

Paul Davies AM/AC

Aelod Y Ceidwadwyr Cymreig dros Preseli Penfro
Conservative Member for Preseli Pembrokeshire

Dai Lloyd AM
Chair, Health, Social Care and Sport Committee

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee

Llyr Gruffydd AM
Chair, Finance Committee

10 January 2019

Dear Chairs,

Autism (Wales) Bill

I would like to thank you and members of your committees for your detailed consideration of the Autism (Wales) Bill and your reports published on 7 December 2018. After careful consideration, I would like to take this opportunity to respond to the recommendations made in each report ahead of the Plenary debate on the general principles of the Bill on 16 January.

Health, Social Care and Sport Committee

Recommendation 8. We recommend that, if the Bill proceeds to Stage 2, an amendment should be brought forward to ensure that Judicial Review is not the only route available for individuals to assert their rights.

I accept the principle behind this recommendation, but having given careful consideration to the relevant issues, it is with much regret that I am unable to implement it at this time.

The overall purpose of this Bill is to ensure the needs of children and adults with Autism Spectrum Disorder (ASD) in Wales are met, and to protect and promote their rights. It would be of great concern to me therefore should those whom this Bill seeks to help are unable to seek appropriate remedies if their needs are not

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met. The Bill currently sets out clear duties on the Welsh Ministers and relevant bodies that enables those wishing to seek redress to do so through judicial review; however I acknowledge concerns that this is not always an easy process to navigate.

In evidence, my officials and I commented on the distinction between enforcement on the part of the Executive, and direct remedies available to the citizen. Whilst the former can be addressed in a number of ways (for example powers of direction and intervention), the options to address the latter in this type of legislation are far more limited. Financial remedies would not be appropriate in this case, and I would not want to legislate for remedies that the citizen already has the right to access (such as complaints via the existing NHS and local authority procedures, and reference to the Public Services Ombudsman). However, like the Committee, I am supportive of the aim of further enhancing the rights of the citizen to access suitable remedies where practical and, as such, have given much consideration during the development of the Bill as to how it might be amended in order to achieve this aim.

Unfortunately however, for the reasons I have outlined, I have been unable to identify a workable solution and am therefore unable to accept this recommendation at this time. That said, I remain fully supportive of the Committee's rationale in making this recommendation, and can assure Members that, should the general principles be agreed, I would be happy to work with Members, or to consider any amendments tabled during the amending periods, with the aim of strengthening the Bill in this respect.

The remaining recommendations made by the Health, Social Care and Sport Committee relate to the Welsh Government. I share the concerns raised by the Committee in its report and fully agree with the Committee that urgent improvements to ASD support services are needed.

Finance Committee

Recommendation 2. The Committee notes the miscalculation in the Regulatory Impact Assessment and recommends this is addressed, should the Bill proceed to stage 2.

Accept.

I wrote to the Finance Committee on 31 October 2018 outlining a miscalculation in the Regulatory Impact Assessment regarding the potential savings that could be made should the Bill result in a 1% reduction in ASD spend. Should the general principles of the Bill be agreed, I can confirm that the revised RIA, which will be produced following the completion of Stage 2 proceedings, will reflect the updated figure.

I share the frustration expressed by the Finance Committee around the Welsh Government's lack of co-operation with me as I sought to obtain accurate data on the current spend on ASD services across Wales. One would expect Welsh Government to collect such data so as to ensure the proper planning and delivery of its own ASD services, and I can say unequivocally that it would have enabled me to provide even greater detail around the costings for the Bill. I wholeheartedly endorse the Committee's recommendation 1 that the Welsh Government should commit to providing information to assist Members in producing accurate costs for explanatory memoranda tabled to accompany Bills introduced in accordance with Standing Order 26.91.

Constitutional and Legislative Affairs Committee

Recommendation 1. The Member in charge should table an amendment to the Bill to require that the autism strategy under section 1 of the Bill is subject to the negative procedure.

Accept.

I accept this recommendation and, should the Bill proceed to Stage 2, commit to tabling an amendment to this effect to ensure that this level of Assembly scrutiny is afforded to the strategy.

Recommendation 2. The Member in charge should discuss with the Cabinet Secretary a suitable timeframe for completion of the autism strategy and table an amendment to section 1(4) of the Bill to increase the 6 month deadline in line with those discussions.

Accept.

I am aware that the Cabinet Secretary for Health and Social Services has expressed concern around the timescale specified in the Bill for completion of the autism strategy. I am content to reconsider the timeframe and commit to working with the

Welsh Government to agree a suitable timescale and to table an amendment to the Bill to that effect.

Recommendation 3. The Member in charge should re-consider whether the remedies available to citizens under the Bill are appropriate, and if necessary, table amendments at Stage 2 to provide a more effective way of enforcing the Bill's provisions.

Accept.

This is similar to recommendation 8 made by the Health, Social Care and Sport Committee. As stated in my above response to that recommendation, I am supportive of enhancing citizen's rights under the Bill where possible, and have carefully considered all practical options to achieve the aim of strengthening the remedies available to them. Unfortunately, as I have explained, I have been unable to identify a meaningful way of amending the Bill in this respect.

However, I re-iterate my commitment to ensuring that the Bill does provide for remedial rights where practical and, as I have stated above, am happy to work with Members and other experts, or to consider any amendments tabled during the amending periods, with the aim of strengthening available remedies under the Bill.

Recommendation 4. The Member in charge should table an amendment to the Bill setting out the data that must be collected by local authorities, with the addition of a power for the Welsh Ministers to prescribe in regulations, subject to the affirmative procedure, other categories of data (in effect replicating the provision in section 6(6)(j)).

Accept.

Section 6 of the Bill sets out the specific data to be collected by NHS bodies to assist in the diagnosis and service provision for people with ASD. The specified categories of data are judged to meet the minimum requirements for satisfying the functions of diagnosis, service planning and development. This provision was informed in large part by consultation with Dr Dawn Wimpory, who manages a trial on ASD data collection for Betsi Cadwaladr UHB, and who is herself a clinical practitioner. It was further underpinned by the public consultation on this aspect of the Bill.

I acknowledge that, whilst local authorities are specified as one of the relevant bodies to whom parts of section 6 would apply, this is solely in relation to their general obligations to assist the Welsh Ministers to discharge their own data collection duties under section 6(1). The Welsh Ministers' duties are to obtain, produce and keep updated reliable data to support their functions under the Bill – and it is open to them to decide what data they must collect to achieve this. Whilst the specific data obligations placed on NHS bodies in section 6(6) of the Bill were included to address a clearly defined and pressing need, no evidence was received identifying a lacuna in relation to data collection within local authorities generally. Further, the Minister, in his evidence, pointed out that the Welsh Government already has extensive powers to collect data, and did not require further powers or obligations in this regard.

The Committee may be interested to note that the forthcoming Welsh Community Care Information System (WCCIS), which I referred to in the Explanatory Memorandum, will better enable health and social care professionals to record and share important information covering a range of activities such as community nursing, health and social care visits, mental health, learning disabilities, substance misuse, complex care needs or social care therapy.

Taking all this into consideration, I am happy to seek expert advice on the types of data that local authorities might usefully collect to assist in diagnosis and service provision, and, if appropriate, table amendments accordingly.

Recommendation 5. The Member in charge should table an amendment to section 9(1) of the Bill to remove paragraph (b) of the definition of autism spectrum disorder.

Accept.

The primary focus of the Bill is on the improvement of ASD services in Wales. However, as currently drafted, section 9(1) permits the Welsh Ministers to prescribe other neurodevelopmental disorders by regulations. This means that if future Welsh Ministers believe the provisions of this Bill should be applied to people with other neurodevelopmental disorders, they would have the power to do so.

This provision was included in the Bill as feedback from the consultation exercises I ran strongly supported the use of the WHO definition of ASD and the inclusion of

a power to specify other neurodevelopmental disorders. The rationale for including this provision was to enable the benefits of legislating for ASD to be extended to those with other conditions, however the Bill is first and foremost about the improvement of ASD services in Wales, and this is its primary focus.

I have carefully considered the rationale behind the Committee's recommendation and conclude that I am content to table the amendment necessary to implement this recommendation.

Regardless of a provision to extend the scope of this Bill to include other conditions, I believe that passing and implementing my Bill will benefit those with a wider range of conditions.

The Bill will result in the upskilling of staff who work not just with people with ASD, but people with other conditions too. The diagnostic process for autism includes consideration of related or co-occurring conditions (e.g. ADHD), necessitating skills in identifying and differentiating these other conditions. Provision in the Bill for earlier diagnosis will ensure that people receive the right help sooner, whether they have autism or another condition. In addition, improving service standards and data collection, and encouraging research and innovation, can help promote best practice across services and ensure appropriate diagnosis levels measured against relevant prevalence data.

Recommendation 6. The Member in charge should table an amendment to the Bill to enable the data collection requirements for new relevant bodies prescribed under section 9(1) to be set out in regulations subject to the affirmative procedure.

Accept.

This ties in with my response to the Committee's recommendation 4. I accept that, should it be necessary to extend the data collection requirements to include an additional body or organisation, the regulations should set out the data collection requirements on that body where expert evidence indicates this is necessary. If the general principles of the Bill be agreed, I will commit to tabling an amendment to the Bill to that effect.

I am grateful to each committee for the time you have taken to consider the Autism (Wales) Bill and your detailed reports. The aim of this Bill has always been to improve services to meet the needs of people with ASD and their families across

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Wales, and I firmly believe that the measures in this Bill provide the most effective means of achieving the improvements needed.

Yours sincerely,

A handwritten signature in black ink that reads "Paul Davies". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Paul Davies AM
Preseli Pembrokeshire
Leader of the Welsh Conservative Assembly Group