving a specialist service aimed at addressing their mental health from a relevant provider (Health Board, or Local Authority) comes under Part II of the Measure and must therefore have a care coordinator, a care and treatment plan, a minimum of 12 monthly review, and is entitled to make a part III self-referral post discharge for up to three years.

Guidance Point: The single defining characteristic of this requirement is whether the care is provided under the "General Medical Services Contract", or under the supervision of secondary services (i.e. a Community Mental Health Team, "after care" under s117 of the Mental Health Act 1983 or as Continuing NHS Healthcare). In this respect, the issue of shared care with the GP on the question of depot medication, or ADHD medication becomes a relevant issue as it appears that under the current arrangement unless the General Practitioner is prepared to prescribe and administer such medications some otherwise stable and self-monitoring patients remain under Part II of the legislation (and must therefore remain open to secondary services) which, in some cases might represent an unintended impediment to their wider sense of recovery. This might present interesting parallels with some aspects of other specialised care that are now managed from Primary Care such as aspects of diabetes and coronary care for discussion within the appropriate Local Partnership Boards.

Safeguarding Adults at risk

The provision of treatment, care and support of individuals with a Mental Health condition is an obvious and important area of interplay between the SSWBA and its Regulations and the Mental Health Legislation including the 2005 and 2007 Act and the Measure.

The SSWBA introduces a strengthened, robust and effective partnership approach to safeguarding. One of the most important principles of safeguarding is that it is everyone's responsibility. Each professional and organisation must do everything they can, to ensure that children and adults at risk are protected from abuse. Apart from establishing a National Safeguarding Board and related Local Safeguarding Board arrangements, the new statutory provisions also introduced the concept of Adult Protection and Support Orders (APSOs) . The SSWBA aims to strengthen and build on existing safeguarding practice in Wales to ensure that people can live their lives to the full. There is a new overarching duty to promote the well-being of people who need care and support – defined with eight common aspects, one of which is protection from abuse and neglect. There are other overarching duties in the Act. Practitioners must have regard to people's individuality, dignity and their views, and support them to participate, including considering whether advocacy support is necessary as well as considering the UN Conventions on Children and on Disabled People and UN Principles for Older People.

The SSWBA includes other provisions that relate to the Duty to Protect including:

- providing services that contribute towards preventing people suffering from abuse or neglect harm, and information and advice on how to raise concerns;
- assessing people's needs, even if they refuse assessment, if abuse, neglect or harm (for children) is suspected;
- automatically meeting needs for people whose needs aren't otherwise eligible if that is necessary to protect them from abuse, neglect or (for children) harm;
- actively engaging and co-operating with partners to protect people from abuse, neglect or (for children) harm.

There are new duties to report an adult at risk for all relevant partners of a local authority and for a local authority to make enquiries if it has reasonable cause to suspect that a person within its area (whether or not ordinarily resident there) is an adult at risk. The Statutory Guidance for Part 7 of the SSWBA can be accessed here: https://socialcare.wales/hub/sswbact-codes. It is important to emphasise that where a safeguarding need is identified this of itself makes the individual eligible for services – whether that be health or social care.

Adult Protection and Support Orders (APSOs) are introduced by the SSWBA. These are a new function designed to enable a local authority to properly assess whether a person is an adult at risk and, if so, to decide about any action that should be taken. Processes are specified to apply to a JP for a Court Order to gain access to an individual to assess their needs. APSOs are only to be used in exceptional circumstances where other attempts to speak to the adult considered to be at risk have failed.

Guidance Points:

- Several areas in Wales have developed Multi-Agency Safeguarding Hubs (MASH) following pilots in this integrated service from England and North Wales commissioned

jointly by the Local Area Safeguarding Boards with permanently attached staff that are co-located from Health Social Services Police and Probation Services. An annual report from the National Independent Safeguarding Board that the SSWB Act also created will be produced.

- Beyond the establishment of MASH, the ethos of the Well-being of Future Generations (Wales) Act 2015 (WFGA), and the SSWB Act, in line with some of the current thinking in Child protection suggests that we should consider re framing our language and the underlying thinking around risk and safeguarding generally in terms of the accepted concept of "Signs of Safety." The preventative stance learnt from working with domestic violence and other safeguarding areas in terms of seeking opportunities for resilience, and community ownership are also examples of good practice. What opportunities do we have to promote safety in our communities and in the social and family networks of adults at risk? It is hoped that by transforming the language it might be less stigmatising and intimidating and a stronger more optimistic message to engage with community partners beyond the specialised agencies.

Deprivation of Liberties

The Law Commission have recommended that the DoLS arrangements should be replaced and that new legislation including a Code of Practice is needed. This will be considered outside of the timeframe for this Guidance but in the meantime, it is important that current requirements of the 2007 Act and the interplay with Protection and Safeguarding duties in the 2014 Act are complied with and that the concerns set out in the Law Commission report about the implications for individuals are addressed (Mental Capacity and Deprivation of Liberty March 2017). https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/

Continuing Health Care (CHC)

Continuing NHS Healthcare (often known as NHS CHC) is a package of care arranged and funded solely by the NHS. It is available to people assessed as having a primary health need, i.e. when their requirement for care is predominantly health related. This is determined by an assessment of the nature of their needs and the level of care required to manage them. NHS CHC can be provided in any setting including a person's own home or a care home (National Assembly 2016). In 2014 Welsh Government published a revised National Framework for Continuing NHS Healthcare, which strengthens guidance and strategic oversight given to LHBs. http://gov.wales/topics/health/nhswales/healthservice/chc-framework/?lang=en

The National Framework is supplemented by a Decision Support Tool to aid practitioners on decisions regarding an individual's eligibility for CHC. Whilst this is primarily about the NHS, Local Authorities also have related duties for CHC and the interplay between these requirements and the joint working mechanisms needed, have been problematic at times in Wales. In relation to Mental Health, the CHC Framework specifically mentions the Measure and it is explicitly included as one of the "characteristics of need and their impact on the care required to manage them" that will determine whether an individual's primary need is a health need i.e. eligibility. In relation to after care under Section 117 of the Mental Health Act (see below), the CHC Framework also sets out

requirements on managing the interface between section 117 and eligibility for Continuing NHS Healthcare. Given the overarching and collaboration duties in the 2014 Act placed on Councils and Health Boards, it is essential that there are effective multi-disciplinary arrangements in place between them to ensure that the individual's well-being and personal outcomes are addressed and all these new statutory requirements are met when considering CHC.

Section 117 After Care

Section 117 of the Mental Health Act 1983 requires health authorities and local social services authorities, in co-operation with voluntary agencies, to provide after-care to patients previously detained in hospital for treatment under section 3, 37, 45A, 47, or 48 of the Act. Case law has confirmed that section 117 imposes an enforceable joint duty on health bodies and local social services authorities to consider the after-care needs of each individual to whom the duty relates. Furthermore, authorities cannot charge for services provided under section 117, which arise from the person's mental disorder. This is a clear priority issue where the interplay between the legislation is important and practice needs to be governed by clear locally agreed procedures.

> **Guidance Point: Continuing NHS Health Care (CHC) and S117 Aftercare**
> If we are to commission and develop person-centred approaches with people in an integrated partnership between agencies, then the funding arrangements for the provision of care/aftercare must not be the determining factor for the engagement of the citizen. It does not matter to the individual if it is Health or Social Services that funds their accommodation and/or care, what matters is that it is an entitlement of theirs as a citizen because of their needs, history and assessment. It falls to the partnership between Health and Social Services to reach a mutual understanding of needs and eligibility/responsibility and to provide for those needs (under review) towards the agreed recovery pathway for the service user. The definition of a relevant person under the Mental Health Measure places a CHC patient and a person eligible for S117 aftercare into Part II of the SSWBA.
>
> **Guidance Point:** Joint Health and Social Service panels to review the placement needs of persons who come under this part are clearly desirable, not only will this reduce duplication but it is also likely reduce delays in transfer of care. Examples of joint assessments and shared discussion have been found in ABUHB and C&VUHB with their respective Local Authorities. Integrated training and shared assessments will be assets towards achieving this goal.

Out of Hours Emergency Delivery Team

Local Authorities have a duty to provide information advice, assistance, assessment and services in an emergency as appropriate to the individual and can delay the financial assessment to ensure services are provided urgently when needed. The work of these teams in Social Services play a vital role and are particularly relevant to mental health support provision and in respect of joint working with the NHS. In particular, the care crisis concordat and the operational approach to Unscheduled Care are relevant here. There is some evidence of variability in approach to this issue across Wales and it is important that compliance with the requirements of the SSWBA is met through consistently applied guidance at the Regional Partnership level.

> **Guidance Point:** Integrated Crisis and home treatment teams are clearly indicated and a natural extension of the Integrated CMHTs, as is the potential for Integrated Teams to extend their working hours in line with the wider GP operating hours. Offering daytime only CMHT appointments appears to run against the spirit of recovery for secondary care patients who may be towards the end of their recovery pathway and are maintaining employment education or training. Services need to consider short term intervention provision to cope with the out of hours issues to include Mental Health social workers located with 1st responders.

The Regulation and Inspection (Wales) Act 2016

This Act provides an important context to Mental Health services in that it introduces a new Regulation and Inspection regime that supports the SSWBA and is about quality and improvement and putting the person cared for at the centre. Regulations were introduced in December 2017 that provide a framework for the inspection of social care provision in domiciliary and adult residential settings, children's residential care settings, secure accommodation for children and residential family centres in Wales that will come into force in April 2018. In respect of integrated services that involve elements of local authority social services, health and third sector services that are regulated services, CIW will register and inspect those services that are covered by the 2016 Act. The Act also provides a robust and meaningful response to the clear lessons which have been learnt from the failures in the system in recent years. There is therefore a strong interplay between this Act, the SSWBA and Mental Health legislation albeit that HIW will also have inspection responsibilities.

> **Guidance Point:** CIW and HIW have commenced the first joint inspection by Community Mental Health Services across Wales specifically seeking information and evidence at the front line of Secondary Care of integration, collaboration, partnerships and engagement with family networks and carers. The reports of these inspections will provide invaluable evidence for practitioners and managers in Mental Health to utilise good practice from across Wales to improve their service response to individuals.

The Well-being of Future Generations (Wales) Act 2015

The WFGA which is of general relevance to this Guidance is designed to achieve seven well-being goals:

- A Prosperous Wales
- A Resilient Wales
- A Healthier Wales
- A More Equal Wales
- A Wales of Cohesive Communities
- A Wales of Vibrant Culture and Welsh Language
- A Globally Responsible Wales

All Public Bodies in Wales are charged with reflecting these priorities in their planning and commissioning and the WFGA will expected them to:

- work together better
- involve people reflecting the diversity of our communities
- look to the long term as well as focusing on now
- take action to try and stop problems getting worse - or even stop them happening in the first place.

The WFGA sets out ways of working towards the Goals and appoints a Commissioner to oversee, advise and scrutinise the performance. Further information can be found at http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en

4. Examples of Effective Practice

Joint Working

Gwent Police have been piloting a mental health professional working on shift in their Force Control Room. This pilot has proved successful and funding has now been secured to appoint a team of professionals, i.e. one professional per shift (there are five shifts). Five mental health professionals have been appointed and one Manager who will work closely with police and LA/Health partners to ensure positive outcomes for individuals in crisis. To date there has been a substantial reduction in the number of S136 arrests as the professional has been able to signpost the individual to achieve more appropriate outcomes. It is envisaged that the new team will commence their employment at the end of January 2018.

The Community Mental Health Teams and Assertive Outreach Team in Caerphilly are managed by Integrated Team Leads, i.e. they manage both health and social services staff. There is a Central Referral Point where referrals are sent via GP and joint assessment clinics are held.

Cardiff and Vale UHB are collaborating with Primary Care, The Mental Health Foundation, Diverse Cymru and a range of Asylum Seeker charities to develop grounding and resilience training for asylum seekers presenting with trauma.

Within secondary mental health services currently in **Conwy** have been providing joint health and social care supervision sessions to support risk management and safer discharging and more beneficial induction programmes for health and social care staff due to the very nature and complexity of secondary mental health services.

Following a recent MHA assessment in police custody the police assisted with conveying a detained person to PICU, whereby risks around unpredictable behaviour, violence and aggression were all highlighted. The person had been arrested due to making threats to kill a neighbour and weapons were located at the address. During a medical examination with the doctor in custody, it became apparent that the person was previously known to the forensic psychiatry service and was in fact relapsing.

There are anecdotal examples of Gwent and SW Police willingly attending and providing valuable support during difficult community MHA assessment, in absence of a warrant. For example, at 4 am in Gwent: Out of hours GP and ambulance were already present at the address, responding to a crisis situation whereby the individual concerned had made a significant deliberate self-harm attempt. The person was not very cooperative (due to being in a state of mental distress) and there were concerns about ongoing suicide risks. Up until this occasion the police had been found to be quite rigid around only attending MHA assessments when a warrant has been secured. Access was eventually secured through the partner/NR who also resided at the address. Due to the support and cooperation from agencies and a shared sense of concern, the person was safely admitted to hospital under s2 MHA 1983.

There clearly needs to be productive outcomes from the Crisis Care Concordat and other multi-agency platforms for discussion and innovation since this front-line cooperation clearly saves time and promotes the best outcome for all parties most notably the service user themselves. We note the new appointment of a “Head of Mental Health” to the senior team of the Welsh Ambulance Service as an opportunity for discussions at a Regional Level on the transport of detained persons and other mental health interface issues.

ICF funding has been provided (up until 2019) for a non-ambulance vehicle and driver for use in Gwent to reduce waiting times for transport. The custom and practice of using ambulances to convey a detained person to hospital can result in long delays increasing stress and risk to persons in an already highly charged situation.

Information, Advice and Assistance

Cardiff and Vale are currently running three separate Pilot initiatives, one in the Third Sector (Mind) one through a private contract, and the third which has two senior Secondary Care Mental Health Professionals working directly within a cluster of six GP practices (Cardiff East Cluster) commissioned from the funds of the cluster but managed in Secondary Care. The early results of this last Pilot have seen secondary care referrals reduce by 50% and the commissioning of a targeted third sector project to address the specific primary mental health needs of the local neighbourhood.

ABUHB with its five partner Local Authorities are working towards Neighbourhood Community Networks (NCNs) based on the primary care clusters that have a Mental Health objective alongside a whole range of chronic health and social well-being issues which aim to offer integrated care in a much more localised and tailored way at the neighbourhood level. http://www.gpone.wales.nhs.uk/sitesplus/documents/1000/Vol%202%20Issue%202%20NCN%20Newsletter%20June%20%20July%202017.pdf

In addition to the IAA Team in **Caerphilly** there is a **Central Referral Point (CRP)** which is an integrated approach to access into mental health or signposted to more appropriate services. Good links are in place with Primary Care who also accept referrals via GPs hence not everything goes through the IAA Team. They also have a Senior Social Worker in the Mental Health Team who ensures there are good links with IAA and Central Referral Point and any issues are addressed accordingly.

5. Further Issues to Consider

The remit of the project to produce this Guidance was limited by both resources and time and prioritised the interface between the relevant legislation. Through discussions with our Reference Group, a number of important and relevant issues were identified that it was not possible to include within the content of this Guidance. The need for these matters to be examined is nevertheless significant and they are listed here to provide a wider future agenda for improvement in this arena:

- Further Guidance where the primary target audience would be practitioners applying the legislation in practice, together with their line managers. It would need to be more focussed on decision making and on the specific related statutory requirements. A decision tree or algorithm to enable staff to reach informed decisions would assist.
- Individuals with a Learning Disability who also have a Mental Health condition.
- Looked After Children and Children with a Mental Health problem who are in transition to adult-hood.
- Primary Mental Health Services and collaboration with Social Services and Community Support Services including for IAA.
- Adults with specific qualifying circumstances (ASD, Drug and alcohol issues, Prisoners, perinatal services or homelessness).
- Practical procedures and arrangements for police support where it is perceived that there will be an issue with someone experiencing mental health crisis and they may be resistant to admission.
- Ambulance waiting times for patients with a suspected mental health problem and joint working between the police and ambulance service where delays can result in leaving the person in mental health crisis waiting and thus further delaying the assessment and subsequent admission.
- Raising awareness and understanding of frontline staff in Health for example Ambulance Crew, GP's around the Mental Capacity Act and their roles and responsibilities under this legislation.

6. Conclusions

This Guidance provides some basic advice about the interplay between the Social Services and Well-being (Wales) Act 2014 and Mental Health Legislation – principally the 2010 Measure. It does not cover all the issues that might have been included but provides a starting point in a discussion that needs to be widened and sustained across Social Care, the NHS and Third Sector. Such a tripartite partnership is clearly supported by Government policy and legislative intent. It is important to understand that the key duties under the 2014 Act and the 2010 Measure do complement one another but this is an important and risky area of integrated working whose further development should be prioritised.

We are grateful to the social services and mental health professionals who have helped with the production of this Guidance.

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