Atodiad 2
Annex 2

Rhif: WG47837

Llywodraeth Cymru

Ymgynghoriad - Cynigion ar gyfer deddfwriaeth sylfaenol mewn perthynas â gofal cymdeithasol plant, Gofal Iechyd Parhaus, hysbysu gorfodol a rheoleiddio ac arolygu (WG45428)

Ymatebion i'r ymgynghoriad – 8 (176 i 200)

Nodwch y canlynol:

- Mae'r ymatebion yn y ddogfen hon yn cael eu cynnwys yn yr iaith neu'r ieithoedd y cawsant eu cyflwyno.
- Wrth ymateb i geisiadau, mae swyddogion Llywodraeth Cymru wedi golygu enwau, cyfeiriadau a manylion cyswllt unigolion.
- Mae Llywodraeth Cymru hefyd wedi golygu enwau, cyfeiriadau, manylion cyswllt a gwybodaeth arall yn ymwneud ag unigolion eraill, fel arfer i sicrhau preifatrwydd, neu mewn ymateb i gais penodol.
- Yn sawl un o'r ymatebion, mae adrannau lle nad yw ymatebwyr wedi cynnwys eu safbwyntiau i benodau neu gwestiynau.
- Mae'r ddogfen hon yn cynnwys 454 o dudalennau (gan gynnwys y tudalennau pennawd).

Number: WG47837

Welsh Government

Consultation - Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection (WG45428)

Consultation responses – 8 (176 to 200)

Please note the following:

- Responses contained within this document are presented in the language or languages in which they were submitted.
- In response to requests, Welsh Government officials have redacted individuals' names, addresses and contact details.
- Welsh Government officials have also redacted other individuals' names, addresses, contact details or other information, usually for reasons of privacy, or in response to a specific request.
- Within several responses, there are sections where respondents have not included their views to chapters or questions.
- This document contains 454 pages (including title pages).

Consultation Response Form

Your name: *Andrew Jarrett*

Organisation (if applicable): *Neath Port Talbot Social Services, Health & Housing*

Email / Telephone number: [redacted]

Your address: *Neath Civic Centre, Neath SA11 3QZ*

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

Sent on behalf of NPT Social Services, Health & Housing

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes as ultimately if you legislate then the market will be required to operate on a 'not for profit' basis. However, there are concerns in respect of how this would be achieved and whether the market could be brought in line through legislative changes?

It is important to consider where surplus monies go. How and will it be reinvested to support children and young people in such provisions. It would be important to define what will be the expectations and role of CIW in monitoring of such statutory instruments and enforcing? As a company's finances are commercially sensitive how will statutory legislation ensure transparency?

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

We agree with the proposal in principle, however if this was to go ahead this would need to be managed carefully. There are a number of concerns/risks identified and we would ask what mitigating factors are there to provide reassurance, given that in the information shared to date, we cannot see the detail in how the risks are going to be managed.

The move to 'non for profit' providers may result in the achievement of better outcomes and better service quality, but this is a complete unknown at the moment. It would depend on numerous variables but in theory, it could result in better quality service delivery.

One of our main priorities is placement stability for children and young people – if the provider whom the children are currently with choose not to become a not for profit provision then this

could result in disruption and placement moves for children and young people from provisions which they identify as their homes, which would have a significant impact on their outcomes.

We are significantly concerned regarding placement sufficiency – we don't know yet what impact this proposed approach will have on the market and how the market will react which in turn may affect our local placement sufficiency. We are already struggling to source and secure placements (both fostering and residential) and there is a concern that this could reach crisis point. The proposed legislative approach will not resolve our sufficiency problem as it does not prevent other Local Authorities placing on our area. The proposal may cause more problems than actually solving our local problems.

We are concerned that some residential providers may choose to not follow a 'not for profit' path and diversify their business into other business models. For example, residential care providers may diversify into supported accommodation provision for care leavers or residential care for young adults etc., which will affect children's residential care placement availability and placement sufficiency. Currently these placements are at a high cost and do not require registration. Alternatively, there is a risk that providers may close and move their business to England, which is an unknown currently but it is a concern. It is of upmost importance to us that Welsh children should be supported to live in Wales close to their families and support networks.

We are also concerned that many of our IFA and residential care provision are used by English Local Authorities; the change into creating a 'not for profit' market may lead to continued use and possibly increased use of placements by English Local Authorities.

In terms of IFA's, we are concerned that carers could leave, companies could close down etc. We need to understand the market more. We feel market engagement work will be more effective on a regional or probably a national footing as many local providers operate in many different local authority areas.

In our experience, some not for profit organisations actually charge more for services when compared to what profit making, commercial companies charge. Therefore, there are concerns that this will not result in savings for the Local Authority which would be reinvested into prevention.

If IFA companies do transfer into 'not for profit' organisations, if this would trigger foster carers requiring re-assessment to go back to panel, in our experience this may put off some foster carers going through the process again and they may cease their foster carer roles.

We would question where does Foster Wales fit into this? Will there be further planned investment into Foster Wales in respect of recruitment for foster carers?

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Yes, restrictions on the way any trading surplus is expended is agreeable. One consideration we propose is to consider aligning the expenditure of trading surplus to localised spend to benefit the local community – how do children and young people benefit from this. For example, we have a commissioned 'not for profit' organisation which uses its trading surplus to fund research and service expansion in England and Scotland, with no benefit to the local community.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

This could be of benefit as new 'not for profit' operating models may be created in the future.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

It depends on market consultations and views of provider organisations. We suggest a phased roll out by having separate phases for residential care and fostering, this will enable key organisations to focus on each phase in a planned way. The current timeframes seem to be restrictive. We need to ensure that the wellbeing of children and young people is prioritised and that they are not affected by changes in this area. If this was progressed too quickly, then there could be a number of placements in crisis plus this could also make finding any new placements very difficult and problematic.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

We feel issues which need focus and attention include the high-level shortages of foster carers and residential placements. Solutions include greater investment into the Foster Wales brand for example.

The approach taken by any new or diversified 'not for profit' organisation will need a better understanding, we don't want a market which 'cherry picks' the young people they support resulting in service gaps. Providers need to understand service demand from Local Authorities and we need organisations who will implement service models to meet local demand. This situation is not perfect currently, but any new providers who enter the market may not understand local demand enough to effectively meet it.

We have concerns that if foster care and/or residential care provisions close and leave Wales, then any resultant disruption to children and young people using these services could have a high, negative impact upon them and their families.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Yes, guidance is always helpful in the interpretation and applicability of legislation. This will be a significant change. The guidance would need to be clear and easy to follow and understand to allow providers to operate within the legislation. This guide would also need to be user friendly to ensure that children and young people and their families and those supporting them understand.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

It is very rare for us to place outside of Wales. Our consideration is if the restriction were to apply, and we required a placement outside of Wales on safety or other young person centred grounds (such as for a specialist placement that could not be found locally), would this restriction be applicable to placements commissioned outside of Wales? There is a concern that the placement availability will not meet the demand – what would happen in this situation? If a placement cannot be sourced for a child / young person? The Local Authority has a duty to place a child in a placement that meets their needs and ensures their wellbeing. There is also a risk of increase costs to the Local Authority as current charitable providers are not at a lower cost. As detailed above the timings would be of importance so that children and young people's placements were not at risk of disruption.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

We have concerns relating to inflated prices from 'not for profit' organisations and if a core price limit was introduced, then possibly additional service elements may attract inflated prices.

We are also concerned that the fostering and residential care markets in Wales may not grow to meet demand or may not be continuously innovative if they do not invest in development and innovation of their service models (by trying to keep their costs down).

There would need to oversight and gatekeeping – would this be CIW?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As Question 1.10

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

We are concerned in respect of the continuity of care for children and young people. We are currently experiencing significant sufficiency difficulties and are concern that this could lead to a further shortage of both foster care and residential provisions, particularly to support more complex young people.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

We agree with the proposal to amend the NHS (Wales) Act 2006 to enable adults who are eligible for Continuing Health Care (CHC) in Wales to receive direct payments. The current arrangements create disparity, in particular to those individuals who decline a CHC assessment due to concern about loss of the quality and consistency of care and support they receive. We strongly welcome the proposal as going someway to providing an equitable service for people in Wales. Not only will this amendment enable those already receiving a direct payment to retain consistency of care and support, it will provide an opportunity to others to benefit from greater voice, choice and control over how their health care needs, and care and support needs can be met.

Direct Payments being unavailable to people with CHC needs remains a major barrier to people exploring their eligibility for health funded services. People are discouraged from applying for CHC funding as they will lose their Direct Payments and consequently the flexibility and choice in managing their care package that they already enjoy.

We feel that the proposal should be extended to all ages [as direct payments within the Social Services Wellbeing Act 2014 do now] so that children with eligible needs are included. As cited within the consultation document, the provision of direct payments 'allows people to exercise voice and control; that is, to decide how, when and by whom their care and support needs are met'.

The introduction of a non-profit policy for children's service provision could be extended to direct payments; so that direct payments are used to commission non-profit services or Personal Assistants (PA). The PA model is non-profit making as the funding is directly between the employer-employee.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;

- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

It is clear to us that this proposal will benefit individuals, those already in receipt of care and support via a direct payment will maintain consistency and continuity of support. This approach will benefit an individual's whole network. Furthermore, it opens up a new pathway of creativity for the delivery of care and support for those eligible for CHC funding as direct payments enable flexibility and choice of delivery of care.

This could be useful where there is a need to support a longstanding condition or around end of life care, where family members could give up work to take a DP in order to support loved ones. Similarly it could be used in those rare situations where people have severe behavioural issues where only family/friends can support.

There are several areas that we feel should be carefully considered as part of the implementation of the proposed legislative change. When individuals take on the responsibility of being an employer, it comes with it a range of employment obligations. It is vital that people are supported with this. Currently as a Local Authority we provide support for employment information, advice and guidance via an in-house service, we hold an approved providers list for the administration of payroll, access to Employers Liability Insurance, and training for PAs. All these services will continue to be needed if Direct Payments are introduced for CHC and the costs associated with this funded as part of the CHC DP payment. We recognise the need for consultation with those who use direct payments to work through the most appropriate model for how this support should be delivered for those eligible for a direct payment under CHC.

Clear guidance will be needed on boundaries and eligibility. In the event that an individual would receive a direct payment that is part funded by Social Services and part NHS, then it will need to be clear how this will be delivered and there will need to be coproduced governance arrangements in place so that the direct payment recipient isn't faced with additional layers of process to deal with.

Consideration will need to be given to the financial oversight and auditing of financial packages. Local Authorities already have processes in place which could be replicated by Health Boards (or commissioned from Local Authorities).

In addition, there will need to be clear guidance on cross boundary arrangements so that people can maintain portability of their care and support plans.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Personal health budgets (PHBs) have been available in England since 2014 (following a pilot during 2009-2012) and later in Scotland but not in Wales; this is a health inequality that should be resolved.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

There are many direct payment support services in Wales already, they have in place existing structures, processes and strategies in place to support people using direct payments. These existing services should not be overlooked in what they can offer to the development of support for those who are eligible for CHC.

We feel that the proposal will need to consider the Welsh context. Most importantly, we feel that Welsh Government need to consult with existing direct payment recipients as well as those who are, or could be, eligible for CHC to identify how best to shape the policy for Wales.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

There needs to be very clear guidance on how direct payments will be offered to those who are eligible for CHC, people need to be able to make informed choices about whether a direct payment is right for them and this offer needs to be backed up by a robust support service so that people are confident that they can manage their direct payment. This should include, advice and guidance, access to employment law advice and support, PA recruitment, and training.

There are specific safeguarding challenges associated with direct payment recipients employing PAs of their choice. Health Boards will need to have robust processes and learn from what is already in place.

Guidance must set out the Welsh Government expectations of the roles and responsibilities of health and social care colleagues.

Governance of CHC/Direct payments must not place additional burden on people and should promote flexibility, creativity, choice and control.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Direct payment recipients would be able to choose their PAs which may extend the number of Welsh speakers they are able to employ from within their current community, especially in Welsh speaking areas.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

NA

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Any changes made must also consider the impact on carers who benefit from the care and support provided to the individual but also Direct Payments made to carers in their own right.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

There is already a duty report written into the Wales Safeguarding Procedures. There are no issues locally to suggest professionals or partner agencies are not complying with this duty. Local Authorities are already experiencing a high number of reports and to impose a duty is likely to increase this significantly and in doing so increases the risk of us losing sight of actual harm and risk: the hay stack grows and the needle is more difficult to find. SW practice is already overly punitive with some academics describing Child and Family practice having taken an 'investigative turn' (Bilson) with many families being taking through S47 enquiries unnecessarily: a high percentage of S47 enquiries finding no risk. Such is the culture of blame that continues to overshadow Child and Family SW work imposing a duty will likely be counter-productive and not strengthen SW relationships with communities but build on the current distrust of social care.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Not agreed in principle for the reasons noted above and further expanded upon below.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

HM Government consulted on this very issue across England in 2016 and published their findings on the consultation in 2018, 'Reporting and acting on child abuse and neglect' with only a quarter of the respondents (n768) favouring the introduction of mandatory reporting. Just under two thirds felt it would have an adverse impact on Child Protection systems. http://data.parliament.uk/DepositedPapers/Files/DEP2018-0224/Reporting_child_abuse_and_neglect_-_response_to_consultation.pdf

We do not intend to repeat the findings re. benefits, risks, costs savings, which are captured in the attached report and would respectfully request that the attached consultation be factored into the Welsh decision.

Question 3.4: What lessons can we learn from the duties to report in other countries?

This question would be best responded to by an academic body who has an interest and authority in this matter internationally.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

It is unclear what is being proposed, for example, who it will impact on and what the penalty or concealment offence for failing to report will be or achieve. The existing duties (see below) are appropriate and the findings and recommendations of national inquiries, such as, ICCSA, whilst welcome are reporting on historical events and practice is very different in Wales today.

At a time when agencies are struggling to recruit and retain quality staff the imposition of a duty with consequences is likely to deter entry into the profession and may result in other's leaving. Agencies, including Welsh Government might be more effectual in reducing child and adult abuse if it better understood and targeted, through revised legislation, those who perpetrate abuse.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

a) As per 3.3 these points have been considered by the UK government whose findings should be considered for the purpose of this consultation.

b) Subject to 3a given the many commonalities.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

If rolled out it would make sense that this covers all those who come into contact with children and adults and might be better aligned to Section 5 of the Safeguarding Procedures: Professionals and Persons in a Position of trust.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

The imposition of a duty and subsequent sanctions target the wrong people. Arguably, a professional or person in a position of trust who has failed to report, under the existing duties and procedures, would satisfy the criteria for a Section 5 Strategy meeting for professional abuse and person in a positon of trust. If substantiated the matter would then pass to the employer to instigate disciplinary proceedings, the governing body and DBS would be consulted. Thus one might say a proportionate and appropriate response to such a failure. Under existing legislation any victim would also have the right to see redress in both the criminal and civil courts.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

As a LA we'd welcome the opportunity to be involved in future discussion and will follow the evidence in respect of this important issue. For example, we would invite Welsh Government to publish the results of the consultation, to include evidence from those countries that have introduced mandatory reporting. With referrals up across all LAs across Wales this would suggest that the Duty to Report is working in its current form, however an analysis of this data, including how many concerns arise from a failure to report should inform any decision to introduce mandatory reporting. For example, how many Section 5 meetings are convened for failing to report; do governing and regulatory bodies hold data on failure to report; how many failures to report have been passed to DBS and have resulted in disbarring?

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes, we are in agreement with this proposal.

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Yes, we are in agreement with this proposal.

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that

the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes, we are in agreement with this proposal.

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes, we are in agreement with this proposal.

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Yes, we are in agreement with this proposal, allowing transparency for the public.

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Yes, we are in agreement with this in principle; however, more information on the intended, related offence and sanctions would be need to be understood.

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No, in the spirit of transparency; however, a middle-ground beyond the 4 inspection reports set out in the consultation all Inspectorate activity should be shared with the host LA.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Yes, we are in agreement with this proposal.

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes, we are in agreement with this proposal.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Yes, we are in agreement with this proposal.

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes, we are in agreement with this proposal.

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes, we are in agreement with this proposal as we believe it to be fair and just.

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to

disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Yes, we are in agreement with this proposal.

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes, we are in agreement with this proposal.

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes, we are in agreement with this proposal.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes, we are in agreement with this proposal.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

This point needs further clarification.

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Nothing further to add.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Yes, we are in agreement with this proposal to ensure continuity.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Yes, we are in agreement with this proposal, for example, cross-border registration within the UK.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Yes, we are in agreement with this proposal; provided the conditions for imposing and reviewing such orders are publicised.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

As above.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Yes, we are in agreement with this proposal as it does bring timeliness to an incredibly stressful process.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Nothing further to add.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

General comment – there are no specific issues with the proposals.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Yes, we are supportive of this proposal because the proposal can support the achievement of a consistently competent and skilled workforce.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Potential impacts include staff may leave or diversify into other roles which requires consideration. Some staff may also not want to complete any additional training or meet registration requirements and some may need support to meet the registration requirements (such as IT skills to access registration resources etc.).

Some staff employed by commissioned domiciliary providers also work as childcare/ play workers. We suggest you consider if any new registration requirements will require such staff to only register once or if they have to meet any additional requirements over and above their domiciliary care worker registration (and vice versa as the case may be). Any additional requirements placed upon such staff may present barriers to staff working in this flexible way.

Like with other SCW workforce status, the introduction of a registration requirement may present the sector in a more positive light to the public, which may result in the sector attracting higher staff recruitment and higher staff retention for example.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

All public bodies should be cognisant of and fulfilling their legal obligations espoused by the Welsh Language Act.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues, which we have not specifically addressed, please use this space to report them.

No comment

Consultation Response Form

Your name: **Stephen Harris**

Organisation (if applicable): [redacted]

Email / Telephone number: [redacted]

Your address:

[redacted]

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

[redacted] **I have witnessed at first hand the distress and anxiety felt by individuals and their families where the issue of losing control arises as a consequence of transition from social services funded care to that of the NHS.**

If you want to receive a receipt of your response, please confirm your email address, here:

[redacted]

n.b. I have only responded to questions 2.1 to 2.8

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

I agree wholeheartedly with this proposal. Ever since direct payments were introduced as a result of the Community Care (direct payments) Act 1996 in the UK as a whole, there has been a potential chasm for disabled people and ill people who require substantial support in order to live in the community. This chasm looms for people who might fall either unevenly between the provision of support from their local social services or their LHB, or face an initial assessment whereby they are unaware of what level of independence might be achieved. Thus, a current user of direct payments might be eligible for CHC but is understandably fearful of it due to the impact it would make on how they currently employed personal assistants. Also, we should be aware of how patients waiting or about to leave a hospital, who might be eligible for CHC, are unaware of alternative ways of deploying the resources other than a provider organisation taking the lead to t to support them in the community.

In the first instance, neither ill health nor impairment stand still, they change as our lives change. Thus, a care package funded from a social services department may initially be considered primarily outside the ambit of CHC but over time may well be reconsidered as primarily a package where growing health needs make it eligible for CHC. For such an individual alone or for the family around him or her, the prospect of losing control of who they employ and how they organize their care and support is unthinkable. Transition to CHC almost looms as a threat to the individual. With direct payments from the NHS this threat of losing control is taken away, and confidence in the system might be retained.

There is also the major consideration of the part this legislative change might play in hospital discharge for people who will need support when leaving hospital. Where the Decision Support Tool has seen a person who is imminently to be discharged as needing CHC, then the prospects of control over one's life are never as widely conceived or discussed if NHS funded care is to be the outcome. Why ? Because the opportunities and advantages inherent with direct payments are not part of any conversation and are not thought of as appropriate for that person's autonomy. They soon could be.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

- *The benefits of using direct payments have been outlined in the consultation documents. They will offer a person the opportunity to recruit and benefit from choosing the people whom they want to provide support and care. They will enhance the self-belief that no matter how substantial their needs are that they still have autonomy and the control over what happens to them. They will allay people's fears of being part of a system where they have to fit a timetable, or a rota, or a protocol that is applied by an agency or body that they have to adhere to. The overall benefit has an additional element in that the recipient of the direct payment has, even if unwittingly, a greater feeling of self-worth. These are some of the obvious benefits proven by direct payments over several decades. I'm not sure that we can bring 'disbenefits' into any focus here, for it is not as if there is 'no way back' or it's direct payments at the 'expense of some other service'. That's not the case, for surely it's an additional option. It doesn't in any way dilute the values and principles of the NHS either.*

- *Direct Payments from social services, well organized and well managed by social services departments, have proved the argument about value for money in favour of direct payments. On the basis of an assessment of, for example, hours required in a care package, the hourly rate for direct payments is far below what is paid out per hour contractually by SSDs to provider organisations. Equally, direct payments are more cost effective than the management and provision of the council's paid social care workers. The on-costs for care provider agencies are there because they are profit-making companies – they have administrative staff, they have owners who make their livelihood from the business. The on-costs, after wages, for the Council's own home care service once again take the per hour rate much higher than a*

direct payment per hour. Direct payments also take up far less time for social workers for the vast majority of direct payment user, compared to the liaison they might have to make with contracts and problems with outside providers associated with providing paid care staff. Whilst there are on-costs, such as a DP support service, to factor in, it is still a cost benefit. Thus, overall direct payments can operate as less costly the NHS than buying services with improved outcomes.

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- *By the very nature of how direct payments work i.e. the recipient of direct payments choosing whom they employ, it naturally appeals to people who come within the definition of 'protected characteristics'. Indeed, I would say that allowing somebody to choose personal assistants who are more suited to that person is fundamentally a human rights issue. The whole idea of direct payments is in tune with that right.*

- *There is a major practical consideration to make in the implementation of direct payments for CHC. This consideration is fundamental to the success of direct payments from local authorities as well. This is the matter of a local support service which is made available by the provider of direct payments. Guidance on direct payments from devolved governments to local authorities have been strong in promoting local support organisations to be at the disposal of users of direct payments and existing users. This has been for employment advice, payroll, recruitment and support intervention, amongst many other things. LHBs will have to think about these practicalities when introducing direct payments. I can't emphasize enough how important this is. Individuals and their families new to direct payments should have access to independent support going forward which has a strong local element if it is to be supportive in the way it is conceived.*

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Question 2.3: What lessons can we learn from other countries' practice in this area?

Personally, I do not know a great deal of the implementation of direct payments for health needs other than our near neighbours in England. There unfortunate circumstances surrounding several legal cases led the English government into making amendments to existing legislation to trial NHS direct payments. Thankfully, this Welsh initiative skips that hurdle of trialling, for direct payments have proved their worth. It is no doubt worthwhile to research and benefit from good practice in England.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

This may be a contentious idea but using the direct payment method for solely CHC might be a restriction that could be reviewed for other health related services. As an example, where an individual has to visit hospital on a regular basis for treatment etc there are transport costs involved. We hear all too frequently of the pressure on the ambulance service - could costs be met by an individual using the direct payment to pay a taxi service. This being by way of an example only, there are ways in which long waits for treatment might be alleviated where an individual can secure that treatment e.g. physiotherapy services locally rather than be on a long extended waiting list. These bits and pieces around the provision of NHS services are not intended to signal 'privatisation' through the back door, as it were, but to free the individual to be able to manage their life more easily.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

I have already mentioned that advice and guidance should include how that individual who opts for CHC as a direct payment can be supported. Clearly, experience and knowledge of direct payments is not widely prevalent in the NHS and therefore I believe LHBs around Wales will be needing to think about this aspect of direct payments used for CHC, i.e. knowledgeable and experienced organisations and individuals providing the know-how to support an individual using CHC funding as a direct payment. The guidance will no doubt follow in many ways the guidance issued to social services departments around Wales. in many ways. Therefore, the guidance will not only promote the philosophy behind direct payments but will chart out the parameters in which it can be used and how it will be responsibly monitored. My thoughts on good guidance reminds me that where positive examples are liberally placed throughout the guidance, they help the reader to engage in the real examples which practically illustrate principles of Independent living. Hopefully there will be many useful examples in the guidance. The guidance, I imagine, will be relevant to many of the stakeholders who are involved in direct payments at the moment, particularly social services where a great deal of experience already lays.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language,

specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

As with the earlier question of the effectiveness of direct payments in regard to people with the protected characteristics, equally with the question of Welsh, this is nothing but a positive. An individual whose first language is Welsh will have the power to recruit people who can speak Welsh or are sympathetic to Welsh. Once again, we touch upon the issue of human rights and the opportunity and the right of an individual to speak in their chosen language. This might be in the language spoken in the home. Depending upon the guidance and how direct payment can be used, then CHC support might be coming from somebody within the family. However, this comes down to the guidance on how a CHC direct payment can be used

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

It is difficult to answer this question in any different material away than the question before where I see the language issue as being a right which I believe direct payments can prove be the best solution in some cases. This is especially so when CHC is provided for terminally ill individuals.

If I were to broaden the answer about Welsh being treated no less favourably than English, then I would once again return to the issue of providing support services which are local and not only know the area but no the local population in terms of people who speak Welsh or who want to learn Welsh. It also relates to advertising in Welsh and interviewing in Welsh. I see this as so important.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

The consultation document understandably cannot cover every aspect of direct payments as it is to be for CHC, however there is very little information at all on the

interface between the NHS through the local health boards and social services departments within each LHB. Issues such as transition from local authority funding to NHS funding have not been touched on so far. The role assessment for new recipients, most notably people leaving hospital, has not been explained. I raise this particular point because expertise about direct payments within the NHS is, of course, quite limited in terms of the practicalities of an individual managing their direct payments as a budget and the NHS advising.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Introduction and context

Welsh Government's Programme for Government makes a commitment to 'eliminate private profit from the care of looked after children'. We recognise that this a priority commitment for Ministers and one which requires a range of partners and expertise to deliver it. For their part local authorities are supportive of the intent behind this commitment. We do however need to make sure that whatever actions and plans put in place to address this priority ensure that we are able to take this forward safely, without destabilising either current placements or the work that is underway in developing suitable local and regional supply of appropriate placements. We are also cognisant of the significantly concerning current economic landscape. The financial outlook is dismal, with councils already facing a potential gap of £802 million over the next two years due to cost pressures (and inflationary and increased energy prices) which will inevitably have an impact on services and potentially on the capability and capacity of councils to deliver this ambitious commitment – appropriate resourcing from Welsh Government, which could be significant, will be essential to its success.

In early November 2021 the Association of Directors of Social Services in Wales (ADSS Cymru) shared a position statement, endorsed by the Welsh Local Government Association (WLGA), that set out its support for the Programme for Government commitment and policy direction of removing private profit from the care of children looked after in Wales. The statement however urged caution regarding policy implementation set against a context of a pre-existing placement crisis and workforce challenges. Put simply you cannot eliminate any element of support underpinning a statutory service without first building the alternative. Recommendations were made on moving forward with an explicit joint commitment to not cause disruption to children and young people's care. As corporate parents it would be untenable to disrupt the day to day lives, care and homes of our children and young people. A year forward, despite providers engaging in this work and retaining commitments to delivering care there is evidenced disruption to the availability of placements for new children and young people entering care, and for those looked after young people with increasing need. Private providers in view of the policy intent are already making business decisions to exit the market in Wales and this is impacting on the number of children who are being cared for in settings which do not have registration. The impact assessment of this policy needs to be robust and understood to address the risks of further destabilisation of accommodation, care and support for children. This is putting the stability of the care sector at risk, which we reference in more detail below. It is our most vulnerable young people with more complex needs who have been exposed to the greatest disadvantage.

The Welsh Government has embarked upon its consultation on "not-for-profit" being the test for providers of care for looked after children to fully take effect from 2027. Whilst we are

supportive of this intent, the complexities of moving from the current level of dependency on independent ‘for profit’ provision and the attendant risks for local authorities meeting their statutory duties under the Social Services and Well-being Act 2014 are significant.

One alternative approach which could be taken is to promote purpose-based organisations that advance the common good, rather than make the negative of “not-for-profit” the litmus test for ongoing provision for children.

This will help to head off the collapse of the market and its associated consequences for vulnerable children that we are already starting to see. We are also aware that, in the discussions regarding price uplifts for 2023/24, some providers intend adding in a ‘compensation’ cost, in the absence of any compensation scheme announced by the Government. With investors and banks now projecting a shorter timescale for return on investment given that the long-term financial picture is so unstable, it will be the local authorities that will have to bear the brunt of significant price rises.

It should be noted that Wales already has a regime where registration requires a body to be non-profit making in the mature market of Welsh social housing. Under part 1 of the Housing Act 1996, to be eligible for registration as a social landlord (RSL) one of the requirements is that under Section 2(2) the body must be “non-profit making”. Section 2(3) states that for the purposes of that section a body is non-profit making if:

(a) it does not trade for profit, or

(b) its constitution or rules prohibit the issue of capital with interest or dividend exceeding the rate prescribed by the Treasury for the purposes of Section 1(1) (b) of the Housing Association’s Act 1985.

This effectively means that in Wales RSLs cannot be “for profit”. RSLs are constituted as charitable registered societies/community benefit societies (registered with the Financial Conduct Authority) where the not for profit status is embedded in the constitution (the Rules) and shareholding does not carry any right to dividends. What this effectively means is that the revenues generated by a not-for-profit are not distributed to the shareholders but instead they are applied towards the business of the registered provider.

The distinction is that RSLs in Wales have always been of this status whereas the Government has in contemplation the transfer of the looked after children provision from majority private sector delivery.

What is outlined below in response to the consultation questions identified in Chapter 1 of the consultation document is a proposition that offers a different way of tackling substantive change while addressing identified concerns about destabilising the current provision of

placements. The responses to this part of the consultation below have been informed by ADSS Cymru, WLGA, 4Cs and Foster Wales.

Questions on chapter 1

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Introducing criteria which providers must fulfil in order to register with CIW should be an effective mechanism enabling delivery of the Programme for Government commitment, but further powers will be needed for enforcement and other purposes. As explained below, these powers include an ongoing monitoring function to ensure continuing compliance; the ability to call for information, challenge, and subject to appropriate process, to suspend or cancel registration.

There are various similarities to this approach already used in the legislation for the registration of co-operative and community benefit societies, and a framework along similar lines may be an appropriate way forward as discussed further below.

For this to work, it is essential that the right language is used so that there is complete clarity about what the legislation is aiming to achieve, and what it aims to prevent. Whilst Welsh Government's aim is clearly set out in paragraph 5 of the Consultation Document ("Our aim is to ensure that public money invested in the care of children looked after does not profit individuals or corporate entities, but instead is spent on children's services …"), the language being used to describe the mechanism for doing so currently lacks some clarity and transition detail. In particular the phrases "eliminate profit" and "not for profit" will need further consideration.

All forms of enterprise – investor-owned, co-operative, charitable, social – must make a profit. That is to say: income must exceed expenditure, otherwise they will make a loss and ultimately fail. Of itself, "profit" is therefore actually a neutral term. All viable businesses must be profitable. Strictly speaking, the aim is not "to eliminate profit", but rather to eliminate the leakage or extraction of profits into private hands, rather than retaining them for reinvestment for the public benefit. The question is, how can this be achieved?

Th fundamental question relates to the ***purpose*** of an organisation – what is it ***for***? Here there are two distinctions to be made, about ***what*** the purpose is and ***who*** it is for.

- The first distinction to be made is between those businesses that exist ***in order to make a profit*** (we often say that such businesses are driven by the "profit motive"), and those

that exist ***simply in order to provide goods and services*** to those who need them (often referred to as social businesses).

- The second distinction is between businesses that exist and carry on business ***for private benefit*** (of the owners, who are investors or shareholders), and those that exist and carry on business for the benefit of the wider community as a whole, or ***for "the common good"***.

We understand the ambition of Welsh Government's commitment is to ensure that those that carry on business to make profits for private benefit will not be able to be providers of care for children looked after; but that only those that carry on business for the common good will be able to provide such care. These are the businesses that are expressly and constitutionally committed to treating all parties fairly, and this includes co-operatives, charities and public services.

It is suggested that this be based on a constitutional commitment to carrying on business for the common good (e.g. charitable purpose, community benefit, etc.), with express prohibitions in the constitution against distributing in-year profits, or any capital surplus (reserves) on a solvent winding up.

Introducing criteria which providers must fulfil in order to register with CIW should be an effective mechanism, enabling delivery of the Programme for Government commitment, but further powers will be needed for enforcement, anti-avoidance and other purposes. These powers include an ongoing monitoring function to ensure continuing compliance; the ability to call for information, challenge, and subject to appropriate process, to suspend or cancel registration.

There are various similarities to this approach already used by the Financial Conduct Authority (FCA) in the legislation for the registration of co-operative and community benefit societies for which the FCA is registrar, and a framework along similar lines may be an appropriate way forward.

Specific types of care services for children looked after will require additional considerations for the approach of implementing the policy objective via CIW registration and inspection to be viable. Firstly, there is no differentiation between adult care homes or children and young people's care homes under the Regulation and Inspection of Social Care (Wales) Act 2016. The eliminate policy is not proposed for adult care at this time, where a rebalancing approach, aligning with the commitment to the foundational economy is being adopted. Therefore, the primary legislation will have to reintroduce a distinction of care homes linked to registration based on age of residents, with those registered for children and young people subject to the registration regime underpinning this policy. Secondly, supported accommodation is not

currently a registered service in Wales, but it will have to become a registered service to align to the proposed approach. Supported accommodation is becoming a regulated service in England with Ofsted registration commencing in April 2023 and national standards becoming mandatory in Autumn 2023, learnings from this process may be helpful within Wales.

CIW, along with registering organisations including charities and local authorities will need investment and additional resource to enable them to both fulfil and meet the extended duties, as this will include the additional business and a new skillset to the regulator's core functions focused on business models. Policy proposals linked to the introduction of a market oversight regime under the wider programme for government need to be considered simultaneously.

We suggest that any timeline for implementation of the policy must take account of the timeline for all stakeholders and CIW to deliver an expanded remit.

An alternative option would be for a new independent body to be formed to monitor and enforce the additional functions related to businesses, however, this organisation would need to work closely with CIW as the regulator. It would not be sufficient for this role to fall to commissioners of services as it would detract from and possibly conflict with their primary duties under the Social Services and Well-being Act 2014.

Question 1.2: **What in your view are the likely impacts of the proposal? You may wish to consider, for example:**

- **Benefits, and disbenefits;**
- **Costs (direct and indirect), and savings;**
- **Impacts upon individuals and groups with protected characteristics;**
- **Other practical matters such as cross-border issues.**

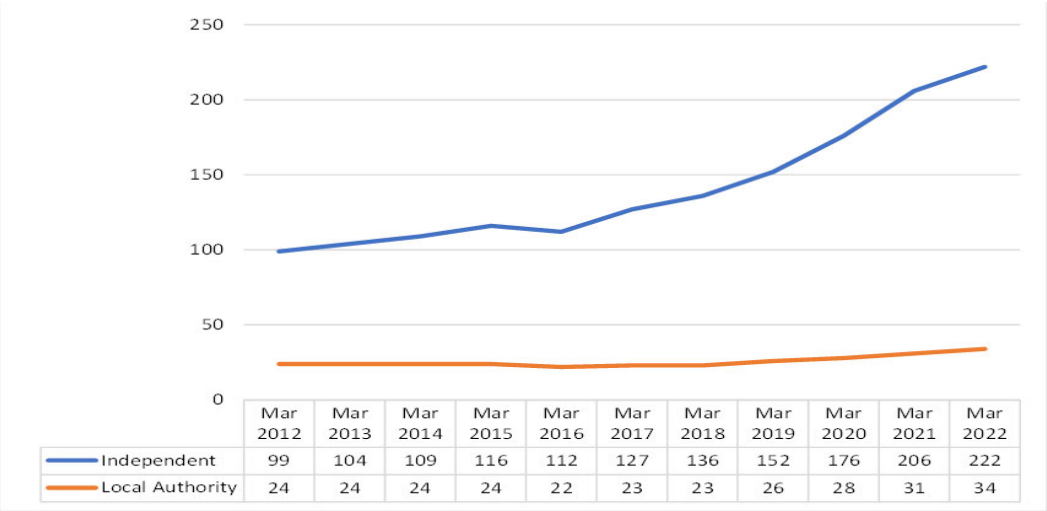
Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.

Due to the current demand for placements and level of dependence on the independent sector for placements this proposal has the potential to have a significant impact. As such considerations of transition from one regime to another must have the best interests and safeguarding of children and young people looked after at its core. The pace of change and transition must be cognisant of registrants' capability to develop the provision that is required across both foster and residential care. Given that the current landscape has emerged over a generation, the approach taken must support a safe and realistic timeline for rebalancing and

full implementation of the policy, allowing us to create a vibrant care economy with purpose led businesses that deliver the best outcomes for children and young people.

The current landscape is depicted below.

Graph 1 Total number of childrens care homes registered with CIW by provider type



	Mar 2012	Mar 2013	Mar 2014	Mar 2015	Mar 2016	Mar 2017	Mar 2018	Mar 2019	Mar 2020	Mar 2021	Mar 2022
Independent	99	104	109	116	112	127	136	152	176	206	222
Local Authority	24	24	24	24	22	23	23	26	28	31	34

Data source: CIW Data

Graph 2. Number of children's homes registered with CIW by provider type by region

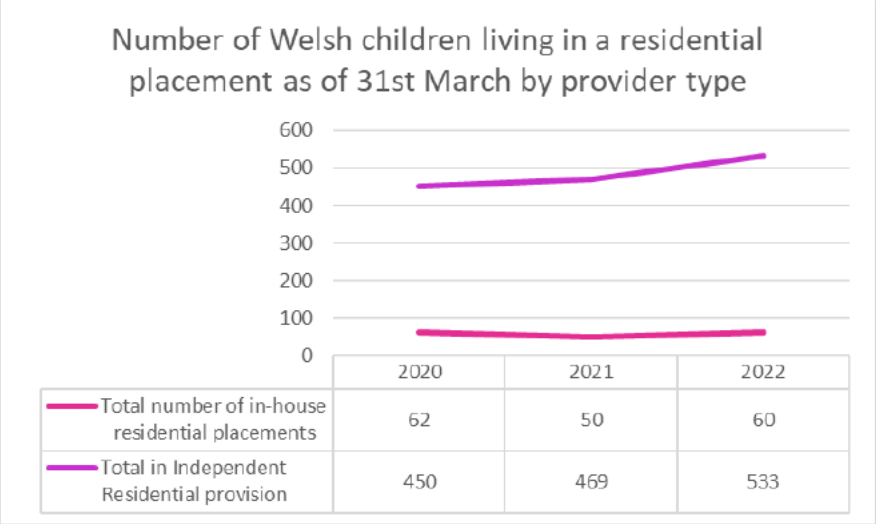
		01-Mar-12	01-Mar-13	01-Mar-14	01-Mar-15	01-Mar-16	01-Mar-17	31-Mar-18	31-Mar-19	31-Mar-20	31-Mar-21	31-Mar-22
North Wales	Independent	38	37	38	40	41	43	44	41	44	47	48
	Local Authority	4	4	4	4	3	3	3	4	5	6	6
South West & Mid Wales	Independent	27	25	27	27	28	29	32	33	36	41	44
	Local Authority	4	4	4	5	5	5	5	5	5	5	5
Western Bay / West Glamorgan (2019)	Independent	11	17	17	17	18	19	18	22	25	29	30
	Local Authority	6	5	5	4	4	5	2	2	1	1	2
Cwm Taf / Cwm Taf Morgannwg (2019)	Independent	5	5	6	8	10	10	13	20	26	33	38
	Local Authority	4	4	4	4	4	4	7	7	8	8	8
Gwent	Independent	13	14	15	14	15	15	17	24	27	37	41
	Local Authority	5	6	6	6	5	5	5	7	7	9	9
Cardiff & Vale	Independent	5	6	6	10	-	11	12	12	18	19	21
	Local Authority	1	1	1	1	1	1	1	1	2	2	4
Wales	**Independent**	99	104	109	116	112	127	136	152	176	206	222
	Local Authority	24	24	24	24	22	23	23	26	28	31	34

Data Source CIW

The data in Graphs 1 and 2 includes all care homes registered for children and young people including those with a disability who may only offer short breaks and respite rather than full time care and support. When you exclude beds for children with short breaks, the total number of residential beds from snapshot data of the period of August – October 2022, has decreased

by 4% from 794 beds to 762. The decrease in the number of beds available has been in the independent (for profit sector), the number of public sector and charitable beds available has remained the same.

Graph 3. Number of Welsh children living in a residential placement.



Data Source: Local Authorities Quarterly Data Baseline Returns (QDBR)

The number of children looked after who were living with an independent residential provider has increased by 18% over a three-year period from 450 children as of 31st March 2020 to 533 as of 31st March 2022.

Graph 4. Maximum registered number of foster beds by provider type.

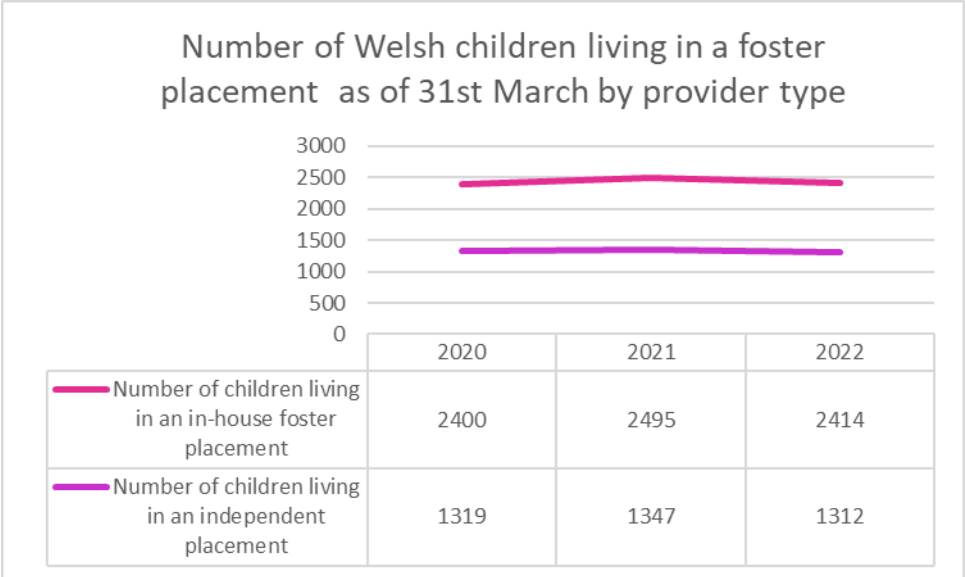
	Mar 20	Mar 21	Mar 22	Jun 22
Local Authority (public sector) beds	3253	3177	3141	3162
Independent (for profit) beds	1443	1636	1759	1795
3rd Sector/Charitable (not for profit) beds	351	372	429	445
Total maximum beds	**5047**	**5185**	**5329**	**5402**

Data Source: Local Authority Data – Quarterly Baseline Data Returns (QBDR) Independent and 3rd Sector - Childrens Commissioning Support Resource (CCSR)

The total number of foster beds registered during the period of June 2022, has increased slightly from 5329 beds to 5402. The largest increase in the number of beds available has been in the independent (for profit) sector, the number of charitable/ 3rd sector beds has increased slightly. It is important to note the maximum number of registered beds can be deceptive due to the method of registration of carers, for example, registration may be for 2 children or a sibling group of 3; potentially a third capacity differential. In June 2022 21.4% of the maximum foster beds were unavailable, 6% were respite only carers, 5.5% were restricted matching and

5% were due to carers personal circumstances. This is a common level of reported unavailability.

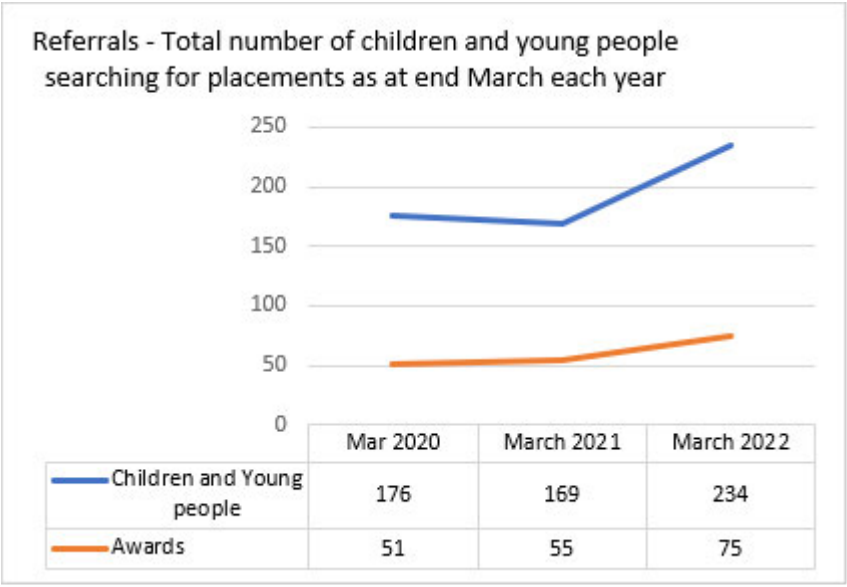
Graph 5. Number of Welsh children living in a foster placement



Data Source: Local Authorities Quarterly Data Baseline Returns (QDBR)

The number of children living in an in-house foster placement has increased slightly (14 children) over the 3-year period from 31st March 2020 to 31st March 2022. The number of children living with in an independent foster provider has decreased by 7 children during the same period.

Graph 6. Snapshot of Welsh local authority referrals and resulting placements made.



Data Source: Childrens Commissioning Support Resource (CCSR)

Excluding known trends for monthly variations, referrals are increasing steadily with more searches made for homes for children and young people with independent providers. There is a significant and increasing gap between referrals and placements made, evidencing the current sufficiency issues. The gap is particularly pronounced for young people requiring complex packages of care. The lack of overall sufficiency is a very real issue, but alongside this there is early emerging evidence, from Foster Wales, of small increases in the level of new placements being made 'in-house' with local authorities foster carers. The current market makeup highlights the challenge ahead in implementing the proposal.

Benefits of the Policy

Local government is supportive of the aim to rebalance social care so that there is neither an over reliance on the private sector, nor a monopoly in the other direction and a well planned, supported and fully resourced implementation of a rebalancing approach to care services for children looked after could address the gaps in much needed service provision for children who are the most vulnerable and require complex integrated packages of care.

It is critical that the opportunity of opening new care services is aligned to the identified need profiles of children and young people to maximise this potential benefit. This requires good commissioning of services and good relationships between commissioners and providers alongside a focus on enabling public sector services to expand. Foster Wales was created as the vehicle to support local authorities to achieve this rebalancing in respect of foster care.

The current approach to relationship-based commissioning could be strengthened with increased focus on longer-term contractual arrangements and a local focus. Partnership forums at regional level considering social value, quality and outcomes can strengthen the approach to working together. Integrated care and support service delivery with social care, health, education and the 3rd Sector seamlessly supporting the primary care givers in the child's life are the aspiration. If successfully implemented this could improve outcomes for children and young people, particularly at the highest end of the continuum of need.

A focus on purpose led services with a strong social value ethos centred on local communities could benefit the broader foundational economy in Wales operating within a supportive framework of national commissioning standards. This aligns with the policy regarding a national framework for commissioning and the proposed creation of a national office.

Money invested and reinvested locally and / or regionally could generate enhanced career opportunities in care and support. Longer term this could benefit workforce recruitment, development, and retention, which is a central consideration to sustainable quality improvements. Improved terms and conditions for social care employees, with increased

sense of job satisfaction would be a significant benefit for maximizing the overall social care workforce. We know that if children and young people are placed with local authority foster carers they are more likely to stay within their own communities. This can have a lasting and positive impact on children's well-being and outcomes.

The policy has the benefit of aligning with the policy commitment to rebalance provision and grow public sector fostering through the development of local authority foster care under the umbrella of Foster Wales. Additional benefits related to work in this area could include the opportunity to finalise and implement work on the harmonisation of fees and allowances and improved fostering standards.

The development of a vibrant care economy through sustainable purpose led businesses anchored in social value and excellent service quality, responsive to the changing needs profile of children and young people looked after, would be the desired long-term outcome maximising the benefit from the policy implementation.

Current Risks

This major shift in policy is proposed at a time of significant instability both politically and economically in the UK and at a time when the long-term impact of covid on children's emotional health and wellbeing is still being understood. The implementation and transition cannot be viewed in isolation from this broader context and must be protected with proactive mitigation of identified and emerging risks. A mature, thoughtful and flexible approach to implementation is needed to acknowledge that progress or aspects of the programme may need to pause, or accelerate, if the broader context is escalating risk to care service delivery.

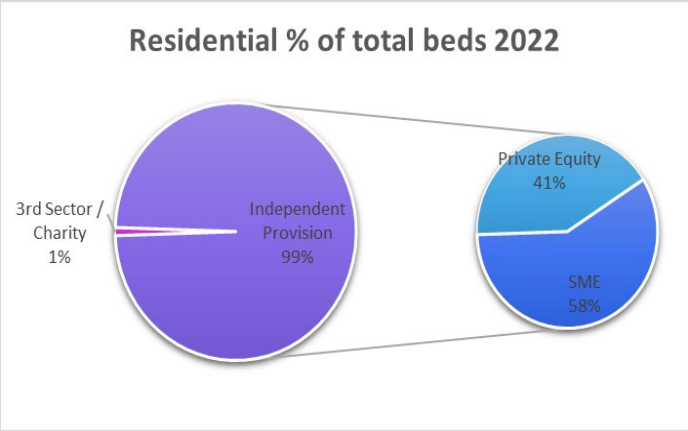
It is already known that smaller private providers are anxious about the policy announcement as they are not established as what are described as "not for profit", nor do they regard themselves as falling into that category. The reality however may be somewhat different. It is likely that many such businesses (including their owners) are personally committed to the welfare of the children they care for, rather than maximizing profits, and are unlikely to be distributing substantial profits to themselves, unless they are doing so by way of remuneration.

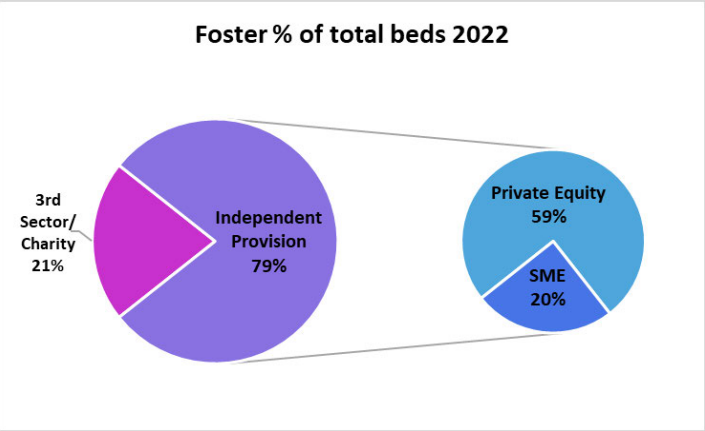
Using different language, setting out constitutional approaches that will meet new qualification criteria, and providing a clear pathway for existing businesses to transition to such approaches, could all help to reduce anxiety, indicate a future direction of travel that is realistic, and thereby retain as many existing providers as possible. However, this needs to be addressed now as some businesses are already looking for buyers or have already been sold. Where small

businesses have been sold they have been purchased by larger UK wide private equity funded businesses, this is at odds with the market changes required to move the policy forward.

Snapshot market share data below illustrates the increasing size of the independent sector but also of private equity funded provision which has increased by 59% in the last 3 years versus small to medium enterprises (SME).

Graph 7. Independent market share by placement type and by provider type October 22





Data Source - CCSR

We must however start to plan contingencies for any disorderly exit from the market by those 'for-profit' organisations who do not convert and this may require legislation, enabling safety nets to be put in place and smoothing the transition.

Foster carers maintain the right at any point in their fostering journey to change the agency that they work with. There is an existing, recently updated, protocol for transfers of foster carers between agencies albeit that this is not currently formalised in regulations or guidance. We suggest that the relevant regulations or Codes of Practice be amended to strengthen the arrangements for the efficient and safe transfer of carers in these circumstances. An option could be a Register of Foster Carers for which there is a current proposal, however this may not be achievable in a timely way and may need to be an option for the future. Any such amendments to the regulations should also include a default mechanism for interim support of foster carers should the agency with whom they are currently registered withdraw or cease to exist, we suggest this should be a local authority. This will safeguard foster carers and the children and young people in their care from any periods of uncertainty without supervision, until they have been fully registered with a new agency of their choice. This work should be prioritised for the next phase of the Programme Board with active input of foster carers, supervising agencies, Foster Wales and representative organisations.

With residential care homes and supported accommodation clear contingency arrangements are needed to support continuity of service and care, should an independent provider exit the market or experience substantial financial difficulty. In this situation local authorities will need to work collaboratively to establish a structure for being a provider of last resort in the short term and minimise any disruption to children and young people in their homes. Local authorities are familiar with acting as a provider of last resort in adult social care and lessons can be learned here for application to children services during what is likely to be a disruptive period, but it will be essential that local authorities are fully resourced to be able to support in this role.

Costs

If qualification criteria are to be introduced for those eligible to provide services, there will be a cost for those businesses that wish to transition to a qualifying constitutional format. Such costs can be mitigated by developing template documentation, and an easy to follow process. We consider Cwmpas and Business Wales key partners in developing this area of support.

It is not a proven fact that the cost base of public sector or 3rd sector / charitable provision is less than private providers, or that the price charged to public sector commissioners is consistently excessive and can be reduced through this policy. There is research available across the UK that considers the detail behind the cost to price ratio and warns of a lack of comparative analysis of like for like provision. While a minority of providers are extracting higher than usual profit in the form of dividends to shareholders, as referenced in the recent Competition Markets Authority report, this is a common feature of demand exceeding supply and commissioners competing for scarce placements for those children and young people with more complex care package requirements. The competition for placements is in essence borderless across the UK nations as the placement crisis and lack of sufficiency is not restricted to Wales. Further reference to cross border arrangements is made below.

Through the work undertaken by Foster Wales we believe that longer term cost savings may be able to be made if provision is rebalanced towards local authority rather than external provision. However, it should be noted that currently most local authority spend on placements are over the allocated budgets (i.e. overspends) so this will bring spend back to base budgets rather than release resources. In addition, current 3rd sector placements are set at a similar price to “for profit” IFA’s and so if the 3rd sector grows more than local authorities, savings to local authorities will not be achieved. This rebalancing towards local authority provision will only be able to happen if there is increased resources to grow local authority staffing and provision to allow this to take place.

There will need to be a significant investment in public sector development of in-house care services. We welcome the investment already available through the Programme Board, funding for Foster Wales and the Health and Social Care Regional Integration Fund (RIF) but this is insufficient given the potential size of rebalancing required. Funding for Foster Wales has also only been focussed on rebalancing provision, rather than supporting the taking forward of the commitment to eliminate private profit. If existing providers are offered a viable support scheme to transition their current business models to meet the new requirements, the required level of investment in public sector growth will likely be less. However, if existing providers are not assisted to transition in a planned way, in the worst case scenario, local authorities may require investment in the hundreds of millions not the tens of millions. Financial modelling by Welsh Government has been discussed at the Programme Board and this needs to be advanced in the next phase of work. The policy implementation must be adequately funded to mitigate risk to children and young people.

Building public sector and 3rd sector capacity at the proposed speed necessary to compensate for private providers exiting the market, will require a very significant front-loaded investment, meaning the cost of policy implementation will likely be at its highest in the first 5 to 10 years. This also needs to take into account the potential disproportionate impact between different local authority areas, for example between those areas where there are currently more residential placements compared with their children looked after numbers. One of the opportunities, if there were appropriate resourcing, would be to invest in creating local authority residential provision in the areas of most demand, meaning that more local authorities would be able to support their own children locally rather than having to place further away.

This comes at a time when the cost of living crisis and workforce shortages are driving the costs of care up at an unprecedented speed. These factors impact the cost of care whoever the provider is or their business model type, no business whether public sector, third sector or private are immune to these pressures. Alignment with the Social Care Wales workforce strategy and the work of the Social Care Fair Work Forum are necessary.

Every local authority is now reporting an overspend in the current financial year and budget gaps in the future years. Other than the experience of the early months of the pandemic, there is no precedent for pressures of this scale escalating so quickly.

A survey of all 22 councils was carried out during August/September 2022 with the help of the Society of Welsh Treasurers (SWT) in order to estimate the pressures in 2023-24 and 2024-25 based on local authorities' medium-term financial plans.

Responses from local authorities identify that cumulatively, the pressures building up in the system are starting to look potentially catastrophic. Recent experience tells us that pressures

in local government budgets vary from anything between £250m to £300m in any one financial year. Even though pressures in the current financial year were offset by a relatively generous settlement, it is becoming clear that there are additional in-year pressures amounting to £257m. This becomes a cumulative pressure £784m by the end of 2023-24. Surging inflation continues to drive the cost base up by £439m in the subsequent year, which gives a cumulative pressure of £1.23bn by the end of 2024-25 according to the SWT survey.

Within social care we know that the pandemic has exacerbated many of the existing challenges that we were already well aware of, including increasing demand for services coupled with increasing complexity, insufficient funding and significant workforce pressures and the survey responses indicate that social care is facing a considerable financial challenge in 2023-24 and 2024-25.

The survey identified £95m worth of in-year pressures in social care with pay and non-pay inflation accounting for around £41m. Demand pressure in adults' services account for £25m and children's services account for £30m (with children's residential placements accounting for nearly £20m of the total). Cumulatively these pressures rise to £256m and £156m in 23-24 and 24-25 respectively giving a cumulative total of £361m.

It should be noted that the pressures calculated are based upon maintaining working practices and core structures as they are at present and does not factor in the investment that would be required for policy implementation. The situation also remains very fluid and the estimates in the survey had been superseded in a matter of weeks by announcements made in the UK Government's mini budget with some authorities reporting that their budget gaps had grown by around a quarter since the survey was returned.

Independent providers without policy certainty are revising business plans from long term return on investment to short term recovery to mitigate losses, again pushing prices upwards now. This is likely to continue together with more placements being made outside of Wales, with the consequent range of impacts including increased cost, due to reduced concentration of provision in Wales. Investment in childrens social care by the independent sector has in the main paused since the policy announcement as providers wait to see the proposed detail of the legislation. There is early emerging evidence that the pause in investment alongside broader economic pressures is impacting the maintenance and improvement of care home environments

At a granular level the price information on charges by current providers are set out below:

Graph 8. Local authorities price paid for residential care homes as at 31st March.

Year	2020	2021	2022
Total number placements	446	472	491

Total weekly expenditure	£2,033,538.	£2,126,425.	£2,385,138.
Average weekly price	£4,559.	£4,505.	£4,857

Data Source: QBDR

The average weekly price has increased by 6.5 % from £4559 as of 31st March 2020 to £4857 as of 31st March 2022, this average includes standard placements and nonstandard across a range of models of care.

Graph 9. Local authorities price paid for foster care provision as at 31st March.

Year	2020	2021	2022
Total number of placements	1290	1325	1275
Total weekly expenditure	£1,042,228.	£1,108,484.	£1,102,781.
Average weekly price	£808	£836	£865

Data Source: QBDR

The average weekly price paid for independent foster care has increased by 7% from £808 as of 31st March 2020 to £865 as of 31st March 2022. This data includes standard and nonstandard care packages but excludes parent and child foster placements.

Savings to the public purse are not foreseeable or guaranteed while the rebalancing process is undertaken nor can they be reliably forecast at any future point given the current broader economic environment.

An additional significant cost risk to the sector is the potential loss of experienced senior workforce in childrens social care, currently contributing as either owner / directors of micro or small local businesses, or as senior leaders within independent organisations, or as carers welcoming vulnerable children into their families. Many are ex public sector employees and have decades of experience in delivering high quality children's social care. While a proportion of these will be welcomed back to public sector employment or may secure 3rd sector employment, it is likely a proportion will be lost to social care as they report feeling devalued and, in some cases, 'demonised' by generalised statements of operating for profit and use of the term 'eliminate'. A shift in focus towards a positive approach to operating for the common good, could help heal some of the early wounds and evident hostility, with a view to stemming losses and retaining skilled and talented professionals in children's social care in Wales. Successful implementation of the policy could attract skilled workforce into Wales where the policy aligns to their value base and business ethos.

Cross-border issues

Securing sufficient care for children in need in their area is already a significant challenge for local authorities in Wales and therefore to restrict them from awarding placements in any other

part of the United Kingdom, restricting their ability to only commission not-for-profit organisations in England or other jurisdictions puts councils in a position of conflict with their overriding duties to the children.

For this significant reason a "for public benefit/good" purpose test would be a better basis for a level playing field than an artificial construct of "not-for-profit".

A revised draft cross border protocol has been developed by a working group of local authorities, providers, the regulator and Welsh Government. This work (completed in 2020) has been delayed in implementation; with a plan of introduction as part of this policy, it will support improved working together between partners cross border.

Graph 10. Welsh cross border placements in England and Scotland.

Placement type	Number
Residential	81
Foster	76
Total	157

Data Source – 4Cs Bespoke data collection October 2022.

Graph 11. English children and young people placed in Wales with All Wales Framework Providers.

Placement Type	Number
Residential	108
Foster	119
Total	227

Data Source – 4Cs Bespoke data collection October 2022.

Graph 11 is an under-representation of cross border placements into Wales as the data set does not include all registered providers in Wales only providers who are on the All Wales Framework.

Secure Childrens Homes (SCH) require specific consideration; services are managed cross border between England and Wales. There is an acknowledged shortage of registered SCH places in England and Wales with children also accessing Scottish based SCH provision. In Wales the current estate is managed by the public sector, however in England and Scotland there is a mix of public and private organisations registered as providers of these services. A review of sufficiency of SCH in Wales and/or the feasibility of Wales only SCH provision, with any necessary increase in provision required nationally, scoped alongside a plan for

disentangling the current cross border referral arrangement would need to be urgently considered, if local authorities in Wales were to be prevented from commissioning placements from organisations elsewhere in the UK that were considered to not comply with a Wales policy. We propose the exclusion of SCH from the initial phase of the policy implementation until a clear strategy for this aspect of care service delivery is agreed.

Protected Characteristics

There is an opportunity to increase provision for children and young people with specialist needs, impairment or disability as the rebalancing process is undertaken. As a low demand but high complexity area of service Wales does not currently have sufficient local provision to meet needs and this can result in children and young people having to be placed further away from home than would be preferred. This can negatively impact the family relationships that we know to be so important to looked after young people and their families. Regional developments are likely to be more sustainable than local developments to allow integrity to model of care but improved regional care and support is achievable. This aligns with current policy and strategies by Regional Partnership Boards developing integrated services with the financial support of the RIF.

The charitable and public sector is already substantially represented in the provision of short breaks for children with disability. Growth is likely required in the provision of full-time, long term care, where necessary. A medium sized, originally Wales only provider, is the main independent provider of these services for children and young people in Wales and also offers young adult care services to avoid disruption to care, supporting transition between childrens to adults social care. Specific work will be needed to ensure this capacity remains stable and available to Welsh children and young people during the policy transition.

Specialist fostering services for children with disability are in the main provided by an independent agency, not the public or 3rd sector. Originally a small Wales only agency but acquired in recent years by a large UK parent company with private equity funding, again specific work will be required to maintain availability of capacity during the policy transition.

With the reintroduction of the National Transfer Scheme for Unaccompanied Asylum Seeking Children there has been targeted growth in the last 2 years in provision for this cohort of young people. A mix of public sector, 3rd sector and private sector provision has been and continues to be developed. Due to the age profile of these young people many are in supported accommodation which at this time is unregulated in Wales. See further comment on policy implementation for this provision type.

Family assessment centres for parents and children are low demand and low supply, with two currently registered in Wales and another application with the regulator. All of these services are private and will require assistance to transition to new business models. This model of care can be a critical prevention service to keep children in the care of their birth families so requires specific attention.

Parent and child foster placements are provided by a range of providers. Again, they are an important short term model of care to keep children with birth families. A regional focus to public sector development in this area of care may assist with sustainable growth.

The impact of the potential restriction on LA's ability to place outside of Wales needs to be very carefully evaluated. It may also have perverse consequences for local authority duties to fully explore the options available to meet children's needs including certain types of placements e.g. friends and family foster care where these are outside of Wales. Transition arrangements will be needed to ensure the best interests of individual children in settled placements of all types are not prejudiced.

Other effects

Wellbeing of Future Generations Act 2015 – this legislation imposes important obligations on public bodies to think and act sustainably, in particular in relation to the ability of future generations to meet their own needs. Clearly decisions about the long-term future strategy for services for looked after children falls within this remit. The approach being pursued by Welsh Government, both in relation to the types of providers that will be eligible to provide services, and the intention to explore a co-operative approach, are consistent with the five ways of working in section 5(2).

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

The language used to describe the types of organisation eligible to provide services needs to be thought about carefully. For the reasons set out above there are issues in relation to the language which must not undermine the objective.

The phrase "not-for-profit" is itself inaccurate and misleading. Inaccurate because of the requirement for any enterprise to be profitable as explained above; and misleading because it avoids the crucial distinction of *purpose*, between business for private benefit and business for

the common good. The phrase “not-for-profit” has been a convenient term for the private sector to use, but it also diverts attention away from the *private benefit* of investor-owned enterprise, and avoids mentioning the positive attributes of business carried on for a social purpose – for the common good. Perhaps one of the strongest reasons for not using such profit-related terminology is that it focusses on what such businesses ***are not***, rather than what they ***are***. They are businesses trading for the common good, rather than for private gain. We need language which accurately and honestly describes the different types of business.

We are suggesting the phrase “common good” as it is relatively free of other implications, though other phrases may be preferred. Societies “for the benefit of the community” offer another option, as does “public benefit”, though the latter may for some imply some sort of state involvement. Whatever phrase is used, it needs to work as a clear descriptor alongside “private benefit”. A final point to mention is that there is an opportunity here for Welsh Government, in this pioneering move, to establish new, clearer and more accurate language, and move away from the profit-related language.

The following approach could be adopted.

1. Specify that the only organisations which will be eligible to provide the relevant services will be those that carry on business for the common good; and those that carry on business for private benefit will not be eligible.
2. Organisations which carry on business for the common good for these purposes must expressly be committed to carrying on business either for public benefit, for the benefit of the community, or charitable purpose, and have two features in their constitution:
    (a) A prohibition on distribution of profits to members or others;
    (b) A requirement that on a solvent winding-up, any capital surplus will be transferred to another body with similar constitutional commitments.
3. These features must either be incapable of change, or incapable of change without the express permission of CIW (which in reality would rarely if ever be used).
4. This approach would permit the following to be eligible.
    (c) A charitable company or CIO
    (d) A CIC limited by guarantee (but not a CIC limited by shares)
    (e) A community benefit society
    (f) A co-operative society containing the relevant restrictions (see above)
    (g) A public body.

Structured in this way, there should be no risk of leakage of public money. There should be no need to say anything further about the way that profits are treated. It would be possible to go further still and have additional requirements about the ownership of any such entity, but that may be unnecessary, depending on other powers available to CIW.

It would also be possible, if adopting a member-based approach such as that involved in a co-operative or community benefit society, to introduce a requirement for care-workers, children and their families/carers to have a voice in provider organisations.

We would not however recommend inclusion of the definition of social enterprise in s.16(2) of the Social Services and Well-being (Wales) Act 2014. This could lead to problems on enforcement because it includes phrases such as “wholly or mainly”, and “most of its profits” and other phrases which require a judgement to be taken as to compliance. Experience by 4Cs from working with the Financial Conduct Authority is that even with the statutory powers at the FCA’s disposal, making judgement calls of this nature is best avoided. CIW would need the power to issue guidance on its interpretation of the eligibility criteria and would then need to be resourced in order to carry out its activities adequately. Without that, there is a risk of inappropriate registration and dispute.

We would not recommend including criteria related to whether an organisation is extractive or regenerative. First, this would similarly be open to interpretation and therefore to dispute. Second, it seems unnecessary in the light of the approach described above, which essentially mirrors the distinction.

Reflecting on the learning from the Scottish model of fostering regulation, and revisiting the policy objectives within Wales, an alternative to criteria for extractive and regenerative could be clear and enforceable anti -avoidance criteria. An anti-avoidance test could be applied by CIW to rule out providers as not complying with the common good principle within their organisational structure, possibly extended to key aspects of their supply chain, and diverting monies. Further research will be necessary to develop a fit for purpose anti avoidance test and scope the required investment in CIW resources to apply said test. Regard can be had to similar instances in other areas for public policy e.g., the General Anti Abuse Rules for tax under the UK Finance Act 2013.

Question 1.4: **Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?**

It should be possible to draft the provisions with sufficient confidence without needing a power for Ministers to amend. However, this will depend on the detailed drafting, and the point may need to be considered at a later stage. We would have no objection to this and experience

suggests that having such flexibility would be useful. There is likely to be a long adjustment period to new ‘market conditions that will require this.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Appropriate time must be built into the primary legislation to support the development of the right services, in the right place, to meet needs effectively and sustainably into the future. A realistic timeline will also prevent the avoidable risk of increasing the numbers of ‘Operating Without Registration’ situations that are high cost and do not always deliver the best outcomes for our vulnerable young people and are a direct consequence of the sufficiency challenge.

In general, the proposed timing for registration of new providers of 1st April 2026 is agreed, presuming sufficient resource can be invested in CIW to be able to deliver a substantially extended remit by this date and appropriate support is in place to enable new registrants to register. The views of CIW should be a primary consideration in this proposed timing.

We believe that the proposed timing of the introduction of the requirements for existing providers of 1st April 2027 is overly ambitious and could carry with it a risk to the safety of children and young people who require a good quality, registered and stable placement. The timeliness of the introduction of requirements for existing providers must be planned, reviewed, and implemented within a safe transition period for children looked after. See further comment in relation to transition below.

Proposed timing must be sufficient to allow businesses to implement the necessary constitutional changes. This should include the practical timescales for the registration process with the Charity Commission for England and Wales as a necessary consideration.

The projected time required for other parts of the sector to expand / develop as necessary should also inform this timeline as well as the investment being made available to support them to do this.

Question 1.6: **Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?**

It is essential that transition planning from the current makeup to the proposed new landscape does not compromise the availability, stability and quality of care and support for children looked after in Wales, or the ability of local authorities to fulfil their duties to provide sufficient

accommodation. The pace of transition should meet this test above any imperative for policy change to fit a pre-determined timescale.

A phased transition period by service type is likely to be the most logical approach. The services where children and young people are at highest risk from the transition should have a longer lead in time to enable robust risk management planning. This gradual rebalancing of the landscape will enable corporate parenting duties to remain at the forefront of decision making.

A proposed phased transition could be by registered service type and/or, albeit acknowledged more difficult, by model of care.

- Foster agencies (largest volume therefore longest phase allocated)
- Family assessment centres (smallest volume)
- Care homes (standard with no evidenced model of care)*
- Care homes with Estyn registered education onsite*
- Care homes with clinical health services delivered onsite*
- Care homes that provide continued specialist care for young people post 18.
- Child disability home care services
- Supported accommodation (not yet a registered service under RISCA but will need to become a registered service to deliver in aligned approach. See previous comment)
- Secure Children Homes

* Differentiating between care homes by model of care will be challenging but if achieved with clear criteria would help minimise risk to higher need children and young people receiving integrated care packages.

We suggest a minimum timeline target of a 5 year phased transition of existing registered services, with the flexibility to extend if implementation is posing an unmitigated risk to children and young people's services.

Question 1.7: **What are your views on the issuing of guidance to support the implementation of the primary legislation?**

Guidance would be sensible. This approach has recently (2015) been adopted for the registration of community benefit and cooperative societies and is helpful. The Financial Conduct Authority in its role as registering authority explains their approach, for example, to

the exercise of their discretion under legislation, and where terms are not defined, their approach to interpretation. This provides clear information, that is practical and easy to understand for those who need to know and need to be able to rely on a consistent approach. Such guidance from the regulator would be welcomed as it is authoritative and can be easily kept up to date as revisions are required.

Question 1.8: **What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular: - Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? - What would be the benefits, disbenefits and other implications of such an approach? - What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?**

We would be strongly opposed to this approach which would limit local authorities' ability to commission placements in Wales and across jurisdictions. Local authorities must retain the power to commission a placement that best meets the identified needs of individual children under their statutory duties.

The proposal is potentially in conflict with a child's right to receive the best possible care from their corporate parent. There may be particular risks for those children and young people who require integrated care services with a specialist health or education element. There would be risk to children and young people who have permanence in care plans receiving stable, good quality care outside of Wales, and therefore outside of the parameters of this policy. As stated previously we are committed to not disrupting children and young people's care arrangements as a result of this policy change.

If this proposal were adopted as an alternative to implementing the policy via registration of services under CIW, providers could continue to register for profit services in Wales and accept placements from England. This could increase the frequency of cross border placements into Wales with local authorities dealing with safeguarding referrals for more children and young people from outside Wales and potentially could exacerbate associated risks such as child exploitation. This could also be a disincentive for existing providers to transition their business models, creating two parallel markets in Wales, one that Welsh children could not access and one which they could, irrelevant of which were best placed to meet their identified needs. This carries the risk of compounding sufficiency challenges for Welsh children looked after, thereby perversely requiring local authority resource and community infrastructure to support more looked after children from elsewhere in the UK.

Delivery of a well-planned phased transition plan linked to registration is preferred and would mean that this proposal was unnecessary.

Question 1.9: **What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?**

Enforcement and anti-avoidance measures are always needed when establishing a regime of this nature. It is not sufficient just to establish eligibility criteria for registering as a provider with necessary related definitions.

1. There needs to be a continuing requirement to meet the eligibility criteria. This needs verification from time to time by providers, within a framework that provides ongoing assurance to CIW.
2. CIW needs the power to check for compliance if issues are drawn to its attention, and for this purpose powers will be needed to call for information and to investigate.
3. CIW needs the power to suspend or cancel registration, or to threaten to cancel registration unless relevant steps are taken.

In relation to anti-avoidance, measures need to be considered to counter the various indirect methods of extracting profits, for example: payment of excessive management charges or interest on inter-company loans, payment of excessive rent, or excessive remuneration. For a charity or a community benefit society, any of these devices would be a breach of duty by the directors or trustees, which would ideally be followed up and addressed by the Charity Commission or FCA. However, the scale of their responsibilities and limited resource suggests that this cannot always be relied upon, in which case empowering CIW to monitor compliance using its power as registrar would be an important part of the arrangements.

CIW needs to have sufficient powers to be able to detect and to prevent any gaming of the arrangements by those not entitled to register. It might be better placed than the Charity Commission or FCA to know whether particular payments were significantly above market rates. A mechanism for third parties to alert CIW about actual or potential non-compliance may be appropriate.

There may be benefits in learning from the experience of the Charity Commission and FCA in relation to this area.

Question 1.10: **We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

Potential benefits in terms of Welsh language provision could be realised through the change and rebalancing process of policy implementation. Local authorities must assess the sufficiency of care and support provided for placements through the medium of Welsh. The linguistic and cultural needs of children are to be included in their care plan (section 6(2)(c) and section 78 3(b)) and when identifying a new home for children and young people these should be key matching considerations.

Opportunities to increase access to Welsh language can be aligned to the development of new care home provision by clear expectations of new market entrants for either residential, supported accommodation or foster care. Foster Wales will continue to target recruitment of foster carers with first language Welsh and/or a willingness to learn Welsh as should charitable and 3rd sector fostering agencies when expanding or at start-up. The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 Schedule 1 requires information on carers cultural and linguistic preferences plus their ability to meet the needs of children and young people with a range of cultural and linguistic requirements. As the local placement landscape changes with policy implementation trends in access will need to be monitored.

Existing independent providers who offer Welsh language services should be supported to transition their business so that existing services are protected, and any potential negative effects are mitigated. Templates and support for transition will need to comply with the Welsh Language Standards.

Partnership forums should consider development of the offer locally and target areas for improvement. This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales.

Question 1.11: **Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

The introduction of the location assessment tool under new legislation, previously committed to by Welsh Government under the Ministerial Advisory Group on Improving Outcomes for Children Looked After, should include an assessment of the prevalence of children and young people in the proposed location of a home who use the Welsh language. It should also include an assessment of local facilities and education that can support use of first language Welsh and inform workforce recruitment to ensure children and young people placed locally can use their preferred language.

Question 1.12: **This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.**

It is vital that this programme has on-going review during the transitional phases to ensure that any risks and mitigations are managed in sequence. This will help to ensure that during the transition process children and young people's care is firmly at the centre of planning and implementation.

There are powerful links between the Well-being of Future Generations Act 2015 and co-operative values and principles which are yet to be identified and articulated. This should be explored further to help to give momentum to the policy and its developing implementation proposals.

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

Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection – Response submitted on behalf of Welsh Local Government Association (WLGA) and the Association of Directors of Social Services (ADSS) Cymru

Introduction

The Welsh Government consultation paper, 'Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection' sets out several proposals for changes to primary legislation aimed at improving social care in Wales. This includes: legislative proposals for eliminating profit from the care of children looked after; proposals to enable access to Direct Payments for adults who are eligible for Continuing NHS Healthcare (CHC); and an examination of existing duties to report children and adults at risk in Wales, asking whether these duties should be expanded.

The WLGA and ADSS Cymru have responded separately to chapter 1 of the consultation which sets out the legislative proposals for eliminating profit from the care of children looked after in a joint submission with other local government partner organisations. This response seeks to respond to the other chapters of the consultation, namely those considering the introduction of Direct Payments for CHC and the mandatory reporting of children and adults at risk.

Introducing direct payments for Continuing NHS healthcare

Councils have made significant progress in supporting people to have more choice and control over their care and support, a key principle of the Social Services and Well-being (Wales) Act. Direct Payments have been an enabler within this, providing an alternative to local-authority-arranged care or support and helping meet an individual's or a carer's need and giving people more choice, greater flexibility and more control over the support they get.

The recent Audit Wales Report identified that Direct Payments support people's independence and are highly valued by service users and carers, but it also highlighted the ongoing difficulties in the interface between NHS continuing healthcare (CHC) and Direct Payments and noted that current practices do not support service users and carers to exercise voice, choice and control. The report recommended that the Welsh Government ensure that people who receive both NHS continuing healthcare and Direct Payments have greater voice, choice and control in decision making.

To date the fact that a person receiving CHC cannot receive direct payments to enable them to make arrangements to meet those needs has resulted in a reluctance from some to access NHS continuing healthcare because they fear losing their Personal Assistants and the ability to determine who provides their services. Concerns have also been raised by service users that the flexibility of Direct Payments – enabling them to access a wide range of non-traditional health and/ or social care services that help improve their wellbeing – would be lost. There have also been instances where individuals with deteriorating health needs have refused to access

NHS continuing healthcare because of fear of losing the flexibility of Direct Payments, the continuity/consistency of quality care and the wellbeing improvements it brings.

Local government is therefore supportive of the proposed legislative change to enable local health boards to provide adults with direct payments to meet their eligible CHC needs. We believe this is something that is long overdue and has potential to make a significant change to peoples experience of CHC. For example, these proposals would be particularly important for young adults who may have ongoing educational needs, those with commitments such as children, employment, social and vocational interests. Having more control over care delivery would support individuals to increase their autonomy and participate more fully in their lives.

However, it is essential that this change be underpinned by a significant change in practice and implementation of CHC. For some time now local authorities have identified challenges in how health boards are implementing CHC and the fact that this is not currently implemented effectively or consistently in line with existing policies. The experience has been that the bar for access for CHC has been increased, despite the legal thresholds not changing. Local authorities firmly believe that the interpretation of health needs and gatekeeping practice needs to change, so that existing policies are implemented effectively. This needs urgent attention.

There is a need to get to a position where the policy is effectively and consistently implemented across Wales, which will ensure that nobody is put at a disadvantage. There is a need to agree a national operating framework which enables the health and social care system as a whole to provide clarity about the application of the framework and guidance across Wales. There also needs to be more effective process to resolve disputes and challenge non-compliance.

While we fully support the proposal to introduce direct payments for CHC. There will be a number of issues to resolve and concerns to manage in transitioning to the use of direct payments to deliver health services, including in areas such as resourcing, processes and governance. For example, currently PA's work *'wholly under the direction and control'* of the individual they support making them exempt from registration on the condition that care, and support is provided '*without the involvement of an undertaking acting as an employment agency or employment business*.' It is important to consider if the identification of a CHC need and the tasks that run alongside it changes this exemption. If the health board starts to direct and control the health tasks a PA completes then these exemptions may no longer apply.

It will be essential that this is supported by robust guidance and that its implementation is monitored. There is also a need to ensure that appropriate training and assurance are provided for staff, in decision making and administration of any payments system. However, we are concerned that the existing challenges in the way that CHC currently operates may undermine the potential benefits that we believe could be realised by the proposed change in legislation.

Mandatory reporting of children and adults at risk

During the Independent Inquiry into Child Sexual Abuse (IICSA), there has been significant discussion of mandatory reporting duties – where there is a legal requirement to report knowledge or suspicions of harm (e.g. abuse or neglect) to a designated authority. In particular, there has been consideration of whether such reporting duties should be placed directly on individuals, in the interests of protecting children and young people from harm. Given the recommendation from that report to introduce a new law of mandatory reporting and a legal requirement for those who work in regulated activity or work in a position of trust to report child sexual abuse it is timely to reflect on the duties to report contained within the Social Services and Well-being (Wales) Act, and whether they should be expanded to include a legal

requirement upon certain individuals to report children and/or adults at risk to the relevant local authority, in order to consider whether this will better protect children and adults from harm.

We recognise that the argument for introducing mandatory reporting is that it reduces the risk that serious cases will pass unnoticed and therefore results in better protection for citizens. However, we are concerned that its introduction would in fact lower the threshold for practitioners choosing to report a concern, with a lower likelihood of being dissuaded from doing so – including in cases where, for example, they are unsure what they have seen, they are influenced by professional cautiousness, or they are fearful of the reputational damage that making a report may cause. It may also lead to an increase in reports and referrals (as was the experience in Australia when mandatory reporting was introduced), potentially diverting attention away from the most serious abuse and neglect cases. An increasing number of referrals risks creating a 'needle in a haystack' effect in which it is less likely, rather than more likely, that the social care system will identify key cases.

Implementation of a mandatory reporting duty may also result in less consideration of the most appropriate stage for referrals, leading to a 'tick box' procedural approach – not only by social workers, but also those practitioners referring cases including in health, education and the police. This would be at a time when many areas are already struggling with the volume of information sharing from partner agencies and at a time when local authorities are already struggling with both staffing numbers and resources to manage existing demands.

Furthermore, mandatory reporting will not itself improve the quality of practitioners' judgement about whether what they are seeing is abuse or neglect, and how best to respond. It could, however, further undermine effective practice by instilling risk-averse behaviour driven by the fear of sanctions, rather than empowering the workforce to make the right decisions. If disproportionate attention is placed on referrals and reporting, it may also deter organisations and agencies outside social care from working effectively with individuals on lower-level issues, engendering an attitude that once the report has been made, they have discharged their responsibilities.

There is already an implicit duty to report which is woven into nearly all professional codes of practice, in particular for regulated services / people registered with Social Care Wales. The Wales Safeguarding Procedures already accurately reflects statutory guidance and states 'if any person has knowledge, concerns or suspicions' which already places responsibility to report on individuals. Whilst the statutory guidance does not impose a legal requirement to comply, it requires practitioners and organisations to take it into account and, if they depart from it, to have clear reasons for doing so. A number of professional regulators and bodies (predominantly those in the health and social care sectors) require their members to report any concerns about a child's safety or well-being. A professional's failure to adhere to such standards or codes of conduct may result in misconduct or fitness to practise proceedings against them. Therefore, we believe we have been operating in this spirit for some time whereby organisations already reinforce their workforce's duty to report through training and contractual employment expectations/agreements. Instead we believe that what would be most effective is improved information sharing, supported by better multi-agency working, better assessments, better decision making and better working with citizens at all stages of their engagement with the safeguarding system rather than a legislative change at this stage which would also bring with it resource implications in relation to the need for new training packages and awareness raising programmes.

Consultation Response Form

Your name: [redacted]

Organisation (if applicable): [redacted]

Email / Telephone number: [redacted]

Your address: [redacted]

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

x

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation? Response from Directors and Responsible Individual

If you want to receive a receipt of your response, please confirm your email address, here: [redacted]

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

[redacted] is a newly registered (4/10/22) Residential Family Centre, we have worked with Business Wales from design to inception.

As part of the development process, we met with the 4Cs who informed us of the proposed legislative changes and suggested that we attend the planned workshop to discuss the proposals in January 2022. Following the workshop, where we were informed that the changes were coming, and we needed to consider the options discussed e.g. Charitable status, workers cooperative etc. We discussed matters with Business Wales who were unaware of the proposals and stated they would liaise with [redacted] and update us once further information known.

To receive information re the significant proposed changes in this way having worked with a Welsh Government organisation for over 12 months was very disheartening. We have committed a significant amount of time and our money to this business, we have a 10year lease on the building which is not negotiable at a cost of £5000 per month. If we must move to a not for profit (NFP) and cannot generate enough profit, how will we pay this substantial debt off. Is there any planned support that will be offered should this occur.

We have also developed a 10-year Plan which requires most of the profits to be reinvested in the building to further develop service provision.

We are not a multinational company with numbers of staff to support the organisation, we are two experienced children's social workers who want to provide opportunities for parents to learn how to care for their babies in a safe and supported environment.

We are located in an area of high deprivation and unemployment; we have recruited staff locally and are paying above the living wage. We are meeting the needs of Welsh Local Authorities. We work with families for a 12 week/3 Month period which meets with the WG vision in respect of providing local services and to ensure if children and Looked After that are for the shortest time possible.

We feel angry, that as a small company we may not be afforded longer-term opportunities to develop, and become fully viable, due to the proposals to place the same financial restraints on a small fledgling company as ours, as you would do with a large established company.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Can I ask why this high cost and risk legislative change is being considered now when we are in a Global Financial Crisis which is resulting in higher cost for every aspect of service provision.

More costs will result in less choice will be available for local authorities, children will continue to be placed some distance from their home communities and culture.

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

What would happen to small organisations such as the [redacted] would they be Governed by the State.

I note some of the Lead People in Welsh Charitable Organisations earn considerably more money than [redacted]

How will the Wages / salery for senior managers be legislated in the WG NFP proposals?

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

The WG have not given direction in relation to what model is acceptable to them.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Any fledgling business will need to reinvest their profits for several years before they become viable. We will take time to develop and progress as proposed in our 10 yr. plan for any significant legislative change to be made at any point may result in the business model failing and the owners in significant debt.

Consideration should be given to smaller business who’s profit margins would be less and needed to ensure they can develop and meet changing demands.

Providers are struggling to recruit suitably experienced staff, wages, training and support are essential, investing in staff is key to managing a business. [redacted] have considered the “Value” of this in their business model.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Families are only with us for a specified period of time and Transition from the service and preparing and planning for it is part of the ongoing work at [redacted]

These Transitions are Crucial for the families transitioning from [redacted] as many will arrive from hospital with out any permanent accommodation options.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

I would expect this from WG

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

[redacted], it is a specialised service and contributes to the WG need to improve the “sufficiency” in respect of placement availability.

The Local Authority would be limited in their choice of placements and would be forced to consider the best fit, rather than their preference of being able to procure a placement locally that can meet the assessed needs of that Family.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

The WG are not considering the risks to business small and large at this current time and I think this consultation time would be better spent improving the outcomes for children in Residential Care. To embark on these changes at this current unsettled time may mean greater cost to all stakeholders involved.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

We Live and work locally and have four Staff who are Welsh Speakers at [redacted] our aim is to build on our responsibilities in relation to service provision through the medium of Welsh. However, we need time and the opportunity to grow and develop in order to fully embrace and implement legislative changes in relation to the Welsh language

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be

formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Welsh will need to become the first language in all parts of Wales.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

I have not been informed of the costs involved in relation to the WG proposed legislative changes, my concern is this will again fall on Taxpayers.

If Welsh providers move to England the pressure on local authorities to meet their placement needs will result in more unregulated placements, placements being procured some distance from the local community. Higher costs due to location and distance.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection

Consultation Response – Voice From Care Cymru

November 2022.

Introduction

Voices from Care Cymru is Wales' leading charity upholding the rights of care experienced children and young people. A key component of our role is enabling care experienced children and young people to get their voices heard where decisions are made that affect them. We are a children's rights organisation, dedicated to ensuring that children and young people affected by the care system have their rights as set out in the United Nations Convention on the Rights of the Child and incorporated into Welsh law and policy fully realised.

We welcome the opportunity to respond to this important consultation. Our responses will focus on the two aspect of the proposed legislation that are most relevant to our care experienced community, one in detail, one in principle

This response is informed by the views of care experienced children and young people expressed through a number of consultations.

1: Eliminating profit from the care of children looked after

Voices from Care Cymru support the goals intended to be achieved by this proposed legislation. Before the 2021 election to the Senedd we consulted with care experienced young people to establish what they wished to see the next Welsh Government achieve for our care experience community. One of the themes that emerged was young people feeling very uncomfortable about their care being 'set out for auction to the lowest bidder.' Older young people in the care system are often acutely aware of the way in which their care is paid for. They know that foster carers and care homes are paid more to take care of 'difficult' children and young people. They dislike this and perceive it as stigmatising. They also do not understand why family members taking care of them in kinship care are paid less than other foster carers. These are issues that they have told us they will wish to explore with Welsh Ministers at the

forthcoming Summit meeting between Ministers and care experienced children and young people.

Informing the Voices from Care Cymru Manifesto, published before the 2021 Senedd election, young people consulted decided to ask the next Welsh Government to remove profit from the care of children and young people.

Below is the fifth key ask from our 2021 Manifesto

5. Profit Free placements

Young people tell us they feel upset, angry and commercialised when conversations on the costs of placements become a factor in their life. Removing incentives of accruing profit can ensure that every penny is spent on building stable, supportive and sustainable placements, instead of being diverted to distant shareholders. This could be a not-for-profit or full cost recovery approach. Any approach should be phased in to ensure existing placements are not disrupted.

"Removing the profit-making element for a care experienced child's placement shows the compassion for the children rather than treating them like an income. We weren't born to be money to our economy, we were born to be loved"

Thus, our support for the proposed legislative change is clear and unequivocal. However, we are concerned that, on the evidence of the consultation document, Welsh Government are not overtly taking a children's rights approach to this proposed legislative change. We believe that this is wrong in principle, and is also a missed opportunity to strengthen the case for change.

Detailed responses

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes. As set out above Voices From Care Cymru strongly supports the intent of this legislation, and we believe that this proposed change in registration will support the intention of the legislation, but may not sufficient in itself.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: - Benefits, and disbenefits; - Costs (direct and indirect), and savings; - Impacts upon individuals and groups with protected characteristics; - Other practical matters such as cross-border issues. Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.

From our perspective a major benefit of the proposed changes would be children and young people no longer feeling that they are treated like commodities to be traded rather than individuals with rights. Savings accrued by no longer having to provide profits to private companies could be re invested in increasing provision and improving quality. It is in the very nature of devolution that cross boarder issues will need to be managed.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

We do not have expertise to offer in detail in this regard. In principle we believe that there should be no margin for any 'trading surplus' – we are profoundly uncomfortable with the provision of care for children being referred to and regarded as a 'trade' – to be used in any way other than to enable not for profit organisations to meet their core costs and to invest to innovate in new models of care.

We believe that it will be necessary to legislate to ensure that organisations that appear to be not for profit in Wales are not, in fact subsidiaries of for profit companies registered elsewhere. Transparency is key

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

Yes. Any amendment should, however, be subject to legislative scrutiny

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

These seem appropriate. However, young people have raised concerns that any changes in arrangements should be carefully managed to ensure minimum disruption for those children and young people currently being looked after in for profit settings.

12 Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Young people have stressed to us the importance of ensuring that children and young people affected by changes are fully consulted and informed at all stages of any change

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Guidance must be detailed, binding and its implementation rigorously monitored.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular: - Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? - What would be the benefits, disbenefits and other implications of such an approach? - What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Without such restrictions the intention of the legislation could be undermined. Care experienced children and young people often express concerns about a lack of consistency in provision across Wales. This legislation must avoid that in this regard. Timescales should be subject to negotiation with local authorities, but consistency must be ensured.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

We would strongly recommend that Welsh Government rephrase the case for this reform, which we strongly support, to place the case for reform in the context on the UN Convention on the Rights of the Child. This would strengthen the framework on which the case for reform is based. For example, we would recommend consideration under Article 3.3, Article 20, and Article 32. We would be happy to provide additional information as to how these Articles might apply in this case if this would be of assistance.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Services for children and young people planned and developed in Wales are much more likely than those planned and developed outside Wales to enable children to have their UN Convention Rights, for example Article 30, and Article 8, realised. These rights should be enshrined – as all Convention Rights should, and, indeed are required to be – in the Guidance supporting this new legislation.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Specific clauses could be included in Guidance setting out requirements of providers in this regard. However, we would expect that a requirement on providers to meet current legislative requirements with regard to the Welsh language should be sufficient

13 Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them

We have already mentioned what we believe to be the necessity to reframe the case being presented for this policy and legislative change to place it in the context of the United Nations Convention on the Rights of the Child, and the Rights of Children and Young Person's Measure, 2011. We submit that this framing would greatly strengthen the Government's case for this change, as well as reflecting the Government's commitments to a rights-based approach to policy affecting children young people.

We would also suggest that this policy approach provides an opportunity for Welsh government to proactively develop Wales based services for children young people, designed and managed here in Wales. While this policy proposal focuses on for profit providers, and we fully endorse the Government's proposal to move away from this model, history provides us with a stark example of a UK wide not-for-profit providers failing to meet the needs of the children and young people of Wales. We refer, obviously, to the withdrawal of services to Welsh communities by the Children's Society in the early days of devolution. We would submit that this is an opportunity for Welsh Government to focus strongly on the development of Wales based services enabling children and young people to be cared for as close as possible to their home community; while fully acknowledging, of course of, that the expertise of UK wide organisations will continue have a place in meeting the needs of children and young people in Wales.

Finally, we would wish to stress the importance of placing the voices of care experienced children and young people at the heart of developing new models of service for those care experienced children young people. They know what works. They know what does not work. Listening to them, and acting on what they tell Government will enormously improve Government's ability to deliver for them and the children and young people that come after them.

Chapter 3: Mandatory reporting of children and adults at risk

We are not in a position to respond in detail to the question with regard to this proposal.

We can, however respond in principle.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

We support this

We do not wish to expand on this position at this time.

Conclusion

We trust that this response will be of assistance.

Please do not hesitate to contact us for any further information.

Voices From Care Cymru

November 2022

Consultation Response Form

Your name: **Peter Max**

Organisation (if applicable): [redacted]

Email / Telephone number: [redacted]

Your address: [redacted]

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

I am responding as an individual and not on behalf of any organisation

(see * above & below).

If you want to receive a receipt of your response, please confirm your email address, here:

[redacted]

Introductory comments:

**** Please note I am responding in a personal capacity and specifically not in relation to, or on behalf, of my roles on***

- ***Welsh Government Sponsored Bodies, where I am a board member of Social Care Wales and of Life Sciences Hub Wales.***
- ***Care Inspectorate Wales, where I am a member of the National Advisory Board***

Where I do make reference to residential family centres, this is partly informed by my understanding as a director of a residential family centre provider in Wales (Partnerships for Progress with a centre in Bridgend), but I am not replying on behalf of that organisation.

The underlying outcomes/policy objectives referenced throughout my consultation response are as follows:

1. "*at its heart, we want to see more children and young people being enabled to live with their families and in their home neighbourhoods with many fewer needing to enter care. We also want to ensure the period that young people are in care is as short as possible.*" (chapter 1, page 6 of 59) (referred to as "**Outcome A**" in my consultation response)

2. The aim is to ensure public monies are "*spent on children's services to deliver better experiences and outcomes for children and young people, addressing service development and improvement and further professional development for staff.*" (Chapter 1, page 6 of 59) (referred to as "**Outcome B**" in my consultation response)

3. "*We want to provide the right type of care for each child: reduce the number of children in care by better supporting them to remain with their families; reform and join up services for children looked after and care leavers; and provide additional specialist support for children with complex needs whilst better supporting those who care for these children.*" (Chapter 1, page 9 of 59). (referred to as "**Outcome C**" in my consultation response).

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No.

1. As detailed below, it would be better and safer (less risk of avoidable harm to children) if any legislative or other changes were made in commissioning aspects and not in changes to registration criteria for CIW.

2. Making changes in commissioning will achieve the underlying policy outcomes (**Outcomes A, B and C**) far better and more quickly.

3. Changing CIW registration criteria to prevent private companies from operating in Wales will not only risk creating avoidable harm to children, but also prevent LAs from ensuring they put the safety and wellbeing of children first (as they may have no safe local alternative to private provision if alternative capacity is not developed, but could not use this if such private capacity is no longer capable of being registered). Commissioners could be asked not to commission from ineligible private providers unless they can evidence there is no reasonable alternative. This would be far safer.

4. As detailed below, making changes to commissioning approaches (and keeping registration criteria as they are now) would reduce materially the risk of there being insufficient supply of services in Wales and avoid the risk of children having to be placed in English services inappropriately and far from home.

5. Also as set out below, it will be difficult to define what profits mean. There are better ways of achieving the underlying policy aims as stated relating to improving outcomes for children.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Potential benefits

1. As the Competition & Markets Authority (CMA) has identified in its Wales summary section of its final report on the children's social care market (10 March 2022), there is some indicative evidence that in the case of foster care (but not children's residential care), IFA foster carers may be more expensive than LA provision and therefore that there is likely to be benefit in seeking to encourage more LA and charitable provision.

2. It is easier to see how current IFA foster carers would be likely to move across to work for LAs or not-for-profits if the policy initiative was implemented.

3. If the policy is to be implemented at all, it must only be targeted at foster care.

4. I believe there will be clear benefits from encouraging more not-for-profit and local authority provision as it is clear-cut there is a lack of supply in Wales in relation to children's services (i.e. alongside private sector provision). However I believe there is likely to be more harm caused to the desired outcomes A, B and C listed above from proceeding with a policy of "eliminating profit" from the care of looked after children and very much hope Welsh Government can reconsider the approach they are consulting about.

PTO for potential disbenefits

Potential disbenefits

A) No evidence that implementing the current policy of eliminating private provision in children's residential care will work and achieve the underlying desired Outcomes

1. There is an unsubstantiated assertion it will achieve the underlying desired outcomes (outcomes A, B and C stated above), but as currently structured, this represents a material and avoidable risk of harm to children (should there be a further deterioration in supply and choice of services as seems likely to occur under the current proposals).

2. The policy must surely not be enacted without a thorough review of the evidence base and scrutiny as to why other changes (such as those recommended by the CMA) are not being undertaken as a preferable alternative.

3. I am aware many individuals working in social care within Wales have significant concerns about the viability of the proposals and the damage that could be caused to an already fragile social care sector in Wales as well as the reputation of Welsh government and public services should it be implemented without justification and contrary to the evidence provided by independent organisations like the CMA.

4. It is imperative that the Welsh Government ensures it puts the needs, safety and wellbeing of children first and it is not clear at all how this policy does this given the lack of an evidence base and the approach taken to remove all private provision (even though much of it is acknowledged to be good quality and required to meet capacity needs).

5. It is vital and important to encourage more supply and to ensure additional supply is in place before changes are made that could result in a reduction of the capacity required to meet children's needs.

6. The best way of reducing fees, improving choice of services within each region / local authority and increasing capacity of good quality providers delivering good outcomes for children, is to encourage more investment from all provider types into Wales (including private sector provision) and to deliver a significant increase in capacity such that fees will reduce, whilst ensuring there continues to be good outcomes. Providers who fail to provide high quality services or value for money will not survive and this will ensure the best services thrive (whether they are not-for-profit, statutory or private). This depends on having a common regulatory and commissioning oversight for all services and full transparency on the costs of providing statutory services.

B) Not clear there will be a reduction in placement fees for residential care homes

1. It is not clear that there will be a reduction in placement fees from the proposals as set out in the current consultation. This is for the reasons set out by the CMA in their report. CMA states explicitly that "*Turning first to children's homes, as discussed above, we did not find evidence that providing local authority placements was any less costly to local authorities than purchasing placements from private providers. Given the current high level of reliance on private provision in Wales, it is clear that there will be a need for new investment in capacity, to meet new needs or to replace capacity otherwise leaving the market. Banning private provision, or taking measures that directly limit prices or profits (which may deter entry or encourage exit of private providers), would entail a commitment to significant investment in capacity by the public sector. Our assessment is that such a ban or profit cap is not necessary to deliver a well-functioning placements market*".

C) Significant concern about the ability to develop sufficient new residential care capacity to replace existing private provision and to meet any future growth in needs. Concern that the proposal will lead to more shortages in choice of placements and worse outcomes for children.

1. It is not clear that it will be possible to develop the capacity required to replace the private sector provision (which represents the majority of all residential care provision) let alone develop the additional capacity that is likely to be required to meet any future growth in need.

2. It is not clear how the public sector finances (including capital budgets) will be available in Wales to ensure capacity is created or investment by statutory and not-for-profit bodies will be underpinned by government subsidies/guarantees. To proceed with the policy without having the certainty of sufficiency of funding would be highly concerning. Surely the deterioration in the public finances outlook is a sensible reason to reassess this policy? If the facts change, so should policy.

3. There is no evidence that charities – who are already facing a difficult fundraising outlook of their own – will be able to raise the funds required to purchase or create the children's care homes required. Has the Welsh Government obtained guarantees from the relevant boards of trustees that they will be able to find the funds necessary to replace lost capacity?

4. There is evidence from the private sector that there will be a reduction in capacity (i.e. that existing provision will not all become not-for-profit).

5. There is evidence that decisions to increase investment in creating new capacity are being put on hold due to the uncertainty (and that it will be difficult to borrow from financial institutions given the requirement for no profits as detailed below).

6. It is not clear in the consultation document how Welsh Government has assured itself that capacity will be created and where the funding and lending support for this investment will come from (tens of millions of pounds will be required).

D) I disagree with the implied view that private provision is by design/nature poor for children; this is far from being the case. Many private providers achieve good outcomes and good inspections from the CIW. Many private providers invest all/the bulk of their profits in improving services. Private providers allow new non-public capital to be deployed in innovative new services.

1. It is of grave concern that the Welsh Government is seeking to reduce the size of the private sector in social care in Wales and to raise concerns amongst providers that this will be extended further in social care. It undermines confidence in the sector at a time there is already significant fragility and the private sector has worked hard, as have all types of providers, in seeking to meet huge increases in demand at a time when there is a workforce shortage.

2. Whilst there are issues with some UK-wide providers (as commented upon by CMA), there are many good Welsh SMEs that have invested capital in creating jobs and services and that achieve good outcomes and CIW inspections. These create additional monies for public services through taxation and support the wider Welsh Government economic aims. The policy should be revised and aim itself instead at addressing the underlying reasons for a lack of capacity (as outlined by the CMA) and any specific issues relating to the over-gearing or distribution of profits to shareholders of larger groups.

3. I believe that the current proposal will not only result in a reduction of capacity and avoidable harm to children, but risk creating more issues in the wider social care sector for families and adults at a time when it is very fragile (as other operators chose not to develop services in Wales and existing care operators exit the market in advance of changes occurring elsewhere).

E) There is significant concern within the sector that this policy will only impact local Welsh SMEs and that larger UK-wide private sector operations will continue to operate cross-border into Wales (even if their Welsh services are stated to be not-for-profit, there is a risk they will use significant advisory/professional capacity to justify management charges and loan repayments etc. such that profits are extracted from Wales into England even if not visibly the case).

1. All this will then do is harm the Welsh economy, reduce the oversight and control over providers in Wales, potentially reduce capacity in Wales or risk the increased use of Welsh beds to provide services for English children. It will also lead to the loss of Welsh capacity and the economic benefit of profits will go entirely into England and not the local Welsh economy. It is likely to hinder the Welsh Government's wider interests in attracting private capital into the Welsh economy as the Welsh Government will have allowed itself to be portrayed as anti-business (and in particular, anti local businesses set-up in Wales).

2. In other words, the policy is likely to lead to a two-tier and uneven playing field and increased regulatory risk in relation to the sustainability of services. This is besides the underlying risk of increased levels of harm to children from a reduction in capacity and removal of existing services achieving good outcomes.

3. There would need to be a significant increase in the budgets for local authorities and CIW in ensuring they have sufficient financial capacity – and access to advisory support of their own – to ensure larger UK-wide operators are not taking advantage of any changes in legislation when Welsh SMEs are unable to do so (as an intrinsic result of their structure, but also because they only operate in Wales). Not only would this be unfair, the main concern over current levels of profitability and levels of borrowing relate mainly to the UK-wide larger operators (as set out by CMA) so this would potentially have zero impact on those that are causing an issue and a huge impact on private providers in Wales (where many provide good outcomes and high quality services). The policy is unworkable in practical financial and resource terms and should be reconsidered.

4. Others are concerned that the policy as enacted will actually lead to more Welsh children receiving support out of Wales as will need to be the case if there is insufficient future capacity in Wales.

5. There is also the risk of wider damage to the Welsh economy and long-term attractiveness for private investment/enterprise if the Welsh Government is seen as anti-business and in particular, anti SMEs set-up in Wales by local people (especially if this is not based on a clear rationale linked in an evidence-base that is corroborated by regulators and others e.g. CMA – which is not the case as far as I am aware in this policy instance).

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.

Enhancing the positive effects

1. The only way of improving the positive effects would be to target the policy only at foster care and not at residential care at all (as there seems to be an evidence base that this would be significantly less risky to children and not result in a long-term reduction of supply). It is vital Government policy is evidence-backed.

Mitigating negative effects

My views are that the negative effects could be mitigated by (in order of priority):

1. Not proceeding with the policy of eliminating private sector provision of residential care for children (or any other category of care for families or adults). No change should be made to CIW registration criteria.
2. Proceeding instead with commissioning changes as outlined by CMA (and considering other options for improving commissioning too as are likely to be suggested in the response to this consultation or as can be explored in subsequent sector-wide engagement).
3. If changes to commissioning approaches at a regional and national level do not work sufficiently – after a sufficient period of evaluation - then consider a cap on distribution of profits and a requirement that the entity is either statutory or a social enterprise (private company limited by guarantee, community interest company limited by shares or limited by guarantee, a charity or a B Corporation).
4. No change to eliminate private sector provision should occur until the following have been appraised fully and independently with the research shared publicly:
    a. Consulting with the sector formally and specifically about the proposal to eliminate profits.
    b. Consulting with the sector far more widely and developing an accurate and complete and agreed understanding of the definition of not-for-profit and any other required definitions prior to developing any further legislative developments.

c. Undertaking a thorough appraisal of the ability of financial institutions (banks, building societies etc.) – and also their supporting advisers e.g. land agents/valuers - to provide lending to operators under the proposed framework (as this seems unlikely to be viable without Welsh Government funding/guarantees). This must involve detailed interviews and discussions (based on a clear operating framework) with such institutions before any legislation is introduced.
d. Clarity on how this policy will not be circumvented by large UK-wide operators with the bulk of their operations in England
e. A thorough and in-depth regulatory impact assessment report given the clear concerns that there will be avoidable harm to children under the current proposals.

5. Delaying any implementation until there is sufficient funding in place to achieve it and until Welsh Government has ensured that the required new capacity is in place i.e. it must ensure there is capacity to meet children's needs and provide improved outcomes rather than remove capacity before it is introduced.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Yes

1. My preferred and recommended approach is to proceed with commissioning changes that enable the underlying outcomes to be achieved (better outcomes for children and the absolute minimization of risk of harm to children). However, if the Welsh Government does not do this, it is much better to address the specific issues with a minority of providers than risk market devastation (and harm to children) by removing the bulk of current children's care homes in Wales (when many are providing high quality services and good outcomes).

2. Representations from providers (e.g. CHA), and from CMA, make clear there are substantial risks from preventing private providers from delivering services in Wales.

3. Indeed as CMA recognizes in clause 33 of their final Welsh report, "*Turning to price, our evidence suggests that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, despite their profit levels*" and in clause 32, "*while there are instances of high and low quality provision from all types of providers, the evidence from regulatory inspections gives us no reason to believe that private provision is of lower quality, on average, than local authority provision*"

4. Many private providers – especially those set-up and run in Wales as small companies – invest all (or certainly the bulk of their) profits back into their services to improve future outcomes (including investing in their staffing talent) and this can create significant economic benefits too from the development of services in Wales, creation of jobs through growth, retention of staff and improved value for money and choice for children and local authorities. Why should such providers achieving good outcomes for children and achieving good inspection reports with CIW, and where local authorities are pleased with the quality of service, be prevented from operating? Removing such providers reduces choice, increases the risk of harm to children and runs counter to existing Welsh Government policy.

5. It is much better to introduce a cap on the distribution of profits to shareholders. The level of this cap should match existing legislation governing social enterprises (i.e. that covering Community Interest Companies limited by shares), which is 35%. Further information can be obtained from the Office of the Regulator of Community Interest Companies, which is based in Cardiff (for the whole of the UK).

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No.

1. Ideally there would not be such a definition (as set out elsewhere in this response) because I think it would be better to address the issues through a revised and improved commissioning approach (for instance such as set out by the CMA).

2. If there has to be any definition, the definition should refer to existing legislative terms or legal mechanisms e.g. addressing a cap on the distribution of profits not the generation of profits themselves which are necessary in order to ensure the sustainability of services whether provided by a statutory body, charity, social enterprise, or private/public limited company.

3. If there has to be any definition it should be in the primary legislation after extensive consultation about wording so that the sector can be confident long-term in the nature of the definition and rely upon a stable legislative environment given the need for long-term investment in this sector to achieve the desired outcomes. Having a definition that potentially can change encourages poor initial legislation and a rushed process (as the mindset might be we can address this later) and is detrimental to the policy aims of encouraging more choice of provider and investment into Wales.

4. Ideally any definition would refer to certain existing categories as being approved e.g. charities registered with the Charities Commission, social enterprises such as community interest companies and private limited companies where there is a commitment to social purpose in their Articles and to reinvest the bulk of their profits into improving services and outcomes.

5. Any such definition should relate to the ability of a provider to be commissioned by a local authority not to their registration with CIW. This achieves the policy aims but ensures that there can be ongoing service provision should there be a delay in obtaining the investment to set-up new statutory and not-for-profit services (as the LAs could continue to purchase from providers that are satisfying the LA on their use of profits as opposed to being prevented from working with high quality providers achieving good outcomes for children).

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

It is too rushed.

The timetable should not be based on specific dates, but on milestones being achieved e.g. trialling alternative commissioning approaches first (as suggested by CMA), then about ensuring it has been possible to set-up alternative and compliant provision and only then agreeing a timetable for the cessation of new providers being capable of being commissioned and finally for existing providers to conform with any future requirements.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No, save for the representations made elsewhere in this response with regard to ensuring residential family centres are not included in any legislative changes given they are assisting this wider agenda as set out in outcomes A, B and C (see detailed responses elsewhere on residential family centres).

There is clearly a transition for some children from a residential family centre to foster placements if a determination is made by the family court and local authority that the child should not remain with their parent(s).

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Guidance is helpful, but it is vital any guidance and legislation is introduced following proper and full consultation with the sector and that this includes the use of technical groups (with appropriate representation from all regulated categories that could be affected now or in the future).

If there is to be guidance, it should be in a format similar to that used in RISCA where the statutory guidance is in columnar format with the relevant legislative clauses in the left-hand column and the supporting guidance in the right-hand column alongside the legislation.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Response to 1.8:

1. The underlying Outcomes (see Outcomes A, B and C above) would be better achieved through changes in national and regional commissioning (as set out in the CMA's final report for Wales (dated 10 March 2022). There is no need to prevent private sector provision as this runs counter to the underlying objectives and wider Welsh Government economic policy (and where there is no evidence that private sector provision is of lower quality than not-for-profit or statutory provision).

2. If there is to be any definitional changes, it should be in relation to what Local Authorities are permitted to commission not a change in who CIW can register.

3. All private providers should continue to be registered and capable of new registration with CIW. Any change in use of certain private providers should be governed by commissioners only. This would ensure that there can continue to be local choice over what services are used and that there is no risk of market failure (and detrimental outcomes to children) if there is not sufficient replacement capacity available i.e. this would be a much less risky policy for Welsh Government to follow.

4. It would also avoid the risk of Welsh children having to be placed in English services (further away from home) because of the inability of CIW to register private providers in Wales (when Welsh LAs – for whatever reason – would prefer to commission services in their locality e.g. from a private provider achieving good outcomes and reinvesting in improving their services and outcomes).

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

If this has to be done, it would be a better way of doing it (as set out in my general response above). However, I think this would be very detrimental to the achievement of the underlying outcomes and would be harmful to children.

- What would be the benefits, disbenefits and other implications of such an approach?

Please see detailed response above.

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

1. The timescale should not be decided in advance, but should be one that is determined naturally in due course and one that is based around ensuring changes to private sector provision only occur (if they occur at all) following the successful establishment of new capacity so there can be no harm to children from the policy initiative.

2. As set out elsewhere in my response to this consultation, I have grave concerns about the achievability of this policy (not least given the worsening outlook for public finances) and whether it will deliver any benefits to the children of Wales (and think it would be harmful to proceed with this policy – especially for individual children).

3. I continue to think that commissioning changes would significantly improve the outcomes for children and choice of services in Wales and that any timetable should focus on the achievement of these commissioning changes first.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

1. Amending the policy so it is achievable – for instance by
    a. Focusing instead on the proposed commissioning changes set out by CMA for Wales (in their March 2022 Report)
    b. Referring to existing legislative categories (e.g. permitting social enterprises such as community interest companies to provide care)
    c. Introducing a cap on the distribution of profits so as to ensure all providers reinvest in their services for children (this could include all statutory bodies and not-for-profit entities so be transparent and fair on all and encourage service improvement).

2. Recognising that any definition of profit will be difficult to regulate and monitor (I suspect this is why there has been a delay in sharing the proposed definition with the sector) and that an approach to refer to either existing legal structures or to requirements for an entity's articles of association would be better and simpler.

3. Recognising that all providers will need to see high levels of investment in property developments to fulfil the policy objective of increasing supply and choice of services and that all financial institutions lending to developers will expect there to be good interest and capital cover as well as "equity" invested alongside their debt. As a result, like all other property investments world-wide there will be an expectation of a reasonable return on the equity proportion of the investment (unless all such funding is made by Welsh Government via capital budgets). It is vital that this is built into any proposals and that extensive consultation is made with the financial lending institutions supporting the care sector in Wales (including those that support housing associations, local authorities and existing providers) prior to introducing any legislative changes.

4. It is reasonable for care homes to incur management and other charges applied by the region/wider group supporting it as certain costs may be incurred nationally (and beyond Wales) and this may be beneficial (for instance in improving value for money through central procurement). It is very difficult to develop legislation and guidance that can address what is reasonable/not reasonable as this will depend on the individual entity. This is another reason why it would be better to ensure the approach focuses on commissioning changes or, if there has to be legislative changes, to focus on existing approved formats of social enterprise or introducing a cap on profits that can be distributed to shareholders.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

1.12 A) General Comments

1. Whilst I recognise this is current Welsh Government policy, I hope it can be reconsidered given the high potential of avoidable harm to children from its enactment as currently envisaged and given the deterioration in public finances (as this seems to me to make it very unlikely it will be viable to achieve anyway)..
2. There are better ways of addressing concerns – including those set out by CMA in their final Welsh report of March 2022.
3. If any changes are made, this should be via commissioning mechanisms and national/regional approaches not through registration requirements with CIW.
4. Any changes in relation to children's residential care should focus on a cap on the distribution of profits not the wholescale prevention of private provision in Wales.
5. Much private provision is high quality and achieving good outcomes and to remove all private provision before ensuring there is additional and sufficient new capacity would be harmful to Wales' current interests (especially those of children) and future generations.
6. Removing all private provision is also counter to Welsh economic policy and good practice – after all a successful private sector allows greater investment into services, the creation of jobs and improved taxation that can be reinvested into public services.
7. Wales needs more provision of high quality services delivering good outcomes for children, not less.
8. This is a significant policy risk and one that is causing a lot of concern within the wider sector and runs the risk of being portrayed as populism or dogma, as opposed to doing what is better for children in Wales and can be substantiated by a supportive evidence-base.
9. I really hope this can be reconsidered or that any changes are only made following the significant investment that is required in providing new statutory and not-for profit/social enterprise capacity.

10. The focus should be more on the quality of service provided and outcomes being achieved and ensuring that value for money is obtained from all providers through improved regional and national commissioning (irrespective of a provider's legal structure). There should be the same oversight and requirements of all providers (irrespective of whether they are statutory, not-for-profit/social enterprise/charitable, or private) and Welsh Government should focus their policy on ensuring that this is the case. This would lead to bigger improvements in outcomes, the safety of children and greater choice of services at lower fees per placement.
11. All providers (including businesses) in social care should operate ethically with a broad stakeholder focus, seek to provide good quality services and outcomes and be accountable to their commissioners and regulators for their performance. It is up to the Welsh Government to ensure there is a commissioning and regulatory framework that ensures this. There is no need for the proposed policy action being taken as all concerns can be addressed through alternative means that have not been explored.

1.12B) Consultation about other potential ways forward

1. Please can there be a consultation and liaison with the sector about how best to achieve the underlying aims and objectives as set out in the consultation – where there are other ways that will be more likely, at pace, to succeed in these objectives and with less risk of harm to children who are looked after.

1.12 C) Request to implement CMA measures as set out in final report for Wales

1. Please can Welsh Government implement the recommendations of the CMA as set out in their final report for Wales. It is my personal view that these should
    a. As a minimum be explored and analysed and commented upon by Welsh Government first and with specific sector engagement (including local authorities, not for profit providers and private companies). To proceed with a policy that runs counter to recommendations from a detailed study by CMA (and not to introduce reforms that have been shown to be successful elsewhere) would be detrimental to public confidence in Welsh Government and policy-making.
    b. Ideally assessed in practice (to see if they are successful) before the current policy to eliminate private profit is put into effect. This would be an understandable and defendable delay in implementation (as Welsh Government would be seen to be introducing best practice that will have more likelihood of improvements in outcomes within the current term of government).

1.12 D) Suggestion to delay implementation until sufficient funding is guaranteed to ensure existing capacity can be replaced and new capacity is introduced (and concern this is not achievable in current public finances outlook)

1. I am concerned that the environment and outlook for public finances – including those for local authorities and Welsh Government capital programmes – is materially worse than at the time the policy was introduced. As such, it will be difficult to create and fund additional statutory or not-for-profit capacity within the timescale set out.
2. To proceed in the absence of sufficient dedicated funding for the implementation of the policy is high risk and not in children's best interests.
3. I hope the policy can be re-evaluated in this context so that any decision to proceed is one made in the certainty funding will be available to replace capacity that is lost and to introduce the additional capacity that is required.
4. The public would expect Welsh Government to prioritise actions that can be implemented within current budgetary environments (for instance the measures set out by CMA that could be achieved much more readily at pace and at materially lower cost).

1.12 E) It is not the production of profits that is an issue (especially if these are reinvested in improving services, staff wellbeing and training and outcomes), but the excessive distribution of these profits to shareholders by some providers.

1. Surely the policy implementation should focus on the use of profits not the existence of a surplus (as all providers should be sustainable and operate with income sufficient to meet current costs including unexpected future costs through contingencies

2. UK and Welsh legislation encourages the use of social enterprise. This includes community interest companies (private limited companies) that exist for a social purpose and where there is a cap on the level of profits that can be distributed to shareholders. It is important that such providers are included within any definition of "not-for-profit" or the new legislation will be conflicting with wider policy and legislative frameworks.

3. More importantly, it is vital that any legislation focuses on the substance of delivery (and the extent to which this facilitates desired outcomes with the least possible risk of harm to children) as opposed to the form ("slogan" of eliminating profits, as someone put it to me) of this. Children in Wales deserve better outcomes and should not be subject to a national-scale trial that is not supported by any rigorous evidence-base and puts children at significantly more risk.

4. I would argue this is best done by recognising there are private providers that reinvest the bulk (and sometimes all) profits they do make in improving services and outcomes for children and very much operate in line with the aim of ensuring any surplus is spent within services to "*deliver better experiences and outcomes for children and young people, addressing service development and improvement and further professional development for staff" (**Outcome B**).* Surely private providers that do so should be allowed to continue to provide services or this is harming the sector and children needlessly?

5. A better way of achieving the underlying **Outcome A, Outcome B and Outcome C**, would be therefore to put a cap on profits being distributed to shareholders and/or requiring providers to reinvest a certain proportion (if profitable) in order to be eligible to continue on commissioning frameworks and/or to be registered as a service in Wales.

1.12 F) Alternative and complementary means of achieving underlying desired outcomes through the use of preventative services to reduce the numbers of looked after children – for instance, use of Residential Family Centres

1. There are a number of preventative means of reducing the numbers of children who are looked after and that also support wider policy and legislative requirements (under RISCA, the Social Services and Well-being Act and Future Generations Act).

2. An example of this is the use of residential family centres; there are 3 of these currently in Wales (all set-up by the private sector without support from local authorities or Welsh Government).

3. These centres – working closely with the team from the relevant local authority - help ensure the safety and wellbeing of looked after children (typically babies shortly after their birth) in helping the local authority and family court to assess whether it is in the child's best interests to remain with their parent(s), but also seek to help parent(s) – where assessed as safe to do so – to learn and sustain parental behaviours and practices that promote the ongoing wellbeing of the child and family (and therefore enable more children to remain with their parent(s) and to avoid staying in the looked after children sector).

4. There is no specific forum for Residential Family Centres in Wales and there is an opportunity for Welsh Government to support local authorities and centres to continue to work closely together to improve outcomes and deliver the preventative agenda.

5. All of these Welsh residential family centres are designed to fulfil the preventative agenda set-out in legislation and therefore to meet specifically
    a. Outcome A (i.e. *"more children and young people being enabled to live with their families and in their home neighbourhoods with many fewer needing to enter care) and Outcome C (*i.e. *to provide the right type of care for each child: reduce the number of children in care by better supporting them to remain with their families)* – by more parents benefitting from a parenting programme and support that enables them to successfully demonstrate they are safe to continue to parent their child and to support their child's ongoing development and well-being.
    b. *Outcome A (i.e. to ensure the period that young people are in care is as short as possible")*- by ideally ensuring the baby is looked after for no more than c. 14 weeks in a residential family centre before being cared for in their own family home

1.12 G) Importance of sustainability of provision and risk to children from provider failure (including necessity of surplus and/or wider resources to provide continuity of service when there are unexpected costs or issues to address)

1. There is a significant risk of provider failure from the current proposals. This is in two areas and the full Regulatory Impact Assessment should be prepared and address these prior to legislation being introduced (so this can be considered in consultation with the sector). The two primary risks are as follows:
    a. A risk that current providers do not remain viable within the implementation period from the uncertainty that arises and this reduces the number of providers available for children before new services are made available. This would cause harm to children. The best way of avoiding this is to ensure any such policy is only implemented following the addition of significant extra capacity from charities, social enterprises, statutory bodies and private companies that are not making significant distributions of profits to their shareholders.
    b. More fundamentally, it is a legislative requirement that all providers of care are sustainable so as to minimise the risk of provider failure and the consequent harm to children of not being able to have continuity of care and support. In layperson terms, this means all providers should have either the support of an entity with significant ongoing access to finances (e.g. being part of a wider group) or have reserves built up to ensure the entity can cope with any unforeseen requirements (e.g. sudden increase in costs e.g. as has happened in the insurance and utility cost areas in the last couple of years). Not-for-profit provision implies that there can be no surplus created and that services are provided at cost, but the reality of care provision is that providers must be able to provide extra support and money into the service should it be required and this is not possible without retained earnings and cash in the bank. I have grave concerns about the viability of charities being able to make such funds available at short notice. It is vital that CIW is involved in the development of any potential legislation and guidance such that the requirement for market stability and sustainability of all provider provision can be maintained and that there continues to be regulatory oversight of this.

1.12 H) Definitions – there is a lack of clarity over what "profit" means.

1. If the Policy is proceeded with (which would be a significant concern on behalf of children in Wales), the definition needs to be clear and robust and one that can be relied upon rather than amended after primary legislation.
2. There should be a specific consultation about the definition and its workability prior to the introduction of any primary legislation that includes the definition.

1.12 I) Request to use existing guidance and legal structures

1. If the policy does go forward in anything like its current format, would it not be better to use existing guidance and legal structures? This reduces the amount of legislation required and can be seen as a means of advancing the policy aims quickly with less risk of disruption to the market (at a time when there is sufficient funding in place from Welsh Government for any similar policy to go ahead).
2. For instance enabling organisations recognised already in UK legislation as social enterprises to provide services to children or requiring that private/public limited companies that are not social enterprises become B Corps and adopt Articles that include a cap on the distribution of profits and explaining that the implementation of the policy objective (primarily the underlying outcomes) will be achieved by using existing structures and permitting the following legal entities recognised by Companies House to provide care for children:
    a. Entities registered with Care Inspectorate Wales that are one of the following
        i. A statutory body
        ii. A charity registered with the Charities Commission
        iii. A company limited by guarantee
        iv. A Community Interest Company limited by guarantee
        v. A Community Interest Company limited by shares (as there is a legal restriction and cap on the amount of profits that can be distributed)
        vi. A public liability company or limited company that has been registered as a B Corp (with the consequent requirement in their Articles to act in the best interests of all stakeholders) – see www.bcorporation.net/en-us/legal-requirement/country/united-kingdom/corporate-structure/company-limited-by-shares

1.12 J) Commissioning evolution is essential – the amendment to commissioning approaches will achieve the underlying policy aims more readily and at lower risk of harm to children

1. As the CMA has outlined in their final report for Wales – and as the Children's Home Association has also set out in their response to the consultation – an amendment to commissioning approaches will achieve the underlying policy objectives (improvement of outcomes in Wales at lower risk to children) far better. The CMA recommendations should be implemented first and then an evaluation made in the future about if, and when (if so) to proceed with any elimination of profit.
2. Additionally to the measures set out by CMA, it should be possible for innovative commissioning (on a placement by placement and/or service basis) to be on a "not-for-profit" basis (for instance through a recovery of costs and partnership approach to planning of placements and capacity and sharing of risk in relation to shortfalls of occupancy/additional costs). This could include some volume-based reductions in fees paid and/or linking of fees to outcomes achieved. Welsh Government and Local Authorities should consider these further.

1.12 K) Concern in the sector about this being extended to other registration categories

1. As detailed above, I hope the policy does not proceed as currently proposed and that a revised and improved commissioning approach is taken nationally and regionally.
2. If there is to be a change in legislation, as set out above, this should address a cap in the distribution of profits and not a requirement to prevent the provision of services by private companies (as many reinvest all their profits in services and are achieving good outcomes). Losing private sector capacity – without ensuring alternative supply in advance – would be harmful to outcomes for children.
3. The Welsh Government should also be mindful of the wider adverse impact any such policy would have in practice as it would lead to funding and investment issues in other areas of adult and family social care.
    a. This would risk increasing the shortage of social care capacity and therefore prevent innovative models of care being developed that help with preventing the future need for services for children that are looked after or for providing improved transfers of care from NHS secondary care services into the community.
    b. It would be much safer/better to provide a stable future policy outlook by using commissioning changes or, if there has to be legislative changes for providers, to target these at the excessive distribution of profits as opposed to preventing the private sector from providing additional care capacity when we need more choice and capacity in Wales (and this would improve value for money and outcomes).

1.12 L) Underlying model for all types of provision is the same with regard to property development and it is vital Welsh Government policy, legislation and guidance recognises this – i.e. the importance of all entities being able to borrow funds for development of buildings/care homes/centres under any amended policy and legislative landscape

1. Irrespective of the legal entity (statutory, charity, private), all residential children's services and other provision (such as residential family centres), require buildings. To purchase, build, and refurbish such buildings all entities are likely to borrow monies from financial institutions (as a housing association would do for a new housing development).
2. All financial institutions will only lend funds if they can be sure that there is an acceptable amount of cover for the loan repayments and interest (i.e. excess of income over costs) and that there is sufficient equity in the building to allow for the lending to occur (i.e. equity investment alongside the debt).
3. As such it is vital there is consultation with the financial institutions before any primary or secondary legislation is developed to ensure that there is the means of providers (whether statutory or not-for-profit or otherwise) being able to invest in the new services required. I believe this means that something like the following will be required
    a. Recognition that the developments will require private investment and that any property investor (as with all property investment world-wide) will require a reasonable rate of return on their investment (i.e. profit) – but how will this be recognised in the primary legislation (as it must be for the investment in property to take place irrespective of whether the care provider is not-for-profit or private); or
    b. A guarantee from the Welsh Government underpinning all investment and loan activity (so that no lender will be at a loss in the absence of equity investment alongside their lending) – but is this viable?; or
    c. A grant from Welsh Government (as is the case with SHG for Housing Associations), but the level of investment required is material and the public sector finances outlook is not conducive to this occurring at the scale required.

1.12 M) Importance of Residential Family Centres not being included in this given reference to "Initial" in clause 6 on page 6 of 59

1. The consultation does not include proposals for the elimination of profit to be extended to Residential Family Centres (a defined registration category in Wales). It is vital that this remains the case.

2. As detailed above, Residential Family Centres are a vital means of advancing the underlying policy aims and Outcome A, B and C as referenced above. They were set-up under the Regulation and Inspection of Social Care Act as a registration category and are fundamentally a part of the preventative agenda encouraged by the Social Services and Well-being Act. They are part of the policy solution required.

3. As such it is vital that they are excluded from any proposed legislation and guidance as to include them would clearly be detrimental to fulfilling the underlying outcomes (**Outcome A, Outcome B, Outcome C**).

4. They should also be excluded as there has been no consultation about including them in the policy objectives and no consultation, as far as I am aware, with the 3 existing residential family centres in Wales. Should there be any future proposal to potentially include residential family centres in any legislative change, it would be important to include all of these providers in the formal consultation and the programme boards considering all aspects arising and their specific circumstances.

5. Moreover, given there is no "not-for-profit" or statutory capacity in Wales and therefore a lack of expertise and knowledge in providing this complex care and support, it is vital that no change to the legislative environment occurs that could be harmful to the current provision until such time as the millions of pounds required has been invested in creating more choice of provision. There is significant opportunity to improve the collaborative approach to commissioning of residential family centres and no need to amend the legislative context.

6. All 3 current residential family centres are private limited companies. All 3 have raised significant amounts of private capital to invest in Welsh services with the aim of advancing Welsh Government policy and supporting improved outcomes for families and children in Wales. By their nature they provide short-term support that can, in many instances, reduce the ongoing cost of supporting children in the looked after care sector materially over many years. They exist solely to improve the outcomes, safety and wellbeing of children.

7. Whilst I am replying in a personal capacity, I work as a director of one residential family centre that has already invested substantially over £2m into Welsh services and that continues to support these services during their developmental phase where they are operating at a loss and requiring ongoing financial support. There is no way that this investment would have occurred should the policy framework be as is currently intended for children's residential care homes.

8. The entrepreneur who provided this initial funding did so to support Wales (improving outcomes for families in Wales with services to be provided in Wales that were historically only in England before his investment, but also supporting the Welsh economy through the creation of local jobs), but in the reasonable expectation that there would be a return on the investment in the long-term even if the bulk of any future profits are reinvested into the service in line with the expectations of Outcome B (*i.e. the surplus is spent on children's services to deliver better experiences and outcomes for children and young people, addressing service development and improvement and further professional development for staff.*).

9. This operator has already identified and purchased a 2nd centre that will require further millions of pounds of private investment support with the expectation that, prior to any amendment in fees required for inflationary costs, there will in due course (following sustaining mature occupancy) be cost efficiencies that can be shared with commissioners through improved value for money as a result of greater overall use of the centres.

10. It will be difficult, if not impossible, to proceed with such equity investment and additional borrowing from a bank if residential family centres are included in this proposed legislative change or there continues to be a lack of clarity about whether they will be included in due course. This would be massively detrimental to Wales (esp. for children in Wales who may otherwise have avoided staying in the looked after children sector) as it would undermine the underlying aims of the proposed policy outlined in this consultation.

11. Any failure to be explicit on residential family centres being excluded from current and proposed legislation would therefore be harmful to the underlying policy objectives and to obtaining further private capital to deliver improving outcomes in Wales. It would also limit the ability of the current centre to provide improved value for money as there will not be the same economies of scale that there would be with two centres.

12. I am confident all residential family centres will wish to continue to liaise with commissioners and local authorities about how they can better support children and families in Wales and would welcome there being a dedicated forum for residential family centres within the 4Cs. This could include potentially frameworks for residential family centres – which do not exist currently – if they are developed in a co-produced manner with the current providers of services and are achievable in practice). They must not be developed by 4Cs without substantive provider and local authority input and a full partnership approach to reviewing draft frameworks (involving providers) or there is a risk they will not achieve the desired aims of all stakeholders.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

1. Agree generally as long as this is a choice not a requirement, but believe it is vital that there is further specific consultation prior to implementation (so any necessary safeguards can be addressed in order to safeguard individuals and members of the public) with the NHS (e.g. the Caswell Clinic) and those specifically supporting individuals with a personality disorder or who have been considered a risk to themselves and/or others as a result of their diagnosis.

2. There could be individuals who are receiving services under existing mental health legislation with restrictions on their day-to-day activities (e.g. Community Treatment Orders) where there are wider complexities that need thinking through, whilst recognising the wider benefit of the proposals generally.

3. It is vital there is a good lead-up time to implementation so statutory bodies can prepare appropriately and ensure good liaison with all stakeholders who will be affected by the changes.

4. Careful consideration needs to be taken with regard to the timing of any introduction and it should only be implemented if there is clear evidence it will not further disrupt the capacity of the social care workforce to meet identified needs of all those who need paid support.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No response made to this question within the consultation.

Question 2.3: What lessons can we learn from other countries' practice in this area?

No response made to this question within the consultation.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

No response made to this question within the consultation.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

1. As stated above in the response to question 2.1, it is essential that consultation occurs with mental health services - particularly the NHS – (prior to the development of legislation and guidance) services that support individuals with complex needs and where they may be receiving support under specific existing mental health legislation.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No response made to this question within the consultation.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

I am supportive of this change.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

I am supportive of this change.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

I believe the proposed changes would improve our shared ability to improve the safeguarding of adults and children at risk.

Question 3.4: What lessons can we learn from the duties to report in other countries?

No response made to this question within the consultation.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

These should sit alongside the existing duties under the 2014 Act (unless there is a separate consultation on any proposed changes to the 2014 Act making clear why such changes would be beneficial in their own right).

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

More widely (including for example those working in religious or sports settings or who are employed)

(b) What are your views on this in respect of adults?

More widely where adults are reasonably known to be at risk due to a diagnosis, illness or disability.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

1. What are your views on this in respect of children (under the age of 18)?

   Subject to further discussion: Anyone providing a service for children.

2. What are your views on this in respect of adults?

   Subject to further discussion:

   - Anyone paid in an organisation providing a service for adults
   - Anyone leading a group supporting adults (on behalf of a charity or social enterprise)
   - Anyone coaching (and where they are registered with their professional sporting body as a coach)
   - Anyone employed by a professional sports club

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No response made to this question within the consultation.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No response made to this question within the consultation.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (‘the 2016 Act’) provides the basis on which Care Inspectorate Wales (‘CIW’) – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of ‘regulated services’.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of ‘Care’ for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes.

Question 4.2: *(a) Identifying unregistered services – power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Yes.

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes.

1. It is important that the wording of this is considered carefully.

2. As currently written in clause 16 (“There will be no impact for existing providers and responsible individuals of regulated services who are already registered”) this seems to preclude inspectors from visiting a property in Wales that is run as supported living, but where there are concerns that this service is being provided in a format more akin to that of a residential care home and therefore in conflict with existing legislation and guidance.

    a. This would inadvertently prevent inspectors from following-up on concerns about the nature of existing providers’ provision (where a provider is registered for domiciliary care but potentially providing support to an individual with a tenancy with a connected legal entity and where it should, in some circumstances, be potentially registered as a care home).
    b. This would increase risk to individuals receiving inadequate care and/or housing.

3. I strongly believe it is vital that the Care Inspectorate Wales is able to investigate all concerns about compliance with registration requirements (including where this is about existing providers being registered for the wrong category of registration i.e. not just for organisations that have failed to register at all).

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes.

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No. This needs more careful consideration before any implementation for the following reasons.

1. It is vital that Welsh Government, local authorities, Care Inspectorate Wales, Social Care Wales, the NHS and other relevant parties improve their ability to collect and analyse common data that assists the effective future planning of services and good policy. This proposal seems to reduce the completeness, viability, timeliness and accuracy of data collection.

2. If there are concerns about a government body publishing others' data, could this element of the annual return (the non-data driven element) be published by the provider, but the Care Inspectorate Wales / other bodies continue to collect more data from providers on their services and workforce?

3. Is it not possible to address any concern about publishing others' data submissions through the use of a caveat instead?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

1. No for the same reasons as set out above in my response to 4.5

2. However, if the proposal does go ahead, there should be a related offence of failing to publish an annual return (in the same manner and form as a provider currently failing to return the information to CIW).

3. However, there should be allowances made for late responses and the ability for a provider, based upon a notification, to extend the timetable for submission in the event of exceptional circumstances (e.g. bereavement, absence of the RI etc.).

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

1. Yes generally, but with the caveat that I continue to have concerns about the exclusion of publication for services that include children (e.g. residential family centres). It is a matter of public record (often on the provider's website) of what the service is for and, where this is the case i.e. it is in the public domain that a specific address is a residential care home for children and/or residential family centre, it is not in the public's interest to withhold the publication of an inspection report.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

1. Yes, but as long as the process is completed internally such that there is an appropriate safeguard to protect the public from another legal entity setting-up with similar personnel providing the same service (potentially at the same location) in due course.

2. For instance, a DBS referral and safeguarding referral is required even if an individual leaves a provider's employment prior to a disciplinary outcome where there has been a relevant concern about their conduct. It therefore does not seem right that the CIW does not have to complete their process simply because a provider no longer provides that service at that specific time (if that allows the same provider / personnel to reopen the service soon thereafter).

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No.

It is vital that there is engagement with the Provider about this.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Yes as long as there is engagement with the provider to ensure that there is no proposal to reopen the service (in which case there should be an improvement notice for the provider to address before reopening).

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes.

1. I strongly agree with this (having had personal experience of assisting an organisation to respond successfully to an Improvement Notice).

2. I believe it is vital that there is a legal requirement for CIW to consider provider representations on an achievable timescale for improvements, prior to CIW determining the final timescale.

3. It is also important any timescale takes into account the fact that a service may not be currently open during an improvement notice and therefore it may be helpful for the format of the improvement notice to have elements that have to be achieved initially (e.g. before a reopening) and those that have to be achieved (as evidenced in inspection in due course).

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No.

1. This is potentially high risk and would need very careful consideration and consultation with the sector (in particular with regard to the introduction of legislative safeguards to ensure this was not applied inappropriately).

2. What is the driver for this potential change? It is not clear there is one.

3. It does not appear to be a justifiable change from the information shared as part of the consultation so I would very much hope the Welsh Government do not proceed with this without further detailed consultation with the sector.

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes.

This is not only fairer, more robust and transparent, but also assists the CIW in its collaboration with providers and wider aims to help improve services (and to itself learn of any opportunities to improve its approach to regulating services).

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes.

Indeed a copy of the Improvement Notice should be sent to each individual listed as a director under Companies House for the legal entity.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes.

There may be good reasons why there is a temporary period where there is not a Responsible Individual designated for a service and an individual is covering the absence of the RI (but is not designated as the RI themselves).

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Yes

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

No response made to this question within the consultation.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No response made to this question within the consultation.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Suggestion RIs become a registered category with Social Care Wales

1. As additional legislation is being considered, is this not the time to ensure that Responsible Individuals are registered as a category with Social Care Wales (it is odd to me that RISCA increases the importance of the RI but then does not require them to be registered when every other individual providing care and support has to be within the care setting).

Requirement to notify Social Care Wales of the contact details of the RI

2. Even if the decision is taken not to register RIs with Social Care Wales, the opportunity should be taken to require Service Providers to inform Social Care Wales who their RI is and to provide and maintain up-to-date contact details. This would assist Social Care Wales to fulfil its statutory functions and to engage better with providers (via RIs) about workforce and learning related matters and promote wider improvement within care services.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

1. I have a declared interest in this matter given my position as a Board Member of Social Care Wales and wish this to be noted in my response.
2. I have two personal views that I hope can be considered prior to any changes being made:
    a. Firstly, I think the requirement should relate to a total term not a number of reappointments. For instance there may be a reason why a board member is appointed for a shorter initial term to ensure there is continuity of board membership at a future date (as opposed to all members leaving at the same time). If a term is a maximum of four years and their initial appointment was two years, this would be prejudicial as they could only serve a maximum of six years whereas others may serve for eight years in total. A total term (irrespective of the number of reappointments) should be capped at 8 years of continuous service.
    b. Secondly, I think it should be possible for an historic or departing Social Care Wales board member to be co-opted onto a committee and/or the board following one reappointment / completion of an eight-year term should any of the following circumstances apply and this having been approved also by Welsh Government:
        i. where a replacement has not yet been identified (for instance there has been a delay in board recruitment)
        ii. where the individual has relevant skills and/or experience not available from other current board members
        iii. where it would help with continuity of understanding in an unforeseen circumstance e.g. departure of multiple board members at the same time subject to this being as short a period as possible and not more than two years.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

No response made to this question within the consultation.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

No response made to this question within the consultation.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

No response made to this question within the consultation.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

No response made to this question within the consultation.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No response made to this question within the consultation.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No response made to this question within the consultation.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Yes

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No response made to this question within the consultation.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No response made to this question within the consultation.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No response made to this question within the consultation.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No response made to this question within the consultation.

RNIB Cymru response to the Welsh Government consultation on proposed changes to legislation on social care and continuing health care

About RNIB Cymru

RNIB Cymru is the largest sight loss charity in Wales, providing support and services to blind and partially sighted people, their families, friends, and carers. We aim to improve lives and empower people to adapt to sight loss and keep their independence. We work in partnership with public, private and third sector bodies across Wales to deliver projects, training, services and give information, advice, and guidance.

We challenge inequalities by campaigning for social change and improvements to services. We believe that timely treatment should be available to all to prevent avoidable sight loss, and that the right support is there for people when prevention isn't possible. We raise awareness of issues facing blind and partially sighted people on a daily basis. Whether you have full, some, little or no sight, everybody should be able to lead independent and inclusive lives, without facing inequity and discrimination.

For further information, please contact John Dixon (john.dixon@rnib.org.uk)

We welcome the opportunity to respond to this consultation. Below we have responded to the questions to which we have specific comments and recommendations to make that relate to issues faced by blind and partially sighted people.

Chapter 4

Question 4.1

We agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated.

An excellent example would be the provision of local authority provided and commissioned rehabilitation services, including vision rehabilitation. We have anecdotal evidence (because there is no systematic centralised data collection) of wide variation in the ability to access services, waiting times for services, the staffing of services, and the range of services offered.

Question 4.21

RNIB Cymru believes that rehabilitation services, including vision rehabilitation, within adult social care was not fully addressed by the Social Services and Wellbeing Act (Wales) 2014.

These services form part of local authority preventative duties, set out in section 12 of the Act and Part 2 Code of Practice (General Functions) of the Welsh Statutory Guidance, Regulations and Codes of practice. We see these services as crucial and cost-effective, providing specialist support and training to help individuals to adapt and maintain their independence.

Services such as these which, in the words of the Act, “prevent, delay, and reduce demand” will also be essential for your vision of a long-term plan for social care. RNIB Cymru would encourage you to include them in your proposals for system reform and the new powers sought, to hold local authorities to account for the delivery of both services and data.

RNIB Cymru cannot emphasise strongly enough how essential preventative services such as vision rehabilitation are for blind and partially sighted people. They must be considered as an equal priority alongside care needs-assessed services in any government proposals for adult social care reform.

Preventative services, as part of wellbeing duties, were a centrepiece of the 2014 legislation, yet remain unreported to Welsh Government. With no data collection from local authorities, those involved in the sector rely on individuals reporting service failures, surveys and case studies to try to gain a picture of provision.

The low visibility and priority given by local authorities to rehabilitation and reablement services, is compounded by a lack of independent oversight. Vision rehabilitation, in common with other tertiary prevention services, is not monitored or inspected, despite requiring a specialist

assessment, and therefore lack consequence for poor or absent provision. As a result, there is little political or professional incentive to improve.

In order to improve both the consistency and quality of services and of data collection, we would suggest that Care Inspectorate Wales is commissioned to undertake a themed inspection of vision rehabilitation services and, from this, develop measures in consultation with the sector.

RNIB Cymru has advocated for CIW's mandate to be extended to all adult care services that require specialist assessment and support, which would include local authority rehabilitation services, including vision rehabilitation. This, in addition to the new powers outlined in the consultation, would provide the Minister with better intelligence of the state of provision, consequences for poor performance, and a resultant reason for improvement.

Vision rehabilitation, in common with other rehabilitation services, is key to governmental aims to reduce dependence and escalation of needs, and would benefit from closer national attention. RNIB Cymru would welcome further conversation, as well as the opportunity to support this work.

Chapter 5

Question 5.9

Welsh Government should explore workforce planning for the Vision Rehabilitation workforce with a view to inclusion in wider adult social care workforce planning, and mandatory registration of those employed in the sector with Social Care Wales and the Rehabilitation Workers Professional Network.

Social Care Wales should also be commissioned to develop best practice guidelines to help provide consistency of services and reduce the unwarranted variation of service across Wales.

End of document.

Profit-making in the children's care system

November 2022

Summary

As a children's rights charity, Article 39 is gravely concerned about the state of England's children's care system. There are not enough safe, caring and loving homes for children in the localities that they are needed. Children are being harmed.

Leaving the care of highly vulnerable children to the marketplace is failing on its own terms, and is an abdication of the state's responsibility. From the 1940s onwards, often in response to abuse scandals and the direct testimony and campaigning of those who grew up in care, Parliament has put in place safeguards for children in care but these are predicated on a care system which has sufficient homes for vulnerable children. In an environment of scarcity and desperation, childcare standards are being increasingly weakened. This is dangerous. Furthermore, profit-making in the care of children brings its own, additional safeguarding risks.

There is an overwhelming, child-centred case for local authorities being directly responsible for arranging, running and managing the vast majority of homes for children in the care of the state. Charitable organisations also play a key role. Profit-making in the children's care system must be proactively and determinedly curtailed, so that it becomes the exception and is only ever justifiable in the interests of children. We support the Welsh Government's proposals to end profit-making in the care of children[1] in that country, and urge the UK Government to follow suit.

1. Introduction

Article 39 fights for the rights of children living in state and privately-run institutional settings, including children's homes, mental health units, prisons, supported accommodation and Home Office-funded hotels. Our charity's origins lie in the restraint-related deaths of two boys, Gareth Myatt and Adam Rickwood, in secure training centres run by G4S and Serco respectively, in 2004. The first secure training centre opened in Kent in 1998, and only one of four remains open. Secure training centres are now widely acknowledged to have been a serious child protection failure.

2. Purpose of policy

This policy on profit-making in the children's care system will shape Article 39's advocacy work – it will inform our campaigns, our responses to public consultations and parliamentary inquiries, and our media interventions.

3. Our guiding principles

Article 39's strives for England to be:

A country where children who are living in institutional settings are given the best of care and protection, in environments where they feel safe, valued and respected, and their views and experiences matter.

This policy has been developed with five guiding principles:

- It is the quality of care, protection and support experienced by children and young people that matters the most.
- Children's homes can offer high quality care, protection and support for children, including older teenagers, when they are local, small, well-staffed, have a clear purpose, are effectively managed and there is a low turnover of staff and children.
- Children and young people's views and experiences are central to determining and improving the quality of services; they have the right to be heard and involved in all decision-making which affects them.
- There is a long history of institutions and organisations failing to protect children, and putting their own reputations ahead of the interests of children. Government and local authorities have often colluded in this.
- A children's rights approach, whereby the requirements of the United Nations Convention on the Rights of the Child (UNCRC) are implemented in full, is the best means of ensuring children and young people are properly cared for, listened to and respected, protected and supported. The UNCRC demands respect for children and is the tool for wider cultural change, bringing about improved relationships and professional conduct, and systems and services which are unequivocally for the benefit of children and young people.

4. Children's care system: where are we now?

Austerity has decimated the public services upon which children and young people, and their families, depend. This includes the help which families need to support children to remain safely at home, and to help children return

home safely after a period in care. For children and young people in care, the current landscape is dire:

- 7,000 children in care aged 16 and 17 are currently living in unregulated accommodation where they are not legally entitled to care or consistent adult supervision.[2]
- Between October 2021 and September 2022, 3,256 unaccompanied children were housed in hotels funded by the Home Office rather than being looked after by local authorities as the Children Act 1989 requires.[3]
- Every day, there are around 50 children in England waiting for a place in a secure children's home, and around 30 children at any one time have been sent to secure units in Scotland due to the lack of places available in England.[4]
- Latest data shows there are 386 children detained in young offender institutions and 38 children detained in Oakhill secure training centre – institutions which the government admitted in 2016 were not fit for the purpose of keeping children safe, and committed to phase out.[5] Over half of children in custody have been in care.[6]
- At least 43% of looked after children live outside their local authority area (in addition, 6% of local authorities reported to the Department for Education that they did not know or record this information; this increased to 13% for children in residential settings).[7]
- Ofsted reports that a quarter of all children's homes are in the North West, and only 5% are located in London.[8] Provision is following the house-price market, rather than meeting the needs of children.
- Provision which is outside a local authority's management and purview is harder to monitor on a day-to-day basis. Further, it is more difficult for local authorities to identify patterns in complaints, abuse and mistreatment allegations, parental concerns and disciplinary investigations.
- The Independent Inquiry into Child Sexual Abuse's final report provides devastating evidence of many different kinds of institutions and organisations putting their own reputations above the interests of children.[9]
- Latest NHS data shows there were 60 children placed on adult mental health wards in the final quarter of 2021/22, despite

amendments to the Mental Health Act 1983 in 2007 which sought to end such practice.[10] Past research has shown that children in care are 24 times more likely to be mental health in-patients than children in the wider population.[11]

- Local authorities report that the accommodation of care leavers is 'unsuitable'[12] for 7% of those aged 17, 4% of those aged 18, and 7% of those aged 19 to 21 years. In addition, local authorities told the Department for Education that they had no information about the suitability of accommodation in respect of 25% of care leavers aged 17, 4% of those aged 18 and 7% of those aged 19 to 21 years.[13]

5. Local authority as customer rather than provider

Since the 1980s, the use of large institutions for children's day-to-day care and/or confinement has reduced – though prisons and boarding and residential schools remain. There has always been profit in the children's care system, but this has substantially increased following the withdrawal of local authorities and the large children's charities from running children's homes in the 1990s and beyond.

There were 2,873 children's homes in England on 31 March 2022; of these, 79% were run for profit.[14] There were 316 independent fostering agencies operating in England on 31 March 2022; of these, 85% were run for profit.[15] The withdrawal of local authorities and the large children's charities from running children's residential care had three main drivers:

- Successive abuse scandals and the serious failure of many local authorities and large children's charities to protect children. Many local authorities and nearly all major providers in the voluntary sector came to see children's residential care as too risky and too difficult to run safely. For the voluntary sector, there was the additional dynamic that serious failure risked reputational damage which in turn jeopardised their charitable income.
- Internationally and domestically, from the 1970s onwards there has been a strong child developmental and children's rights push against large residential settings in favour of family-based care (institutional settings per se were not, however, rejected by local and national policy makers – child prisons remained, as did large boarding and residential schools). Most recently, this culminated in the UN guidelines for the alternative care of children.[16]

- A market ideology within public services from the 1980s onwards, focused on a purchaser/provider split, first in adult social care and then in children's social care, with many local authorities electing to commission and purchase placements for children rather than running these services themselves. This market approach was seen to be more efficient (cheaper) and it was believed that competition would improve the quality and accountability of services.

6. What we know about profit-making in children's services

The Competition and Markets Authority (CMA) launched a market study of children's social care in March 2021, publishing its final report a year later. It confirmed well known and serious deficiencies in the children's care system, including:

- High numbers of children living miles away from their home areas: "Children moved away from their home area may suffer loneliness and isolation at being separated from their support networks, have their schooling disrupted, and experience difficulty in accessing social services".
- Local authorities find it especially difficult to arrange placements for children with complex needs and/or older children.
- Local authorities are often unable to find homes together for brothers and sisters.
- Children are living in unregulated accommodation, not as a positive choice but due to absence of alternatives.[17]

Ofsted reports that "[t]he 10 largest companies own a third of all children's homes. This means that the loss of any of the bigger providers could leave major gaps in supply".[18] The Local Government Association is similarly concerned about the level of financial risk and precariousness of many of the larger providers.[19]

Local authorities have consistently reported that private providers are turning away children who they consider would jeopardise Ofsted inspection judgements. Through its work with advocates, Article 39 is aware of children being 'evicted' from residential settings at short notice, with no financial detriment to companies who have been able to quickly fill the child's place.

Longitudinal research by researchers at the University of Oxford, which examined 13,000 inspection reports for the period 2014 to 2021, found that across all inspection categories profit-making provision was "significantly

more likely" to be judged as being of lower quality than local authority and voluntary sector provision. The authors summed up:

Using a novel and longitudinal dataset, we show that for-profit children's homes are statistically significantly more likely to be rated of lower quality than both LA and third sector services. FP [for profit] services also receive a greater number of recommendations and violate more requirements compared to LA ownership. Third sector services perform worse than LA provision in most of our investigated outcomes, but these associations are considerably less consistent compared to FP ownership. Our presented findings are robust to model specification and consistent over the full analysed period. At LA level, we find provisional evidence that LA Ofsted ratings are negatively correlated with the percentage of for-profit outsourcing, meaning that LAs which outsource a greater amount of their children in care placements perform less well than those which do not.[20]

Analysis of Ofsted data[21] by the Guardian and the BBC found that children's homes run for profit have disproportionately higher levels of serious incidents and complaints. The data was published in response to a parliamentary question and showed that 69% of places in children's homes were run for profit, and these accounted for 76% of serious incidents in 2020/21 and 78% of complaints between 2018/19 and 2020/21. Conversely, 31% of places in children's homes were run by local authorities and charities, and these accounted for 24% of serious incidents in 2020/21 and 22% of complaints between 2018/19 and 2020/21.[22]

The CMA reported that the 15 largest providers of children's homes and fostering services had average operating profit margins of:

- 35.5% for unregulated accommodation, with £330 profit per placement per week in 2020.
- 22.6% for children's homes, with £910 profit per placement per week in 2020.
- 19.4% for fostering agencies, with £159 profit per placement per week in 2020.[23]

Among CMA recommendations were improved commissioning arrangements (including at a national level) and government funding for "collective bodies to trial different market shaping and procurement techniques and improving understanding of what market shaping and procurement models work well". Understandably given its statutory remit, the CMA made no recommendations relating to ending or reducing the pursuit of profit within children's social care.

Similarly, the MacAlister Care Review's final report, published two months after the CMA report, called for new commissioning arrangements (through regional care co-operatives). It recommended a one-off windfall tax for the 15 largest providers of children's homes and fostering services, suggesting a calculation of 20% of profits over the preceding five years. The review stated this windfall tax "could generate hundreds of millions of pounds towards the costs of transforming the care system".[24]
The submission of the North East Association of Directors of Children's Services (ADCS) to the MacAlister Care Review recommended:

The children's care provider market should be dismantled or overhauled. Profit-making from children's residential and foster care must be eliminated or capped. If a mixed economy of provision remains, a national approach is needed to the management of the market, which must address sufficiency and develop a fair price for care with national terms. Capital investment is needed to create new capacity.
The review should examine whether it would be better for all foster carers to be aligned to the LA in which they live or consider other options to have a single co-ordinated approach to recruitment and retention.
Government should support growth in overall care capacity and a wider range of placements, with a greater focus on public sector and not for profit delivery. Additional capital investment and risk sharing arrangements are needed to support the development of local capacity.[25]
In its response to the CMA's interim report, the ADCS had explained:

It is disappointing that the CMA is unclear about the benefits of limiting for profit provision or limiting prices/ profits. Current market conditions, operating as they do with one customer – LAs – and little competition between an ever shrinking group of providers tightly controlling supply, create ideal conditions for a cartel. When comparing the learning disability and mental health market to children's services (both generally operate from similar sized homes), the level of profit made in the children's sector is significant. For example, for one LA, the average cost of a placement for a younger adult with learning disabilities is circa £1,200 per week, compared with a children's residential placement for a 16-year-old averaging £5,000 per week. While there are some differences in legislation and some allowances paid for children, these alone cannot account for the difference in cost.[26]

7. Article 39's position

Our children's care system does not have enough caring and safe homes for children within their local communities. This is a national crisis, akin to ambulances parked outside emergency departments awaiting hospital treatment for critically ill patients. The sufficiency duty on local authorities is ineffective.[27]
Relying on the market to provide homes for children is not working. There are insufficient homes for children in the places that they are needed, and for some groups of children there are no homes at all – particularly teenagers and children with complex needs.

It is a providers' market, which is dangerous for children because care planning for many has been reduced to finding a home – *any home* – rather than the right home which can meet their individual needs and is close to their family and local community. Unique freedom of information research with English local authorities undertaken by Article 39 revealed that at least 54 children looked after by 26 English local authorities were living in holiday rentals, caravans and other 'temporary' accommodation on GCSE results day this year.[28] This is likely to be a significant under-estimate since many of the 26 local authorities who confirmed that some of their looked after children were living in this kind of accommodation refused to give precise numbers. The longest period any child had stayed in 'temporary' accommodation (a holiday rental) was 372 days.
Local authorities, social workers, independent reviewing officers and others involved in planning, scrutinising and monitoring children's day-to-day care are increasingly operating in an environment of chronic insufficiency and desperation. This is not safe for children because expectations are lowered and what should be intolerable is tolerated.

Local authorities have legal responsibility for children in care. Legal protections and safeguards passed by Parliament are predicated on there being an actual *care system* for children, not a marketplace. No political party has ever proclaimed in a general election manifesto that the children's care system should be predominantly based on the pursuit of profit.
There is no doubt that many (possibly all) local authorities seriously failed to protect children in care in the past, especially in residential care. From the 1990s onwards, in consequence of serious and sustained failures, the residential care sector went from being largely unregulated to regulated, including through a ban on corporal punishment and other cruel treatment[29], access to independent advocates and monthly visits from independent

persons. The regulation of the sector occurred alongside the withdrawal of many local authorities from running their own children's homes. This means the vast majority of expertise (except for secure children's homes) is now in the profit-making sector. Further, the children's homes workforce has still not been fully professionalised; degree-level qualifications are only required for children's homes managers. The Independent Inquiry into Child Sexual Abuse first called for the registration of children's homes staff in April 2018[30]; the government undertook a literature review and said it would keep the matter under review.[31] The MacAlister Care Review recommends a leadership programme for children's home managers (rollout by Spring 2024) to be followed by compulsory professional registration for all staff, though has not suggested any timeframe for this.

The Independent Inquiry into Child Sexual Abuse confirms that abuse can happen in any kind of institution and organisation, whether in the public, private or voluntary sector. We believe profit-making brings its own safeguarding risks, including:

- Companies being too big to fail because there is nowhere else for children to go.
- Contracts being legally too difficult or impossible to rescind, even when abuse has occurred.
- Larger companies enjoying close relationships with government and having disproportionate influence over policy making.
- Companies employing marketing and advertising techniques which give an incomplete or false picture of what they provide to children.
- Public disclosure of failure inevitably carries a risk of financial loss and even bankruptcy, so there is greater pressure on profit-making organisations to try and manage complaints and abuse allegations internally, and to seek to minimise them.
- While profit-making provision may arguably cost no more than similar provision in the statutory or charitable sectors, on a place-by-place basis, whenever profit is made these are public funds taken from the children's care system that could have been invested in, for example, higher staff salaries, training and specialist support for both children and staff.

Article 39 supports the minimisation of profit-making in the children's care system, in order to radically improve the care, protection and support provided to children, and to transform the experiences of adults who were in

the care of local authorities as children.

We are not convinced that this will reduce the cost of the children's care system overall since good quality care, protection and support, which lasts for as long as children and adults need it, is rightly expensive. The Independent Inquiry into Child Sexual Abuse's final report should be the catalyst for professionalising the whole of children's residential care, and giving those who work within it the esteem and financial remuneration their vocation demands.

We believe that the vast majority of homes for children in care should be arranged and managed by local authorities.

Only statutory and not-for-profit organisations should be allowed to register as a provider of care to children, whether this is family-based or through children's residential care. There should be national guidelines on the financial arrangements of not-for-profit providers, so as to ensure income is directed at maintaining high quality care and a well-remunerated professional workforce. Funding for children's direct care should not be transferred into charitable reserves, except where this is to sustain the organisation and its services to children.

Legislation making it a condition of registration that providers of children's care operate on a not-for-profit basis could be drafted so as to empower the Secretary of State to authorise the registration of an 'excepted provider' from the profit-making sector when this is in the best interests of children, and those running the service have relevant expertise. Excepted providers should be listed in secondary legislation, and be subject to a system of profit-capping which is subject to independent oversight and control.

Government funds should be available for small care providers who currently operate outside the not-for-profit sector to transfer to the not-for-profit sector.

A legal duty should be introduced requiring the Secretary of State to ensure local authorities have sufficient funds to meet the needs of children currently being cared for, and adults who were once cared for.

Children not being cared for by their own local authorities should be formally

acknowledged as a safeguarding risk, and local authorities required to report on the proportion of looked after children for whom they are responsible that they care for themselves, and the proportion that they pay others to look after.

A transition period will be required to carefully plan and implement the minimisation of profit-making in the children's care system.

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[1] The Welsh government is consulting on implementing a ban of profit in the care of looked after children, deadline 7 November 2022: https://gov.wales/proposed-changes-legislation-social-care-and-continuing-health-care

[2] https://socialcareinspection.blog.gov.uk/2022/08/31/supported-accommodation-we-need-strong-oversight-to-make-sure-young-people-are-safe-secure-and-doing-well/

[3] https://questions-statements.parliament.uk/written-questions/detail/2022-10-11/61091

[4] https://www.gov.uk/government/statistics/childrens-social-care-data-in-england-2022/main-findings-childrens-social-care-in-england-2022

[5] August 2022 data: https://www.gov.uk/government/publications/youth-custody-data

[6] https://article39.org.uk/wp-content/uploads/2020/12/The-Case-for-Ending-Child-Imprisonment-10-December-2020.pdf

[7] https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2020-to-2021

[8] https://www.gov.uk/government/publications/ofsted-annual-report-202021-education-childrens-services-and-skills/the-annual-report-of-her-majestys-chief-inspector-of-education-childrens-services-and-skills-202021

[9] https://www.iicsa.org.uk/final-report

[10] https://www.england.nhs.uk/publication/nhs-mental-health-dashboard/

[11] O'Herlihy, A et al (2002) National in-patient child and adolescent psychiatry study (NICAPS) Royal College of Psychiatrists' Research Unit

[12] See Regulation 9(2) The Care Leavers (England) regulations 2010 for the statutory definition of 'suitable accommodation': https://www.legislation.gov.uk/uksi/2010/2571/regulation/9/made

[13] https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2021
[14] https://www.gov.uk/government/publications/inspection-outcomes-of-the-largest-childrens-social-care-providers/largest-national-providers-of-private-and-voluntary-social-care-march-2022#childrens-homes
[15] https://www.gov.uk/government/publications/inspection-outcomes-of-the-largest-childrens-social-care-providers/largest-national-providers-of-private-and-voluntary-social-care-march-2022#childrens-homes
[16] https://digitallibrary.un.org/record/673583?ln=en
[17] https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report
[18] https://www.gov.uk/government/publications/ofsted-annual-report-202021-education-childrens-services-and-skills/the-annual-report-of-her-majestys-chief-inspector-of-education-childrens-services-and-skills-202021#social-care
[19] https://www.local.gov.uk/profit-making-and-risk-independent-childrens-social-care-placement-providers
[20] https://www.ox.ac.uk/news/2022-10-05-outsourced-children-s-care-homes-provide-poorer-quality-care-oxford-study
[21] https://depositedpapers.parliament.uk/depositedpaper/2284169/files; https://depositedpapers.parliament.uk/depositedpaper/2284131/files
[22] https://www.theguardian.com/society/2022/jun/28/serious-incidents-more-common-in-for-profit-childrens-homes-in-england
[23] https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report/final-report
[24] https://childrenssocialcare.independent-review.uk
[25] https://adcs.org.uk/assets/documentation/NorthEastSubmissiontotheIndependentReviewofChildrensSocialCare2.pdf
[26] https://assets.publishing.service.gov.uk/media/61eff490e90e07037ff2768e/The_Association_of_Directors_of_Childrens_Services_IR_response.pdf
[27] https://www.legislation.gov.uk/ukpga/1989/41/section/22G
[28] 25 August 2022
[29] See the Children's Homes Regulations 1991: https://www.legislation.gov.uk/uksi/1991/1506/regulation/8/made
[30] https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/interim
[31] https://www.gov.uk/government/publications/childrens-homes-workforce-literature-review-and-call-for-evidence

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes, but it will come at significant cost:

Children in care will have reduced access to local specialist provision that meet their needs; Increased risk of children being placed in unregulated settings or placed at distance; An increase in financial costs to council tax payers in Wales.
• This policy change will result in an increased use of unregulated care settings. Data provided by CHA shows that this is already happening. A recent FOI response that demonstrates the use of unregulated provision increasing over the last 2 years. In the whole of 2020 there were 6 placements from 6 LAs, increasing to 39 placements by 15 LAs in the first 8 months of 2022.
• With 80% of provision being eliminated at a time of acute shortage of placements, the Government would succeed in eliminating profit made by regulated good quality provision, but reduce services to children, cause job losses and damage local Welsh operated SMEs.
• The Registration of Social Care – Regulation and Inspection of Social Care Act 2016 provides for multi-service registration. Some providers of children's residential care allow for the transition into their adult services – this will end as they will cease to provide children's services.
• Some larger charities have pension fund deficits that recent economic shocks have increased. For this policy to be consistent policy should also legislate that surpluses must be reinvested in services.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

- Benefits, and disbenefits;

It is of note that this extremely high cost policy is being introduced at a time of domestic and global financial crisis. As well as the upfront costs of introducing the policy, it will significantly increase the annual costs of residential care to council tax payers.
Benefits:
• Government achieves its manifesto pledge
Disbenefits:
• Decrease in the number of placements for children putting children at risk
• Reduced placement availability will mean children being placed at greater distance from home
• Reduced placement availability will increase the number of children placed in unregulated provision
• Loss of specialized knowledge, skills and leadership in residential childcare
• Increase in placement costs that will be paid by local authorities via council tax
• Reduction in investment in Wales due to risk of government policy eliminating core areas of public services i.e. investors will rightly think, 'what industry will be eliminated next?'
• Small Welsh businesses will close or be taken over by large providers
• Workforce will leave the sector due to the toxic environment this policy has created
• Residential childcare further devalued as a positive choice for children and a positive career option for adults

- Costs (direct and indirect), and savings;
There will be no cost savings. There will be significant increase in costs to the taxpayer due to:
• Cost of public sector provision is consistently shown to be higher than the independent sector by between 10 - 20% as reported in the PSSRU Unit Costs Reports 2018/19/20/21. These reports are based on actual spend by all local authorities.
• The cost of opening new homes will be more than £150 million, and the WG has no budget allocation for this. Problems in social care funding has been highlighted by the ADSS in their response to the Rebalancing White Paper stating: The recent announcement by the WG that there will not be additional resources for social care through our system of taxation in the near future, coupled with the potential for

delivering the real living wage for social care staff, raises questions about the financial sustainability of services and the ability to deliver new models of services for the future
• The cost issue was also demonstrated as a critical issue by the WLGA who in their response to the Rebalancing White Paper stated These challenges are set with the context of significant financial challenge (and underfunding) for the social care sector, and across the public sector
• There will be significant Staffing, TUPE & Redundancy costs
• There will be significant increases in transport costs as more children are likely to be placed at distance
• There will be significant compensation costs that are legally prescribed. Protection of Property as set out in Article 14 and the Protocols, Article 1, Protection of property. Full market compensation is payable if the state interferes without proper reason in the providers' peaceful enjoyment with their property. The outcome of this is potentially that the Senedd or Welsh local authorities would be liable to provide full compensation on a commercial basis for all losses to any provider
• The impact on the economies of local communities directly impacting on the goals of the Well-Being of Future Generations (Wales) Act 2015 particularly on local services such as retail and leasing

- Impacts upon individuals and groups with protected characteristics;
• Children in care sadly do not currently have 'protected characteristics' but if they did the results of the 'eliminate' programme, removing 80% of residential services, would clearly be impacting on those characteristics.
- Other practical matters such as cross-border issues.
• There is already a sufficiency crisis in England and Wales – this will further reduce the availability of homes for children, both Welsh and English.
• A growing number of providers have now chosen to open new provision in England rather than Wales as they originally planned. This will increase.
• Some English providers will refuse to accept referrals from Wales as they can not guarantee continuity of care
Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.
• The WG must urgently recognise the impending sufficiency crisis and work with the sector to find a compromise in this policy. "Rebalancing' and 'Social Value' can be achieved without eliminating for profit providers.
• The commitment to social value by the WG is to be applauded. This could be incorporated into the commissioning model for all children's services, thereby ensuring services are developed in order to meet identified need.
• We need an innovative and modern approach for effective collaborative partnerships as identified by the CMA and The Children's Homes Association. This would involve local authorities, providers and potentially others such as health and education bodies, working together in partnership. This approach offers a value for money financial model which delivers fair pricing, reinvestment in growth and quality and realistic provider profit margins.

Please explain your reasoning.
Children and their needs will be at the heart of this model. This is based on two key strengths:
• The similar values and beliefs of authorities and providers. Each strive
to put the interests of the child first and provide or commission excellent
care which offers the best support to enable these vulnerable children to
reach their full potential; and
• In our view, this is best achieved by long term contractual relationships based commitment between local authorities and providers. Designing and developing a model based on assessment and evidence based tools to understand and predict need and putting this into practice with flexible, variable block contracts allowing supportive and trusting relationships to be delivered is key.
• The commissioning and procurement vision and documents will support these core shared beliefs and objectives. Pilots will offer a blue print for long term partnerships with individual providers which can develop and grow if successful and reduce in size and scope if not successful, rather than transactional spot purchasing based on an 'us and them' approach.
• There will be an effective modern performance model with tools enabling outputs and outcomes to be measured. These will be used to build knowledge and information about current and future needs and establish
what works well and what works less well.
• The model including all of the procurement documents will be co-produced with a series of pilots to identify the more effective models to further developed and others to be discarded.
• We do not know if there is some good relationship working in Wales, which could be developed and built on that allow trust to be re-built and developed more widely.
• We are very keen that wherever possible, children's relationships with their birth families, close and distant as well as friends and other relationships within their communities should be maintained. The ability of children to
make and sustain these relationships will be a key criterion for assessing the success of the care, along with other key outcomes, particularly education, mental and physical health.

• There will be fair terms and conditions including effective pricing structures.
A model of flexible and variable block contracts supported by spots where needed, will allow providers to make longer term commercial plans and business decisions. Experience has demonstrated that this should enable them to offer an efficient pricing structure for flexible or soft block contracts with a separate price for the purchase of spots to augment the blocks. This model supports provider borrowing to develop new provision.
• A model where local authorities and providers work in partnership in a collaborative and trusting manner could support effective market management by local authorities, focused development of new provision and in time achieve market sufficiency. However, it will take time to develop the required trust and roll out pilots to the whole market and there needs to be an understanding that true co-production and collaboration requires a recognition that local authorities and providers share a similar vision and values and must work together to meet the needs of the vulnerable children who come into the care system to support their development into adults who are able to meet their true potential.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

• We do not think it is appropriate to adopt such prescriptive approaches. If the WG is to control how an organization invests and operates this will in effect be State run.
• A charity is required to be independent of state or other control and the
Charity Commission & Trustees would generally not accept limits on how a charities surplus might be limited by contracts or terms.
• Charities operating across national; boundaries will not be bound as to how to allocate their surplus amounts.
• It has been stated that 'no profit' can be made. This rules out employee-owned e.g. co-operative and Community Interest Company models where a proportion of the profit is removed by the owner.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

• There is currently no definition of 'not for profit' that identifies which type of provision is acceptable to the WG. This is causing high levels of uncertainty amongst providers with the result that there is widespread talk of many withdrawing from the sector. If there is the provision for Welsh Ministers to amend the definition through subordinate legislation there will be no confidence in business models thereby removing incentive to invest in the sector.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

• As the indicator is that most current provision will not transition to not for profit status children's homes will need to 'start from scratch' and to do that will need between 18 months and two years to:
• decide re the needs of the children the home will meet and the therapeutic/care model that will be adopted
• acquire a suitable building, achieve change of use, suitably equip, employ and train staff, register with CiW;
• Once open children can only be admitted to the home gradually as children need to be allowed to settle before another is admitted thereby potentially filling a 3 bed home takes upwards of 12 months.
• Providers are indicating that they will withdraw from providing services in Wales between now and the implementation date as they need to protect their investments in their business.

This has currently stalled all investment in Wales, which is at best unhelpful

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

• 80% of children living in children's homes will lose their 'home';
• We operate specialist services that I can not see being replicated therefore transition would be impossible for a successful outcome.

Some providers deliver services across children and adults bringing a seamless transition for children with specific needs into long term adult provision.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

• This is a basic requirement of government

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

• No as it is unachievable given the number of children requiring placements and the lack of public and voluntary sector provision currently and the time it will take to grow. If placed in England there are few not for profit providers and a lack of sufficiency sector wide. This was stated by the WLGA in their response to the recent Social Care Market Study. In regard to sufficiency, that the 'deficit is increasingly apparent in residential provision and particularly in the availability of placements for children presenting with the most complex needs.'

What would be the benefits, disbenefits and other implications of such an approach?

• Many Welsh LA's are already failing in their sufficiency duty. The WLGA stated in their recent submission to the CMA Children's Social Care Study: 'Work continues to commission the type of accommodation required to meet the complex needs of this group of children and young people from established regulated providers, and this part of the market continues to grow to meet demand, but given the timescales required to develop these types of establishments prior to being able to take referrals and admissions, it is not able to grow at a pace that means good placement capacity and choice is able to be offered.
• The 'eliminate policy' will create the risk that all local authorities will fail in their duty to meet the sufficiency needs of children in their care. This is already evidenced by Risk Register and the Market Intelligence Summary both submitted to the Eliminate Board on a regular basis and by the recently obtained FOI in relation to the use of unregulated provision.

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?
• An evidence based timescale based on the latest data relating to the need for residential beds. The governments commitment to early intervention is welcomed but that will take upward of 5 years to impact on the number of children requiring provision.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

• The legislative proposals are undermined by the inability of the WG to acknowledge the risks and mitigate for them in a realistic way. Providers are willing to engage in discussion with the WG to explore the moist effective way of ensuring social value whilst providing the highest quality of service to one of the most disadvantaged groups in society.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

• There will be an inevitable increase in placements at distance from the child's home including provision in England, some of which will be delivered by providers that until the 'eliminate' announcement only delivered services in Wales and by Welsh speakers. There will also be an increase in the use of unregulated provision. In both these scenarios the children will not be ensured the Welsh language will be promoted and facilitated.
• We are concerned that there has been no published specific and detailed Welsh Language impact assessment in relation to the eliminate strategy. We consider that this should have been included with the consultation document in view of the Welsh Language (Wales) Measure 2011, relevant standards and guidance made under this measure. The importance of this and need for such an assessment when a decision is at a formative stage is highlighted in the very recent Neath Port Talbot case (Rhieni Dros Addysg Gymraeg (Parents for Welsh-Medium Education), R (On the Application Of) v Neath Port Talbot County Borough Council [2022] EWHC 2674 (Admin).

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

• By encouraging growth of the current provision by Welsh providers with expectation of social duty including the commitment to Welsh being the first language

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

• We have serious concerns that this policy will cause significant harm to children and young people. The current and impending socio-economic pressures on families evidence and history indicates that need for children's social care including residential care will increase. It is our opinion that this is not the time for the WG to try to eliminate decades of evolution of the mixed economy of children's social care.
• Local authorities have the legal duty to provide children's social care. The WLGA in their recent submission to the CMA Children's Social Care Market Study, regarding children's residential care stated 'a mixed economy will always be needed'. Further, in assessing the current situation in children's residential care, the WLGA state 'There is a relatively positive mix of Welsh small and medium-sized enterprises and UK wide large organisations'
• There is no evidence to support this policy, no appropriate impact assessments and despite the programme risk register showing current and future risks to children, the government is continuing without and mitigation of these risks of harm.
• The CHA on behalf of providers of residential child care submitted a response to the consultation. Fundamental to it was the fact that the consultation did not make those being consulted aware of the facts presented to the Eliminate Board in relation to the impact the Eliminate programme was already having on children and was seen as likely to have in the future. These are clearly recorded in the Risk Register and the Market Intelligence Summary.
• The WG are embarking on a dangerous and expensive ideological policy change that will have serious consequences for the children and citizens of Wales. This is being done at a time of financial crisis and will increase costs that could be better invested elsewhere.
• The WG have not informed the government that it is forcing through a policy that will cost tax payers hundreds of millions of pounds that will impact on local authority budgets for many years to come. This will have a detrimental impact on local authorities ability to provide no statutory services.
• We believe that the best way of putting the needs of children at the heart of residential (and other care) is effective strategic commissioning and procurement and this should prevent any excessive profit in the market-place. We recommend a strategic approach delivered at local level in a collaboration and partnership between the Senedd, local authorities, providers and all relevant statutory and other bodies. This is the only approach which will deliver high-quality outcomes, market sufficiency, improved staff terms and conditions to help address the staffing crisis and fair contract terms and conditions. We know that providers would welcome and value the opportunity of working with the Senedd and Welsh local authorities to deliver a different vision and model for residential care services in Wales.
• Through the CHA we believe it to be imperative that it is documented in this consultation that this policy is not harmonious with the rebalancing social care policy work, is contrary to the views of the WLGA, ADSS and the CMA. It will seriously damage sufficiency and be harmful to children and young people. Further, the eliminate policy has not been costed and the people of Wales not informed of the extremely high costs if implemented. This will negatively impact on local authorities ability to provide non statutory services for all.

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

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Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

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No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

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No Response

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No Response

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No Response

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No Response

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No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

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Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

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No Response

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Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

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No Response

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No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: [redacted]

Organisation (if applicable): [redacted]

E:mail: [redacted]

Telephone: [redacted]

Your address: [redacted]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[redacted]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

I think you have to be very careful here. Not-for-profit / 3rd sector providers are traditionally very poor at providing services because they are often driven by a need to alleviate a cause whilst rarely having efficient administration skills.
I feel the legislation would be better served if the Contracts were Not For Profit. This way both sectors could tender for contracts. Businesses could provide the services through their CSR (Corporate Social Responsibility) function, and it would be up to the Government to audit the contracts to ensure every penny is spent on the service provided through the contract with reasonable expenditure on all budget items.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No Response

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Council services are so seriously underfunded it's heartbreaking. Social staff are often not critically educated and, especially if they have come from a care environment themselves, have not been trained to have the emotional objectivity to assess cases fairly and for the well being of all. Several academic studies have been produced on this point but still the system is as it is.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Guidance is always important. It was help as the legislation matures to hopefully stay as intended rather than tangented by the nuances of precedant.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

I think it is short sighted. In my opinion, where services fail is in contract specification. Now we no longer have to tender at European level there is greater freedom to choose which organisation can be chosen to supply goods and services. Again, I feel the contract should be run as Not For Profit, rather than specifying 3rd sector organisations. I admit a business could set up a Not for Profit SPV which may be a way to ensure the administration skills are there.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

Annual auditing by the NAO.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

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No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

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Organisation (if applicable):	-
E:mail:	[redacted]
Telephone:	-
Your address:	-

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Email address

No Response

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

This is a welcome and necessary provision in legislation and it is agreed in full that there is no place for profit in the provision of the care of children looked after. Placing care in the not-for profit sector should increase and strengthen commissioning processes and monitoring procedures, ensure numbers in any placements are moderated, and that referral processes are more person centered through the absence of profits motivating fast and numerous placements.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Benefits will include increasing the number of placements available, resources being spent on quality of support only.
The impact on individual's will be services supplied by providers with the right motivation, ethics, and responsibilities towards good quality care.
The removal of market competition will encourage providers to work together in local communities, maximizing resources.
Removing profit surpluses will create more funding to improve support to families at home in the first instance.
It would be just as beneficial to other groups in need of support, for example adults with a learning disability, particularly those with complex needs.

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

A definition would be essential in order for this legislation to be consistently implemented. This could be addressed during the procurement and commissioning process during PQQ assessments. Cost modelling should include scrutiny of accounts with a threshold for appropriate use of trading surplus, for example ensuring appropriate levels of reserves for innovation, e.g. improving digital infrastructure for increased independence, creating wellbeing activities with-in the home.
The commissioning process could ensure some flexibility regarding assessment of cost modelling based on assessments of evidence regarding quality of outcomes for children.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Only allowing not-for-profit providers to register with CIW would provide the necessary gateway to implement the legislation.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

The 80% is a huge figure to replace. A survey to current providers with their ability to continue if they no longer make a profit would be essential in order to get the timescales assessed.
With the current recruitment crisis across the care-sector it is essential to address pay for front-line workers before attempting such large-scale changes to one element of it. In the short term, providing funding to pay the new Real Living Wage. In the mid-term, providing funding for a professional wage that matched responsibilities and qualification expectations is essential for it's success.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

This would be necessary and welcome to ensure consistency. It would need to be drawn up with providers, carers and those with lived experience to describe appropriate organisational models.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

I think placing a restriction on Local Authorities to commission 'not for profit 'organisations would be essential for the legislation to be implemented. This is a necessary control measure to eliminate profit from the care of children looked after in Wales.
The main disbenefit may be the number of placements reducing in the short term as care providers leave the sector.
The benefit will be ethical, good quality providers being given an opportunity to expand into their local communities.
Adding a locality requirement would improve the approach so that support is provided closer to home as a commissioning requirement.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

Procurement and commissioning to include questions re: groups, subsidiaries, location of 'head office'.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

More local provision inevitably leads to local recruitment that includes Welsh learners and speakers. Including the requirement of evidence of the active offer during commissioning and monitoring of contracts would increase opportunities to have care in the language of choice, familiarity and comfort.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

Agree. The opportunity for individuals to directly seek bespoke arrangements to meet their individual needs will benefit families and improve voice, choice and control.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Being able to make choices about priorities and individual needs from the family perspective has the potential to improve decisions and make them more person centred.
Allocating funding to chosen providers/PA's will be of benefit in many situations, matching staff to individuals' and increasing choice. Cost savings from management overheads and organisational back-office functions may lead to savings
The current and proposed arrangements are heavily dependent on the ability to agree eligibility, which is currently problematic and can take a long time to arrive at. How the new proposal will improve this is not yet evident - who ultimately decides whether health of social care is the most appropriate funding may still be problematic.
The lack of regulation in the PA and micro-team approach needs to be addressed generally, but even more so if complex care is being provided.
The issue of lack of staff in the recruitment pool is unlikely to be supported with the initiative unless adequate funds are provided across the sector.
With the current recruitment crisis across the care-sector it is essential to address pay for front-line workers before attempting such large-scale changes to one element of it. In the short term, providing funding to pay the new Real Living Wage. In the mid-term, providing funding for a professional wage that matched responsibilities and qualification expectations is essential for it's success.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

Not known at this moment

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

Should be discussed further with families and people supported.

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

The initiative would be unlikely to reduce strain on domiciliary care services. With the current recruitment crisis across the care-sector it is essential to address pay for front-line workers before attempting such large-scale changes to one element of it. In the short term, providing funding to pay the new Real Living Wage. In the mid-term, providing funding for a professional wage that matched responsibilities and qualification expectations is essential for it's success.
Supporting people with complex needs requires well trained staff which requires the support of training providers. The advantage of provider organsations is that they often have internal training and qualification provision. Requirements would need to be clear to ensure support is safe and effective.
If funding is used for PA support it would be necessary to understand how the quality of support is regulated.

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

Local recruitment options would inevitably improve opportunities regarding the welsh language.

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Imposing the duty to report a child at risk directly on individuals within relevant bodies should result in the tightening and improving of reporting procedures across local authorities, therefore it has the potential to be an improvement.
However, there must be more systemic ways of making an improvement over the threat of legal action and/or fines.
Consistent improvements to processes across local authorities, safeguarding champions who people feel safer to report to, more robust communication schedules.

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

I think this is the same question - it would depend on who the individuals are. I would not agree with imposing any further legal duties to individuals on the front-line - further responsibilities would discourage an already difficult recruitment market.

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

As above

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

Not known at this stage

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

It should sit alongside existing duties for organisations under the act, making the process more robust without destabilising well worked out methods and processes that have improved safegaurding procedure in the last 5 years

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

I think individual reporting duties could discourage recruitment with-in the sector across the board, therefore would not advocate for it in either category.

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

As above

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

I would not like to see this introduced. Spend energy and effort on refreshing training and support with-in the current process.

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

I am not sure this would have an impact on this area.

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes absolutely

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Yes.

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes.

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes.

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes.

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Yes - I think would support improvements to data protection and put the responsibility in the right place.

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

Yes I think this will be necessary

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Yes this is a more agile response and welcome.

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Yes this makes sense, I can see no reason to pursue if a provider is no longer providing the service.

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes, this seems an unnecessary admin burden and pressure.

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Yes.

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes I think this is important to enable an understanding of current pressures.

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes this would be welcome - more agile approaches as long as consistently applied amongst inspectors. This may be difficult to achieve so the guidance and circumstances would need to be transparent.

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Yes.

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes.

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Yes.

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

The proposals would seem to ease some unintended administrative burdens to inspectors, and provide some variation to approaches depending on circumstances which is welcome to providers, as long as it is applied consistently by inspectors.

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

I don't think there will be an impact form this chapter.

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

Yes - knowledge and experience gained can be utilised, but there will also be a necessary refreshing of views and observations in a timely way.

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

Yes some flexibility with this is necessary for some individuals. There are range of issues that can and should be taken into consideration.

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

Yes I think this is a sensible approach to avoid additional administrative requirements, and is supportive to individuals under review.

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

N/A

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

N/A

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

More time for individuals to request information in their first langauge/be heard in Welsh.

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Yes in principle, however the introduction of the current qualification system had and initial impact on recruitment in the sector, and saw some workers leave the sector as the pay did not increase in line with the expectations of registration with social care wales.

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

As above

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

The registration process has given more staff the opportunity to learn welsh through the requirements to be able to offer support in Welsh if required.

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

As above

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: [redacted]

Organisation (if applicable): [redacted]

E:mail: [redacted]

Telephone: [redacted]

Your address: [redacted]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

No Response

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

[redacted]

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

There is real concern that unregulated providers are currently operating services in Wales for looked after children and that this practice is not prevented by Welsh Government or Care Inspectorate Wales (CIW). If future registration with CIW was available only to 'not-for-profit' providers, can we be certain given the current situation that 'for-profit' providers would be prevented from providing services in Wales? How will the proposed legislation and regulation be fully enforced and managed?

There is concern that some for-profit providers will present a not-for-profit organisation for registration but through complex relationships with other profitable companies, profit will be extracted via management fees and other arrangements.

Analysis from Scotland where only not-for-profit organisations are permitted to provide foster care services shows that private sector providers have established charitable arms and, through substantial management charges or inter-company loans, they have grown the size of their market share. For-profits companies often have the resources to pay accountants and lawyers to get through the loopholes, and this should be planned for.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

A report by Cwmpas (formerly the Wales Co-operative Centre) for the Children's Commissioning Consortium Cymru (known as the 4Cs) on workshops held with businesses providing services for looked after children in Wales, in late 2021 and early 2022, found:

• The commitment in the Programme for Government has opened up a dialogue on what is acceptable as a profit. Service providers were shocked to learn about businesses that do generate huge profits from services describing it as 'immoral profiteering'.

• The most debated discussion topic was on the levels of profit generated from children's social care services. Workshop participants were surprised by the commitment to eliminate profit and saw it as a sweeping brush policy and requested further deliberation on profit.

• Workshop participants thought that commensurate profit was a recognition of the personal investment and risk individual founder-directors have committed to services for children and young people. There was agreement that returns should be proportional to the financial risk and personal endeavour directors make to deliver beneficial outcomes for the future lives of children in Wales.

• There was a strong sense that Welsh SME businesses in the sector need to be protected to deliver services for children rather than future services being delivered by providers from outside of Wales.

• A re-shaping of the Welsh sector should learn from the policy in Scotland where the larger private fostering agencies secured more of the market through establishing charitable arms of their businesses.

• There was a call for acknowledgement of the difference and diversity of the sector in Wales and for a greater empathy and support for the smaller service providers.

Participants were encouraged to use the workshop to open up the conversation and share innovative approaches; how could new opportunities be secured to sustain services focused on children's recovery and their future lives. 4Cs representatives confirmed the need for changes to existing legislation, during which providers can influence the regulatory framework to address prevailing

barriers in services. Workshop participants were asked, ‘how can we all work together to create positive change for the children’s care sector?’

Suggestions of current challenges that could be resolved through engagement with the Welsh Government include:

• Review of regulations to establish ‘protective factors’ for the Welsh businesses in residential and foster care services
• Jointly create a future business model specific for Welsh SMEs and future service options.
• Opportunity to resolve existing ‘frustrations’ of providers, i.e., how private-independent services work with/relate to local authority services.
• Effective representation for distinct types of children’s social care businesses in Wales.
• Lack of services for young people when they reach the age of 18 to transfer to adult services. This is a critical service at crisis point causing people to be stuck in care unable to move on.

Social value model of delivery

An approach to transforming social care is for commissioners, service providers and citizens to work together to co-design and deliver social value models in the care sector. This approach is being piloted in a few authorities in Wales in adult social care, but has potential to offer solutions to services for looked after children, to achieve greater outcomes and impact in their future lives. A social value model of delivery tends to lean towards a not-for-profit organisational approach to service delivery as not-for-profit organisation credentials sit with the five overarching principles of the Social Services and Well-being (Wales) Act:

Well-being outcomes: They do what matters - as people define it. If user-led, not-for-profits have more chance of having an understanding of "what matters".

Co-production: They mobilise people’s own opinions and assets – including community assets. Not-for-profits often have strong local connections. If user led or multi-stakeholder co-op, these assets are mobilised through membership.

Co-operation: They work with others for shared public benefit. Not-for-profits have local roots and their ethical values may encourage collaboration, if market conditions allows.

Prevention: They think long-term and act to reduce or avoid dependency. Not-for-profits have local connections and user/carer involvement encourage whole-life/whole population engagement.

Added Value: They strive to go beyond just delivering a contract. Not-for-profits' values and constitutions should encourage added value, but requires strong leadership.

In simple terms a social value model of delivery is about delivering ‘great social care and ’added value’, achieving the best outcomes for people and communities in both the short and long-term.

The Social Services and Well-being (Wales) Act seeks the transformation of social care in Wales so that it achieves two principal objectives:

• Services that achieve the well-being of people – adults and children: "what matters" to them as they define it
• Services that are sustainable despite demographic trends.

To achieve these two objectives, the Act promoted four headline principles

• well-being outcomes, co-production / voice and control, collaboration and partnership, prevention and early intervention,

and the three types of added value

• social, economic and environmental.

Together, these form the elements of the social value model of delivery. Everyone could be brought together to carry out a collaborative re-design of services in a locality. This should avoid reinforcing silos of isolated provision and encourage commissioners and providers and other organisations/groups that might be logical collaborators to work together in pursuit of shared goals and mutual benefit for the well-being of people in Wales.

Cwmpas work and report on transforming social care is commissioned by Welsh Government and endorsed by the National Commissioning Board - https://cwmpas.coop/social-value-in-social-care/

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

The current Programme for Government makes a commitment to ‘Eliminate private profit from the care of looked after children’. To do this we would need to define ‘Profit’ and ‘Not-for-Profit’. As part of those processes, we could list legal structures that include, or could include non-profit distribution clauses, for example:

• Charitable Company
• Charitable Incorporated Organisation
• Community Interest Company (Limited by guarantee)
• Community Benefit Society
• Co-operative Society.

More information of these structures can be found here: https://businesswales.gov.wales/socialbusinesswales/sites/socialbusinesswales/files/documents/Download%20a%20Guide%20to%20Legal%20Structures%20for%20Social%20Businesses%20%282021%29.pdf

Alternatively, if ‘Not-for-Profit’ is defined in legislation you could simply state that any organisation that wants to provide support to looked after children would need to have ‘Not for Profit’ distribution clauses written into their governing documents. There could also be a requirement for governing documents to include an ‘Asset Lock’ - this means that if the organisation is wound up then any assets left after the payment of any debts would need to be used solely to promote the aims and objectives of the organisation. This usually means giving any remaining assets to an organisation with similar aims and objectives.

The ’Asset Lock’ would work if the new not-for-profit organisation purchased (using debt finance) assets from the previous private sector organisation, which then appeared as an asset on the balance sheet (the purchase is part of the transitioning process from a private organisation to a not-for-profit organisation). If the asset remains in the ownership of the private sector organisation, for example it could be leased or loaned to the not-for-profit organisation in which case it would not appear on the balance sheet and would not be managed under the ‘Asset lock’.

Potential Co-operative Models - Currently the supply chain includes lots of small private sector providers who have the ability to extract profit as part of their business model. In order to retain some of these businesses in the supply chain, they could consider options to transition their model to a not-for-profit model. Some examples of potential models are provided below. There are a number of ways in which the co-operative model could be used in innovative ways to allow small private sector organisations to transition to ‘Not-for-Profit’ service models.

Employee Ownership

This model may be suitable for the transition of a private business to its employees. This would work where the exiting owner has an emotional connection to their workforce and wants to protect their jobs as well as look after the long-term interests of their residents (children). The business would be sold for an agreed price to an Employee Ownership Trust; the Trust will have independent Trustees as well as representatives from the workforce. The Trust runs the business with all profits going back to the exiting owner until they have received all of the purchase price for the business. In this scenario, this would not be distribution of profit but agreed delayed and staged payments to cover the sale of the business. When the exiting owner has been fully paid then profit could be re-invested into the business to sustain or expand it. If the exiting owner was not prepared to wait for their capital from the sale of the business, then debt capital would need to be sought from Development Bank for Wales, for example. This could be achievable particularly if the business includes physical assets that any loan provider could take a charge on. In this model the business would need to be in a good financial position to service the debt.

We know that there are multi-faceted benefits to employee ownership that are particularly relevant to the social care sector. Giving genuine power and control to the experts, those delivering care, will lead to a higher quality of care being provided. Empowering workers in this way will also give them better working conditions and lead to better responses to problems such as as the recruitment and retention

crisis in the sector. For the communities they operate in, employee ownership leads to businesses being anchored and embedded, and more likely to distribute money and supply contracts to local businesses and building community wealth. More evidence of this can be found here: https://employeeownershipwales.co.uk/employee-ownership/

Consortia Co-operative

If there is a number of small private sector organisations currently working together and there is trust between them, they could potentially consider developing a consortia co-operative. This would be a separate legal entity owned by the individual businesses, which would become the members of the co-operative. The consortia could include 'Not-for-Profit' distribution clauses within its governing document, this would mean that any profits made by the consortia would be re-invested to achieve the agreed 'Objects' of the consortia. Members would agree those objects and would be expected to include references to supporting 'Looked After' children.

The consortia co-operative could bid for contracts as a non-profit distributing body. It would sub-contract service delivery to its individual member businesses. It could be stipulated in the sub-contract that the service is delivered on a full cost recovery basis, which could include a management fee for delivering the contract. This means that guidance would need to be provided to members of the co-operative on the acceptable level of management fee in delivering services. One of the benefits of this suggested model is that assets can remain within the ownership of current providers meaning that costly asset transfer doesn't need to be financed.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

We do not take a strong position on this, but would like for the principles of engagement and consultation with the sector to be embedded in the process before any subsequent amendments can be made.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

We believe the priority should be for a successful transition to a not-for-profit sector to be achieved. If the process is rushed, and does not address potential unforeseen or unintended consequences, the sector could be destabilised or under-resourced. This could have an impact on the quality of care for looked after children in Wales and/or the working conditions for those delivering care. Therefore, it is important that the necessary time is taken.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

We know that strong guidance is an important part of the process for implementing policy across different organisations and areas. For it to be most successful and useful, there will need to be regular evaluation and dialogue with the sector. We believe guidance should be about principles, rather than being overly-specific or prescriptive. Effective guidance should acknowledge local contexts, but give an effective framework for understanding and implementing the policy and legislation.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No Response

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of ‘Care’ for children and young people: Do you agree with the proposal to adjust the definition of ‘care’ in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being ‘care’ within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:	[redacted]
Organisation (if applicable):	Cwmpas
E:mail:	[redacted]
Telephone:	[redacted]
Your address:	[redacted]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[redacted]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No Response

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No Response

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

No Response

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No Response

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Whilst there isn't a great deal that I disagree with when considering this element of the legislation's proposals, there is a risk that imposing a duty to report a child at risk directly on individuals presents some workability issues. There needs to be certainty with these proposed changes that it doesn't present risks of coercion for those who work in childcare settings, but that it helps to educate and inform those who are reporting those at risk. We would be supportive in principle of moves towards mandatory reporting of allegations but would have concerns as to how this is practically defined and applied across all aspects that the legislation covers. We do not believe that those in faith settings should be treated any differently from others in this regard.

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

With mandatory reporting in place, individuals may be coerced into reporting matters of abuse based on suspicion. This presents a rather risky approach, as the reporting of suspicions to the statutory authorities is a more fraught area as suspicions are by definition much more subjective. We would be supportive of clearer guidance for all volunteers and staff as to how to respond to suspicions.

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

The childcare that most faith settings provide, fall outside of the requirements of the Children and Families (Wales) Measure 2010. For the faith settings that provide childcare and play and aren't exceptions to these measures, we don't oppose the introduction of mandatory reporting. In this response however, we would like to highlight this matter that most faith settings needn't register as childcare and play providers due to their exemptions from the Children and Families (Wales) Measure 2010, so that those faith groups aren't mistakenly caught out and potentially confused by these proposals.

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

We do not wholly disagree with the proposal to extend the definition of 'social care worker' to include both childcare and play workers, as the number of those in faith settings which this might affect would be slim. This is because the childcare that most faith settings provide, fall outside of the requirements of the Children and Families (Wales) Measure 2010. For the faith settings that provide childcare and play and aren't exceptions to these measures, we agree that their work should be registered and we wouldn't oppose the extending of the role of Social Care Wales. In this response however, we would like to highlight this matter that most faith settings needn't register as childcare and play providers due to their exemptions from the Children and Families (Wales) Measure 2010, so that those faith groups aren't mistakenly caught out by these proposals.

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:	Nathan Sadler
Organisation (if applicable):	Evangelical Alliance Wales
E:mail:	[redacted]
Telephone:	[redacted]
Your address:	[redacted]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

n.sadler@eauk.org

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No, as an experienced and registered social work leader with 24 years in the sector, I believe excluding for-profit providers is a misuse and misunderstanding of the role of a regulator of services for children and families:
CIW are an independent body whose role is to ensure that children and young people are cared for to the highest standards of social work practice as follows:
‘We register, inspect and take action to improve the quality and safety of
services for the well-being of the people of Wales’
CIW are a regulating body that expects agencies to be complaint with regulations and legislation. They expect providers to continually improve, to achieve the best possible outcomes for children and young people and to ensure that those important to children and young people are listened to when decisions are made about where and with whom children live. As an independent regulating body, their role is to ensure that children and young people are having their needs met to a high standard, separate to political agendas and concerns which change over time. The issue regarding whether the agency is profit or non-for profit should play no role in their rigorous inspection of providers. Involving the regulator in the politics of children’s services will be extremely damaging to the sector, forcing CIW to give up its sole focus and neutral stance of assessing the quality of care and compliance/adherence to regulations.
Our view is that if an agency is owned by investors then there is more opportunity for continual improvement, as investors have the capacity to bring funds into the sector, offering financial support to increase quality. Investors understand that striving for excellence will keep children safe, retain the best staff and result in a higher financial return. Independent agencies have more capacity for innovation and service development, and as such are also known to develop faster and make changes quicker based on the business approach. CIW have a critical role to ensure that commercial concerns are never prioritised above children’s needs, but this would happen through the usual inspection framework.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

In order to run an agency to the highest standard of quality, financial investment is required. The Independent sector have for many years taken more difficult to place children (e.g. children with therapeutic needs, older children) and invested in additional training and support to foster carers in order that they can respond well to increasingly complex needs, for examples safeguarding risks to children from outside the home such as CSE and county lines, exacerbated in recent years by the use of mobile phones and social media channels . It is an accepted fact by placing authorities that children and young people assessed as suitable for foster care risk being placed in a residential setting due to complexities of need or challenging behaviour. This takes children away from a domestic family environment and places them inappropriately in an institution away from the routines and consistent relationships of family life. Independent fostering agencies, unlike in-house Local Authority fostering teams, are able to more consistently fund and staff a Team around the Child approach, including regular respite, day-care, support work or specialist therapeutic interventions Having run a successful independent fostering agency for many years it is also apparent that the agency funds additional costs, arguably more than the placing authorities are aware. Examples include higher levels of respite and sessional support to sustain foster placements, not only funding this but ensuring there is flexible step-up and step-down resource available. Without such support, children with more complex needs would continue to experience multiple fostering breakdowns. In the last four years, our agency has increased their numbers of complex/therapeutic placements/packages of care due by 41% to the presenting needs of children in Wales. This increase clearly demonstrates the complexity of children placed but also highlights a deficit in CAMHS provision. With many children and young people placed in our care who have waited over 2 years for therapeutic intervention from CAMHS, a Team around the Child approach which includes consistent respite carers is able to support more challenging children and young people. There is an overt dislike of ‘for profit’ organisations politically without an acknowledgement of the amount of spend ‘put back’ into the care of children and young people.

Our agency supports children in therapeutic placements within a robust clinical framework, overseen by qualified, registered and experienced health professionals such as Clinical Psychologists and Family Therapists. In addition we offer additional training to our carers, social workers and support workers to ensure they are resourced to support the emotional and behavioural needs of children (e.g. trauma-informed approaches). Carers and staff are also offered robust clinical supervision to ensure that the professional network around the child are appropriately supported.

It is also worth noting that Local Authority in-house fostering teams tend to have much higher caseloads than within the Independent sector, in the last 12 months we have recruited two social workers from two different Local Authorities both citing they were carrying a caseload of 27-30. Within the independent sector it is common to carry a maximum of 12 or less, which allows individual Supervising Social Workers the time to offer responsive, robust and sufficient support to foster carers and children when they need it. For example, our own agency visits and supervises foster carers fortnightly not monthly to ensure that the placement is resourced and stabilised through more intensive social work input. This increased resource leads to increasing the resilience of foster carers to parent therapeutically, manage and debrief incidents more effectively thus reducing the risk of placement breakdowns.

Specifically, our agency visits foster carers fortnightly and sees the children and young people very regularly. Feedback from some of our foster carer population in recent years is that they do not see the child’s LA social worker regularly, therefore the issues of contact, education or behavioural management remain unaddressed. The foster carer then understandably assumes that the agency will manage such issues to compensate for this deficit. Our agency offers ongoing support to foster carers, to ensure they are adequately resourced to offer a responsive and therapeutically-informed foster home to the child/young person.

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

Impact on service capacity, choice of provision, workforce and employment There appears to be a lack of recognition for the complexity and behaviour of children and young people being placed, and the attendant amount of cost expended by the independent sector in order to sustain foster placements which properly support children with complex histories and multiple needs. Examples of this are additional specialist funding, specialist training programmes for Foster Carers who require support, high levels of respite with a consistent respite carer to ensure high quality (this adds to the cost for the agency and not the placing authority). IFAs frequently purchase additional equipment for carers as the Local Authority are not in a position to fund it. However, this is also causing many long term foster placements to become unsettled as many of our foster carers are becoming disillusioned and frustrated as they feel they have been advocating strongly but that children and young people are not receiving the support they require from their local authority social workers.

The issue above is just one example of how we believe the independent sector remains flexible and responsive to the needs of children and carers in a challenging environment.

To answer the question of restricting amounts or direction of trading surplus – no we do not believe a restriction should be implemented as this would impact heavily on the high quality service we are delivering to children and young people. There is a risk that independent agencies would have legal or constitutional difficulties if their organisations were subject to new restrictions on trading surplus.

As noted above, it should also be acknowledged there appears to be a number of shortfalls within local authorities, for example regarding lack of LASW visits, unallocated cases, significant delays in safeguarding processes and court hearings. In this challenging context, the Independent sector broadly ensures that funding is available when required. Our workforce of registered and qualified social workers (as well as family support workers and therapists), are emotionally invested in caring for children, and will not leave a child or carer without essential resource, and we have multiple examples of stepping in to support when children require a service that the LA is not in a position to provide the agency can. For example, funding school trips, moving on for independence, moving onto university, moving on to the armed forces, all examples of where the agency is continually utilising ‘surplus’ in the best interests of children and young people.

At a strategic level, placing restrictions on private companies regarding the levels of surplus they can hold or dictating where surplus is and is not to be spent, would be legally complex and virtually impossible to administer and monitor robustly. The risk of this approach would be significant and intense dis-investiture in the Welsh children’s services economy which would have immediate and significant negative ramifications, in turn impacting economically at a national level.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

In short, no we do not, if the Welsh government proceed with this legislation it runs the risk of forcing the independent sector to leave Wales. There is a national shortage of foster carers whereby both Foster Wales and independent agencies are struggling to approve foster carers. If the independent sector reduces due to such legislation it is only children and young people who suffer. Placing authorities require a diverse group of foster carers within a mixed and diverse economy whether they are local authority approved or the independent sector. Such legislation is going to run the risk of removing choice. Fostering is about choosing the right match in order that children and young people can reach their full potential. A diverse group of foster carers is required to meet a diverse group of children and young people. Whilst there is clearly discomfort regarding profit in the children’s sector, our view is that it is being looked at in isolation. Research and consideration should be given to the outcomes achieved, the fact that the independent sector are committed to keeping children safe and more importantly giving them an opportunity to reach their full potential. There appears to be a lack of awareness with regards to the fact that staff running the agencies are experienced Social Work practitioners who are emotionally invested into making a difference. The fact that the agency is a ‘profit’ agency or a business means that resources may be more accessible and rapid responses are available to sustain foster placements.
Similarly, misconceptions exist about not-for-profit organisations being cheaper and that all monies spent with them are go directly to local service delivery. This is simply not true – the larger charities in particular have many other costs – well-resourced national infrastructure costs such as regional management teams and large Headquarters, usually in London, as well as significant multiple costs for sector lobbying, campaigning and fundraising activities. The larger charities have had a sophisticated understanding for many years now of ‘Full Cost Recovery’ as championed by ACEVO, alongside the need to fund their strategic change agendas.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

It is our opinion that that the timescales are far too ambitious. Whilst Foster Wales is investing substantial amounts of resource into recruiting foster carers, it appears that the infrastructure is not ready to take the lead on accommodating high levels of CLA, having been present at a number of work stream meetings regarding this matter. Almost all Heads of Service for Welsh Local authorities have raised concerns that their Local Authorities are not ready and not equipped to accommodate the shortfall if the independent sector chose not to proceed with a non-for profit model. All authorities are experiencing a sufficiency gap. Suggestions have been made by WG that adoption can be fast-tracked, revocation of care orders can be fast tracked and this will stop the number of children needing to be cared for. It is our view that the placing authorities require time to ‘reform’ before they can offer such services. As an independent agency we aware that children are not being visited regularly by the placing authorities, and some allocated Social workers are actually living in North West England but allocated to supervise children placed in South Wales. Serious Case Reviews have increased considerably in Wales, resulting in negative media coverage for the whole sector. Sector intelligence suggests that LA social workers are overworked and feeling extreme pressure, particularly during and in the aftermath of Covid-19. Having worked and led an agency in Wales for 24 years I am aware that my social workers are caseload-protected with manageable caseloads thus increasing quality and ensuring stability. To move forward in the timescales stipulated appears very premature. Whilst WG have a ‘social care reform’ campaign, it does not take into consideration that Social Care workers are struggling post Covid, it is difficult to recruit and maintain staff and there appears to be a decline in the people choosing to become social workers. Our suggestion is that these sector workforce and sufficiency issues should be resolved first, and the workforce is stabilised, upskilled and bedded in before implementing something so ambitious.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

As above, there is significant issue with regards to allocation of LA social workers for children within Wales. There are high expectations on Independent providers to 'social work' many of the children and young people placed (despite not being the corporate parent). Court cases are being delayed whether care proceedings or SGO, children are being left long term where they should be adopted, but lack of social work resource is impacting on this. There also appears to be an inconsistent approach with regards to 'When I am Ready' (WIR) in Wales with only a minimal number of local authorities willing to fund the programme therefore leaving vulnerable young people without services. What is not overtly understood across the sector is that many of the independent fostering agencies in Wales continue to support WIR placements, despite the agency not receiving any income. This is likely to be due to the fact that the foster carer has another child placed. For many years there appears to have been a lack of acknowledgment that although young people are 16 or 18 and not legally 'accommodated' it doesn't meant that their needs have diminished or that they no longer require support from someone that has been acting as their parent for many years. Sector research clearly details that care leavers are left falling off a 'support cliff' post-18, yet our agency works hard to support carers to remain connected to their young person whilst they transition to independence, promoting that attachments and relationships continue as they would for any non Child Looked After.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Guidance is always required with regards to any legislation – without such is leaves room for misinterpretation.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Our view is that this is going to place children and young people at risk, it removes the choice and fostering is all about matching and meeting the needs of children and young people. Consideration should also been given to the fact that for-profit organisations are able to deliver to high quality services. (this is not to suggest that non- for profit do not) but it does allow funding to be readily available to meet the specific needs of children and young people.
In particular:
• Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

Whilst it may support the WG to deliver the commitment it is not going to allow choice and runs the risk of not finding the right foster placement for children and young people. The cost of the political agenda would be firmly met by children not getting the right support and access to a range of support to meet their needs. Children with more complex needs and older children would pay the highest price as they would be disproportionately impacted were for-profit providers to be restricted or decide to disinvest in Wales.

• What would be the benefits, disbenefits and other implications of such an approach?
A high percentage of fostering providers may withdraw from the market and start to offer placements to the English authorities only. Foster Carers end their employment to foster and dedicate their lives to fostering. Many are loyal to their agencies and would not consider fostering for an LA, running the risk of even less foster carer capacity across Wales. Many of our foster carers tell us they stay with us because we offer more support and can be more flexible in meeting the needs of the children and carers than a Local Authority. They also tell us they stay with us because we have low social work turnover which is not the case for many Local Authorities. We are not sure what the benefits would be as the elimination of profit means unsettling the sector and more importantly unsettling the lives of vulnerable children and young people.

• What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

This is a very difficult question to answer when we are seeing high numbers of social work churn in the local authority staff shortages, people working hybrid since Covid plus a reform timetable that is very ambitious. We do not think this is realistically achievable by 2025. Whilst the WG may feel it is achievable to implement the legislation by then, we think there is clear evidence that the workforce and the overarching care system are not ready to accommodate vast levels of CLA if privately owned fostering organisations make a decision to redirect resources and commitment to providing fostering placements to English authorities. Our concern is the impact on those children and young people currently placed.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

Having worked closely with a number of providers over many years, as well as seeking the views of our supportive representative body, it appears that there could potentially be a legal challenge with regards to elimination of profit, particularly with regards to procurement legislation. However, this has not yet be confirmed – it has merely been discussed at this stage and as an agency we look forward to the preliminary legal findings.
Are there any actions which would guard against such activity?

Legislation and the law is as it stands. I am sure the profit organisations will continue to work closely with their representative bodies to confirm if there is any challenge.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

As an agency that has specifically recruited first language Welsh staff to meet the needs of first language Welsh foster carers and more importantly to meet the needs of children and young people placed who are either first language Welsh or learning Welsh, we are concerned that this may impact negatively. As a profit agency we invest resource into ensuring we adhere to the ‘active offer’ legislation – there is a concern that this may be lost if there is instability within the sector. If Welsh IFAs move to offering out-of-area placements to English children from English LAs as a way to continue trading, this would reduce the number of Welsh speaking children and carers within our services.

What effects do you think there would be?

As above lack of investment (within the fostering sector) of active offer if the profit agencies are not stable.

How could positive effects be increased, or negative effects be mitigated?

Positive effects could be increased further by investment, something the profit agencies are willing to provide. The elimination of profit campaign runs the risk of pushing profit agencies out of Wales and into England, this is not only reducing the opportunities to support the Welsh language but significantly reducing the sufficiency numbers for Welsh children. With a national shortage of foster carers anyway across Wales, this is a concern.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

no comment

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

n/a

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:	Sharon Cavaliere on behalf of Calon Cymru Fostering
Organisation (if applicable):	Calon Cymru Fostering
E:mail:	sharon.cavaliere@caloncymrufostering.co.uk
Telephone:	[redacted]
Your address:	UNIT 12

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

sharon.cavaliere@caloncymrufostering.co.uk

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No Response

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No Response

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

No Response

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No Response

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

I work as a Social Care Team Manager, in adult services. I agree with the proposals as it will improve voice, choice and control for individuals whose needs are over and above what can be provided by a social care package.
Often individuals will decline a CHC assessment because they do not want to lose their regular carers. These Personal Assistants or care agency staff would have worked with individuals for years and therefore are experts in the delivery of their care.
When individuals are confirmed to have a primary health care need choices are often limited to care at home provided by the District Nursing Service or nursing placement. Whilst these options are appropriate for some individuals, they are not always appropriate options for all.
Whilst care from health professionals can be positive and work for some individuals, the care delivered is often prioritised based on need. This can then impact on individuals having to wait in/or delay the start of their day. Direct Payments for health will provide greater, voice choice and give individuals greater choice, in terms of how and when their care is delivered.
I also believe that in the current climate the proposal may help with the recruitment of Personal Assistants. Currently employment ends once CHC status is confirmed. The new proposal will provide greater job security.
This legislative change will reduce the number of times that an individual has to tell their story and assist with transition. Health Professionals already train family members to assist with health tasks. The third party delegation framework, details examples of case studies and care and support plans, which I feel would assist and provide interim options.
Local Authorities have been administering Direct Payments for many years. I believe that the current system for facilitating Direct Payments could be utilised as a single system for Social Care and Health Direct Payments. Individuals I believe are also paying for care, which should be free from the point of delivery.
I believe that the proposed changes will help individuals to live the best life that they can by providing flexibility and greater choice.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

There is an overlap with suggestions as sated above, but in addition I think that Direct Payments for health will also benefit unpaid carers. Currently unpaid carers are meeting health needs, so that individuals, have the flexibility to live their lives and ensure that their day is not delayed whilst waiting at home for their health care to be delivered. A small package could prevent carers reaching crisis point whilst providing breaks so that admission into care home settings is delayed.
Continuity of care will also be improved upon with individuals having a team wrapped around them, who are experts in the delivery of their care. This includes personal assistants, agency staff and social care staff. I would agree that their needs to be health oversight, but this could work in collaboration with social care staff.
The current assessments could be developed to detail changes in needs so that individuals only have to tell their story once. This would reduce the amount of paperwork required and reduce administration costs. The introduction of direct payments would also help in terms, of Nursing resources, by transferring tasks to personal assistants where it is safe to do so, which will increase Nursing capacity. The cost associated with employing a Personal Assistant is less than the Nursing hourly rate. All local Health Boards will need to be mindful of cross border arrangements and transition and make allowances for anyone moving around Wales that their Direct Payments continues until a suitable time to review. I was part of the stakeholder group, where it became apparent that there is a different interpretation of the current CHC policy in some areas. It has been useful to have wider discussions and share examples of practice, which are being implemented in some areas with a degree of creativity so that we ensure that we continue do the right, thing for individuals. It is important that we continue to share these examples.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

The Independent User Trusts are an interesting interim option, which has been discussed as a possible interim option in the recent stakeholder groups. However, I feel that deferred direct payments, with joint working is the best interim option. The individual's package of care would continue with the introduction of a health professional/if not already identified and working as part of the MDT. Social Care Direct Payment process/ governance is already insitu and could be adapted if needed.

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

My view is that culture needs to change. Often a CHC assessment will start with a nursing assessment, which does not always capture therapeutic needs. This would be relevant for individuals with neurological needs. Often individuals are of the opinion that should they progress a CHC assessment, that the package of care will reduce. The revised offer should include a rationale if services are reduced.

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

Joint training should be delivered to both health and social care staff. During the consultation it was confirmed that the Third Party Delegation Policy could be deployed as an interim arrangement. This approach is not consistently being implemented across all LHBs, which limiting individuals, choice in terms of how they want their services to be delivered. In the absence of family members/unpaid carers options to the individual are limited.

We have to ensure that that we have a confident, robust workforce so that consistency of an active offer is available to all who wish to progress a direct payment. Joint training and process are key but also joined up pooled budgets would help to reduce some of the current barriers.

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

My view would be that Welsh context extends further than Welsh Language. For example, individuals with complex needs want to access services in their local areas alongside local people. I believe that whilst individuals have complex needs, it remains that they have many strengths and capabilities. There are so many people who I consider as ‘jewels in the community’ whilst they may have some difficulties, they also have many strengths, which can contribute to the wellbeing of others. A social care package is portable, which means that your package of care is transferrable, whether you are at home or decide to take a short break. Whilst not standard practice, we once arranged for a CHC recipient who had complex needs to have a regular holiday, this was supported through his CHC package by his regular carers. The cost of the package was significantly less than a placement but more importantly whilst meeting his health needs, safety was maintained whilst supporting the individual to continue to participate in activities interest to him. Flexibility and availability of Direct Payments for health would provide equity of opportunity for disabled individuals.

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please see above

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No Response

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No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

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Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of ‘social care worker’ to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: [redacted]

Organisation (if applicable): [redacted]

E:mail: [redacted]

Telephone: [redacted]

Your address: -

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[redacted]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Comisiynydd Pobl Hŷn Cymru
Older People's Commissioner for Wales

Newidiadau arfaethedig i ddeddfwriaeth ar ofal cymdeithasol a gofal iechyd parhaus

Tachwedd 2022

Rhagarweiniad

Mae Comisiynydd Pobl Hŷn Cymru yn croesawu'r cyfle i ymateb i ymgynghoriad Llywodraeth Cymru ar newidiadau arfaethedig i ddeddfwriaeth ar ofal cymdeithasol a gofal iechyd parhaus. Hoffai'r Comisiynydd gynnig sylwadau am y meysydd penodol sydd wedi eu nodi isod.

Cyflwyno Taliadau Uniongyrchol ar gyfer Gofal Iechyd Parhaus y GIG

Mae'r Comisiynydd yn cytuno mewn egwyddor gyda chynnig Llywodraeth Cymru i alluogi byrddau iechyd i wneud taliadau uniongyrchol i bobl sy'n gymwys i gael Cyllid Gofal Iechyd (GIP) Parhaus y GIG.

Mae'r Comisiynydd yn ymwybodol o bobl hŷn sydd wedi gorfod dewis rhwng parhau gyda Thaliadau Uniongyrchol neu dderbyn cyllid GIP. Mewn achosion o'r fath, nid anghenion yr unigolyn sydd wedi cael y flaenoriaeth bob tro: er enghraifft, pan fu anghytuno rhwng gwahanol gyllidwyr ynghylch pwy ddylai dalu, a lle mae Byrddau Iechyd wedi awgrymu bod angen i unigolion newid lleoliadau gofal er mwyn cael y cyllid GIP y mae ganddynt hawl i'w dderbyn. Gallai hyn olygu symud o'u cartref eu hunain, neu i gartref gofal gwahanol[1]. Mae'r Comisiynydd yn disgwyl y byddai cyflwyno Taliadau Uniongyrchol ar gyfer GIP yn arwain at sicrhau gofal di-dor sy'n canolbwyntio ar yr unigolyn ar gyfer pob person hŷn sydd ei angen.

Fodd bynnag, mae gan y Comisiynydd bryderon ynghylch sut mae Taliadau Uniongyrchol yn gweithio'n ymarferol ym maes gofal cymdeithasol, ac am risgiau sy'n rhan annatod o unrhyw gynllun taliadau uniongyrchol GIP.

I gael rhagor o wybodaeth, cysylltwch â:
New, Teitl Swydd: Valerie Billingham, Arweinydd Iechyd a Gofal
03442 640 670 // cyfeiriad ebost Valerie.billingham@olderpeople.wales

Nifer y bobl hŷn sy'n eu derbyn

Mae'r nifer sy'n derbyn Taliadau Uniongyrchol mewn gofal cymdeithasol yn isel ymhlith pobl hŷn. Yn ôl Archwilio Cymru ychydig dros draean o'r rheini sy'n cael Taliadau Uniongyrchol (36.1%) sydd dros 65 oed, er bod y grŵp oedran hwn yn cynrychioli dros 75% o oedolion sy'n derbyn gwasanaethau cymdeithasol. Rhaid i daliadau uniongyrchol ym maes iechyd a gofal cymdeithasol gynnwys darpariaethau i helpu mwy o bobl hŷn, gan gynnwys gofalwyr a phobl sy'n byw â dementia, elwa o hyblygrwydd Taliadau Uniongyrchol heb gael eu llethu â chyfrifoldebau anghyfarwydd a beichus ar ben y materion y maent eisoes yn cael trafferth a nhw.[2]

Cyflenwi gwasanaethau gofal a chymorth

Weithiau mae awdurdodau lleol yn cynnig taliadau uniongyrchol i bobl hŷn fel cam olaf, yn enwedig mewn ardaloedd gwledig, lle mae problemau penodol i gael gofal cartref. Nid yw Taliadau Uniongyrchol yn llenwi'r bwlch yn lle cyflenwad digonol o wasanaethau gofal a chymorth. Mae llwyddiant Taliadau Uniongyrchol yn dibynnu ar ffynonellau cymorth sefydlog o fewn cymunedau y gellir cyfeirio pobl atynt, neu y gallant gael mynediad atynt yn uniongyrchol.

Goruchwylio a monitro

Mae GIP yn cael ei roi i bobl sydd ag anghenion gofal cymhleth. Os yw pobl yn prynu gwasanaethau i ddiwallu unrhyw anghenion eu hunain, mae'n bwysig bod y bwrdd iechyd yn goruchwylio a monitro'r gwasanaethau hynny'n briodol, er mwyn sicrhau bod y gofal a'r gefnogaeth a ddarperir yn ddigonol.

Ffioedd atodol

Mae'r Comisiynydd yn siomedig gydag ymateb Llywodraeth Cymru i argymhellion 11 a 12 yn adroddiad Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus y Senedd ar Gomisiynu Cartrefi Gofal[3], ac mae'n bryderus dros ben am y risg y gallai pobl hŷn orfod talu ffioedd atodol er mwyn cael mynediad at wasanaethau hanfodol a dalwyd amdanynt gyda thaliadau uniongyrchol GIP.

Mae tîm Cyngor a Chymorth y Comisiynydd wedi derbyn sawl ymholiad gan unigolion â pherthnasau sy'n byw mewn cartrefi gofal ac sydd wedi cael cais gan ddarparwr cartref gofal i dalu ffioedd atodol ar ben cyllid Gofal Iechyd Parhaus gan y Bwrdd Iechyd. Roedd y rhesymau a roddwyd gan y darparwr dros godi'r ffioedd atodol yn anghyson. Dywedodd y rhai a holodd eu bod wedi cael gwybod bod y ffioedd ar gyfer manteision ychwanegol fel mynediad i'r ardd (nad oedd modd i'r preswylwyr dan sylw, a oedd wedi'u cyfyngu i'r gwely â dementia diweddarach ac yn agosáu at ddiwedd eu hoes, eu defnyddio), neu i gael

cwmni wrth ymweld â meddyg teulu, (y mae'r Comisiynydd yn eu hystyried yn hanfodion, nid yn fanteision ychwanegol). Fodd bynnag, mae'r Comisiynydd wedi gweld llythyr gan reolwr cartref gofal sy'n dweud bod y ffioedd yn cael eu codi oherwydd nad oedd cyfradd y Bwrdd Iechyd ar gyfer cyllid Gofal Iechyd Parhaus yn ddigonol i dalu costau.

Mae'n destun pryder bod preswylwyr a'u teuluoedd wedi cael trafferth herio ffioedd atodol cartrefi gofal. Gall unigolion fynd ag achosion at Adrannau Safonau Masnach awdurdodau lleol er mwyn iddynt weithredu, a gallant gymryd camau cyfreithiol eu hunain. Fodd bynnag, mae cyllid cartrefi gofal yn faes cymhleth, ac nid yw lefel yr arbenigedd sydd ei angen bob amser ar gael. Mae hyn yn golygu mai cynrychiolaeth gyfreithiol bersonol yw'r llwybr mwyaf tebygol, ond mae'n gostus ac yn anodd dod o hyd i gyfreithiwr priodol.

Er gwaethaf ymyriadau gan y Comisiynydd gyda'r Bwrdd Iechyd a'r darparwr, ac er gwaethaf trafodaethau helaeth rhwng tîm y Comisiynydd a'r Awdurdod Cystadleuaeth a Marchnadoedd, ymddengys nad oedd modd gwneud iawn ac roedd y darparwr yn parhau i godi'r ffioedd atodol. Mae hyn yn bryder difrifol. Mae'n hanfodol bod unrhyw un sy'n talu am wasanaeth gyda Thâl Uniongyrchol GIP yn cael ei warchod rhag gorfod talu ffioedd atodol heb gyfiawnhad, ac y dylai fod system hyfyw ar gyfer gwneud iawn.

Dyletswydd i adrodd am oedolyn mewn perygl

Mae'r Comisiynydd yn cefnogi'r ddyletswydd sefydliadol bresennol i adrodd am oedolyn sydd mewn perygl o dan adran 128 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014, sy'n ei gwneud yn ofynnol i 'bartneriaid perthnasol' awdurdod lleol, megis yr heddlu, gwasanaethau prawf, Bwrdd Iechyd lleol neu Ymddiriedolaeth GIG, Gweinidogion Cymru neu Ysgrifennydd Gwladol (wrth gyflawni rhai swyddogaethau) ac awdurdodau lleol eraill, adrodd am oedolion sydd mewn perygl yng Nghymru. Fodd bynnag, mae gan y Comisiynydd sawl pryder ynghylch cyflwyno gofyniad cyfreithiol i rai unigolion roi gwybod am oedolyn sydd mewn perygl.

Yn gyntaf, mae'n bwysig cydnabod hawliau ac annibyniaeth pobl hŷn sydd mewn perygl o gael eu cam-drin neu sy'n cael eu cam-drin. Bydd i ba raddau y gall pobl hŷn fod yn rhan o wneud penderfyniadau a phenderfynu ar gamau sy'n gysylltiedig â cham-drin, yn dibynnu ar sawl ffactor (e.e., ystyriaethau capasiti meddyliol; a yw'r pryder diogelu yn ymwneud â mater budd y cyhoedd). Yn gyffredinol, fodd bynnag, rhaid rhoi ystyriaeth lawn i ddymuniadau a dewisiadau pobl hŷn wrth benderfynu ar gamau ynghylch pryderon diogelu. Mae risg y bydd 'dyletswydd i adrodd' yn arwain at wthio lleisiau pobl hŷn i'r cyrion mewn prosesau diogelu.

Er mwyn i ymyriadau diogelu fod yn effeithiol, rhaid caniatáu i ymarferwyr arfer eu galluoedd gwneud penderfyniadau proffesiynol a gwneud dyfarniadau yn unigol, ar sail y wybodaeth a gafwyd drwy eu perthynas ag unigolion a theuluoedd. Gallai gofyniad am 'ddyletswydd i adrodd', yn enwedig os caiff ei orfodi drwy sancsiynau, gymell pobl hŷn i beidio â datgelu achosion o gam-drin yn gynnar, a allai fod wedi helpu i atal achosion o gam-drin rhag gwaethygu.

Gallai ofn sancsiynau hefyd arwain at arferion anghymesur, gwrth-risg lle mae ymarferwyr yn adrodd pob pryder am gam-drin, heb ymchwilio'n llawn i fanylion sefyllfa. Gallai adrodd cynamserol niweidio perthnasoedd, y rhai rhwng pobl hŷn ac ymarferwyr a rhwng pobl hŷn ac aelodau ehangach o'r teulu, mewn ffyrdd a allai waethygu, yn hytrach na dileu cam-drin.

Diwygiadau i reoleiddio darparwyr gwasanaethau, unigolion cyfrifol a'r gweithlu gofal cymdeithasol

Mae'r Comisiynydd yn cytuno â'r cynigion i ganiatáu i Arolygiaeth Gofal Cymru gael mynediad at wybodaeth a mynd i mewn i safle gwasanaeth, sy'n ymddangos heb ei gofrestru (yn groes i'r gofynion). Mae hyn yn hollbwysig i sicrhau bod y rhai sy'n derbyn y gwasanaeth hwnnw yn cael y gofal a'r cymorth priodol.

Byddai'r Comisiynydd a'i thîm yn hapus i drafod y sylwadau hyn ymhellach.

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[1]Comisiynydd Pobl Hŷn Cymru, Comisiynu cartrefi gofal i bobl hŷn, ymateb i'r ymgynghoriad ym mis Mai 2022 - Comisiynu cartrefi gofal i bobl hŷn - Comisiynydd Pobl Hŷn Cymru

[2]Archwilio Cymru, Taliadau Uniongyrchol ar gyfer Gofal Cymdeithasol i Oedolion, Ebrill 2022 Taliadau Uniongyrchol ar gyfer Gofal Cymdeithasol i Oedolion (archwilio.cymru)

[3] Julie Morgan AS, Dirprwy Weinidog Gwasanaethau Cymdeithasol, Ymateb i Adroddiad Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus y Senedd ar Gomisiynu Cartrefi Gofal, Hydref 2022 ATODIAD 7 – Fformat Ymateb y Cabinet i Adroddiad y Pwyllgor Archwilio

Comisiynydd Pobl Hŷn Cymru

Mae Comisiynydd Pobl Hŷn Cymru yn llais ac yn eiriolwr annibynnol ar gyfer pobl hŷn ledled Cymru.

Mae'r Comisiynydd yn gweithredu i ddiogelu a hyrwyddo hawliau pobl hŷn, rhoi diwedd ar oedraniaeth a gwahaniaethu ar sail oedran, atal cam-drin pobl hŷn, a galluogi pawb i heneiddio'n dda.

Mae'r Comisiynydd yn gweithio i sicrhau Cymru lle mae pobl hŷn yn cael eu gwerthfawrogi, lle mae hawliau'n cael eu cynnal a lle nad oes neb yn cael ei adael ar ôl.

Sut i gysylltu â'r Comisiynydd:

Comisiynydd Pobl Hŷn Cymru
Adeiladau Cambrian
Sgwâr Mount Stuart
Caerdydd
CF10 5FL

Rhif ffôn: 03442 640 670

E-bost: gofyn@comisiynyyph.cymru

Gwefan: www.comisiynyddph.cymru

Twitter: @comisiwnphcymru

Comisiynydd Pobl Hŷn Cymru
Older People's Commissioner for Wales

Proposed changes to legislation on social care and continuing health care

November 2022

Introduction

The Older People's Commissioner for Wales welcomes the opportunity to respond to the Welsh Government's consultation on proposed changes to legislation on social care and continuing health care. The Commissioner would like to offer comments on the specific areas set out below.

Introducing Direct Payments for NHS Continuing Health Care

The Commissioner agrees in principle with the Welsh Government's proposal to enable health boards to make direct payments to people who qualify for NHS Continuing Health Care Funding (CHC).

The Commissioner is aware of older people who have had to choose between continuing with Direct Payments or receiving CHC funding. In such cases, the needs of the individual have not always been the priority: for instance, when there has been disagreement between different funders over who should pay, and where Health Boards have suggested that individuals need to change care settings in order to receive the CHC funding to which they are entitled. This might mean moving out of their own home, or into a different care home.[1] The Commissioner would expect that the result of introducing Direct Payments for CHC would be to ensure seamless, person-centred care for all older people who need it.

However, the Commissioner has concerns about how Direct Payments are working in practice in social care, and about risks inherent in any CHC direct payment scheme.

For further information, please contact:
Name, Job Title: Valerie Billingham, Health and Care Lead
03442 640 670 // email address Valerie.billingham@olderpeople.wales

Take-up among older people

Take-up of Direct Payments in social care is low among older people. Audit Wales found that little over a third of those receiving Direct Payments (36.1%) are aged over 65, despite this age group making up over 75% of adults receiving social services.[2] Direct Payments in both health and social care must include provisions to help more older people, including carers and people living with dementia, benefit from the flexibility of Direct Payments without being overwhelmed with unfamiliar and onerous responsibilities on top of the issues with which they are already struggling.

Supply of care and support services

Local authorities sometimes offer direct payments to older people as a last resort, especially in rural areas, where there are particular problems with the availability of domiciliary care. Direct Payments are no substitute for a sufficient supply of care and support services. The success of Direct Payments is dependent on there being stable sources of support within communities to which people can be referred, or which they can access directly.

Supervision and monitoring

CHC is granted to people who have complex care needs. If people are purchasing services to meet any needs themselves, it is important that the health board undertakes appropriate supervision and monitoring, to ensure the adequacy of the care and support provided.

Top-up fees

The Commissioner is disappointed with the Welsh Government's response to Recommendations 11 and 12 of the Senedd Public Accounts and Public Administration Committee's report on Care Home Commissioning,[3] and is seriously concerned about the risk of older people being charged top-up fees to access essential services paid for with CHC direct payments.

The Commissioner's Advice and Assistance team has received several inquiries from individuals with relatives living in care homes who had been asked by a care home provider to pay additional fees on top of Continuing Health Care funding by the Health Board. The reasons given by the provider for levying the top-up fees were contradictory. Inquirers said they had been told that the fees were for additional benefits such as access to the garden (which the residents concerned, who were confined to bed with late-stage dementia and approaching the end of their lives, could not use), or for accompanied visits to a GP, (which the Commissioner regards as a basic essential, not an additional luxury). However, the Commissioner has seen a letter from a care home manager which states that the fees were

being levied because the Health Board rate for Continuing Health Care funding was not sufficient to cover costs.

It is concerning that residents and their families have found it challenging to dispute care home top-up fees. Individuals can take cases to local authority Trading Standards Departments for action by them and can take legal action themselves. However, care home funding is a complex area, and the level of expertise needed is not always available. This means that personal legal representation is the most likely route, but it is expensive and difficult to find an appropriate solicitor.

Despite interventions from the Commissioner with the Health Board and the provider, and despite extensive discussions between the Commissioner's team and the Competition and Markets Authority, there appears to be no avenue for redress and the provider was continuing to charge the additional fees. This is a serious concern. It is essential that anyone paying for a service with a CHC Direct Payment is protected from being charged unjustified top-up fees, and that there should be a viable avenue for redress.

Duty to report an adult at risk

The Commissioner supports the current organisational duty to report an adult at risk under section 128 of the Social Services and Well-Being (Wales) Act 2014, which requires 'relevant partners' of a local authority, such as the police, probation services, a local Health Board or NHS Trust, the Welsh Ministers or Secretary of State (in discharging certain functions) and other local authorities, to report adults at risk in Wales. However, the Commissioner has several concerns about introducing a legal requirement for certain individuals to report an adult at risk.

First, it is important to recognise the rights and autonomy of older people at risk of or experiencing abuse. The extent to which older people may be involved in making decisions and determining actions related to abuse, will depend upon several factors (e.g., issues of mental capacity; whether the safeguarding concern relates to a public interest issue). In general, however, the wishes and preferences of older people must be given full consideration when determining actions around safeguarding concerns. There is a risk that a 'duty to report' will result in the voices of older people being marginalised in safeguarding processes.

If safeguarding interventions are to be effective, practitioners must be allowed to exercise their professional decision-making abilities and to make judgments on an individual basis, drawing upon the knowledge acquired through their relationships with individuals and families. A requirement for a 'duty to report', especially if it is enforced through sanctions,

could dissuade older people from early disclosures of abuse, which might have helped prevent abuse from escalating.

The fear of sanctions could also lead to disproportionate, risk averse practices where practitioners report all concerns of abuse, without fully investigating the specifics of a situation. Premature reporting could harm relationships, both those between older people and practitioners and between older people and wider family members, in ways that could potentially exacerbate, rather than eliminate abuse.

Amendments to regulation of service providers, responsible individuals and the social care workforce

The Commissioner agrees with the proposals to allow Care Inspectorate Wales to access information and to enter a premises of a service, which appears unregistered (contrary to requirements). This is critical to ensuring that those in receipt of that service are receiving the appropriate care and support.

The Commissioner and her team would be happy to discuss these comments further.

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[1] Older People's Commissioner for Wales, *Care Home Commissioning for Older People*, May 2022 Consultation Response - Care Home Commissioning for Older People - Older People's Commissioner for Wales

[2] Audit Wales, *Direct Payments for Adult Social Care,* April 2022_Direct Payments for Adult Social Care (audit.wales)

[3] Julie Morgan AS, Deputy Minister for Social Services, Response to the Report of the Senedd Public Accounts and Public Administration Committee Report on Care Home Commissioning, October 2022 ANNEX 7 – Format of Cabinet Response to Audit Committee Report (senedd.wales)

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner is taking action to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner is working for a Wales where older people are valued, rights are upheld and no-one is left behind.

How to contact the Commissioner:

Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 03442 640 670

Email: ask@olderpeople.wales

Website: www.olderpeople.wales

Twitter: @talkolderpeople

Consultation Response Form

Your name: Joseph Gwilym Jones

Organisation (if applicable): Landsker Child Care

Email / Telephone number: [redacted]

Your address:

[redacted]

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

These are some of the views as an organisation, but also some of my own views tied in.

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes, but at what cost? There's a much bigger picture to all of this, to which I struggle with, that going all out on a single target will improve the lives of looked after children in Wales. I would predict that due to the lack of services that would be available after this overhaul, this would end up being more expensive in terms of court costs, long term prison costs, legal aid, additional health costs of a life time and additional cost of having no option but to use children homes in England, due to lack of early intervention for traumatized children. Most importantly of all, more children will be in unregulated children's homes and in other unsuitable environments that will be out of line with their needs, which of course would increase the likelihood of further abuse and damage. In terms of short-term immediate risk, I fear that this is a disaster and in terms of long term affects, this would go on to affect many children turning into adults for an entire lifetime.

On the balance of what this target may bring, is that the sector clearly needs cleaning up. The increase in unregulated children's homes has risen significantly and over the previous decade, lots of homes are being knocked up quickly in order to gain profits quickly at the cost of services. There are, however, homes that provide excellent quality of care along with long term benefits with children that receive a high level of therapeutic care while they live in these homes. In the long run, this will of course decrease the need for further interventions over the children's lifetime, therefore reducing costs overall.

Would there be scope to choose the five best providers in Wales and for the Welsh government to help those providers that deliver the level of care needed/expected, to open more homes? If we had the 350 homes facilitated by the best providers, we would therefore then ensure and increase the level and consistency of services to our young people in the care system. Also eradicating those that don't meet the expectation required. Just a thought.

Another solution would be that local authority would open more homes to replace the private sector homes. My concern is that culturally, local authorities are not currently ready for such a challenge. One of the most important elements of running a children's home is that we maintain the least number of staff turnover rate as

possible and ensure that systems involving staff absences are running effectively. To maintain this, the delivery of the professional supervision structure must be tight. I'm not seeing this holistically within the local authorities, nor did I experience this when I worked for the Bridgend Youth Service prior to working for Landsker Child Care.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;

Positive benefits would mean that political targets are met.

Disbenefit would mean further harm to children with immediate risks as well as long term damage because of this process unless I have missed something, I have not seen a viable plan to replace the private sector homes. I fear that as the target is set for just 5 years' time, I struggle to see how in this time frame, a new structure can be developed that will either maintain what we have or improve the lives of the children that we look after.

- Costs (direct and indirect), and savings;

Do we have the funds to replace the services that we currently have?

Are we able to maintain or improve the standard of children's homes in Wales by getting rid of "Not for profit" children's homes?

- Other practical matters such as cross-border issues.

  - It is often that for the safety of the child, it is sometimes the requirement (Safety grounds) that they are not living in where their local authority may be. This is where I would like there not to be cross-boarder issues, so that we can gather the correct placements for all our children in Wales and England. This must work both ways if both children Welsh and English are going benefit from being in a placement out of county or even out of country on some occasion. CSE is at an all-time high, therefore wanting to keep all safeguarding options open to us.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

- I'm hoping that we avoid a wider crisis because of pushing for this one target. I'm hoping that, being adaptable in all areas, we can find a way to increase the quality of services that we provide across Wales for our looked-after children and getting rid of unregulated or poorly run children's homes in the process. This would be my ideal outcome.

Please explain your reasoning.

My main focus is the children that we look after above everything else. I think the issue with a political target is that other priorities are lost in the process, therefore doing more damage than good. With no viable plan and with no clear direction, I'm deeply concerned that children's lives will be damaged within this process. However, I think with the right plan and direction, this could potentially go on to achieve positive outcomes for the children we look after, but there must be a shift in how we achieve this and what the main goal is. Could the main goal be saving money and making better use of the money we have, as opposed to just getting rid of the private sector? This will be done by being honest and open to everyone involved in the process

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

- Very sadly, defining "not for profit" organizations will decrease the amount of options we have in Wales in terms of children's homes. I'm not confident that we are in a position where we are able to reduce our options, given that we are living in Austerity and the living cost crisis, we are currently facing.
- If we were able to maintain/increase quality of these services, maintain/increase options of placements and save money through "not for profit" type children homes organisations all at the same time, I would of course be whole heartly behind the idea. In reality, I can't see at the moment how this is possible.

- **Question 1.4:** Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?
- I don't believe that this would be the correct route to take at this time. Deciding this would put all the eggs in one basket, which with no current

viable plan, would be catastrophic for many looked after children across the country.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

- Recruitment is an issue/difficulty across different sectors across the country at the moment. Trying to start up brand new homes, with a new management structure, new staffing structure, adequate training, adequate buildings, and grounds, bringing children in with the correct suitability to the other children in the home, also in line with settling in period, seems unrealistic, given that 80 percent (around 350 homes) of children homes in Wales are in the private sector. Five years to plan all of this does not seem viable from where I am standing. Landsker Childcare opened 8 homes over 22 years, to maintain standards and high quality of care. A more realistic plan, would be to use the best providers and aid them with support in order to open up more homes. Financial arrangements could be agreed where the profit areas are reasonable, therefore the government spending is less, but at the same time the quality of services has increased.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

- 80% of children living in children's homes will lose their 'homes';
- Transitions to an unregulated children home should never be a thing in 2022. Over 50 unregulated children home in Wales, when there were only two a couple of years ago. This is a national disgrace.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

- Supporting the implementation of primary guidance, would come down to what the plan would be, to replace the 80 percent of children homes being taken away. No plan, no support. If there is a plan that supports our children with a better service or even a service that can be maintained for now, then I would love to be a part of this journey.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- How many "not for profit" children homes are there? Are they meeting expectations and standards? Are they able to respond to the current needs of placements? This is a very difficult question to answer, as I'm not convinced that it's a viable option.

- What would be the benefits, disbenefits and other implications of such an approach?

- You would like to think that the main benefit would be for excessive amount of money to be saved and that saving would then improve the services of how children homes are run. Without a clear plan for this, I would fear that this would end up being of more expense to the taxpayers money, whilst also decreasing the level of service that we provide to looked after children.

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

- In order to eradicate services that are not considered to be of top quality, we would need to trial the "not for profit organization" a bit of a time, so that we don't lose the availability of the beds for children that require them. Those organizations which would surely be needed to be funded through local authorities and can replace some of the private sector. If this transition is working, then this would happen, bit by bit, which would surely take between 10-20 years if it was to be successful. My fear is that culturally, Local authority homes would not be able to stand up to the demands of operating a successful children's home consistently across the country. Therefore, fear that time, money and resources would be lost during this process, as well as the amount of lives ruined by this process.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

- My biggest fear is where will all those children go if we take away all these children homes?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

- Children from Wales would be placed in English Children homes if we lose 80 percent of our homes. This would then go on to have a detrimental affect on the use of the Welsh language for those children. This would also come as a financial effect for Wales as we would be moving money from Wales to England instead of keeping it in Wales.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on

opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language.

- By encouraging growth of the current provision by Welsh providers with expectation of social duty including the commitment to Welsh being the first language

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

- My deepest concerns are that this policy will cause significant harm to children and young people. With the current demands financially across families across the country and the increased number of people living in poverty, there will be even more demand for placements in the coming years. By restricting our options, local authority will have no options but to use children's homes in England, therefore moving money away from Wales. If the aim and goal can be shifted, we could be more financially stable as a country as well as creating a better and safer future for the children that we look after. I am hoping that this process will be adaptable to being more child focused, go on to provide a better framework for children homes in Wales and for the use of tax payers money to be used more productively along with saving money overall.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;

- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes, this need to be progressed with some caution. We believe there needs to be an agreed definition of 'not for profit' in this context. Providers need to be able to have sufficient resources to support the ongoing development of their workforce and services. Not for profit should refer to those paying dividends to shareholders.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Costs may be reduced where there is evidence of private providers taking excess profits. Any savings should be diverted back into public service delivery to develop alternative not for profit services. There needs to be consideration of how capital and revenue budgets will be put in place to support the establishment of not-for-profit services where current providers withdraw from the market.

There is the potential to work with current providers to transform into social value NFP business models, through work with the Children’s Commissioning Consortium Cymru (4C’s), Cwmpass and the Co-production network. This cannot be achieved swiftly, so a phased approach to eliminating profit is necessary.

There are potential negative impacts on people with protected characteristics, especially children with a range of complex needs and disabilities. If current service capacity is not supported to deliver a managed exit from Wales or convert into a NFP model, the current capacity gaps will worsen, reducing choice of suitable placements for Welsh children.

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

It would be helpful to define "not for profit", to ensure that those providers who use their profits to further develop their business, adopt Fair Work principles and improve quality. It may be helpful to consider a reasonable "Sustainability factor" , which is needed for continuous improvement, rather than simply focusing on a trading surplus. This has previously been considered as a factor in social care fee setting arrangements for adult care home contracts.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Yes, to ensure that new service models and corresponding business models can be tested out in practice, without the need for new primary legislation.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

The fragility of the current "market" suggests a careful phased approach is essential to avoid further destabilization. April 2026 for new providers and April 2027 for current providers to transition may be a challenge, as we move into a stringent financial context for the public sector. The ambition is welcomed, although it may be necessary to monitor the impact on capacity during implementation.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

As above, some providers are already signaling to 4C's their intention to give priority to children from beyond Wales, as English Local Authorities are willing to use private sector providers. We are also aware through the 4Cs that the larger private companies in both fostering and residential are making take over bids for the SMEs. For example this is seeing at present 60% of fostering provision in private hands; of that 60%, 48% is owned by 2 companies. We may loose during this transitionary process the small and medium providers who are key in our communities and may be more likely to move to a not for profit model.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Guidance to the sector, both commissioners, professionals and providers, is essential to ensure everyone is clear on the legislation and the timetable for full implementation. There needs to be sufficient time from confirmation of primary legislation to the development and implementation of guidance.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

As above, time is needed to enable some providers to convert their business models into not for profit, where appropriate; Also for sufficient NFP/Public sector capacity to be developed to replace that lost. The overriding factor must be that children's needs are met in the most suitable placement. Until there is sufficient NFP provision in Wales, Local Authorities would have conflicting legislation ie safeguarding children and meeting their needs OR limiting their options to NFP services. It may be unwise to restrict Local Authorities until the alternative capacity is in operation in Wales. The current and future public sector financial forecasts may hinder progress in developing alternative provisions. To support the transformation of children's services, a recent thematic review identified the needs for a community of practice to share information, learning and approaches across Wales. A proposal from Social Care Wales is currently with Welsh Government to support this community.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

The principle of eliminating profit is accepted and welcomed. However, the speed at which this can be delivered, without risking more children not having their needs met as close to home as possible or within Wales, should be considered. It should be noted that it has taken one proactive authority 3 years to build a new in-house residential provision, including the availability of the necessary therapeutic services for young people. In our recent work to understand how to support the transformation of children's services there have been significant concerns raised on workforce capacity – both to support current and future operation. We have submitted a proposal from Social Care Wales to Welsh Government to support additional regional workforce planning to take account of the current and future staffing capacity and competencies required.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

Potentially, there is scope to increase WL provision, if new NFP services are developed in Wales. But if the private equity companies continue to build their share of the market, then the opportunity to influence availability of Welsh language staff will not come about. The Active offer should form a key consideration in the development of any new service provision.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above.

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

To support any transformation of services there needs to be additional capacity so as not to destabilise current support for children. Given the current financial outlook this is a critical consideration in supporting change.

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

We support the proposals, as we are aware of many DP recipients who are frustrated by the lack of continuity of care, as well as voice and control, when they meet the thresholds for NHS CHC.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

The benefits are that continuity of care will be improved; Those who are eligible for NHS CHC will not be deterred from accessing their rights to have NHS commissioned care and support to meet their needs.

There should be improvements in timescales taken for people to access NHS CHC, as the focus will be on the person's needs, rather than disputes over service delivery and funding arrangements.

Many people who have complex health and care needs, may also be disabled and the impact on them should be improved by this change.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

Unsure, as NHS is a UK wide system.

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

Joint health and social care assessments for people with complex needs should become the norm; Joint planning and commissioning of services to meet needs should become the norm, supported by multi-disciplinary teams in line with A Healthier Wales.

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

Easy to read jargon -free guidance is essential to ensure there is clarity about people's rights, both for citizens and professionals.

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

Uncertain. As a minimum, guidance should be bi-lingual.

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Uncertain

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Agree

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

Agree

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Safeguarding children and adults at risk is a responsibility for every professional and having a clear expectation for all relevant roles should eliminate risks of people "falling between the cracks", risks not being managed, and harm being done.

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

Unsure

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

It may be simpler to replace existing duties. However, the key focus is to ensure all relevant professionals understand the duty and what action they need to take.

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

We know that children and vulnerable adults have been harmed in religious and sports settings, so the duty should be applicable to those, and other locations as set out in the 2014 Act.

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Recognising it may be difficult to have a "catch all" for every type of volunteer or paid worker, we should not limit the expectation to regulated roles. A duty for all staff or volunteers to report harm could be specifically focussed on activities and services where children and vulnerable adults are most at risk, with specific responsibilities for those managing or arranging those services.

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

The ultimate sanction for a regulated profession would be via their Fitness to Practice route, with codes of practice needing to be amended to include this new responsibility if it is not currently clear.

For unregulated workers and volunteers the organisation's disciplinary proceedings should be used. Each case should be considered on its merit, as context may be a factor.

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

Unsure

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Unsure

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes, we support this proposal

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Yes, we support this proposal

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes, we support this proposal

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes, we support this proposal

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes, we support this proposal

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Yes, we support this proposal

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

Yes, we support this proposal

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Yes, we support this proposal

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Yes, we support this proposal

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes, we support this proposal

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Yes, we support this proposal

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes, we support this proposal

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes, we support this proposal

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Yes, we support this proposal

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes, we support this proposal

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes, we support this proposal

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes, we support this proposal

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Yes, we support this proposal

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

We recognise that these changes are based on experience from implementing the Act as written, and as such will assist CIW and providers meet their legal obligations. The changes are predominately for clarification or to reduce unnecessary elements of process,and are will therefore be of benefit to the sector.

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

We have identified no effects on the Welsh Language from these proposals.

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Nothing to add

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Nothing to add

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

Yes, we support this proposal. It would remove any ambiguity in the current wording of the Act about reappointment and would also confirm that expectations are aligned with wider policy in relation to such appointments in Welsh public service.

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

We support this proposal. As a regulator we want to ensure that registered persons can work in our sector and can pursue professional development. On occasion, registered persons may find at the time of renewal of registration that they cannot fully evidence requirements such as qualifications or CPD. Where it is appropriate, this proposal will allow us to renew the registration of an individual in these circumstances and ensure that they able to continue in their role until that evidence is forthcoming. We would only envisage this proposed power being used where evidence of completion or requirements is likely to be forthcoming in a reasonable timescale.

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

We support this proposal. This would streamline processes and encourage Interim Order Panels to make decisions more appropriate to the evidence, rather than the full period possible.

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

We support this proposal. This would streamline processes and provide greater flexibility in the system.

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

We support all of the proposals as they provide clarification, simplification and flexibility into the regulatory system that will benefits Social Care Wales, registered persons and the sector more widely.

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

We have identified no effects on the Welsh Language from these proposals.

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Nothing to add

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Nothing to add

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of ‘social care worker’ to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

We support this proposal. Social Care Wales has provided support to the early years and childcare sector from its establishment in 2017, and indeed in its earlier incarnation as the Care Council for Wales. Given the nature of this sector, this support has extended across nursery provision, childcare and play. The proposed change will remove ambiguity in the legal definitions set out in the Act and remove any legal uncertainty around our work across the sector, and with those operating outside of formal settings. The change would also provide confidence in extending our support in specific areas of the sector, such as play.

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

We believe this will initially provide legal certainty and will offer increased confidence to Social Care Wales and the sector about the range of support that can be provided. In the short term we do not see a significant impact on resources,but recognise (as stated in the consultation) that further discussions around particular areas such as play may see future growth in our support.

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

In the medium term, this proposal will provide greater confidence in our ability to support the Welsh Government's ambitions around the Welsh Language across the sector.

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

Nothing to add

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Nothing to add

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:	Sue Evans
Organisation (if applicable):	Social Care Wales
E:mail:	sue.evans@socialcare.wales
Telephone:	[redacted]
Your address:	Social Care Wales Southgate House Cardiff

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

sue.evans@socialcare.wales

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Consultation Response Form

Your name:

Organisation (if applicable): Cardiff Third Sector Council

Email / Telephone number: [redacted]

Your address:

Butetown Community Centre, Loudoun Square, Cardiff CF10 5JA

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

On behalf of an organisation – Cardiff Third Sector Council (C3SC) is the membership organisation and umbrella body for all not-for-profit voluntary groups, community organisations and social enterprises, collectively known as the Third Sector, working or based in Cardiff.

C3SC is a member of Third Sector Support Wales (TSSW), an infrastructure partnership comprising County Voluntary Councils, Volunteer Centres and Wales Council for Voluntary Action. Together we enable the third sector and volunteers across Wales to contribute fully to individual and community well-being, now and for the future.

C3SC provides a voice for the third sector in Cardiff. We do this by providing opportunities for third sector organisations and their service users to raise their views and connect with decision makers. By doing this in an inclusive manner, we contribute to reducing the impacts of the inequalities gap in participation and engagement. This response specifically includes the views from third sector organisations from their experience of supporting service users around the issues that matter to them. Questions that were not particularly relevant to our members or those consulted have not been responded to (e.g., Chapter 4 and Chapter 5)

If you want to receive a receipt of your response, please confirm your email address, here: [redacted]

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

We are in favour of introducing a change in the legislation that only allows "not-for-profit" organisations to register with CIW to eliminate the involvement of profit in the care of looked after children. However, this change will require clear planning and consideration of the fair and inclusive support and resources that will be required to enable the "not-for -profit" sector to effectively provide the level of provision required and for the necessary measures to be put in place to prevent "for profit" organisations working around and taking advantage of the system with clear parameters set around services that are delivered through a charitable arm of a profit-making enterprise.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

The proposal is set to benefit from the range of positives the "not-for-profit" sector brings – including cutting across artificial organizational barriers to provide health care services in an inclusive and person-centered way, working flexibly and resourcefully and being driven to meet the needs of the communities they serve rather than by profit and offering excellent social value and value for money.

However, the sector needs to be properly resourced if disbenefits are to be minimised and enable it to provide the level of quality that is required to look after children and prevent unnecessary stretching beyond capacity and/or financial

insecurity/risks. Provided this is the case, “not-for-profit” looked after children services would be 100% child centered.

The “not-for-profit” sector has a well-established role in improving the health and wellbeing of people and communities. It does so through the provision of services and activities by volunteers and paid staff that are close to and meet the needs of the population, particularly targeting those who are more likely to fall through the net of statutory services, contributing to the building of a more equitable society.

Most “not-for-profit” services have robust governance structures and are highly regulated to ensure accountability, compliance and how profit is managed and reinvested into the community. This added social value increases the sector’s position of being financially competitive. However, if local authorities and commissioners do not have the right processes in place and effective inclusive systems for intelligently procuring services using co-productive practices, “not-for-profit” organisations would be at a clear disadvantage to provide the services and meet requirements, if measures are not put in place to weight social value and equality measures in assessment processes and to prevent current “for-profit” providers from working around the system and becoming competitors. If intelligent commissioning is put into place, it will mean the diversity of the population served by the “not-for-profit” sector will be better placed to have their voices heard in service planning, contributing to greater equality and services that respond appropriately to the needs of a diverse population.

We propose that measures that support equality and accessibility – such as advocacy and access to cultural/disability appropriate language translation should be a requirement of commissioned services.

The Local Authority Funding of Third Sector Services | Audit Wales makes the case for better local authority arrangements to fund third sector services after concluding they do not always make the best use of the (“not-for-profit”) sector nor do enough to secure value for money.

Members contributing to this consultation response also highlighted the risks around filling the gap left by for-profit organizations in a timely manner. The changes in legislation need to be delivered in a way that best ensures there will be enough “not-for-profit” providers to deliver services to avoid gaps in delivery and prevent having to find other avenues, which could result in looked after children being sent to services provided in other parts of Wales/the UK.

The uncertain economic and political environment in coming years also poses a risk to “not-for-profit” organisations being willing to take on any additional risks or to local authorities being ready to engage in the transformative changes that will be needed to move to the new ways services are provided

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Yes, we think it's essential the term “not-for-profit” is well and strictly defined in a clear way to include how any trading surplus is expended and reinvested to support the community, particularly for those more vulnerable or at risk. It should be made clear that any profit made should be directed towards service improvements with the children looked after, rather than the needs of share-holders, at the core of any decision.

We think that the relevant scrutiny processes should be in place to prevent “for-profit” service providers from finding ways around the system and that systems support those best placed to deliver the service locally to be made aware of and access relevant procurement processes.

“Not-for-profit” organizations are also characterized by being values driven - responding to community needs, ensuring their offer addresses what really matters to their service users in a way that is accessible and inclusive. We think this should be part of the definition.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

We think it's important to monitor that real “not-for-profit” organisations are applying to commissioning processes and avoid profit-making organisations from being able to work their way around the system and register a “not-for-profit” arm on Care Inspectorate for Wales (CIW) – so it would be necessary for current “not-for profit” definitions to be reviewed where gaps are identified.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

We think the timelines below are reasonable for the legislation to come into effect if it considers the transition issues identified in Question 1.6 and 1.7. Clear information to current providers and potential providers should be provided at least 2 years before the changes are fully implemented as per below with time for proper assessment of the market stability and consultation on the underpinning principles and systems.

- New providers registering with CIW will have to have not-for-profit status from 1 April 2026
- Any current 'for-profit' providers will need to transition to, and register with CIW as, not for profit status by 1 April 2027

Between 1 April 2026 and 1st April 2027 is a period where current "for profit" providers will be able to "compete" with new "not for profit" providers registered on CIW. We would like to understand how this transition period will work to ensure there is not unfair competition between for-profit organisations which are often comparatively well-resourced and not-for-profit organisations which are often not.

We have noticed that only a very small number of "not-for-profit organizations are current providers, and we think would be important to explore and address the reasons behind this.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

There is a need to ensure the transition process is well-managed with a co-produced transition plan, and an action plan that starts as soon as the changes to legislation are agreed. Current providers will need to have a clear understanding of what is needed from them, what are the implications of the changes so they can make an informed decision on the next steps and are supported to do so whilst providing the best possible care service. Transition/ action plans should be in place for current service providers, including support to step down as a provider.

There is a need to manage the risk of current profit-making providers just doing enough to meet the new legal framework and work around the system to provide a "not-for-profit" arm just to meet the criteria with the consequent unfair competition for new providers with a genuine commitment to community benefit and social value.

New potential "Not for profit" providers will need to be made aware of the opportunities open to them and the timetable for registration with Care Inspectorate Wales' (CIW), and registration should be a straightforward process. Any current issues behind a lack of "not-for profit" organisations registered with the CIW should be identified with plans for how this will be addressed. CVC's across Wales can play a role in raising awareness and supporting potential new providers to register and meet any relevant criteria.

Current procurement processes need to be fair and inclusive with processes that support the planned outcomes - assessment criteria should not center on the lowest cost and should include how well the services address what really matters to those receiving the services, how beneficiaries are involved in shaping services and how inclusive those services are. It should also support fair and ethical practices – for example, wages should be reasonable but fair with positive scoring where wages are

equitable to other professions in the private or public sector and commissioning processes should support and require salaries to be paid at the minimum living wage rate.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Legislation is necessary but not sufficient and therefore co-producing and issuing timely practical guidance to support the implementation of the changes is essential. We think the guidance should include case studies and good examples, as well as be complemented with other types of supporting activities, such as information sessions, workshops or one-to-one advice. Again, if properly resourced, Wales' CVCs could have a role in delivering this support in a way that is relevant to “not-for-profit” organisations.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Legislation would support the objective of eliminating profit from the care of children in Wales; others are better placed to comment on whether this is needed at this time.

However, responses from members have indicated it's essential that the same approach is delivered at all levels, including local authorities, otherwise the commitment to eliminate profit from the care of children looked after in Wales will be greatly undermined.

From our point of view the benefits are greater than the disadvantages, with similar implications to what has been said in the response to Questions 1.2 to 1.7.

The timescales across Wales should be the same through each stage of the whole implementation process, and this way any support guidance provided can be implemented at once across Wales and at the local level and prevent displacement.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

As mentioned in the responses to Questions 1.2 and 1.6 we think measures need to be put in place to ensure values driven approaches are heavily weighted in guidance and assessments and it should be clear for for-profit organisations that the legislation does not create the intent for providers to find ways to work around the systems and legislation.

We believe that all providers, new and old, need to be able to provide evidence of how they put inclusivity and community needs and benefits before financial gain, and there should be guidance and rigor during assessment and inspection processes.

It's important to look at gaps in current provision to ensure relevant providers are invited and have a real chance to look after children appropriately and take all steps available to avoid looked after children being placed with providers that offer their services far away from their relatives, friends, community or in other parts of the UK.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

"Not-for-profit" organisations do not have the same Welsh language duty and therefore need to be supported to meet the criteria if that was considered part of the criteria with due consideration on the impact this might have on people who do not speak English or Welsh or are learning the language.

We strongly suggest the ability to receive support in the most appropriate language extends beyond English and Welsh to all cultural and disability languages.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We acknowledge the importance of accessing services or any relevant support in the language of choice, however we also acknowledge that the language of choice goes beyond English or Welsh and sometimes it's more a language of need than a language of choice.

There should therefore be some thought given to achieving more balance by referencing, for example, that any learning from the consultation responses to be extended to supporting people to use their preferred language of choice/need. We are concerned that the focus on language inclusivity is solely focused on the Welsh Language. This directly risks feeding into a hierarchy of need with the needs of minoritised groups – in this case in respect of language – again being relegated to the lower tiers

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

There was agreement amongst our members that eliminating profit from the care of children looked after should happen. However, several concerns were raised relating to the process of changing the system to one that is entirely not for profit. In summary these concerns are as follows:

- Current recruitment and retention challenges within the social care sector and how these proposals would impact on this.
- It was noted that profit-based organisations can be very good at finding their way around systems and the proposals need to be clear so that this is far less likely to happen.
- Support needs to be provided to (potentially new) not-for- profit providers so that they can navigate the tendering system.
- It should be straightforward for not-for-profit organisations to register, and good quality support needs to be provided to them to avoid the dangers of disproportionately challenging tendering processes for smaller or new providers.
- The transition period needs to be sufficient and well managed; there is concern that a period of one year (even 2026 – 27) will not be enough; maybe some form of staging would be more appropriate

  It was noted that lessons (good and bad) can be learned from the experiences of not-for-profit organisations working in the adult care sector.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

We agree in principle with the proposal; we think it's important that people have more control and say over the care and support they receive so it's the most appropriate for the person's needs. However, this needs to be done with the relevant support and taking into consideration the individuals' capacity to make decisions. Appropriate information and support to properly understand the implications of the choices they make should be provided hand in hand with the changes – including through ready access being made available to advice, information and advocacy

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Introducing direct payments as an option for continuous health care gives people more flexibility over how they want their care package to be arranged and provided so it's the most appropriate care package for the individual, making it more inclusive. It includes choosing to hire the care worker or personal assistant so the person providing the care has the right experience, skill and/or speaks the same language as the person that needs to be taken care of. This way money can be spent in the way that really matters to the end user.

However, this might not be the best option for everybody, for example those who lack the capacity or confidence to manage the payments and keep records. Not everybody has someone else, a relative or a carer for example, who can manage the

direct payments if needed and therefore might prefer the Health Board or the Council to arrange for their care.

How end users access the services they need is another consideration and therefore it's essential that the necessary support is provided to individuals to make the right decision, and how to go through the process as well as implement the payments. The process should be seamless and the same across LA or health boards to avoid any confusion.

There is a role for the third sector in helping individuals understand their options and the pros and cons of choosing direct debit, as well as support to the patient and or the carer managing the direct payment.

Support toward the recruitment of Personal Asistants (PA) should also be provided – the process should be well regulated and have safeguarding policies to protect both patients and PAs.

There are some concerns about the way PAs are recruited, at present anybody can apply to be a PA without having a clear idea of what they are meant to do or having the right skills – so recruitment and screening practices will need to be reviewed. Respondents also mentioned it is not always easy to find a PA, and that the roles need to be made more attractive for people to apply for – so review and changes in practice will also be required in these areas.

There was a consensus that the whole choosing of a continuous health care package through direct payments should be highly regulated, from the point of access to recruitment of care workers and PA's, and how questions and complaints are dealt with.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Evidence and lessons from England, where the system has been operating since 2014, should be considered.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

No further comments

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

The need for proper guidance and support as already mentioned in the previous questions, but the following has been highlighted as particularly important to be part of the guidance

- Make sure carers needs are also considered as well as patients' needs ensuring what is offered is inclusive
- The process to apply and access direct payment should be the same across counties
- Access process to be regulated, including cost/ prices of the services provided
- The guidance provides a list of pros and cons of going through each route/ option of managing the Continuous Health Care package.
- The guidance should include a list of local groups and originations providing direct support to help people navigate through the process.
- To include in practitioners' guidance support for carers as well as those receiving payments directly.
- Guidance on topping up the direct payment, and ensuring this is being done in an inclusive way, not putting others at a disadvantage

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Consideration on the impact this might have on people who do not speak English or Welsh or are learning the language.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

It is important to provide a choice for people to access the services in Welsh if they wish to do so, but also in any other languages of their choice or at least ensure that English or Welsh are not a barrier to accessing services or any of the related support. There should be some thought given to achieving more balance by referencing, for example, that any learning from the consultation responses will be extended to supporting people to use their preferred language of choice/need. We are concerned that the focus on language inclusivity is solely focused on the Welsh Language. There is a risk of this feeding into a hierarchy of needs, with the needs of minoritised groups – in this case in terms of language – again being relegated to the lower tiers.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

It was generally agreed that

- There needs to be clarity about what happens when an individual's capacity to make decisions changes (many people in continuing health care for example are people with dementia)
- People need to be provided with support to make an informed choice (be they the person themselves or their carers) – education and accessible information are needed, and this support should be separate from LAs/Health Board. This is an area where the third sector is and can be well placed.
- It's important that people who are providing support as personal assistants are provided with clear information about what support they are being asked to provide – if this is not in place this will act as a disincentive to people offering their support as personal assistants – and of the support available to them to undertake their role with confidence and competence, including equality competence, and access to supervision and mediation
- Systems need to be the same across all Local Authorities across Wales (especially relevant to where people live on the border between counties)
- Clear guidance needs to be available including details of all the necessary information - such as the options of using top up payments (person/carer adding to payment to add to service offered)

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Members consulted expressed some concerns about the possible implications of this change and felt that individuals should first and foremost be supported properly to report correctly and that imposing punishments on individuals is not a way to achieve better reporting standards, this is further explained in point 3.3.

It was felt that it was more important to have an open and accessible system within a working environment where people feel able to report correctly and be supported to do so.

The requirement to adopt such a system (and attend/sign into information sessions) should be a requirement of registration.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

We think it's more important for organisations to have access to the right tools/ training to support their staff to report appropriately and confidently.

And the legislation would need to be drafted to draw an appropriate balance between where responsibilities lie with the organisation or with staff – similarly to other laws such as H|&S; the possibility of passing responsibility on to an individual could lead to organisations failing to acknowledge their responsibility and generate/contribute to a culture of blame; drafted well it could encourage employers to provide proper training and support.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Some of the risks have been highlighted above in relation to organisations passing on the responsibility to individuals; the legislation should focus on compelling employers to ensure staff are supported, develop competence and confidence and know how/when to report appropriately.

We think incorrect or lack of reporting highlights the need to better understand the issues and needs of staff/volunteers about adhering to reporting standards, and putting in place relevant support in response as opposed to/before placing a burden on being singled out for negligent behavior.

Concern was expressed that external challenges (e.g., higher heating costs) could impose further cost pressures on organisations and staff capacity, support and training as well as making it harder for them to adhere to reporting standards.

We believe the focus should be on the end user, having an empowered and informed workforce to provide the right care/safeguarding, and the duty needs to be framed in positive ways with the possibility of sanctions coming in as a last resort.

Question 3.4: What lessons can we learn from the duties to report in other countries?

No further comments

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No further comments

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Any setting working with children or vulnerable adults should have a clear system of reporting, with appropriate tools and resources to empower their workforce to provide inclusive and appropriate care and safeguarding measures.

We propose WG should put in place a framework, resources and tools to support the development of clear and consistent systems.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Same answer as above

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

As mentioned, we do not think that sanctions on individuals are the answer to ensuring children and adults at risk are identified and looked after. Clear and open reporting systems within organisations with adequate training and support – including training and supervision - for their staff are key. The current sanctions available through organization's disciplinary procedures should usually be adequate, with legal sanctions in place for extreme negligence or as a last resort.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

We strongly suggest the ability to access information and services in the most appropriate language extends beyond English and Welsh to all cultural and disability languages.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We acknowledge the importance of accessing services or any relevant support in the language of choice, however we also acknowledge that the language of choice goes beyond English or Welsh and sometimes it's more a language of need than a language of choice.

There should therefore be some thought given to achieving more balance by referencing, for example, that any learning from the consultation responses to be extended to supporting people to use their preferred language of choice/need. We are concerned that the focus on language inclusivity is solely focused on the Welsh Language. Tere is otherwise a risk of feeding into a hierarchy of need with the needs of minoritised groups – in this case in respect of language – again being relegated to the lower tiers

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No further comments

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Please go to Chapter 6 for further responses to this consultation.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Please go to Chapter 6 for further responses to this consultation.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;

- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Members consulted felt that extending the definition of social care worker would be beneficial but the outcome of extending the term is of greater importance. The proposal is supported if it results in more support, guidance and training for practitioners brought under the social care worker definition.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Extending the definition of social care worker to include childcare and playworkers would improve their profile and status, with a recognition of the role they play in our communities. However, what it means to become part of the social care workers community will need to be clearly defined. For example, will the newly defined social care workers receive free training and support – for example, by being able to access training provided by the LA? Will it result in certification and therefore an increase in salary?

The above will lead to the following possible negative impacts:

- The current cost of childcare provision is already very high – concern was expressed that these changes could result in these costs increasing further and excluding some members of the community (especially if changes resulted in staff having to take more accredited training).

- Childcare/playworker settings could become more formal and therefore less attractive to members of the community. This might put off some people using the services or becoming part of the childcare/play settings workforce. Consideration may therefore need to be given to extending the roles to include for example Play Work Assistants for those wishing to still have entry level options.

- Childcare and play work are already highly regulated sectors, increasing regulations might create recruitment issues by deterring people from going into the profession. This is particularly if the salary rate is not competitive with other similar professions.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Consideration should be given to the impact this might have on people who do not speak English or Welsh or are learning the language.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We acknowledge the importance of accessing services or any relevant support in the language of choice, however we also acknowledge that the language of choice goes beyond English or Welsh and sometimes is more a language of need than a language of choice. There should be some thought given to achieving more balance by referencing, for example, that any learning from the consultation responses to be extended to supporting people to use their preferred language of choice/need. We are concerned that the focus on language inclusivity is solely focused on the Welsh Language. This otherwise distinctly risks feeding into a hierarchy of need, with the needs of minoritised groups – in this case in terms of language – again being relegated to the lower tiers

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No further comments

Consultation Response Form

Your name: Claire Aston, MBE, RGN

Organisation (if applicable): [redacted]

Email / Telephone number: [redacted]

Your address: [redacted]

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

This is my own response, not an organisational response but [redacted] and I consider the matter of direct payments to be so important which is why I have taken time to make comments. Please see my Responses to questions in Chapter 2 only. please.

If you want to receive a receipt of your response, please confirm your email address, here: [redacted]

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

I agree that further voice and control for adults receiving CHC is required in some circumstances but this must be clearly defined to enable a sense of control over their package of care, but it has to be proportionate, well governed with explicit accountability and responsibility. What & who is responsible for contingency plans when something goes wrong or care is not delivered? Will the health board remain as the commissioner or will that be the patient? What happens when something goes wrong for example, a missed call or medication error, how are mistakes and failures reported, resolved and who is accountable for safe care to the person?

It is imperative there is a strong Governance, Accountability and Delegation Framework with the commissioner of care, health board and patient. A framework to support the actual financial mechanisms and Standing Financial Instructions of Health Boards must be explicit. Finance Directors of Health Boards must be consulted on any changes to the current mechanisms for commissioning care.

By definition those people in receipt of CHC are often the most complex and vulnerable adults living in the community with intense, complex and unpredictable health needs. With direct payments it is seemingly easier to apply in social care because there is not a need for a Registered Professional to delegate the task, thus the Delegation Framework needs to be considered within any proposals because there will be tasks and expectations from patients that a Registered Nurse will not be able to delegate.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

This proposed change could open up financial abuse and mismanagement from some patients towards the health board and the financial envelope for commissioned care which must always be proportionate to the assessed health need. Who has the final say and is the final decision maker in any ceiling of care on a clinical & financial footing? In my experience, some patients are able to advocate for themselves and become vocal and abusive on what they feel entitled too rather than what there assess health need is and this is an area which could be exploited leaving the clinical team very vulnerable and unnecessarily increasing costs to the NHS.

Question 2.3: What lessons can we learn from other countries' practice in this area?

A full open and honest dialogue with NHSEngland about the benefits and dis benefits should be a prerequisite to any proposed changes. Also their experience of using IUT should be taken into account to assist with any changes to legislation in Wales.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

As per my comments in 2.1 above.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

A very clear Governance, Accountability and Delegation framework must be devised, explicit and formed into something akin to a contract. Is there sufficient care availability /capacity in each HB areas to deliver such care needs? All care and health needs must be reviewed in line with CHC framework and what happens when there is no longer a primary health need and the patient disagrees with the assessment and demands the funds to directly commission their care remains in situ?

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh

language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

A good idea in principle but in practice, it may be hard to execute as not all areas of wales have sufficient Welsh speakers in their care teams.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As above

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

As per all my comments but I do consider there is an opportunity to consider in much more detail the opportunities of joint health and social care packages which has not been detailed through this consultation process and could deliver some of the proposed objectives.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Consultation Response Form

Your name: Vivienne Laing

Organisation (if applicable): NSPCC Cymru/ Wales

Email / Telephone number: vivienne.laing@nspcc.org.uk

Your address: Diane Engelhardt House, (Unit 2) Treglown Court, Dowlais Road, Cardiff CF24 5LQ

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

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Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

This is the response from NSPCC Cymru/ Wales. We are only responding to questions on mandatory reporting in Chapter 3.

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

NSPCC Cymru/Wales will respond to the questions relating to children and young people in this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

All those working with children should be clear that keeping children safe from abuse is paramount. Professionals must be aware of their responsibilities, be trained to identify the signs of abuse and know what to do if they suspect abuse.

We believe that reporting is crucial to a robust child protection system. We encourage those with concerns about the abuse of children to raise them with social care, with the police, or through the NSPCC Helpline. We also encourage all organisations to adopt robust child protection policies and regularly train staff and volunteers, so everybody is clear about their role in protecting children.

The current duty to report children at risk in Wales, as introduced in the 2014 Act, places a duty on local authority statutory partners to report any suspicions that a child is experiencing or at risk of abuse, neglect or other kinds of harm to the local authority. This duty encompasses professionals' suspicions, as well as professionals witnessing, receiving a disclosure or observing signs of all forms of abuse and neglect. We would be keen to see a full analysis and evaluation by Welsh Government of the impact of these duties. This should examine whether the organisational duty to report has led to an increase in reporting, greater identification of children at risk and, ultimately, has protected more children from harm.

The Independent Inquiry into Child Sexual Abuse in England and Wales (IICSA) considered mandatory reporting in detail, including the current statutory duty in Wales. We note that in its final report, published last month, IICSA recommends that certain individuals should be put under a statutory duty to report child sexual abuse where they receive a disclosure of child sexual abuse, witness a child being sexually abused or observe recognised indicators of child sexual abuse[1]. The IICSA recommendation relates solely to sexual abuse and has a higher threshold (focusing on 'knowledge' of sexual abuse, rather than 'suspicion') than the current organisational duty in Wales.

At NSPCC, our priority is to prevent children experiencing abuse, and for action to be taken to protect them and stop the harm where it has occurred. We are clear that, should Welsh Government amend the current regime of mandatory reporting in Wales in line with that recommended by IICSA, this must be within a context of further support and investment in the child protection system.

[1] The Report of the Independent Inquiry into Child Sexual Abuse – HC 720 (iicsa.org.uk)

We are concerned that local authority social care services are already stretched such that responses to referrals now can vary. Anecdotal evidence from our services and training of professionals across Wales, is that many of the referrals they make result in no response or no further action (NFA), with no reasons provided to the referrer. Local authorities generally provide feedback to referrals from our NSPCC Helpline. However, many come back as NFA, which means that we then re-contact them to find out what actions were taken and what the outcomes were. We are unsure if that is because of the pressure staff are under, staff shortages or the quality of the referral. Indeed, the latest Care Inspectorate Wales annual report identifies 'significant shortages in the social care workforce' and 'that workforce recruitment and retention is at crisis point'[2]. They reflect that 'Unprecedented increase in demand for care and support has created significant pressure on services'[3]. To build confidence and trust in the system, we would urge all local authorities to provide outcomes and actions taken to every referral received.

Therefore, any enhanced reporting duties must be delivered in parallel with substantial increase in capacity in local authority social care services to receive and respond to reports and provide appropriate support services to children and families. More investment is needed to ensure that the child protection system can respond to additional reports which may follow the introduction of a broader mandatory duty to report on professionals.

Crucially, urgent investment is needed to ensure that children who are identified as a result of any widened system of mandatory reporting in Wales are able to access the therapeutic and other support they need to help them recover when they need it. IICSA make clear that all child victims of sexual abuse should be guaranteed access to specialist and accredited therapeutic support. A lack of resources should never prevent children who have experienced abuse from being able to access the high quality, specialist help that is vital in helping them rebuild their lives.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?
Please explain your reasoning.

As set out above, the final IICSA report has set out key considerations around mandatory reporting schemes. Beyond this, we note that some international studies, particularly from the USA, have found that mandatory reporting procedures disproportionately target individuals from ethnic minorities and those from low-income backgrounds. Merkel-Holguin et al (2022) states that 'an individual's sense of risk to children is both subjective and value-laden' and bias includes prejudice and racism which leads to over reporting of culturally diverse families[4]. Inguanta and Sciolla (2021) state that families of colour 'are plagued by mandated reporting, surveillance, and separation'[5].

[2] 221020-annual-Report-2021-22-EN.pdf (careinspectorate.wales)
[3] ibid
[4] Merkel-Holguin et al (2022) Societies | Free Full-Text | Structures of Oppression in the U.S. Child Welfare System: Reflections on Administrative Barriers to Equity (mdpi.com)
[5] Time Doesn't Heal All Wounds: A Call to End Mandated Reporting Laws G INGUANTA, C SCIOLLA View of Time Doesn't Heal All Wounds: A Call to End Mandated Reporting Laws (columbia.edu)

Merkel- Holguin, Inguanta and Sciolla and Hixenbaugh and Khimm are clear that low-income families and families of colour are more likely to be reported for maltreatment than white families and consequently there is over-representation low-income families and families of colour being investigated and in the foster care system[6][7][8]. It will be important for Welsh Government to consider any potential differential impacts when developing any new mandatory reporting scheme.

Question 3.4: What lessons can we learn from the duties to report in other countries?

The IICSA report helpfully examines reporting duties from other jurisdictions. As it sets out, mandatory reporting models vary widely across different countries and states and operate within different contexts, making it difficult to evidence the impact of mandatory reporting and extrapolate it to a UK context.

We note, in particular, the study by Bekink (2021) who states 'Although the mandatory reporting system may be open to question, it does have the potential to play an important role in protecting children from further maltreatment. It is not the magic wand for child abuse but is part of a broader solution aimed at comprehensively addressing the issue.' As mentioned earlier, any new mandatory reporting scheme must be introduced alongside efforts to improve the child protection system in general.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

It is our view that, should individual reporting duties be introduced, they should sit alongside existing duties on organisations. Organisations should continue to be collectively responsible for any failures to protect children, including for having insufficient safeguarding policies and/or failing to implement policies properly; for failing to recruit the right personnel and for failing to train and support staff appropriately to fulfil their duties to keep children safe. This needs to be supported by a strong inspection regime across all settings.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?
(b) What are your views on this in respect of adults?

[6] ibid
[7] Merkel-Holguin et al (2022) Societies | Free Full-Text | Structures of Oppression in the U.S. Child Welfare System: Reflections on Administrative Barriers to Equity (mdpi.com)
[8] How Mandatory Reporting Punishes Poor Families — ProPublica

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

The IICSA report sets out a strong rationale for including all those who undertake 'regulated activity' or who work in a position of trust to be included within the scope of their proposed individual reporting duty.

Both 'regulated activity' and 'positions of trust' place emphasis on the nature of the contact with children, and power dynamic that exists between adults and children, rather than prescribe specific job titles. Indeed, our *Close the Loophole* campaign successfully called for an extension of the definition of positions of trust to include adults working (both paid and unpaid) with children in sport and religious settings to recognise the potential for abuse and exploitation in these contexts. As such, we would support a joined-up approach which is consistent across different pieces of legislation.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

The final IICSA report specifically considers proportionate sanctions attached to its proposed duty on individuals. We note that criminal sanctions are recommended where a relevant individual does not report to a local authority or the police in situations where they have witnessed or received a disclosure of abuse. The IICSA report does not advocate the enforcement of criminal sanctions where a relevant individual recognises signs of abuse (but has not witnessed or received a disclosure) but encourages such reports and recommends authorities ensure appropriate and regular training for staff to enable this.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

All front door services need to be able to take referrals through the medium of Welsh so that Welsh is not treated less favourably than English. Additionally access to support services must be available bilingually, to ensure children, young people and families can access support in their preferred language.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English

language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Consultation Response Form

Your name: Michelle Dumont, Policy Specialist

Organisation (if applicable): Homecare Association

Email / Telephone number: policy@homecareassociation.org.uk

Your address: Homecare Association, Sutton Business Centre, Restmor Way, Wallington SM6 7AH

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

On behalf of the Homecare Association.

The Homecare Association is a member-led professional association, with over 2,300 homecare provider members across the UK. Our members encompass the diversity of providers in the market: from small to large; predominantly state-funded to predominantly private-pay funded; generalist to specialist; live-in services to visiting services and from start-ups to mature businesses. Our purpose is to enable a strong, sustainable, innovative and person-led homecare sector to grow, representing and supporting members so that we can all live well at home and flourish in our communities.

If you want to receive a receipt of your response, please confirm your email address, here:

policy@homecareassociation.org.uk

Questions on Chapter 1: Eliminating profit from the care of children looked after

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

The majority of our members do not provide care for children looked after; we would, therefore, like to limit our response to a more general comment.

We are concerned that eliminating profit from the care of looked after children will de-stabalise the market and could limit competition and encourage consolidation in the market. This could reduce choice for children being placed with services, and mean a move away from the possibility of using local, smaller scale SMEs with strong links to their local communities, and result in large-scale closure of good provision without any alternatives being put in place

We are concerned that Care Inspectorate Wales reported in their Annual Report this year that there are already insufficient placements for some children.

> *"There is placement insufficiency for children with care and support needs. Children are needing support at a much younger age often due to the emotional and behavioral impact of adverse childhood experiences. Homes for children in residential care and foster care are difficult to access for those children and young people with the most complex needs. As a result, some children are being placed far from home and sometimes outside of Wales. Even more concerning, an increasing number of children are moving into temporary care homes that are operating illegally because they are not registered with CIW."*

It is likely that the availability of care will reduce as a result of the not-for-profit policy. The disruption to children and young people could be significant with the possibility of children being placed further away from their original communities, potentially even across the border or in unregistered temporary services.

We believe that care should be commissioned on the quality of the service provided and would urge the Government to consider whether this action will have adverse unintended consequences that could be detrimental to those children and young people that we are trying to serve.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

We agree that Direct Payments can be a valuable option for people receiving Continuing Health Care (CHC). Direct payments, whilst not the best choice for everyone, can allow greater choice and flexibility for people who are arranging their own support.

Direct payments alone, however, are not sufficient to ensure that people have voice and control. Direct payments are only truly effective where there is a thriving market for care provision that provides choices and options. At the moment, homecare services are significantly underfunded and are having difficulty retaining staff as a consequence. (We understand from our members that fee uplifts on the position illustrated in our 2021 Homecare Deficit report have not kept pace with rising costs. Fees offered were already significantly below the cost of delivery in many cases). This must be addressed if we are to truly promote voice and control.

Direct payments also need to be paid at a level that actually meets the cost of providing care, they should not be seen as a cost saving measure.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

As the consultation document highlights, Direct Payments have the potential to improve continuity of care when a person moves from a local authority funded arrangement to an NHS funded arrangement. Relationships are key in care and this could be a clear benefit in some cases. However, we are aware of instances where fees paid by Health Boards are actually lower than the rates paid by Local Authorities. Health Boards should ensure that costs, for what are often complex packages of care, are fully met. When people leave hospital their care need may have changed, it is important that there are care assessments to acknowledge any changes needed in their care package.

We are concerned that paragraph 17 of the consultation document says “It is envisaged that these proposals will open up new ways to deliver care, reducing strain on domiciliary care services”

Domiciliary care services are strained due to staff shortages, which is significantly related to the fact that the funding to the sector receives from public bodies is not sufficient to sustain attractive pay, terms and conditions.

Creating alternative forms of care delivery (for example personal assistants, which are unregulated, so have lower costs) may just reduce the pool of people prepared to work in services that are regulated, managed and require registration with Social Care Wales; with more careworkers moving to work as personal assistants instead. So, this could cause labour market displacement rather than ‘reduced strain’ or an expansion of market options. This could result in negative consequences both for a workforce that may be self-employed with less rights and also for quality of care if more takes place in the unregulated sector.

We urge the Welsh Government to urgently address the capacity issues in domiciliary care by recognising the true cost of delivery, the skilled nature of care work, and reviewing the current registration requirements.

It is also important to recognise that some people who receive direct payments will wish to use those to purchase services from a registered domiciliary care provider, and this requires capacity in the market.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

We would encourage more commissioners in Wales (not just in the NHS) to move away from time and task commissioning towards outcomes focused practice; as was indicated in the Rebalancing Care White Paper.

Approaches that give more freedom for care providers and those using services to negotiate how best to use the funding allocated to meet a persons’ needs, for example, can improve service flexibility, quality and delivery (like

Independent Service Funds in England). There are commissioners in Wales who have explored alternative approaches similar to this and this could form part of the work that the National Commissioning Board and others are doing around a new National Commissioning Framework.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Please ensure that homecare providers are consulted in the development of this guidance.

The guidance should include indications on best practice for smooth transitions from local authority funded direct payments to Health Board funded direct payments. This should include good communication with the provider in question.

It should be clear how Health Boards will set rates for Direct Payments to ensure that they are sufficient to cover costs of delivering care.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

It is of vital importance that all staff in the social care sector take safeguarding seriously, and that there are appropriate accountability mechanisms. However, the idea of a mandatory reporting duty on individuals does raise some concerns. One being that the sector already has significant recruitment and retention difficulties, partly because careworkers undertake responsible roles for low reward. Increasing personal risk for staff may cause some anxiety (even in staff who do their utmost to get everything right). It could also drive risk-averse reporting by staff who are not confident of when to raise and not raise issues. In some cases this might identify serious cases that would otherwise go unnoticed, which would be beneficial. However, it could also generate a lot of activity that would distract from the most serious cases.

There is already an organisational duty to act, as well as professional registration processes if any misconduct is involved. We would, therefore, have concerns about the introduction of a legal duty on individuals. However, this does raise the question about whether some parts of the sector, for example personal assistants, should be subject to registration, which are not at present.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

In response to questions 4.1-4.4: we agree. Regulated providers need to be confident that they are not being undercut by unregulated services who are able to evade investigation whilst not maintaining appropriate standards. For this reason, standard provisions that allow information to be obtained seem reasonable.

We believe that the purpose of regulation and the role of CIW is public protection. This should be determined by the nature of the care work rather than a careworker's employment status.

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

We would have some concerns about this proposal. As you've identified, there is a question over whether all care providers have suitable websites to publish annual returns on. There may also be a question of how easy annual returns will be to find.

Questions could arise about technical problems - would a provider be penalised, for example, if they had a temporary, or unknown problem with their website provision?

Is there a risk that providers will face on publishing their returns if their annual returns (of necessity) contain sensitive information? Can this be addressed?

On the question of the offence – we would request further details. Is it likely that the sanction for someone who both fails to publish and fails to submit their annual return would be more severe than currently for those who do not submit their annual return? If so, is this justified?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

In principle, it seems reasonable to allow CIW flexibility to not publish reports in exceptional circumstances, where this is in the interests of people receiving the service. However, the final wording of the amendment will be important. It

is desirable that there are clear guidelines around when reports are not published for the sake of transparency.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Potentially. Would there be a process for providers to appeal if there is a difference of opinion or misunderstanding about whether the provider is still providing a service; or providing a service from a particular place or not?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes. This seems more efficient.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

In most cases this would likely be welcome. However, as above: would there be a process for providers to appeal if there is a difference of opinion or misunderstanding about whether the provider has ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes, this should lead to a greater level of consistency.

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes, we agree that there may be circumstances in which cancelling a service providers' registration may be a disproportionate approach to them not being able to provide certain information by the deadline. It is important that guidelines around this are transparent, and expectations clear, however.

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Only if there is certainty that the situation is genuinely irretrievable. Is an appeal mechanism possible if there is a difference of opinion over that point?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes, it would be better if this practice were recognised in the legislation. It is important that individuals are able to make representations regarding their position.

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes, this would provide for better communication and give the service provider more opportunity to respond.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes, this does happen in practice sometimes, so it would provide greater clarity to provide for it.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order

to place beyond doubt that the provision of parental-type care is recognised as being ‘care’ within the meaning of the 2016 Act?

> This provision is less likely to apply to our members, so we will leave comment to others.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

> Yes, as the consultation says, this aligns with standard practice for public appointments of this nature.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

> Yes, we would welcome the opportunity for there to be some leniency in the requirements for renewal of registration. One concern would be to ensure that this 'flexibility' is operated fairly and that there are clear criteria about when it can be used.
>
> We would also urge Social Care Wales to consider whether a lower tier of registration with fewer qualification requirements might be offered. Casual and/or part-time workers may choose to work in the NHS or as personal assistants without having to meet the qualification requirements of registration. We believe this is contributing to the ongoing workforce shortages in domiciliary care in Wales.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

> Providing that, as you say, the person's ability to appeal the interim order is not affected this seems sensible. If the panel is easier and faster to convene than the Tribunal then, this would be beneficial.
>
> Delays may sometimes be necessary. However, interim orders may affect a person's prospects and day to day employment and every effort should be made to resolve issues quickly. If there is a pattern of increasing delays this must be addressed through resourcing or review of the approach taken and not just through an easy delay process.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Yes, if the panel has been convened to consider the circumstances around a particular individual it makes sense to consider that holistically rather than requiring a focus only on a particular strand of a case. Interim orders will have a significant effect on the individual and their employer and if there are good reasons for their revocation it would be better to do this sooner rather than later (providing it can be done with confidence).

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

If, for example, it becomes clear through proceedings and evidence considered that the original rationale for the interim order was misconceived, no longer applicable or has been superseded.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

> We have no major objections. However, there are possible instances in which it is important for social care workers (i.e. residential and domiciliary careworkers, staff of supported living arrangements etc) and childcare workers to be treated differently – presumably this would still be possible as registrants would be identifiable due to different categories of registration. Officials using this categorisation for policy work in future will need to be more aware than ever of the variety of roles within care work.
>
> We would urge the Welsh Government to ensure that if Social Care Wales' remit is expanded that it is adequately resourced to cope with this.

Ffurflen Ymateb i’r Ymgynghoriad

Eich enw: Lowri W. Williams

Sefydliad (lle bo’n berthnasol): Comisiynydd y Gymraeg

E-bost / rhif ffôn: lowri.williams@cyg-wlc.cymru

Eich cyfeiriad:

Mae ymatebion i ymgynghoriadau yn debygol o gael eu cyhoeddi, ar y rhyngrwyd neu mewn adroddiad. Os byddai'n well gennych i'ch ymateb aros yn ddienw, ticiwch y blwch:

☐

Dywedwch wrthym ar ran pwy rydych yn ymateb. Er enghraifft, ai eich ymateb chi eich hun yw hwn neu ymateb ar ran sefydliad?

Rwyf yn ymateb ar ran Comisiynydd y Gymraeg. Prif nod statudol y Comisiynydd yw hybu a hwyluso defnyddio’r Gymraeg. Gweledigaeth Comisiynydd y Gymraeg yw Cymru lle gall pobl fyw eu bywyd yn Gymraeg. Mae ein hymateb i’r ymgynghoriad hwn yn canolbwyntio yn benodol felly ar effeithiau cynigion yr ymgynghoriad ar y Gymraeg a hawliau siaradwyr Cymraeg a’r cyfleoedd i ddefnyddio’r iaith. Nid ydym felly wedi ateb pob un o’r cwestiynau. Dylem nodi yn ogystal fod Comisiynydd y Gymraeg yn berson a ganiateir mewn achosion gerbron y Llys Teulu.

Os hoffech gael neges yn cydnabod bod eich ymateb wedi’i dderbyn, cadarnhewch eich cyfeiriad e-bost, yma:

Cwestiynau ar gyfer Pennod 1: Dileu elw o ofal plant sy'n derbyn gofal

Mae yna 12 cwestiwn am y bennod hon.

Cwestiwn 1.1: Ydych chi'n credu y bydd cyflwyno darpariaeth mewn deddfwriaeth sy'n caniatáu i ddarparwyr 'nid-er-elw' yn unig gofrestru ag Arolygiaeth Gofal Cymru yn helpu i gyflawni'r ymrwymiad yn y Rhaglen Lywodraethu i ddileu elw o ofal plant sy'n derbyn gofal?

Dim sylw.

Cwestiwn 1.2: Beth yn eich barn chi fyddai effeithiau tebygol y cynnig? Efallai yr hoffech ystyried, er enghraifft:

- Manteision ac anfanteision;
- Costau (uniongyrchol ac anuniongyrchol), ac arbedion;
- Effeithiau ar unigolion a grwpiau â nodweddion gwarchodedig;
- Materion ymarferol eraill megis materion trawsffiniol.

Byddai croeso hefyd i'ch barn ar sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol.

Esboniwch eich ateb.

Mae Arolygiaeth Gofal Cymru yn nodi mai'r Gymraeg oedd dewis iaith 3% o'r plant mewn cartrefi gofal yn 2017-18 yn Nhabl 3 ei Adolygiad cenedlaethol o ofal i blant yng Nghymru. Nid yw'n adrodd y graddau yr oedd y gofal ar gael yn Gymraeg i gwrdd â'r gofyn. Mae'n bosibl y buasai diffyg gofal yn y Gymraeg yn cael effaith andwyol ar y plant sy'n derbyn gofal (gweler ein hateb i gwestiwn 1.7 yn hyn o beth). Ein disgwyliad wrth gwrs yw bod awdurdodau lleol eisoes yn cynnwys gofyniad i ddarparu gofal i blant sy'n derbyn gofal drwy gyfrwng y Gymraeg wrth gomisiynu gan ddarparwyr, a hynny yn unol â gofynion Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 a safonau'r Gymraeg ers 2015. Os bydd trydydd parti yn cyflawni gweithgaredd neu'n darparu gwasanaeth ar ran awdurdod lleol sydd o dan ddyletswydd i gydymffurfio â safonau'r Gymraeg rhaid i'r awdurdod lleol sicrhau bod y trydydd parti yn cydymffurfio â'r safonau sy'n berthnasol i'r gwasanaeth hwnnw hefyd. Buasem yn eich annog i ganfod beth yw gwaelodlin y ddarpariaeth gofal plant bresennol yn y Gymraeg fel rhan o'ch gwaith asesu effaith rheoleiddiol y bwriedir ei gynnal. Dylem nodi ein bod fel Comisiynydd wedi gorfod ymwneud ag achosion yn y llys gwarchod yn y gorffennol lle mae unigolion wedi cael eu lleoli mewn mannau lle nad oedd darpariaeth Gymraeg ar eu cyfer. Mae hyn yn awgrymu felly nad yw camau bob tro yn cael eu cymryd i sicrhau bod siaradwyr Cymraeg yn derbyn gofal yn yr iaith honno.

Mae'r ddogfen ymgynghori yn nodi y bydd dileu elw preifat o ofal plant sy'n derbyn gofal 'yn hyrwyddo datblygu gwasanaethau lleol sy'n atebol yn lleol. Bydd yn ailgydbwyso'r farchnad gofal cymdeithasol o blaid darpariaeth gofal gan y sector cyhoeddus a sefydliadau nid-er-elw a bydd yn

creu sylfaen fwy o ran darparwyr ac yn sicrhau gwerth cymdeithasol gwell.' (30). Mae pob un awdurdod lleol yn gweithredu yn unol â safonau'r Gymraeg, fel y mae disgwyl i ddarparwyr trydydd parti sy'n gweithredu ar eu rhan fel y nodir uchod. Mae'n bosibl y buasai cynyddu darpariaeth uniongyrchol gan y sector cyhoeddus, a hynny yn fwy lleol, yn golygu y byddai mwy o ddarpariaeth ar gael trwy gyfrwng y Gymraeg oherwydd ei fod yn lleihau'r gofynion trydydd parti hynny mewn rhai achosion. Fodd bynnag, fel y nodwyd eisoes, ein disgwyliad yw bod awdurdodau lleol eisoes yn comisiynu gofal trwy gyfrwng y Gymraeg gan ddarparwyr presennol. Ni fyddai newid i gomisiynu gan ddarparwyr nid er elw o reidrwydd yn gwneud gwahaniaeth i'r ddarpariaeth Gymraeg felly oni sicrheir y bydd awdurdodau yn wir yn comisiynu gofal yn y Gymraeg i blant sydd angen y gofal hwnnw.

Cwestiwn 1.3: Un ffordd bosibl o fynd ati yw i'r ddeddfwriaeth ddiffinio 'nid-er-elw' o ran y mathau o sefydliadau a fyddai'n gymwys. Ydych chi'n ystyried y dylid hefyd gyfyngu ar y ffordd y mae unrhyw arian masnachu dros ben yn cael ei wario? Beth fyddai effeithiau a goblygiadau hyn?

Dim sylw.

Cwestiwn 1.4: Ydych chi'n credu y dylai'r ddeddfwriaeth sylfaenol gynnwys pŵer i Weinidogion Cymru ddiwygio'r diffiniad o 'nid-er-elw' drwy is-ddeddfwriaeth?

Dim sylw.

Cwestiwn 1.5: Beth yw eich barn chi ar yr amseriadau sy'n cael eu cynnig o ran pryd y byddai'r ddeddfwriaeth sylfaenol yn cael effaith?

Dim sylw.

Cwestiwn 1.6: A oes yna unrhyw faterion yr hoffech dynnu ein sylw atynt mewn perthynas â'r broses bontio ar gyfer plant sy'n derbyn gofal, awdurdodau lleol a darparwyr gwasanaethau?

Dim sylw.

Cwestiwn 1.7: Beth yw eich barn chi ar gyhoeddi canllawiau i helpu i weithredu'r ddeddfwriaeth sylfaenol?

Nodir yn y ddogfen ymgynghori bod 'Gweinidogion Cymru yn cynnig defnyddio pŵer i ddarparu canllawiau i helpu i weithredu'r newidiadau deddfwriaethol i ddileu elw preifat o ofal plant sy'n derbyn gofal, megis cyfeirio at fodelau sefydliadol priodol neu eu disgrifio. Bydd y canllawiau hyn o gymorth i ddarparu gwybodaeth a chefnogaeth i randdeiliaid wrth inni roi'r newidiadau ar waith' (28). Rydym yn credu y buasai canllawiau o'r fath yn ddefnyddiol petaent yn cynnwys arweiniad manwl ynghylch sut i fynd ati i sicrhau bod plant a phobl ifanc sy'n siarad Cymraeg sy'n derbyn gofal yn cael gofal yn y Gymraeg yn unol â'r cynnig rhagweithiol, a sut y gall y system gofal yn ei gyfanrwydd roi'r cyfle i bob plentyn ddysgu, datblygu a defnyddio Gymraeg. Buasai'n addas cynnwys modelau sefydliadol ynghylch darparu gofal yn y Gymraeg a fyddai'n cynnwys arweiniad ar ddatblygu, cynllunio ac amserlennu'r gweithlu a sicrhau bod adnoddau a chefnogaeth ar gael ar

gyfer siaradwyr Cymraeg er mwyn sicrhau y darperir gofal trwy gyfrwng y Gymraeg. Dylai'r canllawiau gael eu harwain gan hawliau plant. Rydym yn eich annog yn hynny o beth i drafod gyda'r Comisiynydd Plant yr hawliau ieithyddol sydd gan blant Cymraeg sy'n derbyn gofal yn unol â Chonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn, yn benodol erthyglau 29 a 30. Gwyddom fod Bwrdd yr Iaith Gymraeg wedi darparu cyngor yn 2006/7 yn unol ag Adran 3 Deddf yr Iaith Gymraeg 1993 i Lywodraeth Cynulliad Cymru fel yr oedd ynghylch canllawiau gofal ar gyfer plant sy'n derbyn gofal. Buasai'n addas ystyried y cyngor hwnnw wrth ddatblygu'r canllawiau. Buasem yn hapus i drafod y canllawiau â chi yn ogystal wrth iddynt gael eu llunio.

Deallwn fod Llywodraeth Cymru ar hyn o bryd yn datblygu Fframwaith Cenedlaethol ar gyfer comisiynu gofal a chymorth yn dilyn cyhoeddi'r Papur Gwyn ar Ailgydbwyso gofal a chymorth yn ogystal. Dylai'r Fframwaith Cenedlaethol gynnwys arweiniad cryf ynghylch sut mae comisiynu gofal plant yn y Gymraeg ac yn unol â safonau'r Gymraeg, y cynnig rhagweithiol o ofal a hawliau'r plentyn. Dylai'r canllawiau a gyhoeddir yn sgil cynigion yr ymgynghoriad hwn gyd-fynd â'r Fframwaith Cenedlaethol hwnnw.

Cwestiwn 1.8: Beth yw eich barn chi ar ddefnyddio deddfwriaeth i osod cyfyngiad ar awdurdodau lleol i gomisiynu lleoliadau gan sefydliadau 'nid-er-elw' yn unig? Yn benodol:

- Ydych chi'n meddwl y byddai'n ein helpu i gyflawni'r ymrwymiad i ddileu elw o ofal plant sy'n derbyn gofal yng Nghymru?
- Beth fyddai manteision, anfanteision a goblygiadau eraill dull o'r fath?
- Beth fyddai'n amserlen briodol ar gyfer gweithredu dull o'r fath, pe bai'n cael ei fabwysiadu yng Nghymru?

Dim sylw.

Cwestiwn 1.9: Beth yw eich barn chi ar weithgareddau posibl a wneir mewn ymateb i'r cynigion deddfwriaethol hyn a fyddai'n tanseilio'r bwriad i ddileu elw o ofal plant sy'n derbyn gofal yng Nghymru? Oes yna unrhyw gamau a fyddai'n gwarchod rhag gweithgareddau o'r fath?

Dim sylw.

Cwestiwn 1.10: Hoffem wybod eich barn ar yr effeithiau y byddai'r newidiadau deddfwriaethol er mwyn dileu elw o ofal plant sy'n derbyn gofal yn eu cael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effaith yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Mae'r ddogfen ymgynghori yn nodi y 'bydd yna fanteision posibl o ran darpariaeth Gymraeg, gan y bydd rhaid i awdurdodau lleol asesu digonolrwydd gofal a chymorth a ddarperir ar gyfer y lleoliadau hyn drwy gyfrwng y Gymraeg. Y gobaith yw y bydd hyn yn ysgogi cynnydd mewn darpariaeth newydd i ddiwallu'r angen a'r galw' (37).Fel y nodwn uchod ein dealltwriaeth yw ei bod yn ofynnol i

awdurdodau lleol asesu digonolrwydd gofal a chymorth trwy gyfrwng y Gymraeg yn eu hawdurdod lleol, waeth pwy fyddai'n ei ddarparu, fel yr amlinellir yng Nghod Ymarfer Rhan 2 (Swyddogaethau Cyffredinol Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014. Nid yw'r ddogfen yn egluro pam y byddai newid i drefn 'nid er elw' o reidrwydd yn golygu y byddai cynnydd mewn darpariaeth Gymraeg.

Cwestiwn 1.11: Eglurwch hefyd sut rydych chi'n credu y gallai'r newidiadau deddfwriaethol i helpu i ddileu elw o ofal plant sy'n derbyn gofal gael eu llunio neu eu haddasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Fel y nodwn uchod credwn fod angen rhagor o eglurhad ynghylch sut y buasai'r newidiadau deddfwriaethol i helpu i ddileu elw o ofal plant sy'n derbyn gofal ynddynt eu hunain yn cynyddu darpariaeth gofal plant yn y Gymraeg. Credwn felly fod angen ystyried camau pellach i wneud yn siŵr bod awdurdodau lleol a'r darpar ddarparwyr nid er elw mewn gwirionedd yn sicrhau bod plant sy'n derbyn gofal mewn gwirionedd yn derbyn y gofal hwnnw yn y Gymraeg. Mae'n bosibl y byddai canllawiau manylach megis y rhai y cyfeirir atynt yn 1.7 uchod yn cyfrannu at hynny ond credwn bod angen ystyried camau pellach na hynny i sicrhau bod llety i blant sy'n derbyn gofal yn diwallu anghenion y plant hynny i siarad Cymraeg yn unol â Rhan 6, 75 (1), Rhan 6, 78 (3) (a) a Rhan 6, 78 (3) (a) Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014. Rhaid i bwysigrwydd galluogi plant sydd wedi'u magu i siarad Cymraeg barhau i wneud hynny yn unol â'u hawliau fod yn greiddiol i'r ddarpariaeth ar gyfer plant sy'n derbyn gofal. Dylai sicrhau cyfleoedd i bob plentyn sy'n derbyn gofal ddatblygu sgiliau yn y Gymraeg hefyd fod yn ystyriaeth.

Cwestiwn 1.12: Mae'r bennod hon wedi canolbwyntio ar sut y gallwn gyflawni'r ymrwymiad i ddileu elw o ofal plant sy'n derbyn gofal, ac rydym wedi gofyn nifer o gwestiynau penodol. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw, defnyddiwch y lle hwn i wneud hynny.

Dim sylw.

Cwestiynau ar gyfer Pennod 2: Cyflwyno taliadau uniongyrchol ar gyfer Gofal Iechyd Parhaus y GIG

Mae yna 8 cwestiwn am y bennod hon.

Cwestiwn 2.1: Rydym ni wedi amlinellu ein cynigion i gyflwyno llais a rheolaeth bellach i oedolion sy'n cael Gofal Iechyd Parhaus yng Nghymru. Ydych chi'n cytuno neu'n anghytuno â'r cynigion hyn? Esboniwch eich ateb.

Dim sylw.

Cwestiwn 2.2: Beth yn eich barn chi yw effeithiau tebygol y cynnig?

Efallai yr hoffech ystyried, er enghraifft:

- Manteision, ac anfanteision;
- Costau (uniongyrchol ac anuniongyrchol), ac arbedion;
- Effeithiau ar unigolion a grwpiau â nodweddion gwarchodedig;
- Materion ymarferol eraill megis materion trawsffiniol neu drosglwyddo i'r trefniadau newydd.

Byddai croeso hefyd i'ch barn ar sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol.

Esboniwch eich ateb.

Dim sylw.

Cwestiwn 2.3: Pa wersi y gallwn ni eu dysgu o arfer gwledydd eraill yn y maes hwn?

Dim sylw.

Cwestiwn 2.4: Ydych chi'n credu bod unrhyw ddulliau eraill neu ddulliau ategol y dylen ni fod yn eu hystyried i gyflawni'r un effaith? Os felly, nodwch nhw isod.

Dim sylw.

Cwestiwn 2.5: Byddwn yn gweithio i sicrhau bod unrhyw newid deddfwriaethol yn cael ei gefnogi gan ganllawiau cadarn i helpu'r rhai sy'n derbyn taliadau ac ymarferwyr i ddeall sut y bydd y system yn gweithredu. Allwch chi nodi unrhyw beth y byddai'n ddefnyddiol ei gynnwys yn y canllawiau hyn? Pa gymorth arall y dylid ei ddarparu?

Dim sylw.

Cwestiwn 2.6: Hoffem wybod eich barn ar yr effeithiau y byddai cyflwyno taliadau uniongyrchol ar gyfer Gofal Iechyd Parhaus yn ei gael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effeithiau yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Dim sylw.

Cwestiwn 2.7: Eglurwch hefyd sut rydych chi'n credu y gallai ein cynigion ar gyfer cyflwyno taliadau uniongyrchol ar gyfer Gofal Iechyd Parhaus y GIG gael eu llunio neu eu haddasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg; a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Dim sylw.

Cwestiwn 2.8: Rydym wedi gofyn nifer o gwestiynau penodol yn y bennod hon. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw yn benodol, defnyddiwch y lle hwn i wneud hynny.

Dim sylw.

Cwestiynau ar gyfer Pennod 3:Hysbysu gorfodol am blant ac oedolion sy’n wynebu risg

Mae yna 11 cwestiwn am y bennod hon.

Cwestiwn 3.1: Beth yw eich barn ar yr egwyddor o osod dyletswydd i hysbysu am blentyn sy’n wynebu risg (fel y'i diffinnir yn adran 130(4) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014) yn uniongyrchol ar unigolion mewn cyrff perthnasol?

Dim sylw.

Cwestiwn 3.2: Beth yw eich barn ar yr egwyddor o osod dyletswydd i hysbysu am oedolyn sy’n wynebu risg (fel y'i diffinnir yn adran 126(1) o Ddeddf 2014) yn uniongyrchol ar unigolion mewn cyrff perthnasol?

Dim sylw.

Cwestiwn 3.3: Beth yn eich barn chi fyddai'r manteision, anfanteision, risgiau, costau, arbedion ac effeithiau ar gydraddoldeb, sy’n debygol o ddull o'r fath?

Esboniwch eich ateb.

Dim sylw.

Cwestiwn 3.4: Pa wersi gallwn ni eu dysgu o'r dyletswyddau i hysbysu mewn gwledydd eraill?

Dim sylw.

Cwestiwn 3.5: Pe bai dyletswyddau hysbysu unigol yn cael eu cyflwyno – ar gyfer plant ac oedolion sy’n wynebu risg – a ddylai'r rhain fod ochr yn ochr â'r dyletswyddau presennol ar sefydliadau o dan Ddeddf 2014, neu gymryd eu lle?

Dim sylw.

Cwestiwn 3.6: Pe bai dyletswyddau hysbysu unigol yn cael eu cyflwyno, a ddylen nhw fod yn berthnasol i weithlu'r 'partneriaid perthnasol' presennol o dan adran 162 o Ddeddf 2014 (gan gynnwys timau troseddau ieuenctid mewn perthynas â phlant), neu'n ehangach, er enghraifft i'r rhai sy'n gweithio mewn lleoliadau crefyddol neu chwaraeon, etc., ac yn benodol:

(a) Beth yw eich barn am hyn o ran plant (o dan 18 oed)?

(b) Beth yw eich barn am hyn o ran oedolion?

Dim sylw.

Cwestiwn 3.7: Pe bai dyletswyddau hysbysu unigol yn cael eu cyflwyno, pa fathau o alwedigaeth neu rolau ddylai fod yn ddarostyngedig i unrhyw ddyletswydd (e.e. aelodau o broffesiynau rheoleiddiedig; staff cyflogedig, hyd yn oed os nad ydynt yn cael eu rheoleiddio; gwirfoddolwyr), ac yn benodol:

(a) Beth yw eich barn am hyn o ran plant (o dan 18 oed)?

(b) Beth yw eich barn am hyn o ran oedolion?

Dim sylw.

Cwestiwn 3.8: Pa sancsiynau ydych chi'n meddwl fyddai'n gymesur neu'n briodol am fethu â chydymffurfio â dyletswydd hysbysu unigol?

Dim sylw.

Cwestiwn 3.9: Hoffem wybod eich barn ar yr effeithiau y byddai cyflwyno dyletswyddau hysbysu unigol yn eu cael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effaith yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Dim sylw.

Cwestiwn 3.10: Eglurwch hefyd sut rydych chi'n credu y gallai'r cynigion ar gyfer cyflwyno dyletswyddau hysbysu unigol gael eu llunio neu eu haddasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Dim sylw.

Cwestiwn 3.11: Rydym wedi gofyn nifer o gwestiynau penodol yn y bennod hon. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw yn benodol, defnyddiwch y lle hwn i'w nodi.

Dim sylw.

Cwestiynau ar gyfer Pennod 4: Diwygio rheoleiddio darparwyr gwasanaethau ac unigolion cyfrifol

Mae Rhan 2 ac Atodlen 1 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ('Deddf 2016') yn darparu'r sail y mae Arolygiaeth Gofal Cymru ('AGC') – ar ran Gweinidogion Cymru – yn ymgymryd â swyddogaethau arni mewn perthynas â chofrestru, rheoleiddio ac arolygu 'gwasanaethau rheoleiddiedig'.

Mae'r bennod hon o'r ymgynghoriad yn canolbwyntio ar ddiwygiadau arfaethedig i'r drefn reoleiddio ar gyfer gwasanaethau rheoleiddiedig, darparwyr gwasanaethau a'u hunigolion cyfrifol dynodedig. Mae'r rhain yn ymwneud ag ystod o faterion y darperir ar eu cyfer o fewn Deddf 2016, gan gynnwys:

a) Nodi gwasanaethau anghofrestredig
b) Cyhoeddi datganiadau blynyddol
c) Cyhoeddi adroddiadau arolygu
d) Hysbysiadau gwella a chanslo cofrestriad
e) Unigolion cyfrifol
f) Diffiniad o 'Ofal' i blant a phobl ifanc

Dyma gwestiynau ar ddiwygiadau arfaethedig ym mhob un o'r meysydd hyn.

Mae yna 21 cwestiwn am y bennod hon.

Cwestiwn 4.1: *(a) Nodi gwasanaethau anghofrestredig – pŵer i'w gwneud yn ofynnol i wybodaeth gael ei darparu:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i alluogi Gweinidogion Cymru (AGC) i'w gwneud yn ofynnol i unrhyw berson ddarparu gwybodaeth pan fo achos rhesymol i gredu ei fod yn darparu gwasanaeth a ddylai gael ei reoleiddio?

Dim sylw.

Cwestiwn 4.2: *(a) Nodi gwasanaethau anghofrestredig – pŵer i'w gwneud yn ofynnol i wybodaeth gael ei darparu:* Ydych chi'n cytuno â'r cynnig i estyn y drosedd o fethu â darparu gwybodaeth pan fo'n ofynnol i wneud hynny, i gynnwys y personau hyn?

Dim sylw.

Cwestiwn 4.3: *(a) Nodi gwasanaethau anghofrestredig – pŵer mynediad:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ddileu amwysedd a'i gwneud yn glir bod gan Weinidogion Cymru (AGC) y pŵer i fynd i mewn ac archwilio unrhyw fangre y mae ganddynt achos rhesymol i gredu ei bod yn cael ei defnyddio (neu wedi ei defnyddio) fel man y darperir (neu y darparwyd) gwasanaeth ynddo neu ohono, neu

ei bod yn cael ei defnyddio (neu wedi ei defnyddio) mewn cysylltiad â darparu gwasanaeth rheoleiddiedig?

Dim sylw.

Cwestiwn 4.4: *(a) Nodi gwasanaethau anghofrestredig – pŵer mynediad:* Ydych chi'n cytuno â'r cynnig i estyn y drosedd o rwystro arolygydd neu fethu â chydymffurfio â gofyniad a osodir gan arolygydd, i gynnwys yr amgylchiadau hyn?

Dim sylw.

Cwestiwn 4.5: *(b) Cyhoeddi datganiadau blynyddol:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i'w gwneud yn ofynnol i ddarparwyr gwasanaethau gyhoeddi eu datganiadau blynyddol?

Dim sylw.

Cwestiwn 4.6: *(b) Cyhoeddi datganiadau blynyddol:* Ydych chi'n cytuno â'r cynnig i greu trosedd gysylltiedig sef methu â chyhoeddi datganiad blynyddol?

Dim sylw.

Cwestiwn 4.7: *(c) Cyhoeddi adroddiadau arolygu:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i roi hyblygrwydd ychwanegol i Weinidogion Cymru (AGC) i gydnabod amgylchiadau pan na fyddai llunio a/neu gyhoeddi adroddiad arolygu o bosibl yn briodol, yn berthnasol neu'n gymesur?

Dim sylw.

Cwestiwn 4.8: *(d) Hysbysiadau gwella a chanslo cofrestriad – amrywio cofrestriad fel darparwr gwasanaeth:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ddileu'r gofyniad i Weinidogion Cymru (AGC) roi hysbysiad gwella i ddarparwr pan nad yw'r darparwr bellach yn darparu'r gwasanaeth hwnnw neu'n defnyddio'r lle hwnnw i ddarparu gwasanaeth?

Dim sylw.

Cwestiwn 4.9: *(d) Hysbysiadau gwella a chanslo cofrestriad – dileu amod ar gofrestriad darparwr gwasanaeth:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i alluogi Gweinidogion Cymru (AGC) i ddileu amod ar gofrestriad darparwr gwasanaeth heb roi hysbysiad o gynnig (adran 18) a hysbysiad o benderfyniad yn dilyn hysbysiad o gynnig (adran 19), pan nad yw'r amgylchiadau a arweiniodd at osod yr amod yn gymwys bellach?

Dim sylw.

Cwestiwn 4.10: *(d) Hysbysiadau gwella a chanslo cofrestriad – pŵer i ganslo cofrestriad darparwr gwasanaeth:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ddileu'r gofyniad i Weinidogion Cymru (AGC) ddilyn y broses hysbysiad gwella i ganslo cofrestriad darparwr gwasanaeth pan fydd y darparwr eisoes wedi peidio â darparu gwasanaeth rheoleiddiedig?

Dim sylw.

Cwestiwn 4.11: *(d) Hysbysiadau gwella a chanslo cofrestriad – gwybodaeth gan ddarparwyr sy'n canslo eu cofrestriad:* Ydych chi'n cytuno â'r cynnig i greu pŵer i wneud rheoliadau o dan adran 14 o Ddeddf 2016 er mwyn galluogi Gweinidogion Cymru (AGC) i'w gwneud yn ofynnol bod gwybodaeth yn cael ei darparu gan ddarparwr gwasanaeth sy'n canslo ei gofrestriad ac yn gadael y farchnad?

Dim sylw.

Cwestiwn 4.12: *(d) Hysbysiadau gwella a chanslo cofrestriad – pŵer i estyn y terfyn amser mewn Hysbysiad Gwella:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i roi pŵer i Weinidogion Cymru (AGC) i estyn yr amserlen ar gyfer darparu gwybodaeth pan roddir hysbysiadau gwella?

Dim sylw.

Cwestiwn 4.13: *(d) Hysbysiadau gwella a chanslo cofrestriad – pŵer i ganslo cofrestriad darparwr gwasanaeth o dan amgylchiadau rhagnodedig:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i alluogi Gweinidogion Cymru (AGC) i ddatgymhwyso gofyniad adran 16(3)(b) mewn hysbysiad gwella – i gymryd camau penodol neu ddarparu gwybodaeth – o dan amgylchiadau rhagnodedig, pan na fyddai diben cymhwyso'r gofyniad?

Dim sylw.

Cwestiwn 4.14: *(e) Unigolion cyfrifol – cyflwyno sylwadau:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i roi'r hawl i Unigolion Cyfrifol gyflwyno sylwadau i Weinidogion Cymru (AGC), yn erbyn hysbysiad gwella neu fwriad i ganslo eu dynodiad, ar yr amod y gwneir y sylwadau o fewn y terfyn amser a bennir yn yr hysbysiad?

Dim sylw.

Cwestiwn 4.15: *(e) Unigolion cyfrifol – anfon yr Hysbysiad Gwella at y darparwr gwasanaeth:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i'w gwneud yn ofynnol bod unrhyw hysbysiad gwella a roddir i Unigolyn Cyfrifol hefyd yn cael ei anfon at y darparwr gwasanaeth?

Dim sylw.

Cwestiwn 4.16: *(e) Unigolion cyfrifol – dileu Unigolyn Cyfrifol heb wneud cais i ddynodi Unigolyn Cyfrifol newydd:* Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ganiatáu i ddarparwr gwasanaeth wneud cais i Weinidogion Cymru (AGC) i amrywio amodau ei gofrestriad i ddileu Unigolyn Cyfrifol pan nad yw'n dynodi'r Unigolyn Cyfrifol newydd fel rhan o'r un cais?

Dim sylw.

Cwestiwn 4.17: *(f) Diffiniad o 'Ofal' i blant a phobl ifanc:* Ydych chi'n cytuno â'r cynnig i addasu'r diffiniad o 'ofal' yn adran 3 o Ddeddf 2016 i'w gwneud yn gwbl glir bod darparu gofal sy'n debyg i ofal rhiant yn cael ei gydnabod fel 'gofal' o fewn yr ystyr yn Neddf 2016?

Dim sylw.

Cwestiwn 4.18: Beth yn eich barn chi fyddai effeithiau tebygol y cynigion yn y bennod hon? Efallai yr hoffech ystyried, er enghraifft:

- Manteision ac anfanteision;
- Costau (uniongyrchol ac anuniongyrchol), ac arbedion;
- Effeithiau ar unigolion a grwpiau â nodweddion gwarchodedig;
- Materion ymarferol eraill.

Byddai croeso hefyd i'ch barn ar sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol.

Esboniwch eich ateb, naill ai yma neu, os yw'n haws, mae croeso ichi nodi unrhyw effeithiau sy'n benodol i gynnig unigol o dan y cwestiwn priodol uchod.

Dim sylw.

Cwestiwn 4.19: Hoffem wybod eich barn ar yr effeithiau y byddai'r cynigion yn y bennod hon yn eu cael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effaith yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Dim sylw.

Cwestiwn 4.20: Eglurwch hefyd sut rydych chi'n credu y gallai'r cynigion yn y bennod hon gael eu llunio neu eu haddasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Dim sylw.

Cwestiwn 4.21: Rydym wedi gofyn nifer o gwestiynau penodol yn y bennod hon. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw, defnyddiwch y lle hwn i wneud hynny.

Dim sylw.

Cwestiynau ar gyfer Pennod 5: Diwygio rheoleiddio'r gweithlu gofal cymdeithasol

Mae yna 9 cwestiwn am y bennod hon.

Cwestiwn 5.1: Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ddarparu y gall person sydd wedi dal swydd fel aelod o Gofal Cymdeithasol Cymru gael ei ailbenodi unwaith? Esboniwch eich ateb.

Dim sylw.

Cwestiwn 5.2: Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i roi'r pŵer i Gofal Cymdeithasol Cymru i roi cofrestriad amodol i berson, pan fo'r person hwnnw'n adnewyddu ei gofrestriad, mewn rhai amgylchiadau? Esboniwch eich ateb.

Dim sylw.

Cwestiwn 5.3: Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ganiatáu panel i adolygu ac estyn gorchmynion interim fel sy'n briodol, am hyd at uchafswm o 18 mis? Esboniwch eich ateb.

Dim sylw.

Cwestiwn 5.4: Ydych chi'n cytuno â'r cynnig i ddiwygio Deddf 2016 i ddarparu panel Addasrwydd i Ymarfer sydd â'r gallu i ddirymu gorchymyn interim, yn ystod achosion adolygu, pan fo'n angenrheidiol ac yn briodol? Esboniwch eich ateb.

Dim sylw.

Cwestiwn 5.5: Beth yn eich barn chi fyddai'n ei gwneud yn angenrheidiol ac yn briodol i banel Addasrwydd i Ymarfer ddirymu gorchymyn interim?

Dim sylw.

Cwestiwn 5.6: Beth yn eich barn chi fyddai effeithiau tebygol y cynigion yn y bennod hon? Efallai yr hoffech ystyried, er enghraifft:

- Manteision ac anfanteision;
- Costau (uniongyrchol ac anuniongyrchol), ac arbedion;
- Effeithiau ar unigolion a grwpiau â nodweddion gwarchodedig;
- Materion ymarferol eraill.

Byddai croeso hefyd i'ch barn ar sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol.

Esboniwch eich ateb.

Dim sylw.

Cwestiwn 5.7: Hoffem wybod eich barn ar yr effeithiau y byddai'r cynigion yn y bennod hon yn eu cael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effaith yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Dim sylw.

Cwestiwn 5.8: Eglurwch hefyd sut rydych chi'n credu y gallai'r cynigion yn y bennod hon gael eu llunio neu eu haddasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Dim sylw.

Cwestiwn 5.9: Rydym wedi gofyn nifer o gwestiynau penodol yn y bennod hon. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw, defnyddiwch y lle hwn i wneud hynny.

Dim sylw.

Cwestiynau ar gyfer Pennod 6: Estyn y diffiniad o weithiwr gofal cymdeithasol i gynnwys gweithwyr gofal plant a chwarae

Mae yna 5 cwestiwn am y bennod hon.

Cwestiwn 6.1: Hoffem wybod eich barn ar y cynnig i estyn y diffiniad o 'gweithiwr gofal cymdeithasol' i gynnwys gweithwyr gofal plant a gweithwyr chwarae. Yn benodol, ydych chi'n ffafrio estyn rôl Gofal Cymdeithasol Cymru i gynnwys gweithwyr gofal plant a chwarae sy'n gweithio yn y sector gofal plant?

Esboniwch eich ateb.

Dim sylw.

Cwestiwn 6.2: Beth yn eich barn chi fyddai effeithiau tebygol y cynnig? Efallai yr hoffech ystyried, er enghraifft:

- Manteision ac anfanteision;
- Costau (uniongyrchol ac anuniongyrchol), ac arbedion;
- Effeithiau ar unigolion a grwpiau â nodweddion gwarchodedig;
- Materion ymarferol eraill.

Byddai croeso hefyd i'ch barn ar sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol.

Esboniwch eich ateb.

Dim sylw.

Cwestiwn 6.3: Hoffem wybod eich barn ar yr effeithiau y byddai'r cynnig yn eu cael ar y Gymraeg, yn benodol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Beth fyddai'r effaith yn eich barn chi? Sut y gellid cynyddu'r effeithiau cadarnhaol, neu liniaru'r effeithiau negyddol?

Nid ydym yn anghytuno â'r bwriad i estyn y diffiniad o weithiwr gofal cymdeithasol i gynnwys gweithwyr gofal plant a chwarae oherwydd, fel yr eglurir yn y ddogfen ymgynghori 'bydd hyn yn darparu mandad clir i GCC i gyflawni ei swyddogaethau mewn perthynas â'r gweithlu gofal plant a chwarae, yn ei gyfanrwydd' (pennod 6 (1)).

Mae GCC yn flynyddol yn cyhoeddi adroddiadau data ar y wybodaeth a roddir gan ymgeiswyr a phersonau cofrestredig. Credwn y buasai'n fuddiol petai'r wybodaeth a gesglir am y gweithlu gofal plant a chwarae wrth i unigolion gofrestru yn galluogi llunio darlun cyflawn o sgiliau ieithyddol y gweithlu hwnnw. Mae hyn yn arbennig o bwysig yng nghyd-destun gofal plant a'r bwriad yn y Cytundeb Cydweithio i ehangu'r ddarpariaeth ar gyfer y blynyddoedd cynnar gyda phwyslais penodol

ar gryfhau'r ddarpariaeth Gymraeg. Mae'r ddogfen ymgynghori yn cadarnhau hyn drwy nodi mhennod 6 (10) sy'n trafod canlyniadau arfaethedig y weithgaredd hon 'Yn benodol, er mwyn i Lywodraeth Cymru allu cyflawni ei hymrwymiadau yn y Rhaglen Lywodraethu a'r Cytundeb Cydweithio ynghylch ehangu'r ddarpariaeth gofal plant i bob plentyn 2 oed yng Nghymru, yn ogystal â'r ymrwymiad i dyfu darpariaeth cyfrwng Cymraeg, rhaid i'r sector fod yn gynaliadwy; rhaid cael gweithlu digon mawr a digon cymwys. Mae gwaith GCC yn hanfodol yn hyn o beth ac mae angen sail ddeddfwriaethol glir i allu parhau i gefnogi'r sector gofal plant a chwarae, yn ei gyfanrwydd'.

Mae Mwy na geiriau 2022-27 yn nodi y bydd 'disgwyl i holl gydweithwyr y GIG a gofal cymdeithasol ddilyn cwrs ymwybyddiaeth ieithyddol, a fydd yn egluro pa mor bwysig yw'r Gymraeg wrth ddarparu gwasanaethau ac fel un o anghenion cleifion' (cam gweithredu 14). Mae Rhan 4, 91 (1) (c) Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 yn nodi bod rhaid i gofnod yn y gofrestr mewn cysylltiad â pherson ddangos '.....(c) unrhyw gymwysterau eraill, gwybodaeth arall neu brofiad arall a ragnodir sy'n berthnasol i gofrestriad y person'. O ystyried y disgwyliad hwn yn *Mwy na geiriau* buasem yn eich annog i sicrhau bod gwybodaeth ynghylch p'un a yw unigolyn wedi dilyn cwrs ymwybyddiaeth ieithyddol yn cael ei chasglu ar gyfer pawb sydd ar gofrestr Gofal Cymdeithasol Cymru yn ogystal.

Byddai casglu gwybodaeth lawn a chyfoethog am sgiliau a chymwysterau ieithyddol ynghyd â gwybodaeth am ymwybyddiaeth iaith y gweithlu gofal plant yn gallu cyfrannu at weithredu ymrwymiad y Cytundeb Cydweithio yn llawn.

Cwestiwn 6.4: Eglurwch sut rydych chi'n credu y gallai'r cynnig gael ei lunio neu ei addasu er mwyn cael effeithiau cadarnhaol neu fwy o effeithiau cadarnhaol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, a pheidio â chael dim effeithiau niweidiol ar gyfleoedd i bobl ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Gweler uchod.

Cwestiwn 6.5: Rydym wedi gofyn nifer o gwestiynau penodol yn y bennod hon. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw, defnyddiwch y lle hwn i wneud hynny.

Dim sylw.

Consultation Response Form

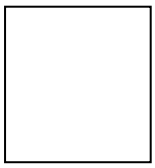
Your name: Lowri W. Williams

Organisation (if applicable): Welsh Language Commissioner

Email / Telephone number: lowri.williams@cyg-wlc.cymru

Your address:

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:



Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

I am responding on behalf of the Welsh Language Commissioner. The Commissioner's principal statutory aim is to promote and facilitate the use of the Welsh language. The Welsh Language Commissioner's vision is a Wales where people can live their lives in Welsh. Our response to this consultation therefore specifically focuses on the effects of the consultation proposals on the Welsh language, on the rights of Welsh speakers and the opportunities to use the language. We have therefore not answered all of the questions. We should also note that the Welsh Language Commissioner is an 'allowed person' in cases before the Family Court.

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No comment.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

The Care Inspectorate for Wales states in table 3 of its National review of care for children in Wales that the Welsh language was the language choice of 3% ofc children in care homes in 2017-18. It does not report on the degree that the care was available in Welsh to meet the need. It is possible that a lack of care in Welsh could have a detrimental effect on children (please also see our response to question 1.17 in this respect). Our expectation is of course that local authorities already include a requirement to provide care through the medium of Welsh when commissioning care from providers, in accordance with the requirements of the Social Services and Well-being (Wales) Act 2014 and since 2015 the Welsh language standards. If a third party carries out an activity or provides a service on behalf of the body which is under a duty to comply with the standards the local authority must ensure that the third party complies with the standards applicable to that service too. We would encourage you to find out what is the baseline of the current provision of care of children looked after in Welsh as part of your planned regulatory impact assessment work. As Commissioner we have had to contribute in the past to cases in the court of protection where individuals have been placed in places where there has not been Welsh language provision available to

them. This suggest that steps have not always been taken to ensure that Welsh speakers receive their care in Welsh.

The consultation document sets out that eliminating profit from the care of children looked after will 'promote the development of local services that are locally accountable. It will rebalance the social care market in favour of public sector and not-for-profit care provision and will create a larger provider base and secure better social value' (30). All local authorities operates in accordance with the Welsh language standards, as it is expected of third party providers acting on their behalf as stated above. It is possible that increasing direct provision from the public sector, more locally, would mean that more provision would be available through the medium of Welsh because it reduces those third party requirements in some cases. However, as already stated, our expectation is that local authorities already commission care through the medium of Welsh. A change to commissioning only from not-for-profit providers would not necessarily make a difference to Welsh language provision therefore unless it is ensured that authorities will indeed commission care in Welsh for children looked after.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

No comment.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No comment.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No comment.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No comment.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

The document states that elsh Ministers propose issuing guidance to support the implementation of the legislative changes to eliminate private profit from the care of children looked after, such as referencing or describing appropriate organisational models. This guidance will act as an aid in providing information and support to stakeholders as we implement the changes' (28). We believe that such guidelines would be useful if they included detailed guidance on how to ensure that

children and young people who speak Welsh receive care in Welsh in accordance with the active offer, and how the care system as a whole can give every child the opportunity to learn, develop and use the Welsh language. It would be appropriate to include organisational models regarding the provision of care in the Welsh language which would include guidance on the development, planning and scheduling of the workforce and ensure that resources and support are available for Welsh speakers in order to ensure that care is provided through the medium of Welsh. The new guidance to support the implementation of this primary legislation should be guided by the rights of children. We urge you to discuss with the Children's Commissioner the linguistic rights of Welsh-speaking children looked after in accordance with the UN's Convention on the Rights of the Child, specifically articles 29 and 30. We are aware that the Welsh Language Board provided advice to the then Welsh Assembly Government in 2006-7 under section 3 of the Welsh Language Act 1993 regarding guidelines for the care of children looked after. It would be appropriate to consider that advice in the preparation of this guidance. We would also be happy to discuss the guidance with you as it is developed.

We understand that the Welsh Government is currently developing a National Framework for commissioning care and support following the publication of the Rebalancing Care and Support White Paper as well. The National Framework should include strong guidance on how childcare is commissioned in Welsh and in accordance with Welsh language standards, the active offer of care and the rights of the child. The guidance published as a result of the proposals of this consultation should be in line with that National Framework.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No comment.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

No comment.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on

treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The consultation document states that 'there will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand' (37). Our understanding is that local authorities are already required to assess the degree of care and support needed and provided through the medium of Welsh in their local authority, regardless of the provider, as outlined in the Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice (General Functions). The document does not explain why a change to a 'not for profit' system, would necessarily mean that there would be an increase in Welsh language provision.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As we note above we believe that further clarification is needed as to how the legislative changes to help eliminate profit from the care of children looked after would in themselves increase provision in the Welsh language. We therefore believe that further steps need to be considered to make sure that local authorities and the potential not-for-profit providers actually ensure that children who receive care actually receive that care in Welsh. It is possible that more detailed guidelines such as those referred to in 1.7 above would contribute to this but we believe that further steps than that need to be considered to ensure that placements for children looked after meets the needs of those children to speak Welsh in accordance with Part 6, 75 (1), Part 6, 78 (3) (a) and Part 6, 78 (3) (a) of the Social Services and Well-being (Wales) Act 2014. Enabling children who have been brought up to speak Welsh to continue to do so should be crucial in the provision for children looked after and in accordance with their rights. Ensuring opportunities for all children looked after to develop skills in the Welsh language should also be a consideration.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

No comment.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 2.3: What lessons can we learn from other countries' practice in this area?

No comment.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

No comment.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

No comment.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No comment.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

No comment.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No comment.

Question 3.4: What lessons can we learn from the duties to report in other countries?

No comment.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No comment.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No comment.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No comment.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No comment.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No comment.

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No comment.

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No comment.

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No comment.

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No comment.

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

No comment.

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No comment.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No comment.

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No comment.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No comment.

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No comment.

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No comment.

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No comment.

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No comment.

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No comment.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No comment.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No comment.

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No comment.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

No comment.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

No comment.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

No comment.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

No comment.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

No comment.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No comment.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

We do not disagree with the intention to extend the definition of social care worker to include childcare and play workers because, as explained in the consultation document, this 'will provide a clear mandate for SCW to carry out its functions in relation to the childcare and play workforce, as a whole' (chapter 6 (1)).

SCW annually publishes registration data reports on the information given by applicants and registered persons. We believe that it would be beneficial if the information collected about the childcare and play workforce as individuals register enables a complete picture of the linguistic skills of that workforce to be drawn up. This is particularly important in the context of childcare and the intention in the Collaboration Agreement to expand the provision for the early years with a particular emphasis on strengthening the Welsh language provision. The consultation document

confirms this, stating in chapter 6 (10) that discusses the intended outcomes stating 'In particular, the Welsh Government's Programme for Government and Cooperation Agreement commitments regarding expanding childcare provision to all 2 year olds in Wales, as well as the commitment to grow Welsh-medium provision, depend on the sector being sustainable; on there being a sufficiently sized and qualified workforce. SCW's work is fundamental to this and requires a clear legislative basis to be able to continue to support the childcare and play sector, as a whole'.

More than just words 2022-27 states the expectation that at 'all NHS and social care colleagues to follow a language 'awareness 'course which will explain how important Cymraeg is in service delivery and as a patient need' (Action 14). Part 4, 91 (1) Regulation and Inspection of Social Care (Wales) Act 2016 states that an entry in the register in respect of a person must show '…….(c) such other qualifications, knowledge or experience relevant to the person's registration as may be prescribed'. Bearing in mind this expectation in *More than just words*, we would encourage you to ensure that information regarding whether an individual has followed a language awareness course is collected for all on the SCW register as well.

Gathering full and rich information about linguistic skills and qualifications together with information about the language awareness of the childcare workforce could contribute to the full implementation of the Collaboration Agreement commitment.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please see above.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes, we need to move away from the reliance on the " For Profit" Providers to deliver the provision on care in Wales. Without legilsation there will be little to reduce the profit making from Childrens services.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Risk of Service not being prepared in private companies walk away from Wales.
Not enough choice of provision or services available, or the expertise within Local government to bring back in house.
However, using funding that would be gained though removing profit and using for in house services could expedite the ability to retain services.

Q3. Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

It is vital that any surplus is used to improve preventative services within local Children services, to support families and children at the early stages so that further care provisions may not be required. There is no place in using Children as commodities to gain profit

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Hoping that the timeline is not too ambitious.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

concerned that many local authorities in Wales do not have enough provision in place to transfer to NFP providers/ foster carers and that Children may not be able to have the support that they deserve.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

This would be helpful to organisations, enabling clear guidelines.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

This should be committed to earlier, so that Local authorities have the time to assess if they have the right balance in care provision.
Clearly there may be some authorities that are unable to do this straight away as there may be no NFP care providers within their authorities which may mean children being placed out of county.
Possibly 3-5 years.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

There will be significant challenges from the For-Profit organisations, with threats already being made to move out of Wales. Welsh Government will need to support Local authorities and prioritise provisions and Foster/kinship carers to provide suitable alternatives.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No comment

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

Partly, although there is a clear need to allow persons to have control of their care requirements. The employment of PAs should be held and controlled by a local authority / not for profit agency so that employment rights are not lost.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

We have seen an increase of poor employment practices of those employed as PAs and in some cases an abuse of family support. PA's are not registered within SCW and that can have implications for service users and staff who are not receiving relevant training and information.
Giving full DP to individuals for CHC may increase the non-registered workforce in Wales and we do not see any evidence of a reduction or support for Domicilary workers, this simply moves the problem of staff shortages.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No comment

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No comment

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

If this does go through, robust advice and guidance on what responsibilities individuals will have as an employer.

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

NO COMMENT

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

NO COMMENT

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

NO COMMENT

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Not enough information in being provided to allow a view to be made on this point.

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

Do not feel there is enough information to allow a view. Potentially this could have a negative impact on the workforce, would need further investigation on the implementation of this.

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

If these have to be brought in then preference would be for them to sit alongside rather than replace, this would hopefully avoid employers relinquishing responsibility and placing only on the individuals

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Could this be achieved by giving clear and practical advice on how/ who to report abuse too? Many people are unsure of how they are able to report, and many believe that the only option that they would have been to contact the Police?
Many workers within the social care sector are unclear on who they can report suspected abuse too and raise concerns that they are often unable to go to the employer as they may be a contributory factor.

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

As above

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Comment.

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Comment

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Comment

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Comment

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Yes, this will hopefully prevent the setting up of unsafe services providing potentially unsafe care and employment rights for the workforce.

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Yes.

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Yes

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Yes

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Yes

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

Yes

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Yes, but only in extenuating circumstances

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No comment

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No comment

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Comment

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes, Welsh Ministers should understand the reasons for this.

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

no comment

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No comment

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

This seems to be within the grounds of reasonableness

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes, The Service provider should be made fully aware of any potential failings, as too should the people using the service being provided.

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Strict guidelines must be in place to make sure that any time scales for replacing are adhered too.

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Agree

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

Aligns with other codes of appointments.

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

Yes, this will allow for delays that sometimes cannot be avoided. Provision should be put in place to ensure that this is not prolonged.

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

Yes, but SCW should only use this where there is no other way to achieve a full, fair investigation, care to make sure that investigations are not unnecessarily delayed due to extended timelines.

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

agree, no additional comments

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Yes, [redacted] have no objection to this as this would allow for clear inclusion into the social care workforce. Allowing a better understanding for the public.

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: [redacted]

Organisation (if applicable): [redacted]

E:mail: [redacted]

Telephone: [redacted]

Your address: [redacted]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[redacted]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Consultation Response Form

Your name: Gethin Matthews-Jones

Organisation (if applicable): Royal College of Paediatrics and Child Health (RCPCH)

Email / Telephone number: [redacted]

Your address: Gethin.matthews-jones@rcpch.ac.uk

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

Royal College of Paediatrics and Child Health (RCPCH)

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

- What would be the benefits, disbenefits and other implications of such an approach?

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Historically the RCPCH has not endorsed proposals to introduce such a duty. In 2016, The UK Government consulted on Reporting and Acting on Child Abuse and Neglect. Our full consultation response is available on our website. In that response, we noted a lack of evidence in relation to:

- Whether increased reporting would result in earlier capturing of abuse and neglect.
- Whether mandatory reporting would have an adverse impact on the child protection system.
- Whether introducing a mandatory duty would directly improve outcomes for children.

However, in very recent weeks the report of the independent inquiry into child sexual abuse was published. Our response to the publication of the report is here. We noted that the inquiry recommends a new law of mandatory reporting making it a legal requirement for those who work in regulated activity or work in a position of trust to report child sexual abuse. We have made a commitment to consider the full findings of the report and recommendations including our position on mandatory reporting of child abuse.

Therefore, we are not currently in a position to formally endorse or reject the principle of a mandatory individual duty. We envisage being able to do so in early part of 2023 once we have reviewed the current evidence.

It would be helpful to understand the Welsh Government's further timeline for work on these issues to see whether there are opportunities to further engage with and inform these discussions, once the implications and recommendations of the IICSA have been considered.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Paediatricians already have a duty to take appropriate action when they believe a child or young person is suffering or likely to suffer harm. They are subject to existing professional duties, guidance and regulation through existing legal frameworks, including duties imposed by the Welsh Government under the Social Services and Wellbeing Act and described in associated guidance. This guidance includes children at risk of abuse or neglect and Safeguarding Children from Child Sexual Exploitation. There is also guidance set out by the College, for example our recent guidance on Perplexing Presentations (PP)/Fabricated or Induced Illness (FII) in children.

In our 2016 consultation response, we noted a number of risks including:

- A risk of undermining the culture of risk and responsibility sharing within current system.
- A risk of dissuading people worried about their own thought or potential actions from seeking advice or assistance for fear of being reported to the authorities and of a culture of fear and distrust developing between clinicians and patients.

We also highlighted in that response that if a mandatory individual duty were to be introduced, there would be a need to strengthen the child protection system in terms of training to increase the knowledge and skills of mandated individuals; guidance to ensure reports are meeting reasonable thresholds and to avoid duplication; and increased resource to ensure that the child protection system is equipped to deal with the likely increase in reports.

It may be that there is new evidence since 2016 and our review and update to our position will account for that when it is complete. We would be glad to share our updated position with the Welsh Government once we have completed this process. We also acknowledge that there will be differences between the contexts of the child protection system and landscape in England in 2016 and that of Wales in 2022. Nonetheless, principles and implications we have highlighted previously including around those around training, guidance and resourcing merit consideration if the Welsh Government does further explore proposals to introducing such a duty.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

In 2021, we published our position on proposals to introduce an individual duty of candour with criminal sanctions attached in Northern Ireland. Although the context is different, both in terms of geography / jurisdiction and the type of duty proposed (candour, rather than reporting), it is worth noting that members in Northern Ireland expressed concern at the principle of introducing individual criminal liability for breach of this duty. In our response, we said that "RCPCH members in NI reported that they believe the impact of criminal sanctions will be detrimental and far-reaching, citing that the anxiety created by the additional threat of criminalisation may encourage practitioners to leave practice". We would therefore recommend careful consideration and further consultation on any proposals that could introduce new criminal sanctions into medical practice.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

a) Identifying unregistered services
b) Publication of annual returns
c) Publication of inspection reports
d) Improvement notices and cancellation of registration
e) Responsible individuals
f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: ***(****d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.