

Health and Social Care Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
13 May 2015

Meeting time:
09.15

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda – Supplementary Documents

Regulation and Inspection of Social Care (Wales) Bill: consultation responses

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

8 Regulation and Inspection of Social Care (Wales) Bill: consideration of evidence (11.55 – 12.05) (Pages 1 – 362)

Agenda Item 8

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Disability Can Do Organisation - RISC 01 / Tystiolaeth gan Sefydliad Disability Can Do - RISC 01

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

We feel it will deliver the stated aims, we feel it is a strong idea and very necessary for vulnerable people in receipt of care. Legislation is needed because without it things get forgotten and overlooked.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

Agencies do not have the adequate resources to allow for additional inspections. It is all about money and they will not be interested in putting extra measures in place especially if they cost money. We feel the local authority may be reluctant to make changes when they do not have the time and the resources to do so. It will be an increased workload that they don't need at the moment and at a time when there are lots of discretionary cuts. Companies cannot cope with the influx of clients all the time let alone the extra work. Local authority should have more power to enforce sanctions if a care agency is not providing the relevant support and meeting the needs. We hope this bill will tackle this.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

No we cannot see any. It is tricky for older people who are isolated with no family and care agencies seem to try and get away with more. There is always room for improvement.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

We think the local authority should have more powers to sanction companies who are repeatedly failing to meet the needs. There should be more onus on the agencies to offer better pay and more training to try and retain staff. The training should be more regulated and monitored.

5. Do you think that any unintended consequences will arise from the Bill? More onus on the local authority who are already struggling. Maybe it should be an independent agency?

Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

We feel this is a good idea and that any quality ratings should be made available for public viewing. It depends what the fees are for?

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

It is a good thing to have more public involvement. People should be included more in inspections and in reviews of their care plans. People should have more of a say into what is happening in their lives and if they are not happy they should have the right to access an independent advocate.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

We do not have any views on this.

For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

We feel Care Council for Wales do not do a great deal at the moment so any extension to remit is a positive step. However we can not see how much difference changing the name will be apart from costing a lot of money.

10. What are your views on the provisions in Parts 4 – 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

We feel this is good, it is really important for all care providers to be registered and not just voluntary. We also applaud the introduction of prohibition orders because agencies should be brought to task if they are not fulfilling the need.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

We think it is an important for bodies to joint working as long as it actually works in practice rather than just a 'tick box exercise'. There has to be a clear process of what joint working is and how to achieve it.

Delegated powers

The Bill contains powers for Welsh Ministers to make Regulations and issue guidance, and for Social Care Wales to make Rules.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

This is difficult to answer. We feel there should be more control from the top down. However it is all very well writing it in legislation but it has to be followed through in practice.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

Kind Regards,

Kate Howell
Welfare Support Manager
Disability Can Do Organisation

Charity number: [REDACTED]

Regulation and Inspection of Social Care (Wales) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru)

Evidence from Age Cymru – paper 1– RISC 02 / Tystiolaeth gan Age Cymru – papur 1– RISC 02

Firstly, on the 11th of November 2013 the Deputy Minister for Social Services committed to examining 15 minute care visits as part of the Regulation and Inspection Bill:

[146] “I recognise and agree with what has been said this morning about the importance of this issue. [...]I expect commissioning and contracting practice to be focused on the quality of care provision, and that this is managed and monitored appropriately. [...] I have asked my officials to consider this amendment in the context of the work that they are undertaking in the forthcoming regulation and inspection legislation, which the Government will bring forward before the end of this Assembly.”

(<http://www.senedd.assemblywales.org/documents/s21863/13%20November%202013.html?CT=2>)

However, we are unable to see how this issue is covered by the Bill as it is currently framed, and would welcome clarification from the Minister on this issue. As noted in our response to the Welsh Government’s consultation on the Regulation and Inspection White Paper, our Local Age Cymru Partners have previously reported that clients are having to make choices between going to the toilet and getting something to eat, particularly as at least 5 minutes of the call time is taken by completing admin and call monitoring. Another example was an older person having to have cold baths as there is not enough time to wait for the boiler to heat the water in a 20 minute call. We would like to see an end to 15 minute care visits as standard practice.

Question: Can the Minister clarify how the Regulation and Inspection of Social Care Bill has addressed this issue of care visits lasting less than 30 minutes, given their detrimental impact upon the quality of care provided?

Secondly, whilst we welcome the fact that the Bill as drafted includes the possibility of registering individual residential and domiciliary care staff in the future, we believe that this is a discussion that should be taking place now. These staff members are providing care for the most vulnerable older people in our society and we believe that they should be registered in the same way that staff looking after other vulnerable groups in our society (for example children). Lack of registration indicates that these vulnerable services users are not being protected in the same way as others. Registration would allow all staff to be held to account against a code of practice and provide reassurance to older people who are in receipt of care services, as well as their friends and family members. These staff provide care to older people in their place of residence, the very place where they should feel most safe and secure.

Question: Could the Minister please clarify current Welsh Government thinking about the extension of registration to these groups of staff who are engaged in providing care to extremely vulnerable older people?

College of Occupational Therapists

Patron: Her Royal Highness The Princess Royal
President: Lord Walton of Detchant
Chief Executive: Julia Scott



Policy Officer – Wales



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[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from College of Occupational Therapists – RISC 03 / Tystiolaeth gan Coleg y Therapyddion Galwedigaethol – RISC 03

12.3.15

Dear Chair and Members of the Health and Social Care Committee.

Consultation on the Regulation and Inspection of Social Care (Wales) Bill

Thank you for the invitation to provide written evidence for the above consultation. The College of Occupational Therapists will be submitting detailed evidence in April. However, The College also welcomes the opportunity to submit comments prior to the Ministerial scrutiny session. It is not possible to produce a full response in the time available so we hope you will accept this letter as a brief indicator of some of the main concerns for the College prior to us submitting a full response later.

The College welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered. This is absolutely vital for protecting the public from poor practice and practitioners and to maintaining the safety and wellbeing of vulnerable people receiving services. Inspection and regulation of service providers and the creation of a Responsible Individual all appear to be good intentions. We have made some comments below which the committee may wish to consider when scrutinising the Minister:

Definition of Care (Part1; Chapter1; 3(i) (a).

The definition of care is concerning as it references solely physical tasks. While we note s3(a)(ii) identifies the 'mental' processes related to those tasks, as it stands it appears to push a focus on task and time rather than quality of the interaction. Relationships and the quality of human interaction is a vital element in providing high quality care services, as many recent reports and investigations such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. Would this definition tend to encourage a focus on tasks? On providing services to meet physical needs only? How do emotional care and support, confidence building and other developmental elements fit this definition? We are concerned



that this definition does not acknowledge that the person being cared for may need cognitive, mental and emotional elements of their wellbeing, as defined in the Social Services and Wellbeing (Wales) Act (2014) to be included in their care.

Inspections

COT welcomes the intent to inspect services. As Welsh Government policy continues to promote the integration of services it is surprising that there is no reference to any potential to allow joint or integrated inspections, for example with Healthcare Inspectorate Wales. COT is unsure if integration of inspection is planned or whether in fact this Bill might prevent it. Is that possible or will the Bill prevent it? The College is aware that members of the profession experience frequent, separate inspections at present depending on their service registration. There is no reference in the Bill to the fact that each local authority as well as CSSIW and HIW may all inspect a single service, each requiring the same or similar information, usually in a different format. A prudent approach would be to streamline this system.

The College understands that at present a single inspector carries out inspections. In many other fields the use of a small team of inspectors allows for validation and triangulation of findings and would seem a good model to promote in this Bill. The College is also unclear whether 'lay' inspectors are service users and members of the public or other practitioners and managers.

Inspection appears to be only of defined services. We are unclear whether 'regulated activity' (s171) is the same as 'regulated services'. In schedule 1 regulated services are defined; yet the Social Services and Wellbeing (Wales) Act (2014) indicates the development of more variable, personalised and flexible services. How will these be included if they don't fit a traditional model of care home or domiciliary care or the definitions in schedule 1? The College notes that only care and support services will be regulated and assumes there will be no regulation of preventative or other services?

Social Care Wales (Part 3)

The objective (s67)(1) for Social Care Wales (SCW) does not limit the protection, promotion and maintenance of the safety and wellbeing of the public in Wales to social care matters. The COT is led to believe the intent of the Bill is that SCW will protect the public only in relation to registered social care practitioners and services. However, In s67(2) the functions do not appear to relate to this objective: this section includes all social care workers and a responsibility to maintain high standards. The College is unclear how this Bill interacts with the responsibility of other regulators. The College assumes this responsibility can only relate to the services and practitioners registered with and regulated by SCW? Practitioners registered with and regulated by other practitioners, such as occupational therapists and nurses will remain under the jurisdiction of those regulators. It is not fully clear how this covers staff who are not regulated at all as individuals, but who work in regulated services. Are the Responsible Individual and Registered Manager accountable for these staff??

There is potential for conflict of interest in placing so many roles in one body. The function of protecting the public should be paramount. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>)



identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that “**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**”(p2). This work came out of the Shipman Inquiry and the Foster review. The proposal for SCW should be examined against these principles for regulation.

The wider roles given to SCW (Part 5) with all social care workers are sometimes beyond the remit of public protection. In healthcare many of these are done through the Workforce Education Development Service (WEDS) or by other regulators. Clarity is needed on the groups that SCW will include in this work. For example, how will occupational therapists be supported in their practice in social care, even though they are not the responsibility of SCW in its regulatory role? How will the different responsibilities be separated? There is a missed opportunity here for improving integration in health and social care.

Social Care workers (Part4)

The definition of a social care worker (s78) includes a far wider group than the registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Clarity is needed on how or if SCW is responsible for those. Much of the wording in the Bill implies that all social care workers will be included. For example, s78 (3)(b) would include occupational therapists. Any regulations made under s78(2) will need to be clear of any overlap with existing regulator functions. The sections immediately after s78 refer to the register and continue to refer to issues relating to registered groups: even though “social care workers” are not registered groups. The College sees value in separation of the roles of regulator and other roles in relation to improvement or education for non-regulated groups to avoid confusion. (One example of this is s57. This section amends the Social Services and Wellbeing Act (2014) and allows for s94(A)(3) regulations to specify that a person not registered under S79 of the Regulation and Inspection of Social Care (Wales) Act cannot work for a local authority in relation to Accommodated and Looked After Children. Care will be needed to ensure that occupational therapists, speech and language therapists and nurses are not excluded by such regulations. S83 (b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered appear to be social workers and registered managers. S83 (b)(i) requires completion of a course approved by SCW under s113 – which cross refers to s79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by SCW but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution.

Social Care workers: standards of conduct, education etc. (Part 5)

This part is sometimes not clear as to which workforce groups are included and which are not:

s111 (1)(a) – this refers to standards of conduct and practice for “social care workers”. The College is unclear if and how codes are to be applied to unregistered groups of staff or to staff registered with other regulators.

S111 (3) refers to codes for social workers when working as approved Mental Health Practitioners (AMHPs). However three other professions can be AMHPs, so surely the



same codes of conduct have to apply to every AMHP regardless of their initial professional background?

S111 (6) says a local authority making a decision about the conduct of any social care worker must (if directed to do so by Welsh Ministers) take into account any code published by SCW. However, the codes of other regulators may be more appropriate. How will this be accommodated?

The College supports the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus requirements: what is the role more generally, and thus good practice but not required; what roles could be enhanced by opportunities for integration or joint working with other regulators, such as HCPC or NMC, and other employers, such as WEDS and the improvement functions of Public Health Wales.

Social Care Workers Fitness to Practise (Part 6)

The College is unclear what remit over fitness to practice SCW has other than for registered groups, in this case social workers and registered managers. Fitness to practice for occupational therapists is under the remit of the HCPC. S116 (5) appears to acknowledge this is only for workers registered with SCW: perhaps the part should not be titled to imply it means all social care workers? The College notes the reference to HCPC in s116 (4) but reads this as referring to social workers registered in England. S117 refers to a “registered person” is this only a person registered with SCW? What about a person registered with another registering body?

Co-operation and joint working by the Regulatory Bodies (Part 9)

S174 identifies the regulatory bodies as Welsh Ministers and SCW. The College questions why is there no reference to co-operation and joint working with HCPC and other regulators? The reasons the College would expect such co-operation include: the potential for an allegation to be made against a practitioner registered with both bodies, for example a social worker may be registered to work in both England and Wales or an occupational therapist may also be a registered manager: and the opportunity to streamline regulation and registration by recognising registration with one body removing the need for registration with a second. The College would expect the Bill to make provision for such working.

The College is disappointed there is no reference to co-operation in relation to the wider roles of SCW given the policy direction of greater integration. For example, workforce development and education commissioning for occupational therapists is undertaken by WEDS, there seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks etc. The College is aware of a lack of cross recognition of qualifications between health and social care. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to ‘redo’ similar qualifications to named recognised qualifications by one part of the sector.

It is hoped the committee find these initial points useful and timely for the initial Ministerial scrutiny session. The College looks forward to submitting a full response to the consultation



later. If the committee have any further questions or would like some further explanation of the views of the College please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Ruth Crowder". The signature is written in a cursive style and is placed on a light grey rectangular background.

Ruth Crowder
Policy Officer for Wales / Swyddog Polisi Cymru

Care Council for Wales' Response to the Health and Social Services Committee's call for evidence as part of the consultation on the Regulation and Inspection of Social Care (Wales) Bill

General

1. *Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?*
 - 1.1 The Care Council for Wales (Care Council) welcomes the broad aims of the legislation with its focus on public protection through the provision of high quality regulated services and a system of workforce regulation that supports the workforce to practise effectively and safely. The Care Council has always emphasised the responsibility on both social care providers and the workforce in ensuring high quality services whilst also advocating the principle that regulation has a significant role in promoting and supporting high quality provision, as well as addressing areas of poor practice.
 - 1.2 In relation to workforce regulation and development, we believe that legislation is required to achieve new powers which will support the workforce in the sector and to support the transition of the Care Council into Social Care Wales. Much of the legislation restates processes currently undertaken by the Care Council with regards to regulating the social care workforce. However, the additional legislation will enable Social Care Wales to carry out its new service improvement function, which is welcomed, as it will achieve coherence in driving forward improvement across the sector.
2. *What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?*
 - 2.1 The primary barriers to achieving high quality provision are the wider pressures on the sector in terms of increasing volumes and complexity of need at a time of significant resource pressures. These lie outside the scope of regulation. The legislation seeks to address these issues through provision for improved planning and market analysis, a focus on high quality professional practice and enhanced co-ordination of improvement activity to address agreed national priorities. Critical to the success of this legislation will be the formation of clear links with the Social Services and Wellbeing (Wales)

Act 2014, with regulation and service improvement and development being linked rather than separate activities.

3. *Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?*

3.1 The legislation should support equality particularly for those groups that are reliant on services provided by the social care sector. We welcome the explicit reference to the provision of services through the Welsh language and to groups with protected characteristics.

4. *Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?*

4.1 This question will be addressed in our responses below.

5. *Do you think that any unintended consequences will arise from the Bill?*

5.1 In relation to service regulation, we do not foresee any unintended consequences although careful monitoring of the impact of implementing the legislation will be required to ensure that there are no negative consequences for a sector that is somewhat unstable at present.

5.2 For workforce regulation, we feel that the detail on the face of the Bill may restrict the ability in the future to respond to new patterns of service and workforce groups for whom other regulatory approaches may be more appropriate.

Provisions in the Bill

6. *What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.*

6.1 The provisions within the Bill are designed to improve the transparency of regulated provision and improved public understanding of, and involvement in, social care provision. Central to this development will be improved public information on the care sector. We consider the obligation to produce annual reports to be a part of this, and as such we welcome this requirement. Such approaches undertaken in collaboration with the sector should result in increased public protection, public accountability, improved public understanding of the care sector and should help to inform and enable individuals who use services in making decisions about their care. This should result in higher expectations of social care provision through wider ownership of matters of quality and safety of provision.

- 6.2 A suitable fee regime for regulatory activities may be appropriate. However if fee collection results in service costs being increased to recoup the cost of fees or if the cost of fee collection outweighs the income received, the application of fees may need to be reconsidered.
7. *What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.*
- 7.1 The move to a focus on outcomes is to be welcomed, both for individuals using services and the population as a whole. However the difficulty of defining and measuring outcomes that have meaning is notoriously problematic and remains largely untested. The requirement that statutory services have a duty of oversight for the local social care economy is welcomed as a key to supporting high quality service commissioning. Key to this is robust and reliable data. We welcome the role of Social Care Wales in this and the work which is underway to strengthen the data available and plans to have intelligence and evidence which can be used in making decisions about the sector.
- 7.2 Sometimes the language in the Bill can appear traditional in comparison to that of the Social Services and Well-being (Wales) Act. It may therefore be appropriate to amend some elements of it, for example, to reflect the shift from 'services' to 'provision'.
8. *What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.*
- 8.1 As stated above, market oversight at the national and local level is to be welcomed, as is assessment of the financial stability and sustainability of providers. However achieving such transparency may be difficult due to the complex nature of the sector. Achieving meaningful information at both national and individual provider level will only be attained by close working with providers who recognise that transparency is critical in being a part of the social care sector.
9. *What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?*
- 9.1 The Care Council welcomes the principle of reconstituting the Care Council as Social Care Wales with an extended remit. The Care Council has operated

from the outset on the basis that regulation of the workforce and development of the social care workforce are firmly linked with the one activity supporting the other. The additional elements of service improvement, research and public information will bring further key levers into a cross-sectoral, co-ordinated approach to raising the quality of provision. Much of the detail of the proposal remains to be determined and it will be vital that there is proper alignment of resources to the ambitions.

- 9.2 The Care Council and many of the stakeholders regret the loss of its branding, which is well known and respected in the sector. However the Care Council looks forward to working with Welsh Government and other key partners in developing the proposals for Social Care Wales through to implementation in 2017 and beyond.
10. *What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.*
- 10.1 The Care Council is pleased that the Bill provides powers to extend regulation to other groups of social care workers in the future. However, we remain uncertain whether the level of detail on fitness to practise processes on the face of the Bill may restrict the future consideration of alternative approaches to regulating these groups of workers.
- 10.2 We note that the Regulatory Impact Assessment points to financial costs as the main reason for not extending mandatory registration. Therefore, we are keen to share the work we have done on possible other approaches to regulation of the non-regulated workforce which may provide economic and practical alternative solutions. In our response to the consultation on the *White Paper on The Future of Regulation and Inspection of Care and Support in Wales*¹, we proposed a licencing model of vocational workforce regulation. The system has many benefits and could help realise the ambitions of the Welsh Government in this area.
- 10.3 The key feature of the model is its focus on supporting care workers to practice safely and effectively through provision of accredited training and guidance, while at the same time addressing areas of poor or dangerous practice by removing those workers from the workforce. Disciplinary action and fitness to practise is first and foremost the responsibility of the employer, who then informs the regulator of the outcome. The regulator can then remove an employee's licence if their practice fails to meet standards. We estimate that the costs of this system for the regulator could be covered by an annual tax-deductible fee of around £25 per person per annum. Further information on the model is at Appendix 1.

¹ Welsh Government, September 2013

- 10.4 We would request that due consideration is given to allowing enough flexibility in relation to the fitness to practise provisions within the Bill to enable the Minister, through Regulations, to extend regulation to other groups of workers through an alternative regulatory model, at a time that may be appropriate.
- 10.5 In its response to the consultation on the Bill the Care Council, in common with the vast majority of other respondents, stated that prohibition orders or negative registers have very little positive benefit, but numerous negative elements. For example, it would introduce significant costs with no income from fees. Furthermore, it would focus on negative practice without benefits such as supporting high quality provision and recognising high quality practitioners. The view of the sector on a negative register is also acknowledged in the Explanatory Memorandum². We do not therefore consider that the option of a negative register would provide Social Care Wales with a viable alternative model to full mandatory registration.
- 10.6 The Care Council agrees that a reliance on voluntary registration is not appropriate, although reports from care workers and employers who have supported their care staff to register indicate that voluntary registration has provided a means of recognising the contribution of the care workforce. As indicated above, we believe that alternative models of licensing regulation are available to replace voluntary approaches.
11. *What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?*
- 11.1 We welcome the proposals in the Bill in relation to co-operation and joint working and are of the opinion that they will enhance the current collaborative work being undertaken between the Care Council and CSSIW.

Delegated powers

12. *In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?*
- 12.1 While the majority of the Bill appears to provide an appropriate level of detail for such legislation, we are concerned, as mentioned in our answer to question 10 above, that this balance may not have been achieved in the sections on fitness to practise, and that this may restrict Social Care Wales from being able to further develop this area and explore alternative models of regulation in future.
- 12.2 We are aware that the majority of this detail derives from the draft legislation produced as a result of the outcome of the Law Commission's review on the

² See page 71

regulation of health care and social care professionals in England³, which has yet to be made into law. This may result in Social Care Wales being unable to respond to changes in UK approaches to workforce regulation, particularly in the social care sector, and may therefore inhibit future collaboration between UK bodies.

Financial implications

13. *What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?*
- 13.1 The Care Council would make the following points regarding the costs outlined in the Regulatory Impact Assessment (RIA).
- 13.2 In looking at the costs of workforce regulation models, the RIA only considers the existing mandatory registration model with increased fees. The Care Council submitted costs for the licencing model of vocational workforce regulation, referred to above (10.2) which we consider to be more appropriate for the regulation of the non-regulated social care workforce at a future date. It is noticeable that no RIA has been undertaken on the costs of introducing the prohibition orders provision included in the Bill.
- 13.3 The assessment of the costs of regulating social care worker training is based on an application of the model employed for social worker training. The nature of social care worker training is significantly different, with a current emphasis on work based learning. Also the number of staff is significantly greater and potentially the number of courses requiring approval will be significantly greater. The view of the Care Council is that decisions regarding the model for regulation of social care worker training will need to be made on the basis of the most effective use of regulatory powers within the context of the existing quality assurance structures for care worker training and capable of being implemented with the resources available.
- 13.4 The remit of Social Care Wales is broad, and whilst it provides an opportunity to achieve more cohesion and strategic direction, its success in achieving this will depend upon a planned, comprehensive approach with cross-sectoral support. While the RIA identifies a range of existing funding streams there is limited evidence regarding the infrastructure required to support the breadth of remit proposed, in addition to the transitional costs. The Care Council is of the opinion that very careful planning is urgently required to ensure that priorities are identified at the earliest opportunity to ensure that the most effective programme is available for the sector which is capable of being delivered within the resource envelope identified.

³ Regulation of Health Care Professionals and Regulation of Social Care Professionals in England, Law Commission, April 2014

Other comments

14. *Are there any other comments you wish to make about specific sections of the Bill?*

14.1 The Care Council welcomes the Bill and the important opportunity it brings to support the development of the social care sector and the social care workforce. It offers the possibility for Wales to do something new and different that will raise understanding and awareness of the social care sector. It will ensure Wales is well placed to respond to the significant changes and challenges that the social care sector will face in the forthcoming decade.

How licencing could expand the regulation of the social care workforce in a cost-effective, rigorous and proven manner

Executive Summary

We propose a new model of regulation to support the professionalisation of the social care workforce in Wales in order to raise standards of practice, to support workers to practice safely and to improve the protection of some of the most vulnerable people in our society. We propose a licencing system which has a proven track record with other groups of skilled workers.

Benefits

- Licencing provides workers with:
 - ~ access to accredited training to obtain required qualification;
 - ~ receipt of support, advice and information to maintain quality practice.
- Improved career prospects and image for the workforce.
- Workforce data for employers, Welsh Government and others.
- Increased public assurance and confidence due to stronger safeguards and quality of the workforce
- Cost-effective and proportionate.
- A proven model of regulation, used effectively by Gas Safe and others over many years.

Types of workers which could be licenced

- Adult care home workers.
- Domiciliary care workers.
- Personal assistants.

Key elements of licencing

- Licencing to include:
 - ~ requirement to obtain mandatory qualification – either upon initial application or by three year renewal;
 - ~ agreement to abide by the Code of Practice;
 - ~ three year licencing cycle;
 - ~ evidence of on-going training and learning required upon renewal.
- Disciplinary proceedings to include:
 - ~ employer to investigate alleged breach of the Code and refer workforce regulator of its decision;
 - ~ officer decision to remove or retain individual's licence;
 - ~ internal and external appeals processes.
- Employers' role to include:
 - ~ regular upload of employees' information to the workforce regulator;

- ~ support qualification and on-going learning attainment;
- ~ undertake disciplinary processes and refer employees to the workforce regulator.

Costs

- Estimated annual registration fee of £25-£30 per annum, per registrant (reducing to £20-£24 after tax relief).
- Potential increase in training costs.
- A potential impact on pay levels as a consequence of professionalisation.

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1. Introduction: the debate on widening regulation

1.1 The Care Council for Wales (Care Council) has long called for a new way of regulating parts of the care workforce. In its *White Paper on The Future of Regulation and Inspection of Care and Support in Wales*⁴, the Welsh Government stated that it ‘has prioritised the professionalisation of the care and support workforce’. The Care Council considers that part of this professionalisation agenda is the extension of its powers to raise standards of practice to other groups of the social care workforce in Wales. We stated in our response to the consultation on the White Paper:

“The issue therefore is not whether to regulate the wider workforce but rather to be prepared to explore different models of regulation for public assurance which would also support the drive for a sustainable, high-quality, valued workforce”.

1.2 We believe that in order to protect individuals who use services and to raise standards in the workforce, the powers held by the Care Council should be expanded to include those workers for whom registration is currently voluntary (see 2.3). However, it is also accepted that the current regulatory regime, as outlined in 2.4 below, would not be sustainable if it was expanded because of the cost. It is further acknowledged that a different type of workforce improvement model is required for social care workers compared with that for social care managers and social workers, to better reflect the nature and salaries of their roles.

1.3 This report looks at a new licensing model for raising standards; the key drivers for this model; comparative models from other sectors; a proposed new model for the social care workforce; and generic costs of a new model. It states the key outcomes that would be beneficial to a range of stakeholders including the workers themselves, individuals who use services and employers.

2. Current practice

2.1 The Care Council has been the regulator of the social care workforce in Wales since its inception in 2001. Its regulatory powers derive from the Care Standards Act 2000. These have been implemented in practice through Regulations and Rules for registration and disciplinary proceedings. The Council maintains a Register of certain social care workers. It can remove people from the Register through its investigative and hearings processes when the practice of these workers is found to be impaired and that they have failed to uphold the standards in the Code of Practice for Social Care Workers (the Code of Practice). Once removed these people cannot practice as registered social care workers.

2.2 The groups for whom registration is currently compulsory and the dates from when registration became compulsory are:

- Social work students (from 2004);

⁴ Welsh Government, September 2013

- Social workers (from 2005);
- Residential child care managers (from 2007);
- Residential child care workers (from 2008);
- Adult care home managers (from 2011);
- Domiciliary care managers (from 2013).

Together these groups account for 16 per cent of the social care workforce. The remaining 84 per cent of the workforce are unregulated. These include:

- Adult home care workers;
- Domiciliary care workers;
- Personal assistants.

2.3 Since 2005, registration has been voluntary for adult care home workers and domiciliary care workers. However, the Regulation & Inspection of Social Care (Wales) Bill will close the voluntary register.

2.4 The same regulatory process applies to each of the groups on the compulsory register. This involves:

Registration

When applying to register, an applicant must evidence: good character, conduct and fitness to practise; the required qualification (upon application or at renewal); the appropriate fee; and agreement to adhere to the Code of Practice. The application must be endorsed by the employer.

Registration is renewed every three years. A registrant must evidence the same elements as above and demonstrate 90 hours or 15 days of post registration training and learning. Apart from social workers, the renewal must be endorsed by the employer.

If the Care Council is minded not to grant an application or renewal, the case is considered by a Registration Committee.

Investigation and Hearings

When an allegation is received that a registrant has failed to uphold the standards in the Code of Practice, an investigation is undertaken. The Care Council is able to undertake such inquiries as it considers necessary depending upon the circumstances of each case. Following this the case may be closed with no further action, or a registrant may be offered the ability to accept an undertaking (a condition/s upon their registration), or they may be removed from the Register by agreement with officers, or the case may be referred to the hearings process.

The hearings process may involve a registrant appearing before an initial committee, whereby they could be suspended on an interim basis from the Register or receive interim conditions on their registration whilst the investigation is being undertaken. A final hearing committee has the ability to admonish, suspend, place conditions on or remove a registrant from the Register.

3. Key drivers for a new licensing model

- 3.1 One of the key drivers for a new licensing model is to improve protection for some of the most vulnerable people in our society. This need has been clearly exemplified in the media through, for example, the BBC's Panorama programme *Undercover Care: The Abused Exposed* concerning the abuse of elderly residents in care homes in England. Further investigations of abuse in the past include the Police investigation of abuse in adult care homes in Gwent (Operation Jasmine) and the abuse of people with learning disabilities at Winterbourne View Hospital in England.
- 3.2 It is becoming more apparent also that the work now undertaken by adult care home workers and domiciliary care workers is of a much more skilled and specialised nature. It requires specific expertise and qualifications as work is increasingly delegated from other professionals. This was highlighted in the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the 'Francis Report'). The report also recommended the registration of health care support workers in England.
- 3.3 The increased drive to move to community provision can be seen in the Social Services and Well-being (Wales) Act 2014. The ability of people to recruit their own personal assistants via the direct payment scheme supports the development of a new model. It will provide assurance that such workers are trained and work to set standards.
- 3.4 Raising standards across the workforce would help to raise the status of the sector. This will help to attract more people to social care which may not currently be seen as an attractive career opportunity. This could help alleviate recruitment and retention difficulties.

4. Potential groups to be included in the new licensing model

- 4.1 It is estimated that there are around 70,000 workers currently employed in the formal social care sector in Wales, of which approximately 11,000 are registered with the Care Council. The domiciliary care workforce and the adult care home workforce comprise a significant part of the remainder. However, this figure does not include personal assistants, self-employed, housing sector workers, or workers who provide care on an informal basis, all of whom could become part of the new licensing scheme.
- 4.2 A range of care is provided in the sector, from informal care at home to intensive formal care and support involving a variety of health and social care professionals. Some groups are already subject to formal regulatory processes and we believe that other groups in the formal care sector could be appropriately addressed by a new model to support high quality practice.
- 4.3 While a new model seeks to raise the standards of practice generally, as it can be seen to be applicable to all care workers, issues of public protection and risk should determine priorities for future development. The Care Council believes that, where the state or its agencies determines who provides care for individuals, there is a duty on the state to ensure that person is trained and is safe to work. Where an individual chooses their own care, they should have access to the highest level of information to support them in making an appropriate choice.

5. The licencing model in other sectors

5.1 Research has been undertaken by the Care Council regarding the licencing model in other sectors. The models looked at were:

- Gas Safe;
- Approved Driving Instructors;
- Approved Competent Persons (building regulations);
- Security Industry Authority.

5.2 The key features of these models are that they include:

- Qualification and character requirements;
- On-going continuing professional development requirements;
- Advice and support is provided for practice;
- Officer removal in fitness to practise cases;
- Appeals mechanisms are compliant with Article 6 of the European Convention on Human Rights (ECHR) which is that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal'.

Importantly, the model does not include an expensive disciplinary process managed by the workforce regulator. Instead, this is the responsibility of the employer, who must then inform the regulator of the outcome.

6. The proposed licencing model for social care

Overview

6.1 Licencing models as described above place significant emphasis on seeking to keep workers on a formal list as opposed to allowing them to operate in a hidden economy. Every effort is made to support workers in practising safely. Guidance and support is provided. Accredited training and access to resources to maintain quality practice to registered individuals is actively encouraged. Removal from the list is seen as a last resort.

We believe that such an approach would serve care workers well. Theirs is a skilled job where the safety of the public is of prime importance. As noted below at 9.1, there are many potential benefits to the workforce of adopting this model, including better training and higher status.

6.2 Therefore, we propose that a licencing model should be introduced for defined groups of care workers in Wales. To become a licenced care worker under such a system, a person would need to be qualified and committed to on-going continued professional development and learning. Where concerns exist about a worker's practice, the primary duty would lie with the employer to investigate such matters, determine an appropriate course of action and, where appropriate, refer individuals to the workforce regulator.

Licensing and fitness to practise processes

6.3 The flowcharts at Annex 2 and 3 outline proposed licencing and fitness to practise processes. The licencing process would involve an option for employers to upload bulk information on their employees to the workforce regulator on a regular basis.

This information would be sent by the workforce regulator to the employees for their agreement and their agreement to abide by the Code of Practice. Workers would be licenced for three years which would require renewal on a three yearly cycle. Renewal would require evidence of training and learning since licencing. Where workers did not hold the required qualification upon initial licencing, they would be licenced on condition that they obtained it by their first renewal. This process would be managed by officers. An appeal processes, ultimately to an independent body, would be available.

- 6.4 Where there has been an alleged breach of the Code of Practice, an employer will be required to investigate and refer the matter to the workforce regulator. The workforce regulator's officers would then make a decision on which sanction to apply. This could include the revocation of the worker's licence to practice. The officer's decision would be based on the information supplied by the employer, and any additional information required. An appeals process, including to an independent body, would be available.
- 6.5 Employers would play a key role in the new model, in relation to the support they provide to their employees and their interaction with the workforce regulator. They will be required to, for example:
- Provide regular (for example, quarterly) information regarding their employees to the workforce regulator;
 - Support qualification and post registration and learning attainment;
 - Undertake disciplinary processes where there has been an alleged breach of the Code of Practice;
 - Refer employees to the workforce regulator;
 - Provide disciplinary information to the workforce regulator and co-operate with their processes.

Legal advice

- 6.6 Legal advice has been obtained by the Care Council on the development of the licencing model. This included advice on whether ability for officers to remove workers' licence complied with Article 6 of the European Court of Human Rights (the right to a fair trial). The advice confirmed this would be possible providing the system included certain provisions, including, primarily, an appeals process⁵.
- 6.7 It is proposed that, if a new model was implemented for certain groups, then the workforce regulator would operate two different systems in parallel. Licencing would be appropriate for skilled workers and mandatory registration for executive and

⁵According to the Care Council's legal advice, in order to comply with the common law requirement for fairness and the potential application of Article 6 in the more serious cases, the system would have to make provision for:

- a. receipt of written submissions from the registrant
- b. guidelines to show how decisions are to be approached
- c. a skilled and experienced staff of arbiters to decide cases at first instance
- d. a process for review
- e. a process for appeal before an adjudicator who is independent from the original decision maker
- f. the potential for an oral hearing either at first instance or on appeal where there are disputed issues of fact which must be resolved by assessment of the credibility of witnesses
- g. sufficiently detailed written decisions at each stage.

'Advice on the Alternative Model Means of Regulation for Some Social Care Workers', Hugh James Solicitors, 30 April 2014

management roles. The Care Council's legal advice has confirmed that this is possible⁶.

UK models compared

- 6.8 With regards to the models in the other countries of the UK, Scotland and Northern Ireland register adult care home and domiciliary care workers, as well as other groups, using the current regulatory model. In England, the Health and Care Professions Council has proposed the implementation of negative registration for social care workers, whilst keeping the current model for social workers. We do not support the proposal in the Regulation & Inspection of Social Care (Wales) Bill that a negative register of social care workers should be introduced. The evidence shows that prohibition orders or negative registers have very little positive benefit, but numerous disadvantages. They have significant costs with no income from fees. The focus on negative practice fails to support high quality provision and recognition of high quality practitioners. This view is shared by many in the care sector, which is acknowledged in the Bill's Explanatory Memorandum⁷.
- 6.9 The proposed model can be seen as a lighter touch approach located between the full health professional regulatory model, on which the Care Council's Register is based, and the proposal for a negative register. It is deemed to be appropriate to skilled workers and is also designed to actively support high quality practice. Licencing would be introduced in phases, which would be carefully monitored throughout its development and implementation.

7. Potential costs of licencing

Overview

- 7.1 The introduction of licencing would potentially have cost implications in three areas:
- i. Training costs for the sector;
 - ii. Salary costs for a licenced workforce;
 - iii. Costs for administering the scheme (registration and fitness to practise).
- 7.2 It is estimated that over 50% of the unregulated workforce already have the required qualifications. Licencing would enable those who weren't qualified to gain the qualification within the first three year licencing cycle. Any potential increase in training costs that employers may face for their unqualified workers could be mitigated by better targeting of training resources at qualifications required for licencing and not therefore, as currently, for a wide range of qualifications.
- 7.3 In order to reflect the more complex and diverse nature of the roles of social care workers, and to have a qualified and effective workforce of the future, it is being increasingly acknowledged that the issue of pay will need to be examined. There is a growing acknowledgement that a living wage for these workers is now required which will be set at a higher level than the basic minimum wage in order to achieve the qualified workforce that will be required for the future.

⁶ According to the Care Council's legal advice, "the creation of a separate form of regulation for second tier workers is not precluded by law"

⁷ P.71, Explanatory Memorandum, Regulation & Inspection of Social Care (Wales) Bill

- 7.4 One of the aims of licencing is that it would be less costly than current registration and disciplinary processes. This would be enabled through, for example, electronic application processes, including uploading of applicants in bulk by employers. A key determinant of the cost of the current model of mandatory registration is the cost of disciplinary processes, including investigations and hearings. Under the licencing model it is the employer who is under the duty to undertake a thorough investigation. The workforce regulator is simply required to decide on the appropriate sanction. This model has been assessed to provide significant financial savings.

Estimated costs for the workforce regulator

- 7.5 Licencing will require additional capacity and close working relationships with employers. Work has begun to cost the model building on the current on-line services to ensure an effective, proportionate and efficient regulatory service. To make the application process as streamlined and as cost-effective as possible, employers would be required to upload workforce information in bulk, to be processed by the workforce regulator's staff. The estimated costs of the application process would be £5-£7 per person.
- 7.6 With regards to disciplinary procedures, employers would be expected to manage the investigation and hearing. The findings would then be forwarded to the workforce regulator for an officer's decision on a sanction.
- 7.7 Given the percentage of cases that currently go through full regulatory procedures and the number of workers, it is estimated that these costs could be recovered through an annual licence fee of £25-£30 per person. However these fees are eligible for tax relief which would reduce the fee to £20-£24.

8. Implications for the informal care sector

- 8.1 In order to maintain public protection and safeguards for individuals who purchase their own care, a high level of information should be made available which would include a list of workers whose licence has been revoked to aid them in making safe recruitment decisions.
- 8.2 High profile information provided through media and service contacts can also provide guidance and advice on safe recruiting processes. In addition, either workers or their employers in the informal care sector could potentially choose to be part of the scheme. This would enable them to access the benefits in relation to training, guidance etc available to those within it.

9. Key outcomes and benefits

- 9.1 It is envisaged that the key outcomes and benefits of licencing would be:

For the workforce

- Trained workforce: all workers would be required to attain a required qualification ensuring that they would be trained to the same standards and have obtained a qualification recognised by the workforce regulator. As obtaining a qualification will be a requirement of being licenced, this will ensure access to accredited training for workers.

- On-going competence: licenced workers will need to keep their training and professional development up-to-date and show evidence of this on renewal. Access to resources to maintain quality practice would be made available.
- On-going support for workers: the 'membership-style' benefits for licenced workers would be: receipt of support, advice and information from the workforce regulator to help them with their practice and conduct, for example practice guidance and additional guidance on specific matters eg maintaining professional boundaries.
- Other care workers, e.g. informal care providers: by either opting to licence themselves or having their employer licence them, it will allow them to have access to training and the other on-going support as outlined above.
- Improved career prospects and image for the workforce: being required to obtain a qualification and being a licenced worker
 - will improve the image of the workforce, and potentially reduce recruitment and retention difficulties over time.
- Improved protection for the workforce: being qualified, working to set standards in the Code, receiving practice guidance on how to undertake their roles, should all help to provide a structure to the workforce on how they are expected to work with the aim of preventing them from putting themselves or others at risk of harm. It also places responsibility on employers to ensure their workforce adhere to this structure, thereby providing additional assurance to workers that they are able to achieve and adhere to it.

For employers

- Data on the workforce: by regulating and recording additional groups of workers, the workforce regulator will be able to provide employers, the Welsh Government and others with a fuller, more informative picture of the social care workforce, which will help with workforce planning and related issues.
- Recruitment: as workers will have to be qualified and have continued their learning and training for licencing purposes, this will provide assurance to employers of the quality of their practice. The benefits associated with licencing should also lead to an improved image of the social care workforce which should in turn attract more people to the sector, thus further improve recruitment.
- Training: the requirement for all workers to be qualified will guarantee employers access to accredited training for their workers.
- A sustainable workforce: employers will gain a workforce which is qualified, whose licencing membership provides them with support to improve their practice, thus reducing retention issues.

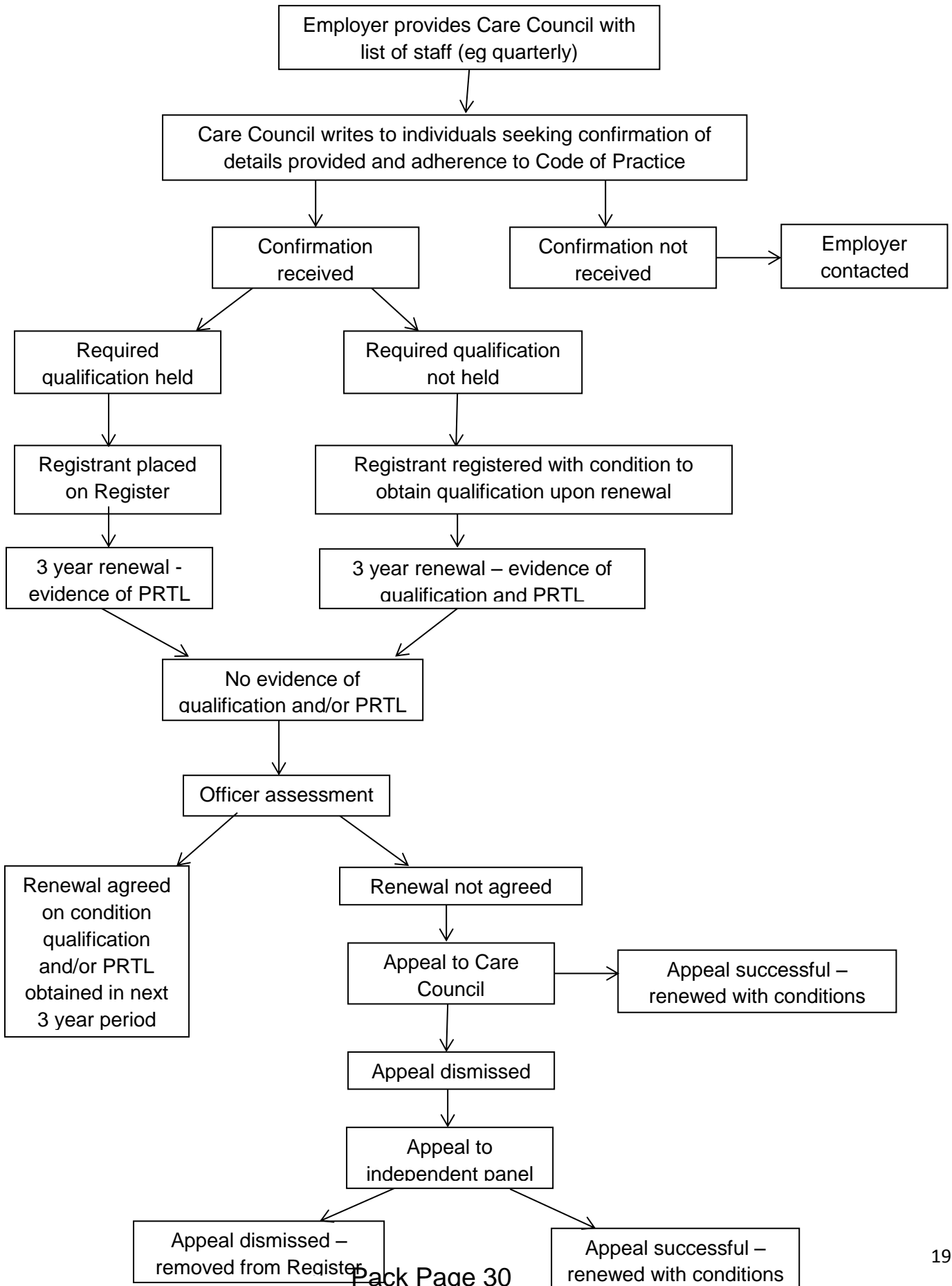
For individuals using services and the public

- Increased public assurance: the licencing of adult care home and domiciliary care workers who work directly with vulnerable people in care homes or in an individual's own home, and who are required to undertake increasingly specialised tasks, would provide assurance that these workers are qualified and

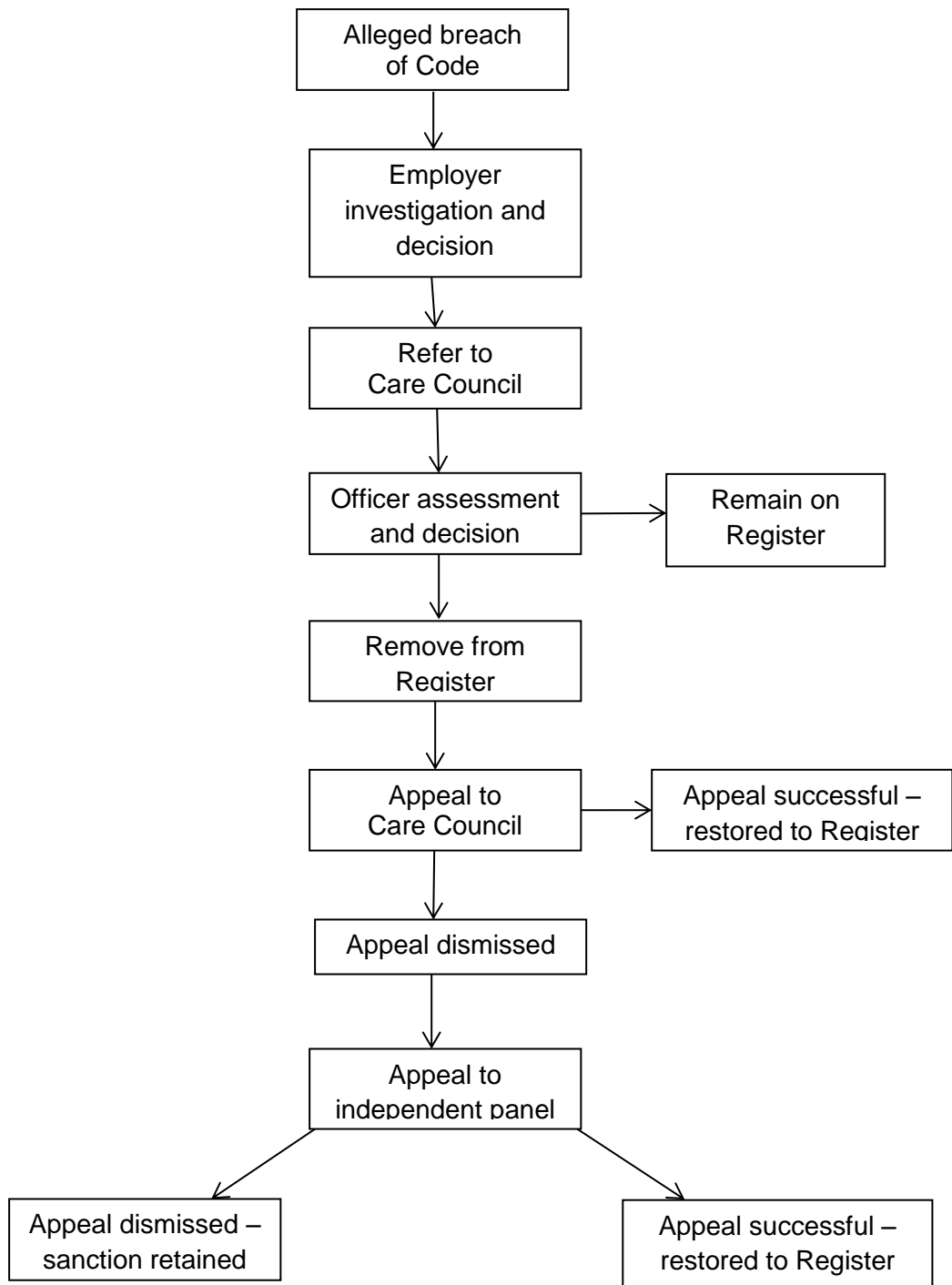
can be held to account if something were to go wrong. The same applies for other types of licenced care workers.

- Increased public confidence: having an accountable workforce would increase public confidence in the process and also in the workforce itself.
- Increased public information: individuals would have access to information regarding workers who had their licence removed so that they can check before recruiting someone on an informal basis.
- Stronger safeguards in place: by regulating more workers, it will be possible to prevent those who are found to have failed to uphold the required standards from working by removing their licence, thus extending the protection that workforce regulation can provide to vulnerable individuals.
- Better care and support: the aim of licencing, and the outcomes set out above, should lead to and ensure the ultimate outcome of improving the quality of the workforce which would lead to improved care and support for individuals who use services.

New licensing process



New fitness to practise process



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Dear Chair

I welcome the opportunity to provide evidence to inform the Health and Social Care Committee's (the Committee) scrutiny of the Regulation and Inspection of Social Care (Wales) Bill.

To help inform the Committee's considerations, our evidence below sets the context in which Care & Social Services Inspectorate Wales (CSSIW) regulates and supports the care system in order that people receive safe, good quality care. I have also made available a number of key documents:

- CSSIW's Annual Report for 2014/15¹
- Independent evaluation of quality judgement pilot in childcare by the Welsh Institute for Health and Social Care University of South Wales²
- CSSIW's guide for non-compliance and enforcement³
- Examples of completed inspection reports. Reports are publicly accessible on CSSIW's website⁴

CSSIW would also like the Committee to note that we have been engaged with the Welsh Government in developing its thinking and shaping of the Bill, the supporting notes and regulatory impact assessments. We welcome these discussions and will continue to work with the Minister for Health and Social Services and his officials to provide professional

¹ <http://cssiw.org.uk/our-reports/annual-reports/2013-2014/?lang=en>

² <http://cssiw.org.uk/about/strategic-plan/changing-the-way-we-inspect/?lang=en>

³ <http://cssiw.org.uk/providingacareservice/how-we-enforce/?lang=en>

⁴ <http://cssiw.org.uk/find-a-care-service/service-directory/?lang=en>

advice based upon our experience as a regulator to inform the development of future regulations and codes of practice to be made under the Bill.

CSSIW's role

CSSIW is the regulator and inspectorate for care⁵ and childcare⁶ in Wales. We also inspect and monitor local authority social services,⁷ and other services,⁸ and carry out these functions on behalf of Welsh Ministers. Our role is to ensure people can access and receive safe, good quality care which meets their needs and promotes their well-being. Our independence is protected through a Memorandum of Understanding (MOU) between the Chief Inspector and the relevant Welsh Ministers.

CSSIW's response to the Health and Social Care Committee's consultation questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

Promoting well-being for citizens and improving the quality of care and support people receive requires a whole system approach which places people at the centre of services. This includes the way in which services are commissioned and regulated. This Bill, taken together with the Social Services and Well-being (Wales) Act 2014 (the 2014 Act), and supported by the Future Generations Bill, will provide a coherent legal framework in which the central focus is on outcomes for people and securing their well-being.

CSSIW has been creative in its application of the current law by shifting the focus of its regulatory practice from assessing standards to evaluating the outcomes for people using services. Our new methods and approaches to inspection and enforcement, introduced in 2012, have been effective in reducing the numbers of high risk services and in placing a new emphasis on "quality of life" across the sector. While these changes have been positive in improving the quality of care people receive, the current law has limitations which curtail our ability to pursue more effective solutions. In particular, CSSIW's ability to hold the right people to account for poor care and to take timely civil enforcement action.

CSSIW therefore views the provisions in the Bill as necessary and believes that they will provide strengthened powers and the architecture for a modern and flexible legal framework. This will enable both the service and workforce regulators to consolidate their approaches and respond to new models of care and workforce patterns. Together with the new duties on local authority social services departments, the Bill provides opportunities to

⁵ Those services within the scope of the Regulation and Inspection of Social Care (Wales) Bill – eg care homes, children homes and domiciliary care agencies

⁶ Child includes day-care, child-minders play , crèche and are regulated under the Children and Families (Wales) Measure 2011

⁷ This includes local authorities fostering and adoption services and their social world practice duties in respect of access, assessments and care management and review of care to individual's who receive social service support.

⁸ Boarding schools , Further Education colleges, residential special schools and residential family centres

influence the key levers for change across the system. Together, these will directly correlate to meeting the stated objectives of the Explanatory Memorandum.

2. *What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?*

CSSIW recognises there are a number of potential barriers and challenges to the effective implementation of the Bill and its policy objectives. We also acknowledge that these can be addressed over time. It is important that there is sufficient flexibility in the system to enable a managed and phased transition to require existing providers to become compliant in line with a service based approach to registration. There are a number of providers who will find it challenging to meet the new registration requirements, in particular to:

- Appoint skilled and competent responsible individuals who will be prepared to take on a clear statutory role with duties and accountabilities defined in law.
- Ensure there is workforce capacity – managers and staff who have the right skills and qualifications to meet regulations and standards set by the workforce regulator to achieve market sustainability.
- Meet any increased expectations. The size and age of care homes has a big impact in the decline in provider profit margins⁹ and the sustainability of care homes. In Wales, small care homes account for 50% of the total placements. Some providers of older non-purpose built care homes currently struggle to meet the current standards and will struggle to remain viable as expectations rise.

We also note that some providers will choose to continue to organise and register their businesses on existing “establishment based” lines. This is because some organisations prefer to structure their business around individual or small clusters of settings and agencies for accounting, liability and taxation purposes. In addition, the reasonable assumptions in the Bill about how care companies are structured are not always matched by the often very complicated arrangements which emerge, even in local companies and partnerships. Operation Jasmine exemplifies this.

3. *Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?*

The Bill may be an opportunity to:

- Cease the use of categories to end the arbitrary movement and restrictions of people with specific conditions, for example dementia.
- Explore with the UK Government reciprocal provisions for Wales and England service regulators (CSSIW and Ofsted) to have powers to make visits to children’s homes

⁹ See Knight Frank Trading Performance of Care – 2014
<http://content.knightfrank.com/research/548/documents/en/2014-2365.pdf>

registered across our borders for spot inspections of care of children placed away from home. These duties will be separate from those of the local authorities in ensuring the safe placement for children in their care.

CSSIW welcomes enhanced duties in the Bill to provide the service regulator with powers to inspect the delivery of care in a person's own home with their consent. This will support CSSIW's future inspection model of domiciliary care and other care services delivered at people's homes. CSSIW also views that similar arrangements should extend to fostering services regulated under the 2014 Act.¹⁰

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

Below we set out key areas for consideration.

The wider system and commissioning

John Kennedy's care home inquiry¹¹ recommends that governments should:

“Regulate the market and take a whole system approach encompassing pay and conditions, staffing levels, commissioning practices and transparent tariffs. These are the factors which directly impact on the quality of care.”

The Bill goes some way towards this and, taken with the 2014 Act, the regulator will have a line of sight and powers of intervention across much of the system. We recognise the importance of the role of commissioners and the responsibilities they have to procure services which are sustainable, meet the needs of people using them and are fair to staff working in them. At present, too much commissioning is short-term and focused on containing immediate budget pressures. Commissioning structures are complex and vary across councils, with overlapping corporate and social services commissioning and procurement departments. CSSIW has limited corporate locus but will have strengthened powers to hold the statutory director for social services to account. However, there are also health commissioners who are very active in procuring services from regulated settings, with different structures in place across health boards. There needs to be a mechanism to include health commissioners within the regulatory system and we are aware that the Minister has announced a Green Paper, due to be published later this year, which will provide an opportunity for this to be considered.

Primacy of well-being

We note from our analysis of Operation Jasmine and other more recent cases, that the law, when formally applied, tends to favour the rights of providers. There is a legal precedent for this which was applied in respect of care homes linked to Operation Jasmine (Joyce –v- NCSC 2003). As the Bill and the regulations are developed, we would welcome

¹⁰ Schedule 5 of the Fostering Services (Wales) Regulations 2003 currently provide that authorities persons of Welsh Government to have access to intervene and visit foster parents at any reasonable time to seek views on how the foster parent is being supported by the agency. This does not provide for entry for the service regulator to inspect the direct provision of care to a child at this foster parents home.

¹¹ <http://www.jrf.org.uk/publications/john-kennedys-care-home-inquiry>

any opportunity to rebalance the application of regulation to give primacy to the “well-being” of people using services. The principle is already established in the 2014 Act (Part 2 refers) which creates an overarching duty to promote the well-being of people in need of care and support.

We also propose active consideration is given to housing support services, as recognised in Scotland. As such, services are currently only registered as domiciliary care agencies and we are not sighted on the range and volume of supported housing settings in Wales. Our local intelligence suggests that there are many settings which are essentially “care homes by another name”, with dedicated teams supporting people with very complex requirements, typically those with learning disabilities or mental health needs. A service based approach to registration would allow for all these settings to be identified, visible and brought into the scope of possible inspection.

We note that some health settings will continue to be regulated under the Care Standards Act and wonder if there is an opportunity for these to be considered at some point. These would fit well within a service based model of registration, for example those learning disability providers who operate a combination of independent hospitals, nursing homes and care homes in Wales as a broad continuum of care.

5. *Do you think that any unintended consequences will arise from the Bill?*

Any transition or change will precipitate a loss to the market in the short-term, particularly in respect of those providers who are coming towards the end of their business life and those operating weaker provision. However, we would expect a more resilient range of provision to develop in the medium term.

In Wales there is an historical legacy where a number of services do not meet the environmental standards that are now common across the rest of the UK.¹² If Wales is keen to drive improvement some of the weaker services may exit the market.

6. *What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.*

Service based model of regulation

CSSIW supports the proposals in the Bill to move to a service based model of regulation, in particular CSSIW welcomes:

- the ability to focus on performance at a provider level, and the power to pursue remedies and enforcement action at a service/provider level when systemic failings emerge, not just at each individual setting level as at present;

¹² Knight Frank Trading Performance of Care – 2014 <http://content.knightfrank.com/research/548/documents/en/2014-2365.pdf>

- the flexibility and proportionality which would be available when registering new services and locations with existing providers;
- the power to register and test the competence of responsible individuals and to hold them to account.

Engaging the public in regulation

CSSIW strongly believes that the rights and expectations of people using services should be at the centre of regulation and inspection practice. CSSIW has given a lot of attention to the engagement of the public in its work, and has considered past schemes in Wales (lay assessors) and across the UK (experts by experience in England (CQC)), and lay assessors in Scotland. We have also piloted the use of independent visitors. In addition, we have established our National Advisory Board (which comprises of over 50% of people who use services or their carers), and will be shortly implementing regional advisory boards to quality assure our work and to go out on local inspections to provide feedback on our practice.

We have concluded that the most effective use of public engagement is holding CSSIW to account, and helping us to shape our priorities and approaches. We do not believe the routine use of citizens in inspections is cost effective (we do not have the resources to do this) and our feedback from previous schemes, and current schemes elsewhere, is that people who become involved in routine inspections do not remain “lay” for very long. Rather than pursue the routine use of lay inspectors, we believe that we need to maximise engagement and feedback from the natural communities around services when undertaking inspections. We need to encourage people to be our “eyes and ears”, and bring concerns to our attention (over 2014/15 we received 2,170 concerns from residents, relatives, staff and professionals) and we are, and have been, developing web based and social media solutions with some success.

We have been using expert lay citizens on a targeted rather than routine basis to bring a citizen’s perspective to our thematic studies, bringing people’s experiences to bear in shaping our approach, gathering evidence, providing feedback and evaluating outcomes. These include Voices from Care and Sense Cymru. Similarly, we will be engaging with All Wales People First and the All Wales Forum of Parents and Carers in our forthcoming thematic inspections of learning disability services in Wales.

Introduction of ratings

CSSIW strongly believes the careful use of ratings will be fundamental to drive future improvement across both regulated services and local authorities social services functions, in particular their role as responsible commissioners to ensure outcome based care. Indeed, in his care home review, John Kennedy recommends that governments “regulate the market to compete on quality” and having a national rating framework is a key mechanism for achieving this. The public want clear information about quality of care offered across different settings/locations,¹³ demonstrated by the increased access of

¹³ The [‘find a care service’ page](#) where people can also search for a service received 31,968 unique page views

CSSIW's directory of services (over 31,968 visits in 2014/15¹⁴). In the absence of ratings, we have streamlined our inspection reports to provide the public with clear information of our judgements about services and include information on areas where the service is failing and is not compliant with the law. CSSIW recognises the benefits and challenges of introducing ratings as highlighted in the evaluation of our early pilots in childcare.

We also recognise the potential to use ratings to identify trends over time, to consider provider performance across a number of settings and the performance of commissioners by collating and comparing ratings on an area basis.

We are currently working with the local authorities and the regulated care sector in the development of a new inspection framework aligned to the well-being outcomes under the 2014 Act. People are positive about this approach and early work on this will include testing the concepts of what a future ratings system could look like.

Strengthened powers of enforcement

CSSIW welcomes the provisions in the Bill. In particular, we believe the ability to issue improvement notices will resolve the current problems faced with undefined and often extended timescales when taking civil enforcement action. Improvement notices offer a targeted and time bound solution, which is focused on securing improvement in the first instance and is therefore less likely to create anxiety for those using or working in services compared with the current arrangement, which commences with a notice of proposal to cancel the registration of the service.

Power to charge fees

We would support retaining regulation making powers in the Bill to introduce fees and support a system of phased introduction of fees so that providers make a contribution to the costs. We acknowledge the financial model will need to be fair and flexible so that fees can reflect the cost of the services and that subsidies are directed to support those who need them. However, we also see in the medium to longer term that fees could be a catalyst to strengthen the responsibilities of both providers and commissioners to facilitate the local market and drive improvements in care. For example, providers who consistently need CSSIW's intervention to require them to make sustained improvements in response to poor inspection or concerns raised by the public to CSSIW's helpline (over 2170 in 2014/15). We believe there are circumstances where proportionate use of fees should be met by the provider, for example to offset the cost to CSSIW in extra site visits linked to our enforcement and re-inspection activity.

CSSIW is firmly of the view that the Welsh Government's current subsidy of the Disclosure and Barring Service (DBS) certificates for the former enhanced criminal record checks required at registration and renewal periods should cease. Registration with the UK Disclosure and Barring Update on-line service should be used as the mechanism to provide proof to the regulator of people's credentials to work with vulnerable people. We

¹⁴ Over 2014/ 2015 the CSSIW website received a total of 672,617 unique page views.*

are already taking action to remove our subsidy in the registration of childcare. The Welsh Government's consultation on extending regulation of childcare signals our intentions on this.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

The importance of a whole system approach on outcomes to enable people to achieve well-being across both local authorities' duties for social services and those for service regulation is noted earlier. Successful delivery of good quality care relies on a number of functions which are highly interdependent. Together, the Bill and the 2014 Act will provide cohesion in assessing the performance of local authorities social services functions in the assessment, care planning, commissioning, and then oversight and delivery of regulated care. The increased range of CSSIW's inspections, intervention and review of local authorities social services functions is positive, and will enable CSSIW to focus its work around particular aspects of one or more local authorities functions.

CSSIW believes that local authorities will find it challenging to prepare market stability reports. Our 2014 national review¹⁵ of local authorities commissioning in Wales found that local authorities and health boards need to make major changes to the way they plan and commission services for people with dementia. CSSIW's 2014 Annual Report points to the challenges local authorities face in their commissioning of both children and adult services.

The proposals for the directors' annual reports and CSSIW reports on their reviews of local authorities social services functions should be laid before the National Assembly for Wales is welcomed. This will ensure transparency and scrutiny at local and national level on local authorities' performance. There is an opportunity to link with the proposals in the Welsh Government's White Paper – Power to Local People, which would require the four main Audit, Regulation and Inspection (AIR) bodies in Wales “to produce a joint annual assessment of the state of local government in Wales”¹⁶.

It is important that production of multiple reports and assessments of local authorities' performance required in this Bill, and other statutes, are flexible and proportionate to avoid duplication. It is also important that local authorities can respond to, and report on, local and national determined objectives that do not detract from the main focus of delivering good care and outcomes for people.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

¹⁵ CSSIW National Review of Commissioning - <http://cssiw.org.uk/our-reports/national-thematic-report/2014/review-of-commissioning-for-social-care-13-14/?lang=en>

¹⁶ Page 75, section 8 – Welsh Government White Paper – Power to local people .

We believe there is a lot to be gained in developing a market oversight approach. There is enormous of potential in making better use of the existing intelligence held by the regulator and commissioners and extending the range of information being collected. This would improve market intelligence and strengthen market shaping, as well as help public authorities to assess and anticipate potential risk of service failure. CSSIW's new computer database has the potential to make a significant contribution in this area, especially when service based registration is introduced, and we will be able to collect and analyse basic returns from providers as part of their annual reporting.

We would, however, sound a note of caution. We cannot offer complete assurance or be sighted on the unknown. We are aware from our conversations with CQC of the complexity of setting up these arrangements, the matter of commercial sensitivity and the very significant costs involved in setting up secure systems, and of employing financial experts with forensic accounting and analytical skills. We note that CQC have (from April 2015)¹⁷ established a scheme in line with new legal requirements and the success of this scheme is to be evaluated. However, the scheme is focused only on the few, very large "difficult to replace" providers (eg more than 2000 residents in care homes). The care market in Wales is quite different. Our register indicates 70% of providers currently operate one establishment and only 2%¹⁸ operate 10 or more. In CQC's consultation on the arrangements, providers advised of the burden and difficulties in supplying the financial information required. Local authorities were as concerned with the impact of the failure of smaller local providers in the areas as much as the failure of bigger companies, a position which would be akin to Wales. CQC has put in place a pathway in response to increasing risk which involves local authorities at the end stage. In Wales we have a more responsive approach, normally driven by the "escalating concerns" procedure which is brought into place when services are likely to fail.

In any market oversight scheme there are a number of major technical problems. Financial returns and company records lack currency and can be up to two years out of date. In addition, local current accounting data can be inaccurate, incomplete and hard to access or interpret. We learnt from Southern Cross that whilst individual services appear profitable, the liabilities and risks can be dependent on factors far removed from the operation of social care companies and commonly off shore. The domiciliary care market is currently a case in point where, behind the scenes and with no consequent effect on registration, companies are constantly merging and changing hands, some with complex debt structures. We have been and will continue to work with other pan UK regulators on this, most particularly CQC, to remain sighted on the large pan UK providers.

Within these constraints, and with some increased capacity, CSSIW could deliver simple market profiles of general oversight and trends. We should be able to identify known and quantifiable risks, such as services in administration, or where financial markers are perverse (eg lack of spend on building and repairs) or where concerns have been raised about unpaid bills or reductions in costs, quality of food or staffing levels. We would not, however, be able to collect or analyse more sophisticated financial data and trading indicators as now planned in England.

¹⁷ CWQC Oversight of Social Care Market <http://www.cqc.org.uk/our-new-role-market-oversight-care-homes-and-other-social-care-services>

¹⁸ CSSIW register 2014/15

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

We have no firm view as to the new name for the Care Council for Wales but the new title does not acknowledge their role to support and build capacity in workforce standards and qualifications for the broader childcare sector in Wales, including what is currently considered as “early years” provision. We understand that this is an area of increasing importance to the Council given the Government’s commitment to a ten year workforce development plan for the sector. CSSIW is therefore pleased to see the wide regulation making powers to extend the categories of persons as a social care worker [Section 78(2) refers] includes child minding and day care services.

In respect of the extended remit of Social Care Wales, we note the improvement function in Section 68 – *the power to provide advice and support (including grants) to any person providing a care and support service*. There will be a need to clarify how this role will be discharged and protocols established to ensure that service regulation, and the improvement functions of Social Care Wales are complementary and do not come into conflict.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

We are pleased to see regulation powers will enable the registration of the workforce to be extended. We also support the inclusion of inspectors within the list in Section 78 of the Bill to include the majority of service areas that CSSIW currently inspect. We have been working with the Care Council for Wales in developing a new qualification framework for CSSIW inspectors and believe that over time requiring inspectors to have the new inspection qualification will significantly enhance the role, status and skills of inspectors. It will also provide a professional career pathway to attract high calibre social care, childcare and nursing professionals to become inspectors, and align arrangements with Estyn who operate a register of inspectors for schools.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

CSSIW currently shares information and works collaboratively with the workforce regulator, the Care Council for Wales, and a number of AIR bodies in Wales and across the UK, as well as local authorities and local health boards, in particular in relation to the protection of people. However, the inclusion of both general and specific duties on the face of the Bill in relation to co-operation between the services, workforce regulator and relevant public bodies is welcomed. It signifies and promotes the importance of reciprocal arrangements between all parties to share intelligence and, where relevant, joint action across the whole system to improve people’s well-being.

Sharing of evidence to meet the Bill objectives will enable both the service and workforce regulator to jointly address and improve poor performance, or failings in management of the responsible individual for a service. The delegation of functions between CSSIW and the workforce regulator could be helpful in some circumstances, but needs to be worked through into practice.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

Yes, however, we note that there is significantly more prescription on the face of the Bill. This can be positive, but may also lead to potential barriers, intentionally or otherwise, if a similar approach is taken in the development of regulations and codes of practice. From a service regulator's perspective, we believe that the law and systems must be sufficiently flexible to enable us to continually improve on our performance, and the performance of those we inspect, through regular review and adjustment to our inspection methods to meet changing patterns of care and best practice. For example, regulations to be made under Section 35 in respect of the criteria to be applied in CSSIW's ratings of a service. We acknowledge, however, the broad spectrum of powers in the Bill together with those in the 2014 Act will future proof the system through secondary law and support the National Assembly for Wales' scrutiny of key regulations through the affirmative procedure.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

CSSIW has provided indicative costs to the Welsh Government to inform the financial implications as set out in the Explanatory Notes and Regulatory Impact Assessment to the Bill. Costs will vary depending on the detailed arrangements of the system to be effected through regulations, codes of practice and CSSIW's own operating policies and guides. We will work closely with the Welsh Government in their development to ensure proportionality and efficiency.

There are significant and inevitable costs related to transition. CSSIW wishes to emphasise to the Committee the importance of having robust transitional arrangements for the re-registration of the current cohort of providers under the new rules to ensure the accuracy and integrity of the service regulator's register of providers, and to ensure the effective administration of the new regulatory and inspection regime. The problems which stemmed from transition in 2002 when the Care Standards Act came in were, in part, reflected in some of the issues which emerged in Operation Jasmine. More recently, we have seen the impact of transition in England when CQC was established and the focus went from maintaining day-to-day inspections to completing the transfer of registration and registering new services.

CSSIW is also the regulator for childcare¹⁹, which is also subject to reform, but will continue to operate a register of establishments. Like many public service and regulatory bodies, CSSIW has made efficiencies (a reduction of £2.1m over three years to an annual operating cost of £14.4m in 2014/15) in its operation of its common registration, inspection

¹⁹4,446 , childcare providers as of March 2014

and enforcement model across both its childcare and other regulated services to be regulated under the Bill. CSSIW's future operation of two different regulatory systems for childcare and care and support, will require CSSIW to change its business and delivery model and will not achieve the critical mass needed to offer the same level of efficiency in CSSIW's financial performance.

14. Are there any other comments you wish to make about specific sections of the Bill?

None at present but CSSIW welcomes the opportunity to discuss our views in more detail in our oral evidence to the Committee later this month.

Yours faithfully



Imelda Richardson
Chief Inspector
CSSIW – Care & Social Services Inspectorate Wales



Rhys Morgan, Deputy Clerk
Health and Social Care Committee
National Assembly for Wales
By e-mail to: [REDACTED]

15th April 2015

Dear Mr Morgan,

Evidence on the Regulation and Inspection of Social Care (Wales) Bill

Thank you for the invitation from the Health and Social Care Committee to submit evidence to the consultation on the Regulation and Inspection of Social Care (Wales) Bill, which I have the pleasure to enclose with this letter.

You will be aware that United Kingdom Homecare Association (UKHCA) is the professional representative for homecare providers across the four nations of the United Kingdom. Comments in our response are based on our knowledge and experience of the development of social care regulation from all four administrations over the last 15 years.

Overall, we would like to recognise the considerable thought and drafting which have gone into the Assembly's Bill to create a streamlined legislative framework for the regulation and inspection of care and support in Wales.

We note that the Bill places many of the provisions of the legislative framework into regulations. For the convenience of the Committee we have generally confined our comments in this response to the draft Bill itself, rather than suggesting detailed points for consideration in future drafting the regulations. I would like to confirm that UKHCA is fully committed to working with Welsh Government to help shape the regulations required for the Bill once enacted.

We look forward to providing oral evidence to the Committee.



Yours sincerely,



Colin Angel

Policy and Campaigns Director

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Alternative formats: If you would prefer to receive this letter in another accessible format, including e-text, 'clear print', large print or audio cassette, please contact us on [REDACTED] or [REDACTED]

UKHCA's Consultation Response to Regulation and Inspection of Social Care (Wales) Bill

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

Yes. We believe that the Bill presents an enabling framework which will enable the aims and objectives to be delivered, and specifies appropriately where regulations should be made (or rules made by Social Care Wales).

It is perhaps difficult for primary legislation to be written in a way which appears to deliver a person-centred approach. However, we can see that the wellbeing of individuals in Wales is an overriding consideration in the drafting.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

We note that the Bill requires much of the legislative framework to be delivered through regulations, which are more likely to be the source of potential barriers than the draft primary legislation. It is therefore difficult to answer this question confidently at this stage.

We make a number of observations against the relevant sections, below.

The bill appears to have been drafted in logical order and with significant attention to detail and contains helpful annotations as to the intentions and format of the legislation. Clauses are generally concise and there is sufficient reiteration to avoid unnecessary cross-referencing. In our experience, social care providers generally do not need to refer to primary legislation too frequently (Regulations generally provide the level of

granular detail which they require), however, the language within the bill is likely to pose some challenges for readers less well acquainted with legislative drafting.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

No, we have not noted any specific equality issues within the legislation.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

No, other than the observations we make below on specific issues that should be considered when making regulations. It goes without saying that the drafting of such regulations will require considerable collaboration between Welsh Government and knowledgeable and experienced stakeholders and the citizens of Wales who will be affected by them.

5. Do you think that any unintended consequences will arise from the Bill?

We note in the relevant sections, below, possible unintended consequences of the Market Oversight Regime, Market Stability Reports and the rule-making powers of Social Care Wales.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?

We are generally supportive of the regulation of social care services in Part 1.

We believe that moving to a service-based model of regulation (where organisations may hold a single registration which specifies one or more

regulated services and/or locations) is an economically effective solution for the service regulator and social care providers.

We note the number of references to consultation with the public over the framing of regulations (and rules to be made by Social Care Wales) and are pleased to see that such consultation has extended to the Codes of Practice which Social Care Wales will produce and maintain.

We strongly welcome the option for Ministers to introduce a quality ratings system, and believe that this:

- a.** Will assist people who use services to make better informed choices about homecare providers when arranging their own care (or where directing others to arrange care on their behalf);
- b.** Encourage providers to benchmark their services against their competitors and inspiring self-improvement.
- c.** Will be welcomed by social care providers as a way of recognising excellence with associated commercial benefits for so doing;

We are, however, disappointed that the definition of "Care" (Section 3) has focused on "physical tasks and needs", rather than a more holistic explanation, which in the case of community-based services may include social engagement, services which help people to remain at home (including assistance with domestic planning and finances and shopping) and assistance with health-related tasks (primarily assistance with taking medication).

We are concerned that the definition of a "domiciliary support service" is ambiguous (Schedule 1, Section 7):

- We were unable to reassure ourselves that this definition made the position of extra care housing services clear;
- We have assumed that the intention is that extra care schemes to be regulated under this definition, but question whether an organisation

which both provided accommodation and care in an extra care scheme might meet the definition of a care home service, which we do not believe would be prudent;

- We also note that the expression “vulnerability” does not appear to have been defined in the Bill.

We are disappointed to see that regulation has specifically excluded personal assistants (Schedule 1, section 7(2)(a)), as we are unable to reassure ourselves that the definition of a “social care worker” to be registered with Social Care Wales (Section 78(1)) will capture personal assistants. The position of this association is that both workers engaged by organisations and personal employers benefit from statutory registration with a workforce regulator.

We also note the intentional exclusion of “introduction-only” employment agencies regulation (Schedule 1, section 7(3)):

- Our experience elsewhere in the UK suggests that it is difficult to establish whether an “ongoing role in the direction or control of the service” is taking place or not (which could lead to some services inadvertently trading without the require registration), and
- In the majority of cases, employment agencies introducing individuals to assist with social care services generally desire registered status, for the additional assurance it provides for people who use the service and for the business itself.

As the exclusion of introduction-only services appears to be intentional, we strongly recommend Welsh Government to consider defining what “ongoing role in the direction or control of the service” in the legislation (We will happily share our views on this technical area at government’s request). This is important for ensuring that organisations are able to identify correctly whether they meet the requirements for registration and avoiding organisations trading unlawfully, with the consequent lack of protection for the public.

We note the requirement for providers to make an “annual return” to Welsh Ministers (Section 8). While this is a reasonable expectation, our

experience suggests that such returns can be onerous for small and medium enterprises to complete, and for larger organisations to coordinate. We urge Welsh Ministers to ensure that the prescribed format of these returns contains only essential information which will either be subject to systematic analysis, or assist with inspection. (The generation of data required for a poorly-designed return is disproportionate to the effort and costs involved for independent and voluntary sector businesses).

Section 25 specifies that providers must display a registration certificate conspicuously at each place where the service is provided, with the presumed intention that it is available for inspection by people who use services and those who support them. The provisions in the Bill are sensible for institutional settings, but less appropriate for community-based services, such as homecare. We suggest that:

- Welsh Government consider a requirement that the statutory regulator maintains a system where the public may inspect the registration certificate (or details of registration) in a format which can be reached on-line (for example, the provider can give people a link to copy of the certificate held on the regulator's website), or
- That providers are required to integrate this information to their websites, where they have one, (for example by using the CSSIW "widget");

We are generally pleased with the provisions of Chapter 3 (Information and Inspection). We note that Welsh Ministers may make regulations on the qualifications and other conditions to be met by individual inspectors (Section 32(2)) and hope that this will include reference to inspectors having occupational competence (or satisfactory understanding) of the different types of service they regulate.

We are pleased to see a requirement that inspection reports must be produced "as soon as reasonably practicable after an inspection has been carried out" (Section 34(1)). Our impression from providers (not just in Wales) is that delayed publication of inspection reports is a regular occurrence, and has an adverse impact on people who use services by delaying the development of action plans which could remedy failings promptly.

We note the option to introduce fees for applications, variation and maintenance of registration (Section 38). Inevitably this will be unpopular with providers, particularly small and medium enterprises. If, in the future, such fees are introduced, we urge Welsh Ministers to consider:

- a gradual introduction of such fees;
- a clear system of calculating the fees payable, which is proportionate to the organisation's size;
- to provide adequate notice of fee increases to enable organisations to budget for their costs during their planning cycle.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority services?

We are pleased to see a requirement on local councils to produce an annual report which includes the consideration of outcomes for service users included in the reviews of social service performance. We are unclear whether the Bill has clearly specified whether the authority is expected to report on its influence within the local market as a whole, or just within the areas from which it purchases (or directly provides). If this report is constrained to the former we are not sure that the market stability report along will be sufficient to achieve the policy objective.

We would particularly like to see a requirement for councils to analyse whether the fees that it pays for social care services (or the direct payments it makes to people who use services) produce a sustainable local market, where providers are able to meet their regulatory obligations, including payment of at least the National Minimum Wage, and other terms and conditions of employment, including for example the use of guaranteed-hours contracts for workers who may wish to have them. Our tentative assumption is that this could be facilitated through requirements issued under Section 145 of the Social Services and Well-being (Wales) Act 2014.

We note that Ministers *may* undertake reviews of local authority social service functions (through the 2014 Act as amended by Section 56 of the Bill). This is a positive position, but falls short of conducting a regular review of the services of councils on a programmed basis, which we believe

is advisable, given the dominant purchasing powers of councils in the local area. Again, we would like to see the local authority's impact on their local market specifically included within the criteria of these reviews.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

We note that the effectiveness of a "market oversight" regime to monitor and provide early detection of provider failure in social care has not yet been demonstrated within the UK, and is an area about which a number of major providers in the sector have expressed a degree of scepticism to this association. That said, the author of this paper has been closely involved with the creation of the equivalent regime operated on behalf of the Department of Health by the Care Quality Commission in England, and is of the opinion that the proposed regime in the bill echoes the majority of considered thinking invested in that regime, and is probably a proportionate way to deliver the policy objective of Welsh Government.

We think that the specification of business volume, geography and specialism of providers are the right measures to determine whether a provider should enter the regime. However, we do not see an obligation for Welsh ministers to consult with experts and other interested persons in defining the regime or the entry criteria. While we hope that this will be the case in practice, it is disappointing not to see this in the legislation.

We note that while the Bill describes how organisations enter the regime (Section 58), it does not make provision for organisations exiting the regime (for example because the organisation reduces its volume, sells part of its business, etc).

Section 61 deals with matter of alerting local authorities that a service provider may be (or is) unable to provide services. This is a particularly sensitive area, where there is likely to be significant tension between local authorities (who will wish to have as much notice as possible) and providers (who will be worried that disclosing this information to naturally risk-averse authorities will become a self-fulfilling prophecy, precipitating the very failure the regime hopes to prevent). The legislation (Section 61(2))

appears to place the duty to inform councils at the point of failure, not before.

The issue of a national market stability report (Section 62) will also require careful handling. While it may have the desired effect of stimulating providers to enter the market (or to provide services differently), it may also have the opposite effect, particularly for corporate providers who provide the majority of their services in other UK administrations.

9. What are your views in the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The expanded role of Care Council for Wales as Social Care Wales appears to have been well thought through, and considerable effort appears to have been made to providing fair, equitable and robust procedures for managing processes relating to the workforce.

We particularly note the high degree of autonomy which will be given to Social Care Wales. It appears to us that Welsh Ministers have largely retained powers to intervene in issues after the fact, rather than retaining a greater degree of final sign-off of proposals before they are implemented. We assume that this is a deliberate policy intention of Welsh Ministers. This is a decision which will have been based on Welsh Ministers' evaluation of relative risk.

We are particularly concerned about lack of ministerial oversight for the fee-raising powers given to Social Care Wales for a workforce who traditionally (and regrettably) are subject to relative low pay for the highly valuable services they provide.

10. What are your views in the provisions in Parts 4 – 8 of the Bill for workforce regulation?

UKHCA has a long-standing policy position supporting the compulsory registration of the social care workforce, because of the benefits it can bring to professionalising a workforce and promoting the status of social care

workers. We are, however, content to see the cessation of a voluntary register, as we do not believe is an effective tool and offers few benefits for public protection (and indeed risks a false sense of security for some).

We support the principle of prohibition orders to ensure that unsuitable practitioners are removed from the sector.

We note reference to rules made for the Registrar's determination for renewal of registration for those who are subject to the regime (Section 78(2)) and hope that such rules will be made in a way which does not prevent people from maintaining an active registration in areas they are temporarily not working in.

11. What are your views in the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

We are content with the requirements of this section.

Delegated powers

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

Yes. The balance is reasonable. Leaving much of the detail to regulation permits greater flexibility of keeping the legislative framework up-to-date.

We have noted in our comments to question 9, that the rule-making powers afforded to Social Care Wales provide a significant degree of autonomy from intervention by Welsh Ministers until the rules have been implemented.

Financial Implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

We express our appreciation for the considerable work undertaken in advance of the bill through 'technical groups' run by Welsh Government and involving a wide range of stakeholders, and in correspondence between Welsh Government and ourselves which is referenced in the Explanatory Memorandum.

Producing estimates of cost on primary legislation which leaves so much of the detail to regulations is an extremely challenging task. We believe that the processes undertaken have been suitably rigorous.

We note the recognition of the costs of workforce registration to providers and the workforce. We regret to say that we are not optimistic that such costs will be reflected in the fees paid by the statutory sector for the services purchased, and we urge Welsh Ministers to continue to give thought to how councils fund the services they purchase to a sustainable level.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

No.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill](#) / [Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Health and Care Professions Council – RISC 07 / Tystiolaeth gan Gyngor Gweithwyr Iechyd a Gofal Proffesiynol – RISC 07

The Health and Care Professions Council response to consultation on the Regulation and Inspection of Social Care (Wales) Bill

1. Introduction

- 1.1 The Health and Care Professions Council (HCPC) welcomes this opportunity to respond to the consultation on the general principles of the Regulation and Inspection of Social Care (Wales) Bill.
- 1.2 The HCPC is a statutory UK regulator of 16 health and social care professions, governed by the Health and Social Work Professions Order 2001. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.
- 1.3 Our remit covers the regulation of social workers in England only. However we have agreed a Memorandum of Understanding with the Care Council for Wales which establishes a framework for co-operation and comparability of education and standards for social workers between the two countries. Registration with the HCPC confers eligibility to apply for registration with the Care Council for Wales, and vice versa. In addition we have a particular interest in the regulation of adult social care workers and how useful parallels may be drawn to regulation of this workforce in England.
- 1.4 We have set out our responses regarding the general principles of the bill below.

2. Removal of voluntary registration

- 2.1 The HCPC supports the intention of Welsh Ministers to remove the option of voluntary registration for domiciliary care workers and adult residential home care workers.
- 2.2 The Explanatory Memorandum accompanying the draft bill acknowledges that there are limitations to voluntary registers; we agree. Our view is that significant shortcomings in voluntary registers have the potential to affect their

effectiveness and ability to command public confidence. They include the following:

- Although an employer might make registration a condition of employment, there would be no legal compulsion for an individual to be registered.
- The regulator would be unable to demand information or compel witnesses as part of fitness to practise proceedings.
- A registrant removed from a voluntary register owing to serious concerns about their conduct or competence could remain in practise.
- There is potential for public confusion generally around the status of voluntary and statutory registers being held by the same organisation.

2.3 We think that a preferable system for regulating this section of the workforce would be one which allows for the removal of individuals who do not adhere to a minimum standard of conduct, as set out in section 3 below.

3. Prohibition scheme

3.1 We support proposals to introduce a power for Welsh Ministers to establish a prohibition scheme for social care workers undertaking certain 'designated activities' who are not legally required to register with the workforce regulator. We view this as a proportionate way of providing public protection and assurance about the suitability of those working in social care. Such a scheme would also support other initiatives aimed at improving the quality of services provided in the care sector, such as efforts toward professionalisation of the workforce.

3.2 The HCPC has previously proposed a similar system with respect to unregistered adult social care workers in England – that is, establishing a statutory code of conduct and a 'suitability scheme' (also known as a 'negative register'). This regulatory model would deal effectively with the small number of individuals who are found unsuitable to work in the sector without placing a disproportionate regulatory burden on the remainder of the workforce.

3.3 Our proposal for such a scheme would involve the following:

- A statutory code of conduct would clearly set out what the public expects of all adult social care workers in England.
- The regulator could investigate serious concerns about these workers and if found unfit to work in social care, they could be entered onto a 'negative register'.
- It would be a criminal offence to engage in adult social care in England whilst included in this list.

3.4 We believe that a suitability scheme for unregistered adult social care workers in England, like the proposed prohibition scheme in Wales, would provide an important 'safety net' and a system of accountability similar to that of professional statutory regulation but in a more proportionate manner.¹

4. Extending the regulation of workforce training

- 4.1 We are supportive of proposals to allow for the regulation of training of a wider section of the social care workforce in Wales. We believe that enabling the regulator to set and maintain standards for training of certain categories of social care workers would provide a means of enhancing the quality of care provided in the sector.

5. Rule-making

- 5.1 We note the proposal to remove from rules and include explicitly in primary legislation the processes for registration of the social care workforce, including fitness to practise processes. We support the intention in doing so to provide a legislative framework within which the workforce regulator can develop its own operational procedures in rules without the need for these to be approved by the Welsh Ministers.
- 5.2 The ability to write and amend rules which are not subject to a formal approval process by the Welsh Ministers would significantly reduce the burden and timescales for this process, enabling the regulator to respond to changing needs or risks in the sector in a more timely way.

6. Co-operation and joint working

- 6.1 We welcome provisions in the proposed bill which provide specific powers for the Welsh Ministers and Social Care Wales to co-operate in the exercise of their functions, as well as a duty on the regulatory body to disclose information if it is considered necessary to protect the well-being of an individual. Additionally we would support references – if not in legislation, then as a matter of policy – to the importance of co-operation between the workforce regulator in Wales and other professional regulators, including the HCPC.
- 6.2 We see value in joint working and information sharing among social care professional regulators across the UK as a means of achieving greater assurance about the quality of care and the fitness to practise of those providing it. For example, where concerns are raised about a social worker who is dual registered with both Social Care Wales and the HCPC, effective information sharing would ensure that appropriate regulatory action can be taken in a timely manner.

¹ Our full proposal for a suitability scheme for adult social care workers is available here: <http://www.hcpc-uk.org/assets/documents/10003F1AHcpcpolicystatement-RegulatingadultsocialcareworkersinEngland.pdf>

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Association of Directors of Social Service and Welsh Local Government Association – RISC 08 / Tystiolaeth gan Gymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru a Chymdeithas Llywodraeth Leol Cymru – RISC 08

The Regulation and Inspection of Social Care (Wales) Bill

Health and Social Care Committee Stage 1 Written Evidence – Joint response on behalf of the Association of Directors of Social Service (ADSS) Cymru and the Welsh Local Government Association (WLGA)

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

The Bill is only one part of a number of measures, including the Social Services and Well-Being (Wales) Act and the Well-being of Future Generations (Wales) Bill that have a mutual dependency. These interdependent parts, including regulation and inspection, need to be strongly connected and complementary, so that they produce a whole system, the objective of which focuses on improving the well-being of the whole population, as well as improving the quality of care and support in Wales.

We recognise that social care has changed significantly since the last major regulatory change in Wales with a growth of mixed forms of support. With the implementation of the Social Services and Well-being (Wales) Act which will transform social care in Wales, as well, it would appear to be sensible to bring our regulation and inspection legislation up to date and review and reduce any complexity that exists under previous legislative frameworks.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

As mentioned above the Bill is just one part of a number of measures that seek to secure well-being for citizens and to improve the quality of care and support

in Wales and so the Bill is dependent on the other measures being successfully implemented and ensuring that each support the aims of the others. The Bill does seek to make fundamental changes to the regulation and inspection framework in Wales, such as the re-constitution of the Care Council for Wales, a move towards service based regulation and a greater focus on outcomes. These changes do not come without barriers, such as changes in requirements on providers and what they are reporting and the need for new systems to be able to manage this. The Bill takes account of a number of these barriers, for example the introduction of new offences to support the submission and accuracy of these reports. The biggest barriers will however be around the culture change within organisations needed to implement these new provisions and with the costs that are associated with the changes. The Explanatory Memorandum (EM) concludes that there will be additional costs associated with the Bill, particularly around the move to a service based model of registration and the introduction of a quality judgement framework, however it also recognises that there are some elements where it has not been possible to calculate costs making it difficult to ascertain all of the financial implications of the Bill.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The Bill's emphasis on focusing on the individual with a shift to outcomes-based regulation, as well as providing citizens with more opportunities to access information about services in which to make decisions on, should have a positive benefit for all citizens, including those with protected characteristics. Based on what we have seen we do not believe that there are any issues, though as the provisions are further developed it will be important to assess any potential impact that the changes may have.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

We have commented on a number of issues throughout this response that suggests that more work is necessary on a number of matters to strengthen the Bill.

5. Do you think that any unintended consequences will arise from the Bill? Provisions in the Bill

There is a considerable number of provisions included in the Bill for subordinate legislation, including regulations, guidance and code of practice making powers for Welsh Ministers. There are also rule, guidance and code of practice making powers for Social Care Wales' – without knowing the detail that will come through as a result of these it is difficult to say what any unintended consequences may be. However, there are some areas of risks, which are covered in more detail later, in response to the questions on the provisions in the Bill. For example, there may be some unintended consequences as a result of the introduction of a Quality Judgement Framework and the introduction of registration fees.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

The original white paper on the future of regulation and inspection of care and support in Wales set out the benefits of moving to a service based model of regulation. The joint ADSS and WLGA response to the White paper (which can be found at: <http://www.wlga.gov.uk/download.php?id=5872&l=1>) welcomed this move as there should be a greater likelihood of being able to identify systemic failures on the part of providers and allow the addressing of these issues at an organisational level. It should also provide useful information about the culture and values across settings and it will be important to enable the regulatory body to both drill down into services and at a whole organisation level.

This approach does need to be balanced with not reducing the focus on settings, direct service delivery and the impact on users. It is important to ensure each setting is still inspected appropriately and that there is a level playing field in inspection between smaller and larger organisations. Managers of individual parts of the service must be clear that responsibility rests with them, not with head office. It also needs to be clear that if one part of a service has difficulties there is not an automatic judgement made against the service as a whole.

The Explanatory Memorandum (EM) identifies that the change to a service based model of registration is the preferred option but that this model will involve substantial transitional costs for the service regulator estimated at £1,471,000 for 2016–17. Given the financial challenges facing public services we need to ensure that this shift in approach will bring about value for money and that any added benefit outweighs the costs that are associated, particularly given the fact that EM identifies that 78% of independent service providers have only one setting.

There are some concerns over the proposed Quality Judgement Framework (QJF). In principle a QJF could be a useful tool for the citizen as it should enable them to compare and contrast services more easily. However, there is a big challenge to ensure that the framework is meaningful and effective, helping bring about a real improvement in services. There is a very real risk that the score would be the sole focus and any narrative would be lost. Rather than having a score, or a one word descriptor, we need to be focusing on having something that is succinct and encapsulates the whole performance, allowing citizens to make informed decisions. A poor quality judgement on a service provider which might be the home of choice for current residents will be disturbing and it is essential that such judgements are reliable, consistent and easily understood by the citizen. QJF's can be subjective and as a result do not provide consistent information / messages, unless that subjectivity can be reduced or removed it will always be open to challenge.

Experience has also taught us that the market moves quickly and individual service provider's performance can vary throughout the year. There will be a challenge as to how to keep the QJF up-to-date to inform citizens and ensure that people are making decisions based on accurate and reliable information.

In our joint response to the original White paper we outlined our views on the introduction of registration fees, identifying that as a fee would add to the current burden of tight margins for many providers and that ultimately this cost would be passed along to the citizen through the fee system then the potential benefits are unclear, as such we are not in support of this element of the Bill.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes

for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

Establishing an outcomes focused approach is to be welcomed and something that both the WLGA and ADSS Cymru have previously endorsed. In achieving this, there needs to be a greater focus on integrating the inspection process towards the achievement of improved well-being outcomes across the public sector. Work is required to redevelop current systems and approaches to establish workplace cultures that are based on people's needs rather than systems and processes. Strengthening service users' voices, so that their aspirations are reflected in the way in which services are delivered, will drive improving standards and provide the context for this shift in focus. In order to respond effectively and better understand how the working environment will have to change, inspectors and regulators will need to understand the challenges faced by the citizen, the workforce and service providers.

There is a clear link with the current Welsh Government consultation on performance measures under the Social Services and Well-being (Wales) Act which ADSS Cymru and WLGA are also responding to. This sets out how social services performance will be measured to ensure that they are meeting the duties of the Social Services and Well-being (Wales) Act, with a greater focus on measuring well-being and the achievement of outcomes. Our main point in response to the consultation is pertinent here – without a stronger clarity about 'what good looks like' we will all struggle to know how best to gather evidence to convince ourselves and others that the performance is good or excellent, rather than 'good enough'.

The Bill places a responsibility on local authorities to produce both an annual report and a local market stability report. Whilst much of the detail of these are to be prescribed in regulations it is important that neither of these become overly burdensome. Local authorities already produce an Annual Report of the Director of Social Services and so it is hoped that the regulations will build on what is in existence rather than looking to re-create anything.

Under the Social Services and Well-being (Wales) Act local authorities will be required to produce a population assessment, which under the draft code of practice, is to be produced once every local government electoral cycle and based on the LHB footprint. Any expectation on the local market stability

reports needs to link in with these other duties, otherwise we run the risk of duplicating work – The EM references an ‘annual statement of the social care market’ – it would seem unrealistic and unwieldy for local authorities to have to undertake this work on an annual basis whilst the population assessment is undertaken every 4 years. It would make sense to bring the frequency of production of the local market stability reports in line with the population assessment, with a need to review them during their lifetime as appropriate. A better understanding of the market and future trends is a good thing and local authorities have made efforts towards this. A Commissioning Framework was developed in 2010 which provides guidance under Section 7(1) of the *Local Authority Social Services Act 1970* in the form of standards which local authorities are expected to achieve. The Framework’s commissioning standards set the benchmark against which the effectiveness of local authority commissioning will be measured. The standards centre on the development of evidence-based commissioning plans and their delivery through effective procurement. Since then the Social Services Improvement Agency (SSIA) have also developed guidance to support the development of Market Position Statements. We need to be sure that placing a duty on local authorities to undertake an assessment of their sector will add value to the work that is already being done. Whilst the EM identifies the difficulties in attributing a cost to the process it does recognise that ‘undertaking the required analysis of the social care market in Wales will require specialist research skills, particularly skills associated with modelling’. This is equally applicable on a local level and so the production of these reports will require both time, expertise and resources for them to be effective.

The overlap of requirements in the Bill and the Social Services and Well-being (Wales) Act around producing a population assessment, an annual report and a local market stability report highlights the need to ensure that any legislation being passed compliments and links with existing, or planned responsibilities / duties. In addition to the requirements resulting from both the Bill and the Social Services and Well-being (Wales) Act, the Well-being of Future Generations (Wales) Bill puts local well-being plans on a statutory basis and the White paper on reforming local government talks about Council Leaders producing a manifesto and annual statement, with the Chief Executive responsible for producing an Annual Report.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

Anything that reinforces in the public mind, as well as with public sector commissioners, that social care, as well as health care, is a sector where provision derives from public, third and private sector bodies is to be welcomed. In both children's and adult services, providers have been in a position of considerable power in the market place, often because of public sector agencies' inability to think and behave commercially and therefore anticipate how the market will respond to changing economic and political trends.

'Shaping the market' is clearly a role for public sector commissioners and the regulators have a potentially helpful role to play in reinforcing a strengthened role of commissioners, but one that is built on mature and respectful relationships with providers. Legislative change should be a driver in shaping the market and the Social Services and Well-Being (Wales) Act 2014 makes a clear directional change, away from traditional and institutional response to people's needs and towards services and responses that have at their heart, offering improvements in people's lives and giving people more control over their lives and their care and support, where possible offered to people in their own homes and neighbourhoods.

The development of commissioning plans and strategies will be best undertaken between commissioners and providers, since providers will have intelligence about what works well for people and that people appreciate. That should be the basis on which future plans are developed. So whilst providers should not shape the market alone, neither should commissioners operate without the necessary dialogue with providers. Regulators should be free to bring their intelligence to the table, recognising any conflicts of interest, but without their contribution, the picture is incomplete.

We welcome oversight for CSSIW on the financial and corporate governance of the 'larger players' in the market, but it may be necessary for those powers also to be available in relation to smaller providers, particularly in a regional market place that can easily be destabilised, particularly by action against or closure of smaller domiciliary care providers. A review, as set out in Part 1, would place on the provider the requirement for contingency planning, but the experience in

using 'escalating concerns' procedures suggests that contingency planning should be a collective responsibility for all key stakeholders in dealing with a potential business failure and this should be reflected in legislation.

The development of local and regional market position statements is a step that should offer greater intelligence about stability and the scope for development to meet changing needs and demands. The regional footprint is more likely to be the most helpful configuration, since the scale of provision should allow greater flexibility in dealing with market changes, though flexibility will be required as in some circumstances a sub-regional approach may be more beneficial. These position statements should provide the foundations for a 'national market stability report'. The national report has to be continually 'work in progress', in order that commissioners and providers can demonstrate and learn how to show responsiveness to people's changing needs and wishes, as well as to the legislative landscape and what it suggests about commissioning intentions over the next 10/15 years.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

It is important that we move from a position where there is insufficient clarity about where the responsibility for improvement sits and equally important that it is recognised that there are potential conflicts of interest between the role of regulator and that of promoting, encouraging and requiring improvement. There will also need to be a mature conversation about the distinction between improvement, that requires current arrangements to deliver better outcomes, and innovation, that requires that new responses are developed to meet changing expectations and demands, as well as new legislative requirements, as set out in Social Services and Well-Being (Wales) Act 2014. These will both need to be addressed through an agency with 'improvement' as one of its key drivers.

The regulatory function of Care Council for Wales has been important in giving the public confidence in the social care workforce and holding the workforce to account. Being able to remove a worker from the register to practice is a critical characteristic. It signals that poor practice is not tolerated, even where there

may be explanations and it has reinforced a sense of personal, professional responsibility amongst the workforce.

The resources available for improvement will be put to better use if they are pooled and driven by a single objective, to ensure that people who receive services experience increasingly better outcomes.

The renaming and reconstituting of Care Council for Wales (CCfW) as **Social Care Wales (SCW)**, with an extended remit, should build on the strengths of CCfW, particularly in giving service-users a voice and a part to play in the education of social workers and other social care workers. It is essential that this aspect of the CCfW's work and history is taken forward by SCW. In addition there should be at least the same level of representation on SCW for service users, as that provided by CCfW. Ensuring Local Government representation will also be important, particularly around the new remit to support improvement.

The extent of third sector and private provision needs to be better recognised through grants and assistance to support improvement available from SCW, as the stability of the market will partly depend on the continual professional development of the workforce and proper career pathways in all sectors of the workforce. It is worth restating that of 1780 regulated social care settings in Wales in 2011/12 only 218 were owned by local authorities and of nearly 12m hours of domiciliary care provided, only 3.6m was provided by local authorities. We believe that the majority of the social care workforce, in third sector and private agencies, has to have increased access to the attention and resources for their continuing professional development.

We welcome the remit for undertaking studies to improve the effectiveness, efficiency and/or economy of care and support, as that will help to demonstrate 'what good looks like', as we have referred above to the significance of being able to understand that. We believe that local authority performance and improvement should remain a sector-led and sector-owned model, with local government being best placed to support local authorities in many of the areas which are critical to local authority performance and improvement. This includes: understanding the local context and priority setting; financial planning and viability; political and managerial leadership; governance and decision-making; and organisational capacity. Local government has a successful track record for supporting service improvement and we would want

to see this role continuing through the use of elements such as peer review / challenge and self-assessment.

10. What are your views on the provisions in parts 4–8 of the Bill for workforce regulation?

The approach proposed in relation to workforce regulation for SCW is generally welcomed, particularly consolidating existing powers to regulate the workforce into a single statutory provision. In addition we welcome the clarity and explicit nature of the procedures for registration and fitness to practice, with greater autonomy to SCW in developing the rules governing the process of regulation.

Whilst the Bill 'recognises the broad nature of the social care workforce', it does not provide sufficient detail to give confidence to workers in third and private sector agencies that their needs are being properly considered or indeed that those workers, who make up the majority of the social care workforce, who are not social workers, are being given appropriate attention and recognition for the part they play in supporting people to lead fulfilling lives.

The work of the Law Commission (2014) should be a useful aid to develop this part of the Bill, with its recommendations, in England, for a single legal framework for all health and social care professionals. At the very least in Wales, this suggests the need for dialogue and much closer collaboration between SCW and bodies such as Health and Care Professions (HCPC) in the future, as we see greater collaboration and integration between local government and NHS in Wales. This is supported in the Social Services and Well-Being (Wales) Act 2014, with its emphasis on promoting the well-being of people to avoid later crises, with a shared responsibility for that purpose between NHS and local government reinforced by the Act.

We would support the proposals in the Bill for the removal of voluntary registration, but believe that there should be early discussions about the significance of leaving domiciliary workers and care home workers unregistered and therefore unregulated. We note the requirement to ensure that all regulated services have a registered manager, but this can only be a first step to offering greater protection within the law for all social care workers. This would be a huge call on resources and it would need to be focused on improving people's

lives and their experiences of services, rather than pursuing the objective of 'widening registration'.

We support the removal of dual registration for managers, placing the responsibility for registration solely with SCW.

On the matter of protection of title, we believe that there was benefit in protecting the title of social worker through the Care Standards Act 2000. The extension of this protection to other social care workers will need a wide debate with all key stakeholders.

We believe that it is wise for SCW to hold a list of people who are barred from practice and welcome an approach that differs from DBS, by referencing standards of conduct to which workers should adhere. However as stated in previous consultation responses we do not believe that the use of prohibition orders will be helpful as this is likely to cause confusion with the DBS processes and could lead to less public protection and assurance.

11. What are your views on the provisions in part 9 of the Bill for cooperation and joint working by regulatory bodies?

The developing trend and future plans suggest that more provision will be jointly provided between agencies and by a multi-professional and multi-disciplinary workforce. To improve the regulatory context for these changes, targeted at improving people's experiences of services and delivering better outcomes, requires that regulators reflect the service landscape and work together, letting go of sectional interests, and focusing on a maxim that suggests, 'doing it better means doing it together'. This complements the move away from assessing whether minimum standards are being met, towards an assessment of the well-being of the people receiving services.

It will be hugely helpful to have the level of cooperation required spelt out in the Bill, specifically identifying powers to cooperate in the exercise of their functions, to carry them out jointly and to be able to delegate functions to each other.

Sharing of information, or the lack of it, has been a real impediment to sharing responsibility and ensuring that the Bill makes it clear that sharing information

is expected to be the default position, rather than the exception, will set a standard for others to follow.

12. In your view does the Bill contain a reasonable balance between what is included in the face of the Bill and what is left to subordinate legislation and guidance?

Our response has raised a number of issues that we believe can be dealt with in subordinate legislation and guidance and our view is that the balance is adequate at present.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

As identified earlier there are a considerable number of provisions included in the Bill for subordinate legislation, including regulations, guidance and code of practice and so without knowing some of the detail behind the provisions within the Bill it is difficult to know what many of the financial implications will be. The Bill itself fundamentally changes the regulation and inspection framework in Wales and, as reflected in the EM, there will be transitional costs associated with these changes, most of which fall on the current regulatory bodies. There are also new duties created, for example local authorities, in addition to the production of an annual report, will need to produce a local market stability report which will have a resource impact on local authorities to produce. We also need to be careful that as funding for improvement across the sector is consolidated through a single body in the form of Social Care Wales that local authorities do not lose the ability to focus on improvement or to be able to respond to performance issues that they have previously been able to.

Most frontline services are facing considerable cuts in the current climate, so the impact of costs associated with these changes should not be underestimated and should not risk further destabilising care providers.

14. Are there any other comments you wish to make about specific sections of the Bill?

Not at this stage

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Wales Carers Alliance – RISC 09 / Tystiolaeth gan Gynghrair Cynhalwyr Cymru – RISC 09

Wales Carers Alliance Response to National Assembly for Wales’ call for evidence on Regulation and Inspection of Social Care (Wales) Bill

Overview

- (i) Wales Carers Alliance recognises the need for the Regulation and Inspection of Social Care (Wales) Bill
- (ii) We would welcome a greater recognition throughout the Bill and associated documents of carers, including a greater emphasis on carer involvement in the regulation and inspection of services, and a recognition that some social care will be provided as a result of a support plan for a carer.
- (iii) We welcome the duty on local authorities to produce reports on the provision of social care in their areas and hope these reports will be able to highlight and promote service provision/providers that meet the needs of carers
- (iv) We believe there is ambiguity over Social Care Wales’ proposed role in relation to the wider social care workforce beyond those who would be registered to and regulated by Social Care Wales
- (v) We are concerned about the way the Bill defines ‘care’ as being physical tasks and the mental processes associated with those physical tasks. We feel this downplays the importance of human interaction and relationships, including involvement of the carer, in delivering effective, quality care.
- (vi) We feel that the Bill could have been more ambitious and gone further in promoting integrated and joined up approach to inspections, workforce development and education
- (vii) In its current form, we feel it is not immediately clear how the Bill relates to the social care workforce as a whole. Similarly, at a number of points in the Bill it is not immediately clear which groups are being referred to when the Bill refers to the ‘social care workforce’.

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Members:

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer's Society, Care & Repair Cymru, Carers Wales, Children in Wales, Kids Cancer Charity, Hafal, Learning Disability Wales, Macmillan Cancer Support, Marie Curie, Motor Neurone Disease Association, MS Society Wales, National Autistic Society Cymru, Parkinson's UK, SNAP Cymru, The Carers Trust, The Stroke Association

Wales Carers Alliance exists to represent the concerns and further the interests of carers in Wales. There are over 370,000 carers across Wales providing unpaid care to friends and family, together the 18 member organisations of Wales Carers Alliance work with and for carers to promote the well-being of all carers.

Response

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 Wales Carers Alliance feels that there is a need for legislation to achieve these aims. We recognise the need to incorporate well-being in response to the Social Services and Well-being (Wales) Act 2014 and to promote the involvement of citizens to help improve and assure quality (p. 10). We also recognise the need to learn from the serious incidents that have taken place across the UK in respect to safeguarding vulnerable citizens.

1.2 Wales Carers Alliance believes that this Bill could help move social care in Wales towards the stated aims. We welcome the proposed duty on local authorities to produce local market stability reports, and we welcome that such reports would include assessment of 'sufficiency of provision of care and support'. Many of services across Wales that are focused on supporting carers are finding themselves under increasing market pressure with services being commissioned on cost rather than quality.

1.3 We believe that the local market stability reports could help promote and secure these services and in doing so protect carers' wellbeing. 96% of care in the community is delivered by carers, saving social services and the NHS in Wales a significant amount of expenditure, preventing hospitalisations and supporting faster transfers of care.

1.4 To support them in their caring responsibilities, carers require quality social care that includes longer visits. A '15-minute call' does not provide carers with a break, and evidence demonstrates how vital good care and support are in ensuring a carer is able to continue in their caring role. A 2011 report found that spending more on breaks, training, information and emotional support for carers could significantly reduce the overall spending on care by local authorities¹.

¹ Conochie, G (2011) *Supporting Carers: The Case for Change*; London: The Princess Royal Trust for Carers and Crossroads Care.

Äelodau:

Members:

1.5 As such, Wales Carers Alliance would want local market stability reports to take into account the type of social care being commissioned and at what cost the social care is being commissioned.

1.6 Wales Carers Alliance would also like to see the involvement of carers in the inspection of service providers strengthened. For example, one way to do this would be to amend section 33, subsection 3 (f) as follows:

- (i) interview in private any person accommodated or receiving care and support at the place who consents to be interviewed.
- (j) interview in private the carer of any person receiving care and support at the place who consents to be interviewed

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

2.1 Wales Carers Alliance believes that some of the potential barriers to implementing the Bill include:

- Ambiguity over the reach and remit of Social Care Wales in relation to the whole social care workforce, including those regulated by other bodies
- Potential conflicts of interest within Social Care Wales. Social Care Wales would have a number of different functions and roles. For example, as well as being responsible for protecting the public, Social Care Wales would also be responsible for the workforce development of social care workers.
- Difficulties in managing transition for service providers, including allowing enough time to raise awareness and support the implementation of changes to registration, regulation and reporting
- Difficulties in clearly and successfully communicating the changes, and what the changes mean in practical terms, to those with care and support needs and, where relevant, their carers

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 There are different expectations for registration of adult and children's workforces which may cause different levels of protection for vulnerable people.

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4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

4.1 Wales Carers Alliance would welcome a greater recognition of the role social care plays in providing breaks to carers. Services, inspections and regulation are discussed across the Bill in relation to those in need of care and support but not their carers. Often, social care is safeguarding and promoting the well-being of both the person with care and support needs *and* the carer. Sections 39, 70 and 55 could all include additional reference to carers of those with care and support needs.

4.2 The Bill does not appear to encourage integration in inspections, workforce development and education, and in improvement agendas. Part 9 of the Bill does highlight co-operation between regulatory bodies stating that such bodies must 'co-operate with each other... if they think that such co-operation...will have a positive effect'. But the relevant bodies listed in part 9 do not include other professional regulatory bodies such as HCPC.

4.3 To fully involve people in the regulation and inspection of services, we continue to believe that the introduction of 'lay inspectors' would help improve regulated services in Wales as well as helping to protect and promote the well-being of people in Wales. We would welcome clarity on any intention to make provision for 'lay inspectors' in either the regulations or codes of practice associated with the Bill.

5. Do you think that any unintended consequences will arise from the Bill?

5.1 Wales Carers Alliance is concerned by the definition of 'care' in the Bill in section 3. This definition defines 'care' as relating to 'the day to day physical tasks and needs of the person cared for' and the 'mental processed related to those task'. We feel that this definition does not place a sufficient emphasis on the relationships and quality human interaction inherent to providing a good standard of social care.

5.2 Many service providers in Wales, particularly those with a carer-focus, are third sector organisations. As such, care should be taken that the new responsibilities on service providers to provide an annual return align wherever possible with their existing reporting responsibilities as charities to avoid unnecessary duplication of effort, particularly among smaller, less-resourced, third-sector organisations.

5.3 Wales Carers Alliance believes that an unintended consequence of the local market reports could be that initial market reports find that local markets are insufficient to meet the needs of citizens. In such a case, there would be a need for increased public sector investment in areas of the social care 'market'.

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Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?

For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 Wales Carers Alliance welcomes greater engagement with the public in Part 1 in relation to the regulation of social care services. However, we do not feel it is sufficiently clear in what ways or to what extent the public will be involved in the regulation of social care services in the Bill.

6.2 We would also want to see greater reference to involving carers specifically across the Bill. Carers are often experts in the care that those they care for require, but the involvement of carers directly in the current regulatory and inspection environment is inconsistent. Similarly, currently the involvement of carers in social care by service providers is not consistent across all service providers.

6.3 There are many opportunities to reference carers in the Bill including in section 33 (as outlined above). We welcome that the Statement of Policy Intent makes it clear that in regulations under Section 26 (1) carers will be involved in how providers work with service users to define and agree well-being outcomes that are personal to the service user. We feel that it is important that this involvement is clear and further emphasised. Social care may be arranged as a result of a support plan put in place by a local authority for the *carer*, the purpose of which is to enable the *carer* to meet their well-being outcomes. As such, it is important that the social care services in this context delivers for the carer's well-being outcomes also.

6.4 Wales Carers Alliance welcomes the power and intention to introduce quality judgement ratings although with the usual caveats that such a system must not produce a 'league table' and must be developed carefully and in partnership with stakeholders. Many carer-focused services across Wales already participate voluntarily in externally assessed quality awards, and as such would welcome an opportunity to gain national recognition for their commitment to quality.

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7. What are your views on the provisions in Part 1 of the Bill for the Regulation of local authority social services?

For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 To reiterate our earlier points – we feel it is important that the Bill makes reference to involving carers specifically. For example, in section 55 the annual reports produced by local authorities could include detail on how they involved carers in how their social services functions were exercised.

7.2 We welcome the introduction of the new duty to report on local markets for social care services for the reasons outlined in our response to question 1 – if executed correctly, such reports should help promote quality social care that delivers for carers, as well as shine a light on the increasingly difficult environment that carer-focused services are currently operating in.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability

8.1 Wales Carers Alliance welcomes the development of market oversight of the social care sector but feel it is important that great care be taken in developing the regulations that determine whether a provider falls under the regime.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1 Wales Carers Alliance has some concerns over the breadth of Social Care Wales objectives as laid out in section 67 and how they relate to its regulatory role. The definition in section 78 of a social care worker is broad and encompasses workers from a range of professions regulated by other professional bodies. We would welcome clarity over which aspects of Social Care Wales' responsibilities relate to only those staff that are regulated and/or registered with Social Care Wales and which responsibilities relate to the whole social care workforce.

9.1 As outlined earlier in this response, Wales Carers Alliance is concerned of potential conflicts of interest arising between Social Care Wales' functions – for example, Social Care Wales' regulatory functions in relation to fitness to practice and Social Care Wales' role in continuing professional development and the approval of courses.

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10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation?

For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

As outlined in previous responses, we welcome the provisions in part 9. However, we are disappointed that Part 9 does not go further in encouraged and promoting co-operative working between Social Care Wales and other professional regulatory bodies such as HCPC.

16 April 2015

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Welsh Reablement Alliance and the Social Care and Wellbeing Alliance Wales – RISC 10 / Tystiolaeth gan Cynghrair Ail-alluogi Cymru a Cynghrair Gofal a Lles Cymdeithasol Cymru – RISC 10

Consultation on the Regulation and Inspection of Social Care (Wales) Bill: Stage 1

From the Social Care and Wellbeing Alliance Wales and Welsh Reablement Alliance

Introduction

The Social Care and Wellbeing Alliance Wales (SCWAW) and Welsh Reablement Alliance (WRA) are two separate alliances, referred to throughout the document as the alliances. SCWAW seeks to identify, and address, issues affecting social care and wellbeing and their impact on people in Wales. WRA campaigns to promote the benefits of consistent, effective, integrated services which enable people to maximise their ability to live as independently as possible.

Member organisations are drawn from the third sector, patient and service user representative groups, professional bodies and social care providers. Many member organisations are members of both alliances and so we have decided to submit this as a single response. We would like to note that some organisations within these alliances represent patient and service user interests whereas others will represent organisations or practitioners providing regulated services. For many, there will be overlap between the two. As such, this response summarises the main issues the alliances have identified. Individual organisations may also submit evidence detailing organisation-specific issues.

The alliances welcome the Bill as the missing element of development from the Social Services and Well-being (Wales) Act which needs to be connected and complementary. Further, the alliances recognise the opportunity to improve on current provisions to ensure cohesive and comprehensive regulation, registration and inspection of social care provisions in Wales. As such, the alliances support the aims of the Bill even if they might not be considered as comprehensive as they might be.

Headline issues

- A fundamental function of regulation and inspection is the reduction in both risk to, and breaches of, individuals' human rights. The alliances are concerned that a requirement of due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People and the United Nations Principles for Older Persons is not explicit on the face of the Bill as it is in Section 7 of the Social Services and Well-being (Wales) Act.

- Due to the number of provisions in relation to subordinate legislation, the alliances have some concern that we are not able to fully consider the Bill without some greater indication, beyond section 5 of the explanatory memorandum, of the subordinate legislation.
- The alliances have some concern that the Bill is not taking the opportunity to address the required symbiosis of different regulation and inspection regimes that exist within the wider provision of social care services.
- It is a perception of the alliances that there could be a more coherent use of language both within this Bill and across legislation but, in particular, with the Social Services and Well-being (Wales) Act.
- The alliances seek clarity around the potential regulation of care and support services that may be provided to individuals as part of a preventative service. Our concerns in particular are around the status of reablement services and whether these, as preventative services, will also be subject to regulation.

Response to questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. This protection is not only vital at times of risk but where there is the potential of risk. The regulatory system in place to provide that protection needs to be robust. It appears from the Explanatory Memorandum that there is a need for the legislation. In particular, paragraph 3.9 identifies the growing potential for complexity and loopholes if new legislation is not provided.
- 1.2 The alliances note that the long title of the Bill says regulation of persons, not services, and lists certain specific service types, whereas the aims of the Bill in the explanatory notes (P298; policy background 4) are listed as objectives in Section 3 paragraph 3.15 Explanatory Memorandum.
- 1.3 The alliances welcome the aim as stated in section 3; however, it is not always explicit how the Bill will achieve the objectives. For example, it would appear that the person to be placed at the heart of the system will become clearer through regulations because the Bill, as drafted, focuses on the activities of organisations.
- 1.4 The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other relevant regulatory bodies in Wales and the UK. This includes regulators of members of the social care workforce already regulated by other, often UK-wide, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies.
- 1.5 Achievement of the aim/objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the

Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the Explanatory Memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. In fact, this is social work and managers of services with a potential to add other groups at a future date.

- 1.6 The alliances remain resolute that the Bill will not achieve its aims unless human rights are a fundamental and explicit principle. The alliances are concerned that the government appears reluctant to accept its role and responsibility as described in the Vienna Declaration and programme of action; Article 1 - *'Human Rights and fundamental freedoms are the birth right of all human beings; their protection and promotion is the first responsibility of Governments'*.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 At the risk of being repetitive, it is the opinion of the alliances that a significant barrier is the lack of reference to human rights. Additionally, the lack of due regard to international instruments is a potential barrier.
- 2.2 The alliances would welcome amendments that clarify the relationship between different regulatory and inspection regimes. Without this, we believe that inconsistency might occur within a provision where the possibility of multiple regulation exists. Situations where multiple regulations might occur could also lead to onerous regulation and inspection burdens for services and individuals. The Bill retains the current model of regulation of the service by one body and regulation of the workforce within that service by another body. There is potential for confusion between the separate accountabilities and a possible missed opportunity for streamlining.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 The alliances are concerned that the potential for some divergence of protection thresholds between regulated services and registered workforces for children or adults exists. Members of the alliances highlighted that the Equality and Human Rights Commission review of home care services in England found that people with sight loss were involved in some of the most disturbing examples of poor treatment.
- 3.2 This concern may be addressed through subordinate legislation (Codes of Practice) or developing codes of conduct and registration criteria. However, it does highlight the need to be active in reducing conditions that might increase vulnerability. The RNIB have also suggested that a greater reference to the Equality Act should be made. Perhaps the development of Equalities duties as a requirement of registration and regulation might be beneficial.
- 3.3 We also have concerns that the Bill does not extend to services purchased through Direct Payments.

- 3.4 The current model of inspection for social care is that of a single inspector. Other inspectorates, for example Healthcare Inspectorate Wales use small teams to validate and triangulate their findings. As more and more services integrate and may receive inspections from more than one regulator/inspector, this may result in inequality for some groups.
- 3.5 The alliances believe that the primary function of Social Care Wales must be the protection of service users and their experiences of receiving regulated services. Any function which relates to promotion of any professional group should be evidently secondary and separate. There is a potential conflict of interest between the role of regulator and that of promoting and encouraging improvement.
- 3.6 The alliances would repeat their assertion that demonstrable due regard to human rights instruments is required in relation to equality.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 The Social Services and Well-being (Wales) Act will transform services and drive greater integration. The alliances would question whether this Bill, as tabled, contributes to that direction. It would be helpful if the Bill explicitly spelt out the expectation and powers to co-operate, jointly act, or to delegate function for integrated infrastructure in, for example, inspections, workforce development, education and improvement agendas. This relates to our comments at question 11.
- 4.2 The alliances would also repeat our human rights concerns in relation to this question.
- 4.3 The alliances campaigned for the inclusion of a section on appeals for users of care and support in the Social Services and Well-being (Wales) Act. The alliances would suggest further consideration of an amendment to that Act through this Bill in relation to appeals on Local Authority decisions for individuals, which would contribute greatly to the protection of people using services, their active involvement in service provision and the promotion of effective and efficient services whether regulated or not. Amending the Act in this way should also create greater parity between individuals and social care workers, as workers have the right to appeal decisions about them under this Bill. The alliances would like to bring to your attention section 72 (Part 1) of the [Care Act 2014](#) which addresses appeals for individual users in England.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 The alliances are concerned that the definition of care in Part1; Chapter1; 3(1)(a) solely references physical tasks. While 3(a)(ii) identifies the 'mental' processes related to those tasks; as it stands, it appears to push a focus on task and time rather than quality of the interaction. The definition appears to be very different to the expectation and thrust of the Social Services and Well-being (Wales) Act and does not support the intention to put the citizen at the centre of their services.

- 5.2 Relationships and the quality of human interaction is a vital element in safeguarding and providing high quality care services, as many recent reports and investigations, such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be very different to the clear expectation of the Social Services and Well-being (Wales) Act where care and support is required to meet a much wider range of well-being outcomes.
- 5.3 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Well-being (Wales) Act which allows for a wide range and mix of services to provide care and support. The alliances are not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering or providing services. Both legislative frameworks need to be strongly complementary and consistent with each other.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

- 6.1 The alliances welcome the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered, the inspection and regulation of service providers and the creation of a Responsible Individual.
- 6.2 It is not clear whether 'regulated activity', section 171, is the same as 'regulated services' (Chapter 2; s6). The definition of regulated services in schedule 1 of the Bill appears limited when compared to the apparent breadth of social care services within the Social Services and Well-being (Wales) Act. Terminology will need to be clearly defined and used consistently.
- 6.3 The meaning of well-being in section 2 of the Social Services and Well-being (Wales) Act offers the opportunity and promotes the need to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility across the social care workforce beyond regulated services while maintaining and ensuring the safeguarding imperative.
- 6.4 It is not clear how the inspection regime will involve and engage with persons in receipt of care and support. It would be helpful to include a duty to report on how citizens, people and the public have been engaged in the inspection regime. Section 33(3) (i) gives power to the inspectorate to interview persons in receipt of care and support. However, there is no similar power to interview carers or people in need of care and support.

7 What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance,

increased public involvement, and a new duty to report on local markets for social care services.

- 7.1 The alliances welcome the intention to consider outcomes for individuals in reviews of social services and increased public involvement.
- 7.2 Section 55: insertion to the Social Services and Well-being (Wales) Act, section 144B, presumes that services will be easily definable. It will be more challenging to summarise individualised and person-centred interventions than report on the number and location of residential places or domiciliary care agencies. It will be important that the reporting duty does not become so onerous that vital frontline activity is compromised.
- 7.3 One aim of the Bill is to clarify and reduce complexity; however, complex, dual regulation of practitioners or the loss of a multi professional workforce may not deliver the intended outcomes. For example, in section 57, the insertion to the Social Services and Well-being (Wales) Act relating to looked after children: Regulations under section 94A (3) can prevent a person working if they are not registered under section 79 of the Regulation and Inspection of Social Care (Wales) Act (registration of social care workers). This presumes any registered staff are registered with Social Care Wales rather than registered with other regulators.

8 What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- 8.1 The alliances welcome the intention of this. It is important to recognise that the unforeseen can always arise; this activity needs to be proportionate to the other demands of activity for local authorities.

9 What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- 9.1 The objective, section 67 (1) for Social Care Wales, does not limit the protection, promotion and maintenance of the safety and well-being of the public to social care matters alone. This should be stated explicitly. This responsibility can only relate to the services and practitioners registered with and regulated by Social Care Wales: however, in section 67(2) the functions do not appear to directly relate to this objective: this section includes all social care workers and a responsibility to maintain high standards.
- 9.3 Practitioners registered with and regulated by other regulatory bodies, such as occupational therapists and nurses, will remain under the jurisdiction of those regulators. It is not clear how this covers staff who are not regulated at all as individuals, but who work in regulated services. Are the Responsible Individual and Registered Manager accountable for these staff? What is the balance of accountability between individuals and service quality and how will this work in practice?

- 9.3 The alliances suggest that the Bill should be very clear what references to social care workers means:
- a. Those who are registered/regulated and thus affected by parts of the Bill relating to the role of Social Care Wales as a protector of the public (social workers and managers) or,
 - b. The whole workforce when Social Care Wales is acting as an improvement, education and support agency (all social care workers).
- 9.4 The wider development roles of Social Care Wales, Part 5, for all registered social care workers are sometimes beyond the remit of public protection. In healthcare many of these are done through the Workforce Education Development Service or by other regulators. Clarity is needed on the groups that Social Care Wales will include in this work. For example, how will occupational therapists be supported in their practice in social care, even though they are not the responsibility of Social Care Wales in its regulatory role? How will the different responsibilities be separated? How will other professionals (such as physiotherapists, speech and language therapists and dietitians) working in integrated health and social care be supported within a social care context? Will Social Care Wales have responsibilities here? There is a missed opportunity here for improving integration in health and social care.
- 9.5 The alliances consider there is potential for conflict of interest in placing so many roles in one body. Specifically, we are concerned with the potential conflict of interest between regulating social care services and promoting and developing a service, with the possibility that this might inhibit honest and frank discussion of issues arising that could be prevented prior to the need for regulatory sanctions. The function of protecting the public should be paramount and separate to other roles.
- 9.6 Through the inclusion of a duty of due regard to human rights' instruments, the alliances would expect the functions of Social Care Wales described in Part 5 to reflect human rights' principles.
- 9.7 Protecting the public is a significantly different role from those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that **“Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved”**(p2). This work came out of the Shipman Inquiry and the Foster review. The proposal for Social Care Wales should be examined against these principles for regulation.
- 9.8 The role of Social Care Wales needs to be enhanced and extended to fully realise its role as the sector skills council. This should involve responsibility for

upskilling and training all social care workers, as well as workers in health and more widely who contribute to care and support provision.

10 What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- 10.1 The description of a social care worker, section 78, includes a far wider group than those considered registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Clarity is needed on how, or if, Social Care Wales is responsible for those.
- 10.2 Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of Social Care Wales as a regulator. For example, section 78(3)(b) would include occupational therapists. Any regulations made under section 78(2) will need to be clear of any overlap with existing regulator functions. The sections immediately after section 78 refer to the register and continue to refer to issues relating to registered groups, even though “social care workers” are not registered groups. This could usefully be made more explicit to help the Bill achieve its intent and ensure that implementation is effective.
- 10.3 Section 83(b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers and registered managers. Section 83(b)(i) requires completion of a course approved by Social Care Wales under section 113 – which cross refers to section 79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by Social Care Wales but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved. This would helpfully include an expectation that qualifications required by other regulators or employers are recognised when staff move around the sector. It seems inefficient that public money pays for a qualification when working in one sector and then pays for another qualification with similar outcomes but a different title if they move to another part of the sector.
- 10.4 The alliances also suggest that Part 5 (Social Care workers: standards of conduct, education etc.) is also unclear as to which workforce groups are included and which are not. For example, section 111(1)(a) refers to standards of conduct and practice for “social care workers”. It is unclear if and how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. Section 111(3) refers to codes for social workers when working as Approved Mental Health Practitioners. However three other professions can be Approved Mental Health Practitioners. The alliances would suggest that the same codes of conduct have to apply to every Approved Mental Health Practitioners regardless of their initial professional background or professional regulator.

- 10.5 The alliances support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus what are the requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or joint working with other regulators, such as the Health and Care Professions Council or the Nursing and Midwifery Council, and other employers, such as NHS Wales (supported by Workforce Education Development Service), and the improvement functions of Public Health Wales.
- 10.6 It is unclear what remit over fitness to practice, Part 6, Social Care Wales has other than for registered groups (social workers and registered managers). Section 116(5) appears to acknowledge this is only for workers registered with Social Care Wales. The alliances suggest that this part should not be titled to imply it means all social care workers throughout the social care workforce. The reference to the Health and Care Professions Council in section 116(4) is assumed to refer to social workers registered in England and misses the opportunity to consider staff registered in Wales. Section 117 refers to a “registered person”: is this only a person registered with Social Care Wales? What about a person registered with another registering body?
- 10.7 Although we accept that it is not possible to comment on future developments, the alliances are aware that it is the Government’s intention to include advocacy as a regulated service at some time in the future. Consequently, we would recommend early consideration of integrated regulatory processes for advocacy required through different legislations, such as the Social Services and Well-being (Wales) Act and the Mental Health (Wales) Measure.

11 What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

- 11.1 The alliances are concerned that these refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. Section 174 identifies the regulatory bodies as Welsh Ministers and Social Care Wales. It is disappointing there is no reference to co-operation and joint working with the Health and Care Professions Council, the Nursing and Midwifery Council and other regulators. The alliances consider this might be a missed opportunity to deliver increases of efficiency in regulation.
- 11.2 The alliances are disappointed there is no reference to co-operation in relation to the wider roles of Social Care Wales given both the policy direction for, and reliance on, greater integration for the delivery of the change desired from the Social Services and Well-being (Wales) Act. For example, workforce development and education commissioning for occupational therapists, nurses and others is undertaken by the Workforce Education Development Service. There seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval and integrated career frameworks for the whole social care workforce. The Bill offers an ideal

opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

12 In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 The balance appears to be right given what is on the face of the Bill. However, without greater indications of what subordinate legislation might be, it is difficult to comment fully at this stage.

Financial implications

13 What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

- 13.1 The alliances feel ill equipped to pass informed comment on this. However, we have some concerns with the frequency that it is suggested in these parts that there will be no cost incurred with these changes other than those associated with transitional arrangements.
- 13.2 The alliances recognise the effects of significant underfunding of the social care sector will not be solved by market oversight and annual reports.

14 Are there any other comments you wish to make about specific sections of the Bill?

- 14.1 The alliances have some concerns in relation to section 33(3): powers of the Inspector. For example, Inspectors have the power to talk to service users in private, but not carers.
- 14.2 The Inspector may ... "assess the well-being of any person accommodated or receiving care and support there" (section 33(3)(a)). Does this constitute a professional assessment which meets the requirements of the assessment regulations for the Social Services and Well-being (Wales) Act? If so, will this person be expected to hold the qualifications and registration of that professional such as a Nurse, Occupational Therapist or Social Worker and include consideration of the well-being outcomes? If not, and this is intended to mean a more general consideration of the situation of the person, it may be more useful to use different language given the meanings of well-being already present in two pieces of legislation.
- 14.3 Language: The alliances consider that the language used in this Bill is inconsistent, using different words for the same concepts or groups and is not always consistent with that of the Social Services and Well-being (Wales) Act.
- 14.5 The alliances suggest that the Bill will be clearer and achieve its aims more effectively if clarity is achieved in the use of language and definitions.

Conclusion

SCWAW and the WRA welcome the intention and aim of the Bill to protect the public and ensure a streamlined and effective regulatory system. Many sections appear to continue the Care Standards Act (2000) and the alliances feel the Bill could go further in driving improvements for people by enabling greater integration and more streamlined regulation for integrated services.

Ruth Crowder for the WRA [REDACTED]

Tim Ruscoe for the SCWAW [REDACTED]

April 2015

1. Care Forum Wales would like to thank the Health and Social Care Committee for the opportunity to provide written evidence on the Regulation and Inspection of Social Care (Wales) Bill. In our evidence, we seek to respond to some of the general matters raised in the consultation and to those provisions within the bill that are relevant to our members.
2. Care Forum Wales is the main professional representative organisation for independent providers (both third and private sector) of health and social care services in Wales. Our 450 plus members provide services across the full range of ages and settings, including looked after children, domiciliary care, supported living, residential and nursing care homes and hospices.
3. In our original response to the bill, Care Forum Wales confirmed broad support for the direction of travel and the need to update legislation to reflect current circumstances – the increasing dependency needs of people receiving care services and the higher expectations of society for quality services against a background of financial austerity. As an organisation we are keen to promote three key principles that we believe are central to achieving the required outcomes for citizens:
 - commissioning for quality
 - regulating against commissioning
 - building a professional and qualified workforce fit for the future.

Translating these into action requires a focus on quality and a genuine commitment to partnership and co-production. All of this chimes with the findings of two recently published and respected reports, “A Place to Call Home” by the Older People’s Commissioner for Wales (OPC) and “John Kennedy’s Care Home Enquiry” for the Joseph Rowntree Foundation.

4. John Kennedy’s report supports what Care Forum has been saying for a long time that society has to agree what it expects of publically funded care. This is not just a question of money, but about identifying what good, sustainable service looks like and recognising good performance. Both the OPC and John Kennedy recognised that we have some excellent care homes. We want to be able to identify such “beacon” homes so that they can provide inspiration and pass on their knowledge. We support the need for a “scores on the doors”

approach. Citizens want a simple system that reflects choice and availability of local services, along the lines of the Food Hygiene Ratings System where a rating of 1 does not mean that the premises have to close. Interestingly we never receive complaints from members about Local Authority inspections on hygiene scores because they are conducted in a supportive way. This is also what we want to see in regulation of care. Overall we need a regulation system that is flexible and allows people to share best practice; a system that is based on support to develop rather than on compliance; a system that is fair and transparent with an effective right of reply; a system that reflects the rounded experience of people receiving services and their families; a system that adds value and is not just a tick box exercise. This approach underlines the findings in the OPC's review of residential care. The review found no regulatory failings amongst any providers, but found that the system does not support quality because it is too bound by paperwork. There will always be a minority of providers that fail, but this is never intentional, hence regulation and the threat of de-registration will never be enough alone. Quality has to be built in and can only be achieved through clarity and support. Where something does go genuinely wrong we need to be able to learn from it together.

5. Once we understand what good quality is, it needs to be reflected in clear commissioning guidance. There is a particular lack of statutory commissioning guidance within the NHS in Wales which was highlighted in the recent Judicial Review action by Forge Care Homes et al against the Local Health Boards, which demonstrated that there is misunderstanding and misinterpretation of such guidance as does exist on Funded Nursing Care. Where commissioning guidance exists for social care, commissioners are not currently policed or held to account. The majority of Local Authorities do not commission at a rate that supports quality outcomes or payment of a wage that will encourage a professional workforce. We understand one local authority pays a fixed rate of £35 for an 8 hour "sleep in" shift that does not enable the provider to pay even the minimum wage; we regularly hear of Local Authorities telling providers that they are spending too much on food or staff levels. Our colleagues in UKHCA have identified £15.74 per hour as being the lowest rate at which domiciliary care can be commissioned whilst enabling payment of the minimum wage: yet the lowest fee paid in Wales is just £9.16. Domiciliary care is increasingly being purchased on the basis of on-line auctions, such as the Matrix system in Cardiff, that drive the price to the bottom and do not adequately reflect a quality element. There is a major difference in the residential care commissioned by Local Authorities across Wales, ranging from £419 per week in Powys (average fee) to £524 in Vale of Glamorgan (minimum fee). There is also the long standing issue with Funded Nursing Care paid by Local Health Boards towards care packages for those residents in care homes who have a combination of health needs and social care needs (commissioned by the Local Authority).

6. For this reason, we are very keen to see regulation of commissioning placed on the same footing as regulation of service provision and, whilst this may eventually fall out of the bill as it progresses, we would want to see it clearly expressed now. Current regulation of

commissioning is not strong enough and does not hold statutory provision for funded care sufficiently to account under the law. Commissioners both in Local Authorities and Local Health Boards must clearly state what they are commissioning for and should be regulated against this. In the spirit of professionalism and accountability, we also see value in commissioners registering with the workforce regulator.

7. Provision of good care can only be achieved with a professional and motivated workforce, another theme strongly endorsed by John Kennedy. We believe that all social care practitioners should be registered – Registered Care Managers should manage registered staff. This would both professionalise the workforce and give assurance to people using care services. However, the threat of being removed from the register is not enough in itself and needs to be backed up by support and we fully endorse Welsh Government's plans for the new Social Care Wales as an opportunity for improving and supporting practice. Social Care Practitioners are undervalued, often under paid because of low fee levels and have no governing or support body in the same way as nurses, for instance, have the Nursing and Midwifery Council. Care Forum Wales has long argued for social care practitioners to have access to such a body and have set up the Academy of Care Practitioners. Although still in formative stage, our vision is to build a professional body that builds in quality and support in the same way we would like to see services supported by the regulator.

8. The success of regulation and quality of care is underpinned by the need for collaborative working and co-production. Gwenda Thomas, the previous Deputy Minister for Social Care, deserves much credit for developing the notion of national partnerships and collaborative working between Welsh Government, commissioners and providers through legally constituted organisations. Unfortunately this level of collaboration does not always exist below Welsh Government level. For instance, in handing down his decision on the Judicial Review on Funded Nursing Care, Mr Justice Hickinbottom was critical of the lack of engagement by the Local Health Boards with their colleagues in Local Authorities and providers. We would like to see more explicit instructions within the bill to emphasize partnership working and to ensure that the national partnership and leadership arrangements are replicated as Welsh Government intend at regional level.

9. The bill in its current form is not fully developed, which makes it difficult to comment upon in detail. This is a concern given that poor law making in the past has resulted in tensions e.g. between CRB and employment law when first introduced. We have already indicated on the key areas that we would like to see more explicitly addressed. We are broadly supportive of the general direction of travel, but would need to see more detail of what is proposed in relation, for example, to providers' annual statements. We also remain concerned about the potential to introduce registration fees. Given that the majority of care is funded by the statutory sector we see this as simply moving money around the

system without improving the quality of regulation and increasing public expenditure on collection.

10. However, we also recognise the need to maintain flexibility within the bill to ensure that it can register future services, encourage innovations and maintain choice such that people are not shoe-horned or constrained by regulated services. The bill needs to be fit for purpose beyond 2027. In general terms, as detail develops and the implications become clearer, we would stress the need to continue the progress made on partnership working, for continued consultation moving forward and for the National Assembly for Wales to continue scrutiny.

Melanie Minty

Policy Adviser

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Health and Safety Executive – RISC 12 / Tystiolaeth gan Yr Awdurdod Gweithredol Iechyd a Diogelwch – RISC 12

Health and Safety Executive response to the Consultation on the Regulation and Inspection of Social Care (Wales) Bill

Role of the Health and Safety Executive (HSE)

HSE is responsible for health and safety policy at work in Great Britain and regulates occupational health and safety across most industries and sectors, including in the health and social care sector. HSE enforces the Health and Safety at Work etc. Act 1974 and related legislation. It engages in both inspection and investigation activities. HSE inspectors have extensive powers to take action, including powers to issue improvement and prohibition notices or prosecute those in breach of health and safety legislation.

Consultation questions

HSE has views on two of the 14 questions listed in Annex A of the Consultation letter and its response to both questions overlap. The two questions are questions 1 and 4.

HSE response to questions 1 and 4

HSE considers that to achieve the stated aims and objectives there needs to be a robust inspection and investigation regime, delivered by a regulator or regulators with adequate powers to both secure improvement and secure justice. The Welsh Government's regulators are the Care Council for Wales (CCW) (to be renamed Social Care Wales) and the Care and Social Services Inspectorate Wales (CSSIW). Both the CCW and CSSIW lack a comprehensive set of powers. Our view is that the specialist regulator for social care in Wales, the CSSIW, should have the necessary regulatory powers and criminal sanctions to deal with poor care services that put service users at risk. Effective

enforcement is a necessary tool in securing compliance and improvement, and in holding individuals and organisations to account and securing justice where failings have caused serious harm or death. Whilst the Police and HSE/Local Authorities have powers to investigate and prosecute either single or multiple incidents, the powers available to CSSIW are much more limited and aimed primarily at securing improvement.

The lack of a comprehensive set of powers by specialist regulators such as CSSIW, who may otherwise be better placed to act, often leads to HSE being called upon to act as a 'regulator of last resort'. However, HSE can only enforce where there has been a breach of relevant legislation and the incident falls within its published selection criteria, so there is effectively a regulatory gap in respect of failures outside these parameters. In such instances the social care providers may escape prosecution even if their failures and the consequences have been very serious.

We believe that in order to ensure effective regulation there needs to be:

- A comprehensive regulatory framework that ensures adequate inspection and investigation by the specialist regulator, and that ensures that there are no regulatory gaps;
- Adequate regulatory powers to secure improvement and justice;
- Clarity about roles and responsibilities;
- A duty to report incidents, so relevant regulators know about problems and can become involved where appropriate;
- Sufficient resourcing, and
- Clarity for citizens, so that they know what good care looks like, the standards that have to be achieved and who they can turn to if they have concerns.

HSE would welcome further discussions with the Welsh Government, CSSIW and others about achieving these outcomes.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
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[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Velindre NHS Trust – RISC 13 / Tystiolaeth gan
Ymddiriedolaeth GIG Felindre Diogelwch – RISC 13

Date: 20th April 2015

Sent via email: SeneddHealth@Assembly.Wales

Dear Sir/Madam

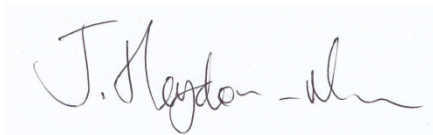
Re: Evidence on the general principles of Regulation and Inspection of Social Care (Wales) Bill

I write on behalf of Mr Steve Ham, Interim Chief Executive for Velindre NHS Trust in response to the invitation to offer comment on the above bill.

This has been distributed widely across Velindre Trust, and I am writing to confirm that there are no specific comments that the Trust wishes to submit at this time.

Please do not hesitate to contact me should you wish to discuss this response further.

Yours Sincerely



Julie Heydon-Mann
Velindre NHS Trust HQ / Pencadlys Ymddiriedolaeth GIG Felindre
Communication and Compliance Officer / Swyddog Cyfathrebu a Chydymffurfiad
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Heol Billingsley
Parc Nantgarw

Mae'r Ymddiriedolaeth hon yn croesawu gohebiaeth yn y Gymraeg
This Trust welcomes correspondence in Welsh



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cc Mr Steve Ham, Interim Chief Executive

Mae'r Ymddiriedolaeth hon yn croesawu gohebiaeth yn y Gymraeg
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[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from UNISON and College of Occupational Therapists – RISC 14 /
Tystiolaeth gan UNSAIN ac Coleg y Therapyddion Galwedigaethol – RISC 14

Regulation and Inspection of Social Care (Wales) Bill

Response from UNISON, including the College of Occupational Therapists.

Introduction

UNISON is pleased to respond to this consultation having taken part in the task group on worker regulation. UNISON is also the largest public sector union and has approximately 33,000 members working within the social care sector in Wales. We have a Social Services Forum, where members meet and exchange information, as well as communicating views via e-mail. Our members include Social Care Workers of all grades.

The College of Occupational Therapists is the professional body for occupational therapists and represents over 30,000 occupational therapists, support workers and students from across the United Kingdom and 1,600 in Wales. Occupational therapists work in the NHS, Local Authority housing and social services departments, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services.

Occupational therapists are regulated by the Health and Care Professions Council, and work with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties. The philosophy of occupational therapy is founded on the concept that occupation is essential to human existence and good health and wellbeing. Occupation includes all the things that people do or participate in. For example, living independent lives in their own homes, caring for themselves and others, working, learning, playing and interacting with others. Being deprived of or having limited access to occupation can affect physical and psychological health.

Response to questions

- 1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales)**

and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 UNISON welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered. The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. Robust regulation is essential for protecting the public from poor practice and practitioners and to maintaining the safety and wellbeing of vulnerable people receiving services.
- 1.2 Both UNISON and the College of Occupational Therapists have taken part in the work groups relating to workforce regulation and inspection, committed to ensuring all our members views are considered.
- 1.3 There is a need for the legislation as a result of changes to the existing legislation in England and to ensure that services which cross borders are included. As services are no longer service led but person-led the old system will become unwieldy. It will be essential that this Bill offers sufficient flexibility to keep up with the changes that will occur as the Social Services and Wellbeing (Wales) Act 2014 is implemented. The long title of the Bill says regulation of persons not services and lists certain specific service types. This may not facilitate that flexibility.
- 1.4 We further believe that legislation is necessary if we are to safeguard ourselves from the situations reported in the Francis review et al. Standards need to be consistent, and it is our belief that by having this framework (of the Bill) we will be better placed to provide that consistency of care to the people of Wales.
- 1.5 Regulation of the providers and workforce are vital to provide the public with assurances that their well-being is being protected. Responsibilities fall on employers and the workforce alike, but the monitoring and inspection must be properly resourced, to ensure there is confidence in the measures suggested.

- 1.6 We understand the argument against not extending regulation to all social care workers, but we do remain of the view this is a necessary part in the increased professionalization of the workers within social care. The provision for regulations to follow in the future is better than outright blocking of this issue, but we are concerned that the resources issue is unlikely to improve (and that is one of the main reasons for the decision), whilst the increase in care work continues (as outlined in all the statistical commentary). Social Care workers are vital to any social care policy succeeding as the major provider of the care – we should recognise their responsibility, and registration would assist this. Responsibility without professional support only serves to abandon Care Workers to the lower paid – increased professionalization is often recognised with better pay. However, we are saying in this Bill that there are not the resources available to take this step, we may do so in the future but for now, they are not required to be registered. We would like to see this part of the bill reviewed annually with all interested parties so that we might react more quickly in the future.
- 1.7 UNISON welcomes the aim as stated in section 3. The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other regulatory bodies in Wales. This includes regulators of members of the social care workforce already regulated by other, often UK, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies. Achievement of the aim/ objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the explanatory memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. However, this Bill is only regulating social workers and managers. The remainder of the social care workforce are either not regulated or are regulated by other bodies.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 Inevitably finance and the pressure on current services will be a potential barrier to implementing the provisions of the Bill.
- 2.2 There must be robust inspection and monitoring procedures in place – they are outlined within the bill but will not succeed if the resources are not provided. Staff and Service Users and their families must have confidence that any complaint will be quickly and thoroughly investigated. At the moment we find that families feel unsure how to complain and staff feel that their job will be in jeopardy if they ‘whistle blow’. We would like to see the Welsh Government ensuring that procurement criteria includes an organisation having an open and transparent ‘whistle blowing policy’. It would be useful too, that any inspection includes contact with the Trade Union, to ensure partnership working means what it says and that any collective issues and personal case trends can be reported professionally and be part of the investigation.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 There are different expectations for registration of adult and children’s workforces which may cause different levels of protection for vulnerable people.
- 3.2 The current model of inspection for social care is that of a single inspector. Other inspectorates, for example Healthcare Inspectorate Wales use small teams to validate and triangulate their findings. As more and more services integrate and may receive inspections from more than one regulator/ inspector this may result in inequality for some groups.
- 3.3 Whilst the Annual Report imposes a duty to include accessibility, it does not go further than that. This could lead to a ‘lip service’ response, in that the employing bodies just answer without actually consulting families and the Trade Unions. We would like to see a model consultation provided to the

employers which covers all aspects of equality – the report would then be more relevant, and equality would be at the heart of the service provided.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 One major omission is that the Bill does not explicitly acknowledge the fact that some social care workers are already regulated by UK regulators. The current system also experiences this and it has created a situation where such groups, because they are not regulated by the Care Council for Wales tend not to be included in the other work of the Care Council in its role as a sector skills council. So for example, workforce development and career opportunities for occupational therapists have not been given the same attention as those for the regulated social work workforce. The College of Occupational Therapists and UNISON would hope that this Bill will redress that and ensure that the roles undertaken by Social Care Wales beyond those of a regulator are clearly expected to be for the entire workforce.
- 4.2 The Social Services and Wellbeing (Wales) Act will transform services and drive greater integration with health and other partners. This Bill does not appear to explicitly drive that agenda further by at least explicitly allowing or encouraging integrated infrastructure in, for example, inspections, workforce development and education and in improvement agendas. That omission may lead to missed opportunities in practice to transform and improve services
- 4.3 We have already set out above our belief that regulating all social care workers should be undertaken, not least because the public will expect them to be.
- 4.4 In section C of the explanatory memoranda the Welsh Government states that we ‘recognise that the marker should not determine priorities in social care’ and goes on to say that we should all work collectively to meet the priorities as set by the Welsh Government. With 968 providers in Wales, how confident can we be that high standards will prevail in all providers – we repeat here our

view that monitoring and compliance must be robust if we are not to allow unelected employers to determine social care outputs (which is the main change in the focus of social care provision in this bill). Policy must unequivocally be set by our elected representatives, and any comparisons when Local authorities put out procurement criteria must be honestly compared to like for like comparisons with Care provision from within the public sector before any contracts are issued.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 The omissions mentioned above may result in unintended consequences. The definition of care (Part1; Chapter1; 3(i) a) solely references physical tasks. While s3 (a) (ii) identifies the 'mental' processes related to those tasks, as it stands it appears to focus on task and time rather than quality of the interaction. Relationships and the quality of human interaction are a vital element in providing high quality care services, as many recent reports and investigations such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be different to the expectation of the Social Services and Wellbeing (Wales) Act where care and support seek to meet the wellbeing outcomes and explicitly include a wider range of outcomes. Would this definition tend to encourage a focus on tasks and providing services which only meet physical needs? How do emotional care and support, confidence building and other developmental elements fit this definition? This definition does not acknowledge that the person being cared for may need cognitive, mental and emotional elements of their wellbeing, as defined in the Social Services and Wellbeing (Wales) Act to be included in their care and support.
- 5.2 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Wellbeing (Wales) Act which allows for a wide range of services to provide care and support. It is not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering/ providing services.

- 5.3 Resources will be higher than expected as care requirements grow and the workforce becomes more trained and valued. This is an issue for all governments in the UK and we should be making plans now for providing the social care needed. Wales could lead this in the UK.
- 5.4 With so many providers, there will need to be robust monitoring as stated above to ensure compliance with Welsh Government Policy. The costs to Local Authorities could increase further as they are left with the more expensive care provision.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

- 6.1 UNISON and the College of Occupational Therapist welcomes the move to regulate services rather than organisations. It is not clear whether 'regulated activity' (s171) is the same as 'regulated services'. The definition of regulated services in schedule 1 is limited compared to the Social Services and Wellbeing (Wales) Act. The meaning of wellbeing (s2) in that Act offers the opportunity to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility in order to continue to protect vulnerable people. How will these be included if they don't fit a traditional model of care home or domiciliary care or the definitions in schedule1? We note that only care and support services will be regulated and understand this to mean there will be no regulation of preventative or other services.
- 6.2 As Welsh Government policy continues to promote the integration of services It is surprising that there is no reference to any potential to allow joint or integrated inspections, for example with Healthcare Inspectorate Wales. An explicit reference to allow, or even to promote such partnership working would

be very useful in Part 9. We are aware that members of UNISON experience separate inspections at present depending on their service registration. There is no reference in the Bill to the fact that each local authority as well as CSSIW and HIW may all inspect a single service, each requiring the same or similar information, usually in a different format. A prudent approach would be to streamline this system.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 We welcome the intention to consider outcomes for individuals in reviews of social services and increased public involvement. S55: insertion to Social Services and Wellbeing (Wales) Act (s144b) requires services which will be easily definable. If these do become more individualised and flexible to meet individual's goals it will be challenging to summarise these in a report for the whole authority. Such a report can count and comment on residential care places but may not be able to amalgamate very individual responses.

7.2 S57: insertion to the Social Services and Wellbeing (Wales) Act in relation to looked after children. Regulations under section 94A (3) can prevent a person working if they are not registered under s79 of the RISC Act (registration of social care workers). This presumes any registered staff are registered with SCW which may have an impact for staff already registered with other regulators. One aim of the Bill is to clarify and reduce complexity, if this resulted in dual regulation or the loss of a multi professional workforce this may not deliver the intended outcomes.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- 8.1 Whilst we prefer that social care provision remain with the public sector, we understand that this Bill intends to ensure that the Welsh Government drive social care priorities and retain the variety of employers. We do welcome the provision to ensure that employers financial and corporate governance are investigated. It will be important to recognise that unforeseen situations will continue to arise and this activity needs to be proportionate to the other demands of activity for local authorities.
- 8.2 The development of market oversight, must only be an analysis of the provision within each area of the particular annual report and must be objective. It is easy for an employer to submit a bid undercutting the staffing costs, for instance, if the criteria for assessing against that in the public sector is different. There must be an open assessment of relative costs for comparison purposes.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- 9.1 The objective (s67) (1) for Social Care Wales (SCW) does not limit the protection, promotion and maintenance of the safety and wellbeing of the public in Wales to social care matters. UNISON expects this responsibility to relate only to the services and practitioners registered with and regulated by SCW. However, in s67 (2) the functions do not appear to relate to this objective: this section includes a responsibility to maintain high standards for all social care workers. UNISON is unclear how responsibility can apply beyond the services and practitioners registered with and regulated by SCW. Practitioners registered with and regulated by other practitioners, such as occupational therapists and nurses will remain under the jurisdiction of those regulators. It is not fully clear how this covers staff who are not regulated at all

as individuals, but who work in regulated services. Will the Responsible Individual and Registered Manager be accountable for these staff?

- 9.2 The Bill should be very clear what references to social care workers means
- a. Those who are registered/ regulated and thus parts of the Bill relating to the role of SCW as a protector (naming them as social workers and managers)
 - b. The whole workforce when SCW is acting as an improvement/ education and support agency (using the term social care workers)
- 9.3 There is potential for conflict of interest in placing so many roles in one body and so the function of protecting the public should be paramount and separate to other roles. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that “**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**”(p2).
- 9.4 The wider roles given to SCW (Part 5) in relation to all social care workers are undertaken via the Workforce Education Development Service (WEDS) in healthcare. Clarity is needed on the groups that SCW will include in this work. For example, how will occupational therapists be supported in their practice and professional development in social care, even though they are not the responsibility of SCW in its regulatory role? How will the different responsibilities be separated? There is a missed opportunity here for improving integration in health and social care.
- 9.5 The title Social Care Wales, is a good one – it will show immediately that there has been a change. We are not sure how the CSSIW and Social Care Wales will work together, particularly when setting standards.

9.6 Training and supervision: Every employer should have processes in place to ensure that staff have the appropriate skills to do their job and these skills are steadily enhanced through training and professional development. This should include providing access to competent professional supervision and appraisals carried out by trained staff. It is also good practice for an employer to set aside resources and protected time for training and development, including for part-time and shift workers. Staff who are supervising others or being supervised should fully engage in the process and be able to access guidance if they identify any difficulties or concerns. We are not clear how this will be provided by employers outside of the public sector and how SCW will monitor and assess training provision. We do welcome the inclusion of ensuring training is part of the SCW remit.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

10.1 Social Care workers (Part 4)

The definition of a social care worker (s78) includes a far wider group than the registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of SCW as a regulator. For example, s78 (3) (b) would include occupational therapists. Any regulations made under s78 (2) will need to be clear of any overlap with existing regulator functions. The sections immediately after s78 refer to the register and continue to refer to issues relating to registered groups: using the term “social care workers” who are not registered groups. For example, section 57 amends the Social Services and Wellbeing (Wales) Act and allows for s94 (A) (3) regulations to specify that a person not registered under S79 of the Regulation and Inspection of Social Care (Wales) Act cannot work for a

local authority in relation to Accommodated and Looked After Children. Care will be needed to ensure that occupational therapists, speech and language therapists and nurses are not excluded by such regulations.

10.2 S83 (b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers and registered managers. S83 (b) (i) requires completion of a course approved by SCW under s113 – which cross refers to s79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by SCW but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved.

10.3 Social Care workers: standards of conduct, education etc. (Part 5)

This part is not always clear as to which workforce groups are included and which are not. For example, s111 (1) (a) refers to standards of conduct and practice for “social care workers”. We are unclear how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. S111 (3) refers to codes for social workers when working as approved Mental Health Practitioners (AMHPs). However three other professions can be AMHPs and it would make sense for the same codes of conduct to have to apply to every AMHP regardless of their professional background. S111 (6) says a local authority making a decision about the conduct of any social care worker must (if directed to do so by Welsh Ministers) take into account any code published by SCW. However, the codes of other regulators may be more appropriate. How will this be accommodated?

10.4 We support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus are requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or

joint working with other regulators, such as HCPC or NMC, and other employers, such as WEDS and the improvement functions of Public Health Wales.

10.5 Social Care Workers Fitness to Practise (Part 6)

UNISON is unclear what remit over fitness to practice SCW has over workforce groups other than social workers and registered managers. Fitness to practice for occupational therapists is under the remit of the HCPC. S116 (5) appears to acknowledge this is only for workers registered with SCW: changing the title of this part so it does not say all social care workers would help. UNISON notes the reference to HCPC in s116 (4) but reads this as referring to social workers registered in England. S117 refers to a “registered person” is this only a person registered with SCW? What about a person registered with another, UK, registering body working in Wales?

10.6 We have stated our disagreement with not extending regulation to other workers above.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

11.1 These refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. S174 identifies the regulatory bodies as Welsh Ministers and SCW. It is disappointing there is no reference to co-operation and joint working with HCPC and other regulators in relation to staff regulated by that other regulator.

11.2 There is also no reference to co-operation in relation to the wider roles of SCW, which is surprising given the policy direction of greater integration. For example, workforce development and education commissioning for occupational therapists is undertaken by WEDS, there seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks and continuing professional education and learning (CPEL). UNISON is aware of a lack of

cross recognition of qualifications between health and social care. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 Mostly. We are concerned that the future of social care will become a private concern rather than public sector lead – this has been the direction of travel for some time, which has not been halted by this bill. We recognise the commitment to priority setting by the Welsh government, but this may not be sufficient.
- 12.2 Regulations are necessary because of the detail required, and in the main the balance is correct – however we remain nervous of how those regulations will read and would assume we will be equally consulted about those.
- 12.3 Not setting out clear plans of how to regulate Social Care Workers will be confusing to the public, who will assume they are regulated.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

- 13.1 The cost of care is set to increase, the memorandum provides some useful information, but it is based on assumptions where specific information is unknown (actual staff and hours for instance). We are concerned that as resources reduce how the quality of care will be maintained and improved.

14. Are there any other comments you wish to make about specific sections of the Bill?

- 14.1 Section 33(3): powers of the Inspector. The Inspector may “assess the wellbeing of any person accommodated or receiving care and support there”. Does this constitute a professional assessment which will have to meet the requirements of the assessment regulations for the Social Services and Wellbeing (Wales) Act including consideration of the wellbeing outcomes? If not, and this is intended to mean a more general consideration of the situation of the person it may be more useful to use different language.
- 14.2 Language: throughout the Bill varying language is used. Consistent language will help make the Bill clearer and will achieve its aims more effectively. For example, more consistent use of registered service/ person; is a regulated service the same as a social care service? ‘Regulated activity’; ‘regulated services’ and ‘social care’ are all used to describe regulated services. The main one is using ‘social care workers’ when referring to both registered and non-registered groups without clarity.
- 14.3 We are also concerned about the increasing personalisation of care and how this will be largely excluded from the remit of this bill. We believe that personalised care providers, as individuals (often) need protection and support as well as the Service Users – this would in our view lead to different care for different providers, which this bill is hoping to avoid.
- 14.4 We would have like to see an attempt to work on optimum staffing models: which can assess the right staffing numbers and skill mix against local population numbers and needs. The staffing model should include all in social work teams including skilled administrators. Extra capacity in teams for support, mentoring and development activities and for staff to have enough time to work directly with service users. This may be provided for within the regulations.

15 Conclusion

We welcome the aim and intent of the Bill and consider that the legislation is needed. The main concerns are that the Bill:

- Is absolutely clear how relationships between regulators enhance public protection by acknowledging and providing for some staff to be regulated by SCW while others are regulated by UK regulators:
- Is clear about when SCW is acting as a regulator and the sections relating to the staff regulated by SCW; and when it undertakes other roles which include other staff. Those staff need to be treated equitably with staff registered/ regulated by SCW and a consistent term is used in those different roles.
- Promotes and encourages co-operation and integrated working to support the transformed, integrated services which will improve delivery for people reliant on them.
- Is properly resourced, and that
- The regulations are created by consultation.

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Shared Lives Scheme

Supporting people to live their lives
Cefnogi pobl i fyw eu bywydau

21st April 2015

Consultation response to the inspection and social care Bill (Wales) from the ategi Shared Lives Scheme

Introduction:

Shared Lives also known as Adult Placement, arrangements are provided by individuals and families (Shared Lives Carers) in local communities. The ategi Shared Lives Scheme is registered with CSSIW. We recruit the individuals, couple or families and undertake a rigorous assessment process with them including references, CRB checks and induction training before they become approved Shared Lives Carers.

Our 165 approved Shared Lives Carers in Cardiff RCT, Swansea, NPT and Bridgend provide a range of services to vulnerable and disabled adults that includes including:

- Long term accommodation and support
- Short breaks
- Day time support
- Rehabilitative or intermediate support

The main feature that distinguishes Shared Lives from other kinds of support is that, whatever the service provided by the Shared Lives Carer, the person being supported has the opportunity to share the Carer's family life and be part of their social networks. The relationships that develop are committed and consistent and highly valued by both the person receiving the services and the Shared Lives Carers.

Shared Lives is a regulated service under Adult Placement regulations, with minimum standards enforced by government inspectors.

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In an excellent Shared Lives scheme:

- People who use Shared Lives and their families are at the heart of all the scheme does. They are fully involved in decisions about their lives, their support and the scheme's future.
- Matching between Shared Lives carers and people who use Shared Lives is at the heart of the referral process and is a fair and transparent system. Shared Lives carers are not placed under pressure to accept matches. People who use Shared Lives have a strong sense of belonging within their household, community and relationships.
- The on-going roles of Shared Lives carers, scheme workers and social workers are clear and all are able to work together positively to help each individual plan and review their goals and support.
- Shared Lives carers are recognised and respected as colleagues and play an active part in developing the Scheme policies.
- There is a local Shared Lives carer group which allows Shared Lives carers to meet up, learn from each other and to influence the development of the scheme. Shared Lives carers are encouraged and supported to take part in NAAPS at regional or national level.
- The care and support expected of Shared Lives carers is clear and reasonable, with adequate access to respite and breaks. Payment levels are structured and transparent.
- The scheme is a learning organisation and always seeks to improve its practice.
- There are clear procedures for when things go wrong and Shared Lives carers can access appropriate support if they face an allegation.
- Scheme workers recognise both the emotional and economic implications for carers when a Shared Lives arrangement ends.

The ategi Shared Lives Scheme is a strong and committed provider of Shared Lives Services. We respond to this consultation to confirm our general support for the main aims of the Regulation and Inspection of Social Care in Wales Bill which is to:

- reform the regulatory regime for care and support services.
- establish requirements for local authorities and Welsh Ministers to undertake assessments of the sector's future stability.
- reform the inspection regime for local authority social services functions.
- reconstitute and rename the Care Council for Wales as Social Care Wales and broaden its remit.
- define the regulation of the social care workforce.

In supporting the Bill we ask that the work of Shared Lives Carers is strongly considered when developing a new approach to inspection of services and that any changes to not have a detrimental effect on the valuable work of Shared Lives Carers in Wales. We ategi worked hard with colleagues across Wales through Shared Lives Plus (formerly

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NAAPS Cymru) and within the Welsh Government to ensure that a full understanding of the Shared Lives Carer role influenced the appropriate inspection of Shared Lives provision. The results have been largely successful in the 10 or so years since the introduction of regulations for Adult Placements (2004) Wales.

We support the idea that inspections should seek the views of people using Shared Lives Services but that Shared Lives Schemes should also be measured on their approach to and support of Shared Lives Carers. This would lead to an approach where services are inspected on the outcomes for service users and Shared Lives Carers.

We would hope that the Health and Social Care Committee will work positively with all providers of services in Wales to develop a new approach to inspecting services including Shared Lives Plus – the member organisation for Shared Lives providers. Colin Batten is the Shared Lives Plus Development Worker in Wales and should be consulted with on behalf of the growing number of Shared Lives Carers in Wales.

Yours sincerely



Tim Southern – ategi CEO

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**Wales Alliance for Mental Health
Cynghrair Iechyd Meddwl Cymru**

21 April 2015

Health and Social Care Committee

Consultation on the Regulation and Inspection of Social Care (Wales) Bill

The Wales Alliance for Mental Health (WAMH) welcomes the opportunity to provide written evidence on the Regulation and Inspection of Social Care (Wales) Bill to the Committee to assist in its scrutiny of the Bill. As a membership organisation, the Wales Alliance for Mental Health seeks to improve the lives of people experiencing mental ill health in Wales by:

- Setting the agenda for mental health debate
- Being a powerful and influential platform that articulates clearly, and with integrity, the views of our membership
- Promoting excellence
- Ensuring equity for all protected characteristics

The current membership consists of: Bipolar UK, Diverse Cymru, Gofal, Hafal, Mental Health Foundation, Mental Health Matters, Mind Cymru and Samaritans

We strongly believe that this piece of legislation provides an opportunity to further integrate the regulation and inspection of health and social care services in Wales, to ensure people with experience of using services, and carers, are fully involved in service inspections and delivery, and that any form of abuse is never tolerated. We are therefore limiting our comments to these 3 specific aspects where we think there is scope to significantly strengthen this piece of legislation:

Greater Health and Social Care Integration

Part 9 – Co-operation and Joint Working by the Regulatory Bodies, etc. (Sections 174 – 180)

There is an increasing focus on better integrating health and social care, and delivering flexible services that are designed to address people's needs and requirements as opposed to merely trying to fit people into very narrow and specific service models. People receiving health and social care and support do not necessarily distinguish between social care workers and health care workers, and want services that are flexible and more tailored to meeting their needs.

We believe that as part of this push towards greater health and social care integration it is essential for all of us to be fully assured that the care being provided is of the highest quality,

and would like to see the scope of this Bill broadened to include joint quality standards across health and social care, the registration and regulation of health care support workers, and the merging of the health and social care regulators, i.e. HIW and CSSIW.

Engagement and Involvement of Service Users in Service Inspections and Delivery, etc.

Part 1 Chapter 3 – Service Inspections (Sections 32-33)

We think it is important to ensure that people who have had experience of using services form a key part of the inspection team. This is particularly important when it comes to inspecting mental health services where we think it is essential that detailed and specialist knowledge from someone who has experience of having used the service is vital.

This would require these lay reviewers who have experience of having used services to receive training in inspection techniques and processes, but could also involve current or former service users training and briefing other inspection staff on key points to look at for, etc.

The annual return required (under Section 8) to be developed and submitted by service providers should include evidence showing how service users, carers and other citizens have been involved and made a difference to the design, planning, delivery and evaluation of services, as well as how service users and carers have been engaged and involved in the design of their own individual care and support plans to demonstrate that services have been designed around people achieving meaningful outcomes that have involved people having choices and control over the services they have received

Adopting a ‘Zero Tolerance approach’ to any form of neglect or verbal or physical abuse

Section 4 of the Bill sets out the general objectives of the Welsh Ministers in exercising their functions under Part 1 of the Bill (Regulation of Social Care Services). We believe that these objectives should be far more rigorous and should forcefully spell out that everybody who uses health and social services must be treated with dignity and respect. To drive home this message we think the Bill should state that the Welsh Ministers expect there to be ‘zero tolerance’ across all health and social care services of any form of neglect and verbal or physical abuse.

In addition we think that the general objectives of the Welsh Ministers should include the expectation that high standards includes promoting the provision of a positive and therapeutic environment and culture within all health and social care settings that ensures sufficient personal space, privacy in personal care and confidentiality of treatment and personal information, and that people will be listened to and their views positively valued.

Although much of this may be included within service standards and within subordinate legislation, we think it is important for this Bill to set the tone, and to highlight more forcefully these issues.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from GMB – RISC 17 / Tystiolaeth gan – RISC 17



GMB – Britain’s General Union Response to:

**Welsh Governments
Consultation Document on**

Regulation & Inspection of Social Care (Wales) Bill

Action Required: Responses by 20th April 2015
Date of Submission: 20th April 2015

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GMB response to Welsh Government:
Regulation & Inspection of Social Care (Wales) Bill.

GMB Trade Unions Response to the Consultation on the Regulation and Inspection of Social Care (Wales) Bill

General:

1. Do you think the Bill as drafted will deliver the stated aims (to secure Well being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum?

Is there a need for legislation to achieve these aims?

The GMB welcomes the broad aim and direction of the legislation with its focus on the provision of quality regulated services, and a system of workforce regulation that supports the workforce to practise effectively and safely.

The GMB has campaigned continually to highlight that the responsibility is on the social care providers to provide high quality services whilst also advocating the principle that regulation has a significant role in promoting and supporting high quality provision, as well as addressing areas of poor practice.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

The main barriers to implementing the provisions of the bill are the wider pressures on the sector in terms of the increasing volumes required at a time of significant resource and financial pressures, The Bill seeks to address these issues through provision for improved planning and market analysis, a focus on high quality professional practice, and enhanced coordination of improvement activity to address agreed national priorities.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The GMB believes that the legislation would support equality for all groups that are dependant on services within the Social care sector.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

This question will be addressed in our responses given below.

5. Do you think that any unintended consequences will arise from the Bill?

In relation to service regulation we do not believe that there should be any unintended consequences, although careful monitoring of the impact of implementing the legislation will be required to ensure that there are no negative consequences arising for a sector that is somewhat unstable at present.

For workforce regulation, we feel that the detail of the Bill may potentially restrict ability in the future to respond to new patterns of service and

workforce groups for whom other regulatory approaches may be more appropriate.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

It is important that the public are able to understand the complexities of the Social care sector in a clear and transparent way, allowing the public to have confidence in the sector.

Central to this development will be improved public information on the care sector. Such approaches undertaken in collaboration with the sector should result in increased public protection, public accountability, and improved public understanding of the care sector, and these improvements should help to inform and enable individuals who use services, when having to make decisions about their care.

This should result in higher expectations of social care provision through wider ownership of matters of quality and safety of provision.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

I will expand upon this question at the committee.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

The GMB welcomes the market oversight at national and local level as is the assessment of the financial stability and sustainability of providers which will hopefully allow greater stability for the workforce. However achieving meaningful information at both the individual provider and national level will only be attained by close working with providers with recognition that transparency is critical in being a part of the social care sector.

10. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The GMB is disappointed with the decision to re-brand The Care Council for Wales. The Care Council has developed its brand since its inception and is now the most recognisable establishment within the care sector. We are concerned that the significance of The Care Council may be lost with the change.

11. What are your views on the provisions in Parts 4 & 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

The GMB is concerned that the Bill has chosen not to take the opportunity to regulate Domiciliary care workers and Care home workers; The GMB believes that this will simply cause confusion to the workforce and to the public. The GMB have campaigned for recognition within the sector to professionalize the workforce, and we believe that registration of these workers allows for this.

The GMB is aware that The Care Council has considered a model of some form of licensing for the workforce. This has been used successfully in a number of sectors over many years, with 2 of the GMB organised industries using effective licensing schemes. E.g. 'Gas Safe' and the Security Industry Authority are both examples of effective schemes which provide public assurance and raise standards.

We believe that it could be used as a model for social care workforce groups such as domiciliary care workers and care home workers.

The key feature of the model is its focus on supporting care workers to practice safely and effectively through provision of accredited training and guidance, while at the same time addressing areas of poor or dangerous practice by removing those workers from the workforce.

As stated above we consider that the proposal to not implement a standard register for workers who are currently required to register and those that are not currently not required to register with Social Care Wales, would lead to confusion between the two registers for the sector and the public.

The GMB agrees that a reliance on voluntary registration is not appropriate, due to the confusion that it can cause to the Workforce and public. As indicated above, we believe that alternative models of licensing regulation are available to replace voluntary approaches.

12. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

The GMB believe that this is a natural progression and welcome closer cohesive working between the CSSIW and The Care Council

Delegated powers

13. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

I will expand on this point at the committee.

Financial implications

14. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

I will expand on this point at the Committee.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

The GMB welcomes the majority of the legislation and considers that it provides an important opportunity to support the development of the social care sector and the social care workforce in facing the significant changes that will be required in the forthcoming decade.

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill](#) / [Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Royal College of Nursing Wales – RISC 18 / Tystiolaeth gan Goleg Nyrsio Brenhinol Cymru – RISC 18



Regulation and Inspection of Social Care (Wales) Bill

*Response from the Royal College of Nursing, Wales
Presented to the National Assembly for Wales Health and Social
Care Committee April 2015*

ABOUT THE ROYAL COLLEGE OF NURSING (RCN)

The RCN is the world's largest professional union of nurses, representing over 400,000 nurses, midwives, health visitors and nursing students, including over 24,000 members in Wales. The majority of RCN members work in the NHS with around a quarter working in the independent sector. The RCN works locally, nationally and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a UK-wide organisation, with its own National Boards for Wales, Scotland and Northern Ireland. The RCN is a major contributor to nursing practice, standards of care, and public policy as it affects health and nursing.

The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies.

Regulation and Inspection of Social Care (Wales) Bill

Response from the Royal College of Nursing, Wales
Presented to the National Assembly for Wales Health and Social Care
Committee April 2015

General

- 1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?**

The Royal College of Nursing Wales (RCN Wales) is broadly supportive of the as drafted. We have some concerns, particularly with regard to workforce regulation outlined in this response which could be met by amendment or clarification. In general however we believe that this Bill is necessary and will achieve the objectives set out in Section 3 of the Explanatory memorandum.

- 2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?**

Public sector finances will remain a challenge for the foreseeable future. The effective regulation and inspection of services and workforce will require investment in sufficient qualified staff to undertake inspection and regulatory process such as appeals hearing in an appropriate timeframe. This must also include inspection of nursing services by nurse inspectors.

In addition education in the sector will be needed on the provisions of this Bill.

- 3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?**

It will be important in the process of encouraging citizen engagement that diverse groups of service users are represented.

- 4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?**

RCN Wales believe the proposals in the regulation of the social care workforce need to be more explicit about interaction and crucially, cooperation, between different professional regulators.

We expand on these concerns later in this response but the essence of our concern is that In order to achieve the best possible care package for the individual's needs, professionals with **different** health and social care expertise are needed for example, an occupational therapist, a social worker, a nurse etc

Highly skilled professionals are regulated by different regulators for extremely good reasons that include those laid out in this Bill. The regulator must have an understanding of the educational and practical requirements of the profession at a the highest level

As it is to be hoped that the future will see increased integration between health and social care services the Bill must have a framework that encourages explicitly recognises and respects the different regulatory regimes and effectively encourages cooperation.

5. Do you think that any unintended consequences will arise from the Bill?

The concept of 'social care workforce' must be clearly and legally understood as entirely separate from the concept of the 'people who work in health and social care in the community'.

For example the RCN has around 6000 members in Wales working in the independent sector (and thousands more working in the community with social services on a daily basis). Many of these will be providing nursing care to older people. Nursing care is a specific service not only characterised by the task but by the whole knowledge, experience and skills that educated professional registered nurse brings to this task. A classic example of this is the bathing. Bathing, undertaken by an appropriately experienced and qualified registered nurse would become an opportunity for a therapeutic assessment of skin, nutrition, memory and mental well-being. This does not mean that all bathing should be undertaken by a registered nurse and equally a different professional would bring a different set of skills to the assessment.

As it is to be hoped that the future will see increased integration between health and social care services the Bill must have a framework that encourages explicitly recognises and respects the different regulatory regimes and effectively encourages cooperation.

The danger of a combining a rigid approach to social care (e.g. 'it must be provided by a Social Worker' with an acquisitive approach to what its social care (e.g. 'everything outside a hospital') is that this could frustrate a multi-disciplinary approach and work to prevent integration.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

The Royal College of Nursing Wales is supportive of these provisions. The service based model of regulation appears a much needed simplified system and we support the full engagement of the public in these processes. We support the introduction of a fee for regulation with the proviso that it must be proportional and able to be borne by the market. A sliding scale might be a proportional approach.

We support in principle the introduction of a quality rating system. This, coupled with the introduction of comparable annual reports will allow for much greater accessibility and ease in scrutinising services. This is particularly important for members of the public. However we welcome the government's acknowledgement that this system would need "significant consultation" to establish the best approach.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

The Royal College of Nursing Wales is supportive of these provisions. The new reporting measures appear a simpler system with greater ease of comparability on content.

We are particularly pleased to welcome the new duty to report on the local market for social care services which will be of great importance in the planning of local healthcare services and local healthcare workforce need.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

The Royal College of Nursing Wales is extremely supportive of these provisions. A sudden decision to withdraw services by a major provider can cause immense harm to service users and create immense pressure on an already fragile acute care sector.

We are enthusiastic about the provision of a national market stability report and urge consideration of the labour market to be part of its regular content.

It is only in the last year that the educational commission process for non-medical professionals was first formally required to attempt to take account of the needs of the independent sector in its assessments but the two sectors are very closely interrelated. This is particular true for health care support workers who are am more mobile part of the labour market and regularly migrate between the NHS and the independent sector.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The Royal College of Nursing Wales has some concerns about the potential conflict (or perceived conflict) of interest between the role of a regulator and that of a professional body. A regulator must protect the public by regulating the profession. It cannot place the interests of the profession or appear to place the interests of the profession first.

The Royal College of Nursing is a professional body. We promote standards of care and the interests of patients and nurses, and of nursing as a profession and as such contribute to the development of nursing practice, standards of care, and public policy.

The Nursing and Midwifery Council (NMC⁰) is the regulator of the nursing profession.

The duties of promoting high standards in the profession and of promoting public confidence in the social care workforce are suggested in this Bill for Social Care Wales. These are not incompatible with regulatory duties but certainly need some further careful thought on wording.

For example the website of the NMC¹ defines its role as:

- We exist to protect the health and wellbeing of the public.
- We set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers.
- We ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- We have clear and transparent processes to investigate nurses and midwives who fall short of our standards.

It explains its mission as (*italics added*):

Our primary purpose is to protect patients and the public in the UK through effective and proportionate regulation of nurses and midwives. We set and promote standards of education and practice, maintain a register of those who meet these standards and take action when a nurse or midwife's fitness to practise is called into question. *By doing this*

¹ <http://www.nmc-uk.org>

well we promote public confidence in nurses and midwives, and regulation.

It would be helpful to have clear and explicit regulations about the governance of the organisation and the role of lay people in this process, the engagement of citizens and stakeholders and a duty to work with other relevant professional bodies, trade unions and regulators in the field.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

The Royal College of Nursing has a number of concerns with the approach to workforce regulation laid out in these sections.

The rigid qualification rules

The approach to registration laid out for Social Care Wales in the explanatory memorandum is a continuation of the current approach by the Care Council for Wales. It is rigidly based on the possession of the 'right' qualifications (as defined by Social Care Wales).

This has currently resulted in the absurd situation of experienced senior nurses holding several degrees at postgraduate level being required by the Care Council for Wales to sit a basic NVQ examinations in health and social care.

At best this is a waste of time for the nurse, the people s/he cares for and the Care Council for Wales. At worst it is indicative of ignorance about the nature and value of nursing skills in the care of older people and will act as a disincentive to encouraging nurses to pursue careers in health and social care in the community.

Registered Nurses also promote residents' independence through proactive, rehabilitative care; promote residents' health and flourishing; deliver high quality palliative care and end of life care for individuals; play a key role in advocacy for residents and families.

Registered Nurses are managers and leaders in terms of managing the care for individual residents; managing care services and care settings; co-ordinating multi-professional input; teaching and enabling staff, residents and families; knowing about local policies and services and providing healthy and safe environments.

This situation could easily be addressed by taking cognisance of equivalent qualifications *where the individual in question is a regulated healthcare professional.*

Dual regulation for already regulated healthcare professionals

The RCN believes that regulated healthcare professionals are exactly that – already regulated. They do not require additional regulation from the Social Care Wales.

Registered Nurses are registered professionals (regulated by the Nursing and Midwifery Council) accountable for evidence-based practice in accordance with their professional code.

Dual regulation will not protect the public in any additional way or provide an extra value to the public.

Instead it will cost the regulator (and ultimately the public purse) as the administrative processes of regulation (revalidation, registration, and disciplinary hearing, any appeals etc) will need to be gone through twice. This is time-consuming as well as costly.

The individual being regulated will have to pay the regulator twice. This could be too costly. The bureaucracy and cost will prevent ease for movement in services in the community at a time when the policy direction is to encourage it.

There could be miscarriages of justice and at very best confusion if a disciplinary care arises placing individuals in a double jeopardy situation.

All of this could be avoided by a clear policy statement that whilst regulated healthcare professionals working in these roles will need to be registered with Social Care Wales regulation remains with the appropriate professional regulator.

The potential extension of registration to other categories of social care workers

The RCN believes it is appropriate to introduce this new system and assess impact before proceeding to registering new categories of workers. Changes to local government and further integration of health and social care are on the agenda. It may be more prudent to take stock of these changes before proceeding.

In addition we would draw the committee's attention to our concerns expressed in answer to question 5. The concept of 'social care workforce' must be clearly and legally understood as entirely separate from the concept of the 'people who work in health and social care in the community'. It would not be appropriate for Social care Wales to seek to extend registration to GPs or district nurses for example.

The regulation of healthcare support workers

Registered nurses are currently accountable to the NMC for delegation to healthcare support workers and supervision of their tasks.

Healthcare support workers whose routine duties are delegated to them by a registered nurse or who have a health and social care qualification, are part of the nursing family and are eligible for membership of the Royal College of Nursing.

The RCN believes this category of healthcare support workers should be regulated by the NMC.

Prohibition Orders

The powers around prohibition order appear extremely wide at present and require far more clarification before the RCN could be fully supportive. In particular we have concerns about the relationship of these orders to already existing regulatory regimes for all the reasons of double jeopardy and confusion we laid out earlier.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

We do not believe the statements in the explanatory memorandum sufficiently reassure and explain how this cooperation will be sought and, maintained and put into operation.

We do not have confidence in the system at present and would require more explicit reassurance that the intention is to protect the public in the most effective manner whilst ensuring natural justice for those regulated.

The Bill contains powers for Welsh Ministers to make Regulations and issue guidance, and for Social Care Wales to make Rules.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

The Royal College of Nursing Wales objects strongly to the provision for Social Care Wales to make Rules without requiring the permission of Welsh Ministers.

We do not think it is all appropriate for any such body to have this wide autonomous policy making ability without any democratic oversight.

This is even more alarming a suggestion as the predecessor body the Care Council for Wales has on numerous occasions demonstrated its lack of understanding and recognition of value in the nursing contribution to care in the community.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

We have no comment on this section.

14. Are there any other comments you wish to make about specific sections of the Bill?

RCN Wales warmly welcomes the introduction of the concept of the 'Responsible Individual' who must be a senior representative of the provider and on whom the legal responsibilities are placed. This is an excellent development and will mean that responsibility is rightly placed with those that have the means to effect change.

On the provision that: Service providers will no longer have to register separately for each service and at each location where the service is provided. A provider will instead make one application for registration which can be varied so as to authorise changes such as the provision of further services at further locations

RCN Wales believes this will assist with delayed discharges from both acute and community services. However this places responsibility firmly in the hands of the provider to ensure that services can meet the assessed needs of the individual and for large providers may result in people being moved between homes to meet staffing needs. This possibility will need to be considered.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Mid and West Wales Fire and Rescue Service – RISC 19 /
Tystiolaeth gan Wasanaeth Tân ac Achub Canolbarth a Gorllewin Cymru –
RISC 19

In response to the Consultation on the Regulation and Inspection of Social Care (Wales) Bill, I wish to submit that Mid and West Wales Fire and Rescue Service has no specific observations to make apart from a minor observation relating to section-33 Service Inspections.

If there is intended to be requirement for fire safety inspections to be undertaken and reported on, then these should be carried out as per the requirements of the Regulatory Reform (Fire Safety) Order 2005.



National Assembly for Wales / Cynulliad Cenedlaethol Cymru

[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from NSPCC Wales - RISC 20 / Tystiolaeth gan Y Gymdeithas Genedlaethol er Atal Creulondeb i Blant - RISC 20

Response to

National Assembly for Wales' Health and Social Care Committee's Consultation on The Regulation and Inspection of Social Care (Wales) Bill 2015

Date: April 2015

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**MAE POB PLENTYNDOD WERTH BRWYDRO DROS
EVERY CHILDHOOD IS WORTH FIGHTING FOR**

Pack Page 134

About the NSPCC

We're leading the fight against child abuse in the UK and Channel Islands. We help children who've been abused to rebuild their lives, we protect children at risk, and we find the best ways of preventing child abuse from ever happening.

Abuse ruins childhood, but it can be prevented. That's why we're here. That's what drives all our work, and that's why – as long as there's abuse – we will fight for every childhood.

We help children rebuild their lives, and we find ways to prevent abuse from ruining any more. So when a child needs a helping hand, we'll be there. When parents are finding it tough, we'll help. When laws need to change, or governments need to do more, we won't give up until things improve. Abuse changes childhood. But so can we.

Introduction

Key issues

- Human rights should be at the centre of the regulation and inspection regime. **Despite the strong focus on outcomes, NSPCC Cymru/Wales is disappointed that there is no duty for persons exercising functions under the Bill to have due regard to the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Principles for Older Persons and the United Nations Convention on the Rights of Disabled People.**
- Due to the numbers of provisions to be determined by subordinate legislation, **NSPCC Cymru/Wales is concerned that it is difficult to build a picture of what the full effect of the Bill will be, beyond section 5 of the Explanatory Memorandum.**
- NSPCC Cymru/Wales welcomes the provision for publication of local authority annual reports on the exercise of their social services functions. **We feel these reports should contain provisions on how well children who return home from care are supported to stay with their families, as this is not currently published.**

NSPCC Cymru/Wales welcomes the opportunity to respond to the Health and Social Care Committee's consultation on the general principles of the Regulation and Inspection of Social Care (Wales) Bill 2015.

Outcomes based regulation and inspection regime: welcome. Rights based approach and delivering change for service users. Caveat: this will only be truly effective if performance measures are meaningful. (Will the NOF apply to all providers?)

The NSPCC is an independent social care provider and the majority of our resources come from donations. NSPCC Cymru/Wales delivers a number of services to children and young people in Wales in three centres based in Cardiff, Swansea and Prestatyn. Our areas of focus are as follows:

- Physical abuse in high-risk families
- Supporting children in care
- Babies
- Sexual abuse
- Neglect

However, our services are not provided within a residential setting and as such **do not fall within the remit of the service regulator or the Bill.**

The audit and inspection of our services is carried out by an internal inspection unit, whose role is to promote and ensure the highest professional standards and the continued improvement of services and activities. The Inspection Unit is independent of the activities which it inspects. It does not undertake line management tasks outside the unit.

All inspections are individually planned within an established methodology which draws on recognised inspection practice, for example from the statutory inspectorates. All inspection reports are submitted to the Chief Executive and representatives of the Board of Trustees.

The views of children and young people who are service users are collected through a variety of channels during the inspection of our various services. Inspectors can set up on-line chats through the NSPCC on-line community N-Spire, which has been developed by young people; have face to face conversations or observe sessions. These will then be included in the inspection report.

In addition, some of the practitioners who deliver our services are qualified social workers, and as such are subject to the Care Council for Wales requirements for registration and professional development.

NSPCC Cymru/Wales is a member of the Social Care and Wellbeing Alliance Wales (SCWAW). SCWAW seeks to identify, and address, issues affecting social care and wellbeing and their impact on people in Wales. We support the comments submitted by SCWAW in their response to the consultation.

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 NSPCC Cymru/Wales feels that the Bill has the potential to improve the regulation and inspection of social care in Wales to achieve better outcomes for service users. The Explanatory Memorandum (section 3.9) clearly states the need for legislation in order to avoid loopholes and complexity.

1.2 However, we feel that the Bill needs to be strengthened in a number of areas.

1.3 Improved well-being and outcomes for service users can only be achieved if a rights-based approach to regulation and inspection is adopted. NSPCC Cymru/Wales feels strongly that **there should be a due regard duty to human rights treaties (UNCRC, United Nations Principles on the face of the Bill in the same way as section 7 of the Social Services and Wellbeing (Wales) Act 2014.**

1.4 NSPCC Cymru/Wales agrees with SCWAW's view that the objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other regulatory bodies in Wales. This includes regulators of members of the social care workforce already regulated by other, often UK regulators and co-operation with existing health inspectorates and workforce and improvement bodies.

1.5 We also feel that the improvement of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the bill relates to different groups of workforce in different ways.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

2.1 The provisions of the Bill will not be implemented effectively unless a rights-based approach to regulation and inspection is adopted (see our comments under paragraph 1.3).

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 NSPCC Cymru/Wales feels that there is a potential issue of equality in relation to children and young people. A significant part of the Bill is about service users accessing service performance information and making an informed choice about their care and support options.

3.2 In order for children and young people to have access to service performance information, there will be a **need for this information to be available in a language and format they understand.** There is also a need to recognise that having access to performance information in relation to some children's placements, for example residential

placements, could be potentially unsettling for vulnerable children. It is imperative that access to information is **managed in a sensitive way, and that independent sources of support and advocacy are offered to the child or young person.**

Provisions in the Bill

6. What are your views on the provisions in part 1 of the Bill for the regulation of social care services. For example, moving to a service based model of regulation, engaging with the public and powers to introduce quality ratings and to charge fees.

6.1 We can see the benefit in being able to single out a poorly run service without affecting others run by the same agency. **We are pleased that the Bill only requires service providers to register with the regulator once,** with the possibility to vary initial registration. This allays the concern we expressed during the consultation on the White Paper that moving to a service based model of regulation could increase the administrative burden on service providers, as they would need to complete separate paperwork for each service. We saw this as a particularly big issue for smaller, third sector service providers, who may not be able to continue operating under increased administrative requirements.

6.2 NSPCC Cymru/Wales agrees that quality ratings can be a useful tool to aid greater transparency and scrutiny. However, it is important that a quality judgement framework is used in a way which can identify how progress can be made rather than just becoming a way to score services against each other.

6.3 In our response to the White Paper, we expressed concerns about proposals to introduce a fee for the registration of care and support services. We felt that this would have a potentially serious impact on third sector and small providers, particularly as it was unclear whether an organisation providing multiple services would have to pay multiple fees. Sections 3.98 to 3.101 of the Explanatory Memorandum do provide helpful information on the intended effect of the legislation, and **we are pleased that the Welsh Government has stated that the introduction of a fee should only take place if the impact on the market is understood and worked through, and that work will take**

place with the sector before deciding whether to introduce a fee for service registration.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority services? For example the consideration of outcomes for service users in reviews of social services performance, increased public involvement and a new duty to report on local markets for social care services.

7.1 We agree with the Bill's approach which places citizens at the centre of service delivery. It is right that their wellbeing should be viewed as one of the benchmarks driving service performance and improvement.

7.2 An outcomes-based approach is also particularly useful to ensure that the United Nations Convention on the Rights of the Child is fully embedded into service delivery.

7.3 We will be concentrating comments on local authorities' annual reports on social services performance. We feel very strongly that they should **contain information about how well children who return home from care are monitored and supported to stay with their families.**

7.4 The majority of children who leave care return home to live with a parent, relative or other person with parental responsibility. Statistics show that in the last 3 years, more than half of children leaving care did return home (51%).

7.5 Unfortunately, returning home does not seem to guarantee stability for children. A recent request from NSPCC Cymru/Wales to Stats Wales shows that 27% of children who went home in 2008/09 had returned to care by 31st March 2014. Figures also show huge variations between local authorities: in some areas, only 14% of children who went home 5 years ago have returned to care, but in others, nearly half have returned (47%).

7.6 Failed attempts to return children home from care can cause them lasting harm. Repeatedly moving in and out of care has a profoundly damaging impact on our most vulnerable children.

7.7 Key to supporting children who return home from care to stay with their families is **measuring how well local authorities monitor and**

support them. There is currently a lack of data being routinely collected about children who return home from care. Better data would allow managers to target resources on those children and families who are most likely to be in need of a more intensive service. Better data collection would also allow local authorities to measure the impact of their reunification practice.

7.8 This should form part of local authorities' annual reports and we would wish to see **regulations under section 55 of the draft Bill make provision for information on reunification practice and performance to be collected and reported on as part of local authorities' annual reports.**

7.9 Annual reports should evidence progress made in relation to implementing quality standards and performance measures detailed in the draft Code of Practice relating to measuring social services performance, issued under section 145 of the Social Services and Wellbeing (Wales) Act 2014, which is currently out for consultation.

7.10 In the draft Code of Practice, NSPCC Cymru/Wales feels that a number of performance measures should be added to quality standard 5 ("local authorities must support people who need care and support and carers who need support to safely develop and maintain healthy domestic, family and personal relationships") to ensure that information on reunification is collected:

Group 1: children who cease to be looked after when they return home

- How many children returned home from care each year in the previous 3 years?
- How many of the children who return home, re-entered care?
- What was the length of stay at home before returning to care? (less than 3 months, 3-6 months, 6-12 months etc)
- What are the need codes for children who return home from care and for those who re-enter care?
- What was the status for these children at the point at which they returned home (did they have eligible needs for care and support, were they on a child protection plan?)
- How many children experienced further episodes of return home and re-entry into care?

Group 2: Children who are placed with parents on return home:

- How many children were placed with parents in the previous 3 years?
- How many of these placements with parents broke down?
- What were the placement outcomes for these children?
- How many of the children placed with parents had their care order discharged?
- How many of them re-entered care?

For group 1 and group 2:

- percentage of children who were returned to their families in the last year with a care and support plan in place.
- percentage of children who were still in contact with and receiving support from social services one year after returning home.
- Percentage of children who receive support from social services one year after returning home and who are achieving the well-being outcomes in their care and support plan.

7.10 NSPCC Cymru/Wales will also be calling for regulations under section 84 of the Social Services and Wellbeing (Wales) Act 2014 (care and support plans for looked after children) to include provisions for better monitoring and support for children who return home from care.

7.11 With an appropriate care and support plan in place, and robust monitoring and reporting on practice and performance, we can ensure that vulnerable children and their families are supported to stay together in a way which safeguards and promotes children's well-being.

10. What are your views on the provisions in Parts 4-8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration and the introduction of prohibition orders.

10.1 We support SCWAW's comments and agree that improvement of workforce development and regulation will require co-operation with a

range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways.

10.2 As we indicated in our response to the White Paper, we support the removal of voluntary registration.

10.3 We have some concerns over the introduction of prohibition orders. A negative register will have to be carefully drawn up in order to ensure that there is no duplication with the disclosure and barring scheme (DBS) which is already up and running in England and Wales. The scheme is already recording centrally those people who are unsuitable to work with children or adults in education, caring and supportive roles. Developing a negative register could create an added layer of administration, and overlap with the DBS. There could also be an element of doubt if a person is barred on one register but not the other. **We are pleased that Ministers only intend to introduce such a scheme after full consultation across the sector.**

11 What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

11.1 As was highlighted by SCWAW in their response, we are concerned that these refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. Section 174 identifies the regulatory bodies as Welsh Ministers and Social Care Wales. It is disappointing there is no reference to co-operation and joint working with the Health and Care Professions Council, the Nursing and Midwifery Council and other regulators. The alliances consider this might be a missed opportunity to deliver increases of efficiency in regulation.

11.2 We are disappointed there is no reference to co-operation in relation to the wider roles of Social Care Wales given both the policy direction for, and reliance on, greater integration for the delivery of the change desired from the Social Services and Well-being (Wales) Act. For example, workforce development and education commissioning for occupational therapists, nurses and others is undertaken by the Workforce Education Development Service. There seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval and integrated career frameworks for the whole social care workforce. The Bill offers an ideal opportunity to co-operate in recognising

qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.



Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru
Care and Social Services Inspectorate Wales

National Advisory Board

National Assembly for Wales /
Cynulliad Cenedlaethol Cymru
[Health and Social Care
Committee / Y Pwyllgor
Iechyd a Gofal Cymdeithasol](#)
[Regulation and Inspection of
Social Care \(Wales\) Bill / Bil
Rheoleiddio ac Arolygu Gofal
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Evidence from National
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Cynghori Cenedlaethol - RISC
21

Dear Chair

Thank you for the opportunity to contribute to the Health and Social Care Committee's consideration of the Regulation and inspection of Social Care (Wales) Bill. The views from the CSSIW's National Advisory Board are outlined below.

We were pleased to note the Committee's invitation for lay members of the NAB to attend to provide oral evidence.

Role of the National Advisory Board

The National Advisory Board (NAB) has an advisory role, providing expertise and authoritative advice to the Chief Inspector of Care and Social Services Inspectorate Wales (CSSIW) in order ***to improve care and social services for the people of Wales through better regulation, inspection and review.***

The NAB's overarching focus is to use its expertise to drive improvement in the social care, and childcare sectors and has a specific role to:

- be the 'voice' for citizens and stakeholders, telling us what services are like;
- help CSSIW to set priorities and monitor performance;
- review CSSIW findings and contribute to the development and improvement of our operations / services.

Views

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

We welcome the overarching aims of the Bill and the emphasis on improving people's wellbeing. We note that the Bill is aligned to the Social Services and Wellbeing Act (Wales) 2014, and both place the citizen at the heart of care services. This alignment is important for developing a coherent approach across Social Services and regulated care.

We support the aims of the Bill and believe its general provisions will meet the Government's objectives. The delivery of high quality care is very important to those receiving care and it will be important to ensure that the Bill's aims are able to be realised in practice. Implementation and the detail will be key to this.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

We feel that a skilled and motivated care workforce is critical to the provision of good care. We are concerned that public spending austerity measures may adversely impact on the workforce in respect of pay and conditions and training opportunities. We believe this to be one of the largest barriers to delivering on the Bill's aims. We acknowledge the proposed role for Social Care Wales in driving workforce standards but are concerned that the new body may take some years to become fully effective.

We support the principle behind making the Responsible Individual (RI) more accountable but feel it may be challenging to secure people of the right calibre and motivation to take on the new statutory duties. We believe there is potential for frequent changes in RIs which will undermine consistency and continuity of care services. It will be important that the capacity of an RI to oversee a number of services is carefully considered.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The Board considered equality issues and feel that all people should have similar entitlement and protection whether services are regulated or not. We see that some people are at greater risk of exploitation for example people with mental illnesses and learning disabilities. As a group we have particular concerns about personal care behind closed doors in people's own homes and day centres as this can increase people's vulnerability.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

We understand that the Bill excludes childcare but felt it should extend to childcare to ensure parity. We are pleased to see that the Bill does provide for powers to extend regulation to cover other or new types of care provision in the future.

5. Do you think that any unintended consequences will arise from the Bill?

We did not identify any particular risks of unintended consequence that may arise from the Bill.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

We support the move to a service based model with greater oversight by CSSIW across a number of services owned/operated by the same provider/company. We welcome CSSIW's proposals for on-line registration services as this will reduce

bureaucracy. The Board however feels that the future model should not seek to diminish or take away the important role of site inspection and regulator talking and visiting people in the environment they are being cared for. We have been assured that the integrity of inspection will remain central to the Bill and the new system.

We welcome the proposal to formalise the role of the public within regulation.

We believe that as a national advisory board we have been able to influence and inform the direction and operation of CSSIW and welcome the opportunity to ensure the voice of people using services and their carers is considered by the regulator. We have considered the independent visitor pilot studies and whilst we welcome the opportunity for people to be involved directly in inspection work and we realise that this comes at a cost.

We have mixed views on the rating system. We see it has major benefits and it is people's right to have access to clear and transparent information about different care settings/service. However, we see also the tension this may place on families and professionals when making decisions about future care options where the choices of good care that may be on offer may be limited. We support ratings but also see there needs to be sufficient providers and in Wales who can offer quality and choice.

We note that advocacy is one of the areas to become regulated. It is important that the new system maintains a level of safeguard on the independence of advocacy services to ensure the service does work in the best interest of people and is reflective in giving them a voice. Over-regulation may have a negative impact on people's use and perceptions of advocacy.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

Commissioners have an integral role in creating the right market for quality care in Wales. It is important therefore that care is commissioned against the high service standards to be set in the Bill and to meet the national wellbeing objectives.

In respect of the proposal for annual reports for local authorities, CSSIW and providers of care, we view this to be positive but reports must be useful to people, accessible and clear about the performance of services.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

We welcome proposals for market oversight but see this will be challenging to both local authorities and CSSIW and will require a different set of skills. It is important that the Commissioners of care are also accountable to ensure they only contract providers that offer good quality care.

We also felt there to be an important role for UK oversight of the care market as many large companies operate across the UK and there is a responsibility on the

differing Governments. Pan UK collaboration is essential to promote the sustainability of the future care sector/companies across the UK and also to ensure parity of treatment and care of people who are cared for across our UK borders.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

We have mentioned previously our view about workforce and welcome the new body to be known as Social Care Wales and the renewed emphasis and investment to build workforce capacity and standards. We believe it is important that Social Care Wales continues to have a role in driving improvement in the childcare workforce.

New duties of co-operation and joint working are welcomed but it is important they are effective and have some teeth when operating in practice.

10. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

We have no firm view on this but we do however feel it is important that the law is not restrictive and overly burdensome. We mentioned earlier the importance of regulation which is practical and proportionate.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

We note the financial implications in the documentation to support the Bill. Below is an extract of the view we expressed to Welsh Government in our response to regulations being made under the Social Services and Wellbeing (Wales) Act 2014 on financial viability.

“in the current climate the Board’s view is that some of the aspirations/objectives of the policy may not be realised in practice for example there is major assumption on people needs and outcomes will be met through preventative services which are few and patchy across different parts of Wales. Given the austerity measures and pressures faced by public and other services, it is unclear as to the means by which local authorities and health partners can grow and promote capacity in prevention to serve people wellbeing need without significant investment and sufficient time for services to be developed.”

We wish the Committee to note our concerns about financial conditions and challenges of meeting the aspiration of both the Social Services and Wellbeing (Wales) Act 2014 and this Bill in achieving improved citizen wellbeing over the medium term.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

CSSIW's National advisory Board would like to thank the Committee for this opportunity. We would also like to acknowledge our support to the efforts of Welsh Government in the prioritising the care of vulnerable people through bespoke Welsh law that places the voice and wellbeing of its citizens at the heart of public services in Wales.

National Assembly for Wales /
Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y](#)
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[Care \(Wales\) Bill / Bil Rheoleiddio ac](#)
[Arolygu Gofal Cymdeithasol \(Cymru\)](#)
Evidence from Civil Service Pensioners
Alliance - RISC 22 / Tystiolaeth gan
Gynghrair Pensiynwyr y Gwasanaeth
Sifil - RISC 22



Wales Executive Council Member
Ystrad Farm
Llansteffan Road
Carmarthen SA31 3QR
18 April 2015

Health and Social Care Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA

Dear Sir,

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL

Response from the Civil Service Pensioners' Alliance on behalf of members resident in Wales:

The Civil Service Pensioners' Alliance has over 55,000 members and local groups throughout England and Wales and separate branches in Malta, Northern Ireland and Scotland. The CSPA is the only organisation recognised by the UK Government as being mandated to speak on behalf of civil service pensioners and with direct access to the Cabinet Office.

This response is submitted on behalf of the CSPA by Jean Hardiman Smith: CSPA Health Policy Advisor and National Executive Council member.

The CSPA believes that effective regulation is a key driver for positive transformation, and that it will enable the public to be more aware of the services and standards they can expect. Effective regulation will also enable service providers to be more informed of how this expectation should be met. Quality, and an awareness of the impact on people, is crucial to the delivery of public expectations. We agree that social services in Wales must, as a sector, understand the impact of their actions on the lives of users and carers, and that citizens should be enabled, empowered and be at the heart of the process. We also believe that it is important that information is transparent and meaningful. We are pleased to note that the primary aspiration of the Bill should be to deliver positive outcomes and feel that this should also include the aim that these outcomes are achieved and delivered in a dignified and caring way.

It is important to our members that the robust re-framing of regulations will help to avoid further tragedies like Southern Cross, and we are pleased that the risk of provider failure has been acknowledged, and taken into account in the Bill. We are also pleased that the Bill will allow the care system and regulation to evolve and move the system towards a responsive and flexible approach.

The CSPA considers the Bill, as drafted, will deliver the stated aims of securing the well-being of its citizens, and improve the quality of care and support in Wales.

We also consider that the Bill will deliver the key objectives for Welsh Ministers, and provide a framework for them in the delivery of their functions.

We agree that a service based regime of registration to deliver regulated services will provide both greater flexibility for users and transparency for users and the public.

We welcome the legal requirement around users' outcomes, and that this is based on the well-being outcome of users.

We consider that the Bill will provide a better fit between the regulatory, and outcomes focused approaches, and agree that this will help to ensure that vulnerable people are safe from harm and abuse.

Finally, we believe that the legislation will provide more transparent, comparable and robust information for users, and the public.

Yours faithfully,

A handwritten signature in black ink that reads "Philip Grice". The signature is written in a cursive style with a large initial 'P'.

Philip Grice
Executive Council Member for Wales

on behalf of

Jean Hardiman Smith, CSPA Health and Care Policy Advisor



CSP Wales Office
1 Cathedral Road
Cardiff CF11 9SD

www.csp.org.uk

Health and Social Care Committee
National Assembly for Wales
Pierhead Street
Cardiff CF99 1NA

23rd of April 2015

Dear Colleague

Re: Consultation on the Regulation and Inspection of Social Care (Wales) Bill

Introduction

The Chartered Society of Physiotherapy is a member of both the Welsh Reablement Alliance and the Social Care and Wellbeing Wales (SCWAW) so fully endorses the response submitted jointly by these two alliances.

Overall, the CSP supports the aims and intentions of the Bill and acknowledges that this Bill needs to be considered in relation to the Social Services and Wellbeing (Wales) Act and not in isolation from it. In particular, the CSP welcomes the intention to consider outcomes for individuals in reviews of all social services and increased public involvement in regulation and inspection of social care services.

Comments from the CSP

The CSP highlights a few comments which are of importance to the profession:

- The CSP considers there is a need to improve definitions and use of language throughout the Bill. There continues to be confusion around the use of the terms 'social care workforce' and 'social care worker'. The Bill identifies that Social Care Wales will have responsibilities in relation to development of the whole social care workforce. The profession considers this must be made totally clear on the face of

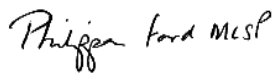
the Bill and that the 'social care workforce' must be seen as being wider than just social workers and managers.

- Language and use of definitions needs to read appropriately across the Social Services and Wellbeing (Wales) Act and the Regulation and Inspection (Wales) Bill. The profession is concerned that there should not be different definitions of a care and support service in these two pieces of legislation.
- Workforce planning responsibilities for Social Care Wales need to take into account the wider social care workforce, for example, those providing preventative services. There needs to be recognition of cooperation and collaborative working around workforce planning in order to support the integration of services.
- The CSP has some concerns about future inspection models (in currently retaining two inspection bodies) but does acknowledge that Welsh Government intend to address this in the future. The profession considers it will be important in relation to the future integration of health and social care and having in place the most efficient and effective model for inspection.
- The CSP continues to caution that there could potentially be a conflict of interest between the role of regulator and that of promoting and encouraging improvement. The CSP has previously undertaken both roles operating as a professional body and a regulatory body. The regulatory functions, however, have since been given over to the Health Care Professions Council (HCPC) to prevent any conflict of interest issues arising.

Concluding remarks

The CSP is pleased to have played an active part in the scrutiny by the Health and Social Services Committee and looks forward to receiving their report.

Yours sincerely



Philippa Ford MBE MCSP
CSP Public Affairs and Policy Officer for Wales


(w)
(m)

About the CSP and Physiotherapy

The Chartered Society of Physiotherapy is the professional, educational and trade union body for the UK's 53,000 chartered physiotherapists, physiotherapy students and support workers. The CSP represents 2,300 members in Wales.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity. Physiotherapists and their teams work with a wide range of population groups (including children, those of working age and older people); across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote

independence, helping to prevent episodes of ill health and disability developing into chronic conditions.

Physiotherapy delivers high quality, innovative services in accessible, responsive and timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person centred professionalism. As an adaptable, engaged workforce, physiotherapy teams have the skills to address healthcare priorities, meet individual needs and to develop and deliver services in clinically and cost effective ways. With a focus on quality and productivity, physiotherapy puts meeting patient and population needs, optimising clinical outcomes and the patient experience at the centre of all it does.



National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal
Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil
Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Welsh Language Commissioner - RISC 24 /
Tystiolaeth gan Gomisiynydd y Gymraeg - RISC 24

21/04/2015

Dear Members,

Thank you for the opportunity to present evidence to the Committee on the Regulation and Inspection of Social Care (Wales) Bill.

Context

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of Welsh in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner's work:

- In Wales, the Welsh language should be treated no less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory Welsh language schemes through the powers inherited under the Welsh Language Act 1993.

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5-7 Heol Eglwys Fair
Caerdydd CF10 1AT

Welsh Language Commissioner
Market Chambers
5-7 St Mary Street
Cardiff CF10 1AT

[REDACTED]
Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

[REDACTED]
Correspondence welcomed in Welsh and English



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

The role of the Commissioner was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate failure to implement a language scheme, interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to meet standards.

One of the Commissioner's priorities is to scrutinise policy developments with regard to the Welsh language. The Commissioner's main role is to provide comments in accordance with this remit, acting as an independent advocate on behalf of Welsh speakers in Wales. This approach is adopted to avoid any potential compromise of the Commissioner's regulatory functions and should the Commissioner wish to formally review the performance of individual bodies or the Welsh Government in accordance with the provisions of the Measure.

Regulation and Inspection of Social Care (Wales) Bill

The Welsh Language Commissioner has stressed on several occasions the importance of considering the Welsh language as a cross-cutting issue within broader policy contexts or areas. This was the case with the School Standards and Organisation (Wales) Act 2013, which set clear and unambiguous references to the Welsh language within the Act. The new Planning Bill also imposes language duties on local authorities and the Future Generations Bill places duties on certain public bodies in relation to the Welsh language. Section 14 of the Social Services and Well-being Act (Wales) 2014 also makes provision for the Welsh language by imposing requirements on local authorities and health boards to assess the steps to be taken in order to be able to provide the required range and level of Welsh language care services. In the same way, therefore, we wish to highlight the importance of including clear and unambiguous references to the Welsh language within the Regulation and Inspection of Social Care (Wales) Bill.

In our response to the Welsh Government's consultation on 'The Future of Regulation and Inspection of Care and Support in Wales' in December 2013 we noted the following points:

- **Citizen well-being and offering services in Welsh** : *'...one of your objectives will be to make a positive difference to the well-being outcomes for citizens receiving care and support. In order to effectively prioritise the safety of all citizens, we suggest that it should be ensured that it is possible for individuals to use their chosen language, without having to request it.'*
- **Independent scrutiny of services and reporting on the experience of service users through outcomes**: *'...no inspection practices, especially scrutiny of users' experiences, should exclude the collection of information on the experiences of services in Welsh'.*
- **Reconstitute the Care Council for Wales**: *'...this work should not lead to the erosion of the language commitments included in the Care Council's existing Welsh Language Scheme and opportunities to strengthen it should be sought.'*



I welcome the fact that the assessment of the Bill's impact on the Welsh language states that the Bill should *'emphasise the need for further promotion and encouragement of the 'Active Offer,' as outlined within the Welsh Government's 'More than Just Words...' strategic framework'*. The impact assessment document also states that the Bill will *'strengthen and focus the efforts that both of the regulators, the Care Council and Care and Social Services Inspectorate, are already undertaking to help deliver these goals [greater emphasis on service providers to deliver a more user focused service for the individual, including greater emphasis on their choice to speak Welsh should they wish to do so]... that therefore will require a new inspection regime to monitor and evaluate that the service providers are delivering services that meet the outcomes agreed for the user and are of a high quality.'*

The section 'Welsh Language Impacts' within the assessment document states that the Bill will *'help focus the drive forward to deliver further improvements or provide an example of best practice for others to aim to emulate and enhance or strengthen the delivery of care services through the medium of the Welsh language.'* The assessment document also suggests that the annual reports prepared by service providers will *'help illustrate the wider picture of services available across Wales, including the identification of any areas where greater assistance might be required to meet any deficiencies (i.e. the need for more Welsh speaking staff in South-east Wales).'* Furthermore, the impact assessment suggests that the Bill will mean that the service regulator and the workforce regulator will have the data to *'help develop a clearer nationwide Picture of Welsh language Service provision and workforce that would... help potential Service users to find these services if they want them.'*

Despite the findings of the Welsh language impact assessment, there are no clear and unambiguous references to the Welsh language within this Bill. The only reference to any matter relating to the Welsh language within the Bill is the following reference found in Section 40. This reference refers to the fact that service providers should include information in their annual reports on how 'standards' duties under the Welsh Language Measure (2011) have affected the exercise of their functions:

- 40 (2) The annual report must include details of—
- (a) how the Welsh Ministers have exercised those functions during the year,
 - (b) the extent to which they have, in the exercise of those functions—
 - (i) achieved the objectives referred to in section 4, and
 - (ii) had regard to the most recent statement of policy published under section 39, and
 - (c) how the duties mentioned in subsection (4) affected the exercise of those functions during the year.
- (3) The annual report may include any other information the Welsh Ministers think appropriate.
- (4) The duties referred to in subsection (2)(c) are the Welsh Ministers' duties under—
- (a) section 149 of the Equality Act 2010 (c.15) (public sector equality duty),
 - (b) section 1(1) of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) (duty to have due regard to the United Nations Convention on the Rights of the Child), and



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

(c) Part 4 of the Welsh Language (Wales) Measure 2011 (nawm 1) (standards).

Without obvious or specific references to the Welsh language and services through the medium of Welsh within the Bill, it is very difficult to see how the desired outcomes listed in the Welsh language impact assessment document could be achieved. It is also surprising to see that the assessment document refers, yet again, to the need for potential service users to '*identify those [Welsh medium] services that could benefit them*', rather than the emphasis being on the need for the provider to offer those services in Welsh. The onus on the user to '*identify those services*' for him or herself is diametrically opposed to the concept of the 'Active Offer', which forms the basis for the Government's service delivery standards and is also one of the leading principles of 'More than Words...'

It is likely that the duties imposed under the Welsh Language Measure will be general standards, and that no bespoke standards will be placed on the social care sector in particular. If the Bill does not provide clear guidance to providers and regulators on the services that should be available in Welsh, there is a danger that this could significantly impact on the availability and quality of Welsh language services within the sector.

On behalf of social care service users in Wales, I ask that you consider my comments above.

Yours sincerely,

Meri Huws
Welsh Language Commissioner

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Association of Teachers and Lecturers – RISC 25 / Tystiolaeth gan Gymdeithas Athrawon a Darlithwyr – RISC 25

**Association of Teachers and Lecturers – Wales
Cymdeithas Athrawon a Darlithwyr - Cymru**

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9 Rhodfa Columbus, Maes Brigantin, Caerdydd CF10 4BY
Tel/Ffon: [REDACTED] Email/Ebost: [REDACTED] www.atl.org.uk



David Rees AM
Chair of the Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

21st April 2015

Dear David,

Regulation and Inspection of Social Care Bill – Stage One Consultation

About ATL Cymru – the education union

The Association of Teachers and Lecturers represents over 160,000 education professionals across the four constituent parts of the United Kingdom. It draws its membership from teachers and lecturers, leaders and support staff in maintained and independent schools, and Further Education Colleges. As well as campaigning vigorously to protect and enhance members' pay and conditions ATL also believes that the education profession has a key role in developing education strategy and policy. ATL Cymru represents over 6,500 education professionals in colleges and schools across the whole of Wales.

Our response

We welcome this opportunity to respond to the Consultation which is examining the General Principles of the Regulation and Inspection of Social Care (RISC) Bill. We would like you to note that as an education

union which represents members across the education workforce in Wales we would, of course, welcome the ‘General Objectives’ of the Bill:

“4 [...] The general objectives of the Welsh Ministers in exercising their functions under this Part are—

(a) to protect, promote and maintain the safety and well-being of people who use regulated services, and

(b) to promote and maintain high standards in the provision of regulated services.”

However, we do have a series of inter-related concerns about the registration of the workforce, which we believe need to be addressed. We would be concerned if members of the nursery, school or further education (FE) workforce were asked to register with *both* the Education Workforce Council (EWC) and Social Care Wales (SCW) in order to carry out their work. We think this would be unacceptable. We have detailed our concerns below.

Background

Whilst it is not clear who exactly will be required to register as a ‘social care worker’ under the RISC Bill (Part 4) in the future, we would have concerns that those working within some early years settings could be subject to dual registration, which would not be acceptable.

In addition, those working as learning support workers (or similarly titled), especially those supporting a disabled child or young person in a school or FE setting could also be deemed a ‘social care worker’ under future regulation.

We would have concerns, therefore, that groups of ‘learning support workers’ would have to register with both the Education Workforce Council (EWC) *and* the new Social Care Wales (SCW).

Not only would dual registration cause cost duplication within the sector, but may mean parents and employers would be unsure about which registers to check when checking someone is suitable to employ, leading to potential safeguarding issues. Those working in early years settings, such as nurseries, or supporting disabled learners in schools or FE settings are often poorly paid and it would be completely unreasonable to expect them to pay to be registered twice. We therefore seek clarity on this and assurances be put on the record from the Welsh Government that dual registration will not be required.

We have outlined our reasons for our concerns below.

Education Workforce Council

From April 2016 the Education Workforce Council (EWC) (which came into being on 1st April 2015) will be responsible for registering “learning support workers”. The Welsh Government is currently consulting on who will be included within this definition. We expect that those working as ‘learning support assistants’ (or similarly titled) to support disabled learners will fall within the registration framework of the EWC. We would however have concerns that under the RISC Bill, these same people could potentially be expected to register with Social Care Wales (SCW), and would seek clarity to ensure this is not the case.

The current EWC consultation can be found [here](#).

Welsh Government “10 year plan for the early years workforce”

We would also note that within the earlier Welsh Government consultation on the ‘*Draft 10 year plan for the early years, childcare and play workforce*’, WG examined registration of the workforce with EWC. WG also suggested closer alignment between maintained and non-maintained settings, with EWC requiring CPD as part of the registration. The Consultation said:

*“Ideally, this CPD record could form part of a **workforce registration process**, where practitioners would be required to demonstrate a record of learning and development activities to support re-registration. This process could help to establish a culture of CPD in the early years, childcare and play sector, as well as contributing to greater professionalisation and a more defined career pathway, as practitioners would be able to register at a particular level, commensurate with their qualification level and job role. This approach is being taken forward for learning support staff in schools through the new Education Workforce Council, with this system expected to be in place by 2016. As one of our objectives is greater parity between the maintained and non-maintained sectors, we would want to learn from this process and look to apply similar principles to the non-maintained childcare workforce, if appropriate and feasible. We will also look to the voluntary model recently introduced by SkillsActive for play workers in England, which also includes a recorded CPD portfolio. We would invite your views as to the potential impact and benefits of professional registration for the childcare workforce.”*

Therefore we would presume that these workers, in early years settings, would be named as 'learning support workers' and registered with the EWC.

However the consultation also outlines proposals for their use of the Care Council Wales (CCW) induction pack, and CCW's work within the early years setting. It is especially to this end that we would be concerned should those working in an early years setting be expected to register with *both* the Bill's proposed successor to CCW, Social Care Wales (SCW), and with the EWC. We would seek clarity to this end.

We would also note that the RISC Bill means Welsh Ministers expect SCW to keep a 'register of managers of regulated services'. **We would therefore be especially concerned about the impact on those deemed 'learning support workers' in the early years who are expected to register with EWC, who could include managers registered with the SCW.** As we have stated this would be a real concern and we seek assurances this will not happen.

Full details of the "10 year plan..." consultation can be found [here](#).

Welsh Government position

In response to the above consultation on the early years workforce we wrote to the Minister for Education and Skills in November 2014 asking:

"will any members of the workforce be required to register with both EWC and CCW? If not, it would be helpful if you could please provide details of all the different roles fulfilled within the early years sector plotted against their prospective registering body."

Since the Minister did not provide a breakdown we would still be concerned that some members of the workforce still run the risk of being required to register with both.

Under the RISC Bill the definitions of "care" (3 (1) (a)) and "support" (3 (1) (d)) includes functions which could be applied to a 'learning support worker' in a school, FE or early years setting. Given that Welsh Ministers will have the regulation making power to describe who is a "social care worker" (78 (2)) and who will be required to register with Social Care Wales (79 (b)), we seek assurances that there will be *no* requirement for dual registration with SCW and EWC.

In a Unison Partnership Meeting with DfES officials (14.4.15) we were given assurances that there would be **no** dual registration. **We**

welcomed that assurance but we would want it put on the public record.

Estyn and CSSIW

We also note that Estyn and Care and Social Services Inspectorate Wales (CSSIW) are developing a joint inspection framework in order to ensure that their work is joined up. As Estyn's November Newsletter said:

“Estyn and CSSIW want to reduce the number of discrete inspections that non-maintained nursery settings receive from Estyn and CSSIW separately. Currently, Estyn inspects once in six years and CSSIW inspects day nurseries every year and playgroups every other year. The new joint inspections will replace one of CSSIW's previous visits and replace Estyn's previous model of inspection entirely.”

This will bring the work of both inspectorates closer together, and we understand the joint framework will be consulted on over the summer.

It is perhaps worth noting that in England, Ofsted inspects all nursery settings. We would welcome this sort of approach, as we believe this work would best be carried out by *one* inspectorate.

However, we note that under 2 (1) of the RISC Bill, where ‘regulated services’ are listed, registered day care does not appear. We would seek clarity on whether early years settings will continue to be registered with CSSIW. Current details of how to register with CSSIW to provide “day care” can be found [here](#).

Donaldson Review

Finally, it is perhaps worth noting that the Donaldson Review of Welsh education, “Successful Futures”, outlines plans for the curriculum from 3-16, thus including early years in future curriculum plans. We would therefore expect a coherent workforce plan, with associated registration and CPD to run from ages 3-16 (with full and real engagement with the FE sector). Details of the plans can be found [here](#).

Our concerns

We have outlined above the background to our concerns. Though we are delighted to see some elements of the registration and inspection sectors working together, we would have concerns that there could be **unintended consequences** of the RISC Bill should there be expectations of dual registration for workers in the early years, and those supporting disabled learners.

We would welcome a situation in which learning support workers in early years, school and FE settings were able to move easily between maintained and non-maintained settings, as well as within different age ranges in schools and FE, with joined up expectations, including on continuous professional development (CPD) and qualifications.

We note from the “10 year plan for early years...” that there are plans for increased professionalisation of those working in early years settings, which we would expect to be expanded to include all learning support staff. Whilst we welcome this in principle we would again have expectations that these requirements do not differ from those set out by SCW. It seems odd that potentially one registration body should be the sector skills council for the workforce which is registered with another registration body and would have concerns about the expansive role of these bodies. Indeed, there could be potential conflict of interest issues here too.

We would expect SCW and EWC to be working together now to provide a joint framework for the support staff workforce, within the context that any expansion of EWC’s role be subject to full consultation.

We would welcome clarity on the issues surrounding dual-registration, the definitions of social care workers for those working as nursery or support staff and the role of SCW, and potentially EWC, within this context.

Please do contact us if you have any specific questions.

Yours sincerely,

Mary van den Heuvel
Policy Officer
ATL Cymru – the education union

Contact:

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Sense Cymru – RISC 26 / Tystiolaeth gan Sense Cymru – RISC 26

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Sense Cymru is a national charity that supports and campaigns for children and adults who are deafblind. We provide tailored support, advice and information as well as specialist services to all deafblind people, their families, carers and the professionals who work with them. In addition, we support people who have a single-sensory impairment with additional needs.

Deafblindness is the combination of both sight and hearing difficulties. Most of what we learn about the world comes through our ears and eyes, so deafblind people can often face problems with communication, access to information and mobility. People can be born deafblind or become deafblind through illness, accident or in older age. Around 18,850 people in Wales are affected by a combination of visual and hearing impairments.

Sense operates a number of day and residential services across the UK and, whilst we do not currently operate a regulated service in Wales, we support deafblind people who access regulated care and support services in addition to the specialist one-to-one services we provide.

For example, many of deafblind adults of working age whom we support access care and support services, regulated and otherwise, including care home services, adult placement services and domiciliary support services. Moreover, with 62% of the deafblind population over 70 years old, we know that a significant proportion of older people living in residential care homes will be affected by dual sensory loss, diagnosed or otherwise.

Sense Cymru is a member of the Wales Reablement Alliance (WRA) and the Social Care and Well-being Alliance Wales (SCWAW) and also endorses the joint evidence submitted by these groups.

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 Sense Cymru believes there is a need to bring forward legislation to deliver on the proper and appropriate regulation and inspection of social care services in Wales that are in line with the outcomes focused approach introduced to social care in Wales through the Social Services and Well-being (Wales) Act 2014. This legislation provides the opportunity to reform our regulation and inspection regime into one that genuinely considers the issues that matter to the people who use the services.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

2.1 N/A

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 Sense Cymru is concerned that a requirement to demonstrate due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People and the United Nations Principles for Older Persons is not explicit on the face of the Bill as it is in Section 7 of the Social Services and Well-being (Wales) Act.

3.2 We are concerned that the potential for some divergence of protection thresholds between regulated services and registered workforces for children or adults exists.

3.3 To ensure that the provisions are delivered in a way that values and promotes equality, we would expect regulations setting out the format of annual reports to include reporting on delivery of duties under the Equality Act. This should include how a body has made reasonable adjustments for service users with sensory loss.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

4.1 Section 2(1), and Schedule 1, of the Bill lists clearly the services which will be regulated. 2(1)(h) makes provision for subordinate legislation to add to the services listed on the face of the Bill. This is right and proper to ensure that the burgeoning of user-led, social enterprise and cooperative services – a desired consequence of the Social Services and Well-being Act – can be accommodated within the regulation regime should this be appropriate.

4.2 In addition to the services to be regulated listed on the face of the Bill, many deafblind people in Wales will use care and support services, including those that deliver personal care such as Extra Care and day services.

4.3 We therefore welcome the Minister's public commitment to making use of regulation making powers to add to the list of regulated services, starting with advocacy, in his

evidence to the Committee on 25 March 2015. However, we would like to ensure that as the regulation and inspection regime proposed under this Bill is strengthened over time, that appropriate time and notice is given to care and support service providers whose services may become regulated, as the impact on their business and planning will be significant. We therefore propose that regulations under 2(1)(h) are subject to a super affirmative procedure.

5. Do you think that any unintended consequences will arise from the Bill?

5.1 We are keen to promote the expansion of user-led services and innovation within the care and support system, as made possible by the Social Services and Well-being Act, and we are keen to see people receiving care and support services, including deafblind people, lead in developing new service models. It is possible that the potential to be included as a regulated service could act as a barrier to the innovation envisaged by the Act.

5.2 Likewise, the Social Services and Well-being Act's promotes the voice and control of people with care and support needs. This means there is the possibility of an increase in the number of people exercising control over the services they receive through the use of Direct Payments. We can expect an increase in the number of people using their Direct Payments to purchase services that might traditionally have been provided in the regulated services listed on the face of the Bill. These people will therefore be receiving unregulated services and there are safeguarding implications that will need to be addressed.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 **Service based model of regulation:** We support the move to a service based model of regulation. The regulated services listed on the face of the Bill, and those to be listed in Regulations, will provide clarity for service providers seeking registration and should serve to simplify and streamline the registration process.

6.2 **Engaging with the public:** We agree that the service regulator should be required to involve citizens in its work at a strategic and operations level. The service regulator should be required to engage with the full spectrum of citizens, including the hardest to reach who are most likely to be in receipt of care and support services. We expect the Welsh Government's policy document outlining how it will engage citizens to address how the process will be fully accessible to deafblind people, including deafblind children and young people, and people with sensory impairments with additional disabilities.

6.3 **Quality ratings:** We support all moves that make it easier for people to make informed decisions and choices about the care and support they receive or their friends and relatives receive. Quality ratings will need to be available in accessible formats, including in easy read formats.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for

service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 If we are to fully follow the thrust of the Social Services and Well-being Act to promote people's personal well-being outcomes, then it is imperative that the regulatory framework monitoring the provision of social care under this Act also takes performance against well-being outcomes as one of its measures. We therefore support the move to bring the regulatory framework in line with the National Outcomes Framework. A framework incorporating the proposed Quality Framework, replacing National Minimum Standards, alongside individual outcomes should ensure the right balance and focus for a reformed regulation regime. However, we are uncertain as to the practicalities of monitoring an area's performance against individual outcomes. This duty on Local Authorities must be realistic and achievable.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

8.1 Sense Cymru supports the intention to produce a national market stability report.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1 Sense Cymru does not object to the renaming of the Care Council for Wales as Social Care Wales.

9.2 It is right and appropriate that Social Care Wales will have a new duty placed upon it to make information about its work regulating the care and support workforce available to the public and to engage the public in its work, in line with the parallel duty on Ministers in relation to their function as the service regulator.

9.3 We agree in principle with the extension of the workforce regulator's remit. We agree with the intention to create a more efficient and coordinated approach to developing the social care workforce in Wales, minimising potential duplication with other Welsh Government funded agencies.

9.4 However, we believe there will be a need to exercise caution and transparency as Social Care Wales takes on the double role of regulator and promoter, and potential conflicts of interests this may incur in being responsible for both improving and regulating social care workers. Other bodies with similar dual (and potentially conflicting) responsibilities, such as the Welsh Language Commissioner, have sought to deal with this potential conflict of interest through carrying out their duties to promote and improve only to those groups that are not specified in regulations. This is not an option open to Social Care Wales, which is specifically responsible for developing social care workers in Wales, including the regulated workforce.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new

categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- 10.1 Sense Cymru recognises that it may not be appropriate in terms of capacity and resource for the regulator to extend registration to new categories of staff and likewise that not all workers in social care settings will need to be subject to the rigours of registration and regulation. However, we are concerned that the proposed narrow definition of “social care worker” excludes many other workers in the field of social care and that the new terminology is misleading both within the sector and to the public more widely.
- 10.2 The proposals outline that “social care workers” will encompass social workers, those who manage regulated services and those who provide care and support as part of a regulated service. However, there will be services not currently registered – such as in Extra Care and Day Services – that users of care and support, their families and friends, may presume will have staff registered and regulated.
- 10.3 Likewise, many people in receipt of care and support plans under the Social Services and Well-being Act will receive social care services in non-regulated settings provided by a highly skilled workforce. There is merit in describing these workers, as well as the workforce in regulated settings, as “social care workers” and it is likely that both they and the people they support would describe themselves using this terminology. Sense Cymru’s Communicator Guides and Intervenors will be among such workers. It could therefore be problematic to limit the meaning of such a generic term as “social care worker” to a specific group of workers amongst the wider pool.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

- 11.1 The Bill sets out clearly the opportunities for the primary regulatory bodies – the Welsh Ministers through CSSIW and SCW – to cooperate where this will have a positive effect on exercising its functions and where this serves to achieve their general objectives.
- 11.2 However, there is little on the face of the Bill with regards the way in which Ministers will enable the better coordination of CSSIW and the Health Inspectorate Wales. As we understand it, this Bill will not preclude opportunities for greater collaboration but we would welcome further information about Ministers’ intentions to promote joint working between the regulation of health and social care.
- 11.3 Likewise, further clarification about the way in which CSSIW and SCW will cooperate with relevant regulatory bodies, such as the Health and Care Professions Council, both within Wales and across the UK.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 Sense Cymru is not aware of any duties that should be placed on the face of the Bill that are currently left to subordinate legislation.

12.2 However, due to the number of provisions in relation to subordinate legislation, we have some concern that we are not able to fully consider the Bill without some greater indication of the subordinate legislation.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

13.1 Sense Cymru does not have a position on the financial implications of the Bill.

14. Are there any other comments you wish to make about specific sections of the Bill?

14.1 N/A

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from One Voice Wales - RISC 27 / Tystiolaeth gan Un llais Cymru - RISC 27

Consultation: Evidence on the general principles of Regulation and Inspection of Social Care (Wales) Bill

One Voice Wales Response

One Voice Wales is recognised by the Welsh Government as the national representative body for community and town councils in Wales. It represents the sector on the Local Government Partnership Council and some three-quarters of the 735 community and town councils are already in membership, with numbers growing year on year. As well as our representative role, we also provide support and advice to councils on an individual basis and have previously launched, with Welsh Government support, a modular training programme for councillors. We believe strongly that community councils are well-placed to develop the economic, social and environmental well-being of the areas they serve and, as such, are active and proactive in debating key issues such as energy policies, environmental issues and strategic planning. Our sector strongly supports any measures that will improve the health and social well-being of our families and communities, and we agree with the general direction of this proposed legislation. We would add three specific points:

Firstly, it is appreciated that this proposed bill would be implemented in parallel with the Social Services and Wellbeing Bill, and between them it is hoped that they will succeed in regulating health and social care services in Wales.

Secondly, One Voice Wales welcomes the proposal for a new Social Care College/Institute to develop the profession in Wales.

Lastly, it is noted that social care tends to be a lower paid profession and it is hoped that measures within this Bill will help to improve circumstances for people who work in this profession, which will in turn help to improve the work of the profession as a whole.

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RNIB Cymru response to Health and Social Care Committee consultation on the Regulation and Inspection (Wales) Bill

23 April 2015

1. About RNIB Cymru

RNIB Cymru is Wales' largest sight loss charity. We provide support, advice and information to people living with sight loss across Wales, as well as campaigning for improvements to services and raising awareness of the issues facing blind and partially sighted people.

2. About sight loss

- There are currently 106,000 people in Wales living with sight loss (1).
- It is estimated that the number of people living with sight loss in Wales will double by 2050 (2).
- The prevalence of sight loss increases with age: one in five people aged 75 and over are living with sight loss; one in two people aged 90 and over are living with sight loss (3).
- Older people with sight loss, particularly those over the age of 75, are often living with up to three or more long term health conditions, making it even more of a challenge to maintain independence, social networks and wellbeing. Many need care and support (4).
- Sight loss impacts on every aspect of a person's life: their physical and mental health, their ability to live independently, their ability to find or keep a job, their family and social life. As a result, people with sight loss form a significant group of users accessing social care services in Wales.

There is a higher prevalence of sight loss among people with certain other conditions. In particular:

- Up to 70 per cent of people who survive a stroke have difficulty seeing or processing visual information (5);
- It is estimated the number of people over 75 years with dementia and sight loss, is 2.5 per cent. This figure is likely to be an under-estimate because studies have not accounted for individuals who are considered to be 'untestable'. The degree to which a person with dementia is able to cope will be influenced by their sight loss (6). As the population ages, the number of people with both dementia and sight loss will increase;
- People with learning disabilities are ten times more likely to have serious sight problems than other people. People with severe or profound learning disabilities are most likely to have sight problems. Six in ten people with learning disabilities need glasses and often need support to get used to them (7). Sight loss is often overlooked in people with learning disabilities, because the individual may not know they have a sight problem or be unable to communicate the problem, and problems caused by their sight loss might be attributed to other causes.

This means that people with sight loss are accessing a broad range of social care services with a range of intensity of use. Blind and partially sighted people who receive community or residential care because of their sight loss and/or additional disabilities will be more vulnerable to abuse or exploitation, because of their visual impairment – for example, they may not be able to see what is occurring around them, or physically identify social care staff who are abusing them. It is vital that the proposed Regulation and Inspection Bill provides a framework capable of safeguarding people with sight loss and ensuring high quality care and support that can meet their needs.

3. Evidence about quality of care

It is only a small proportion of social care services which require enforcement action via regulation. However, we would stress that recent reviews have highlighted a failure to provide high quality social care services for people with sight loss.

It is clear from the evidence that there is a lack of understanding of the needs of people with sight loss, despite the significant numbers of older people accessing care who will have sight loss. For example, the Equality and Human Rights Commission's (EHRC) review of home care services in England (8) found evidence that people with sight loss were involved in some of the most disturbing examples of poor treatment:

"I recently had to stop a carer throwing a blanket over a service users head, she seemed to think it was amusing to humiliate [the] service user who was visually impaired but the most concerning thing was that she did not understand what she was doing wrong" (Homecare worker – private sector)

The EHRC inquiry report noted that people with sight loss found it difficult to complain and indeed, were viewed by carers as less likely to complain than those with sight. Despite this, the inquiry also heard complaints about carers who were clearly unaware of the needs of people with sight loss and noted that of the 50 service specifications submitted, only 17 mentioned sensory impairment or people with sight loss, indicating a lack of awareness of sensory loss both at the point where social care is being provided, and when it is commissioned.

While the EHRC inquiry looked at home care services in England, its findings have been reiterated elsewhere, such as the Older People's Commissioner for Wales's recent review (9) of quality of life and care of older people in care homes in Wales, which found:

- Homes were poorly lit, with no consideration of the importance of lighting, particularly for residents with deteriorating eyesight and sight loss, impeding residents' ability to easily and safely move around the home environment with support.
- Older people were not routinely screened for sensory loss upon entry into care homes, and there is a lack of ongoing/regular screening for sensory loss for older people in care homes. This is despite NICE guidance stating that organisations providing care should ensure that staff are trained to be alert to specific needs arising from sensory

impairment in older people in care homes and to record them in a care plan (10).

- Care home managers who stated that sensory loss did not affect any of their residents, when, given the prevalence of sensory loss among older people, this is almost certainly not the case, and means that a large number of older people could be missing out on essential assistance and support.

As noted by NICE (11), mild but progressive sight and hearing losses are a common feature of ageing and may go unnoticed for some time, but can have a serious effect on a person's communication, confidence and independence. Recognition and recording of the sensory needs of older people in care homes is essential to improve their quality of life and avoid isolation, which can have a detrimental effect on wellbeing. We would expect any system of inspection to ensure that care homes are meeting the recommendations made by NICE, that:

- organisations providing care ensure that staff are trained to be alert to specific needs arising from sensory impairment in older people in care homes and to record them in a care plan;
- social care staff are alert to and recognise specific needs arising from sensory impairment in older people in care homes and record them in their care plan;
- local authorities commission services from providers that can produce evidence of protocols for training staff to be alert to specific needs arising from sensory impairment in older people in care homes and to record them in a care plan.

RNIB Cymru is seriously concerned that residential care homes are failing to take into account the needs of people with sight loss. If due regard is not taken of residents' sight loss, residential care homes will be in breach of the Equality Act by:

- not removing or minimising disadvantages experienced by people due to their protected characteristics;
- not taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

4. Consultation questions

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

RNIB Cymru agrees that there is a need for new legislation on the regulation and inspection of social care to achieve the aims and objectives set out in Section 3 of the Explanatory Memorandum. However we believe that there are potential barriers to implementing the Bill, as set out in our answer to question 2.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

RNIB Cymru believes that the main barriers to successful implementation of the Bill are:

- **Staff training:** changes to the social care sector will not happen without a properly trained and engaged workforce. In particular, the skills of inspectors and the regulatory workforce will be crucial to the implementation of the new system of outcome based measurement and a quality framework. There will only be public confidence in the judgments of the inspectorate and regulator if judgements by inspectors are consistent and accurate. It is vital that this is given consideration when determining what will constitute a person to be “appropriately qualified” (part 4 of the Bill) and in planning transition to the new inspection and regulation regime.
- **Insufficient investment in the social care sector:** the social care system is chronically under-funded and needs significant additional investment to ensure it is a viable system capable of providing high quality person-centred services that can meet the needs of people with sight loss. An ageing population means that the number of people in Wales who need support from social care will increase. Without investment in social care, it seems unlikely that already stretched services will be able to meet the needs of the population, regardless of the system of regulation and inspection. We look forward to commenting on

Welsh Government proposals on the funding of social care as part of the forthcoming consultations on regulations under the Social Services and Well-being (Wales) Act.

- **A lack of support for the social care workforce:** as highlighted by the Older People's Commissioner (2014), care staff work in highly challenging circumstances, yet they currently receive low pay, often have poor terms and conditions, lack training and work in a sector that is rarely seen as having a valuable status. There is little support available to care staff to ensure that they have the right skills and knowledge to provide high quality care, and limited opportunities for continued professional development or career progression. In addition, CSSIW's annual report for 2013-14 highlights the overriding imperative for local authorities to make significant savings in 2014-15, 2015-16 and beyond, as a risk to workforce stability. The cultural change needed is not addressed by the Bill, but is a major threat to achieving its objective of supporting the best development of the workforce possible. Once established, it must be a priority for Social Care Wales.
- **A lack of reference to human rights:** a fundamental function of Regulation and Inspection is the reduction in both risk to, and breaches of, human rights. Thus RNIB Cymru would like to see an explicit requirement on the face of bill for due regard to be given to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People or the United Nations Principles for Older Persons. We see the lack of reference to human rights as a potential barrier to the implementation of the Bill.

We would also stress that there must be effective transition arrangements to ensure that users of social care services are safeguarded while the move to a new regulatory and inspection system is implemented.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

RNIB Cymru would stress that social care services should be required to include in their annual report how they are meeting their requirements under the Equality Act. For example, the Older

People's Commissioner's recent review of care homes (2014) highlighted that many care homes, both internally and externally, do not enable the independent mobility of people with sensory loss. The review identified a lack of hand rails and clearly marked ramps, which impeded residents' ability to easily and safely move around the home environment without support; notice boards which provided essential information for residents, such as information about activities, advocacy services and other local information, were often hard to reach or difficult to see.

CSSIW's annual report for 2013-14 also highlights that the Quality of the Environment is commonly cited in notices of non-compliance for adult residential homes, with a lack of ongoing investment, maintenance and repair highlighted in a number of care and nursing homes for older people. This can pose a particular risk for older people with sight loss, who have 90 per cent higher odds of multiple falls than a person with normal sight (12).

It is simply not acceptable that people with sensory loss have little choice but to accept that they must be accommodated in physical environments that are not safe or appropriate for their needs, can limit their mobility and independence. RNIB Cymru is seriously concerned by the lack of regard for making reasonable adjustments to meet the needs of residents' with sight loss. In some cases, we believe residential care homes will be in breach of the Equality Act. Inspection of care homes must include consideration of the safety and accessibility of the environment and identify actions to secure improvements.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

RNIB Cymru believes that there is opportunity to better integrate processes for the whole social care sector. Currently the Bill misses the opportunity to strengthen and streamline current processes to create improvement and more effective regulation of integrated services.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

RNIB Cymru is supportive of the provisions set out in Part 1 of the Bill, including the move to service based regulatory provision.

We welcome the move towards greater engagement with the public. To ensure that blind and partially sighted people can engage fully it is vital that all information, such as the proposed annual reports, is available in a range of accessible formats. We would like to see a commitment to ensuring provision for all types of communication and information needs within the new regulatory regime, and that these needs can be met within the same timeframe as standard information would be provided.

RNIB Cymru strongly supports powers to introduce inspection quality ratings. We believe that this will enable service users to make comparisons between services, and hence more informed choices about the services they need to access. However we would like to see commitments to ensure that information on the quality of services is made as accessible and transparent as possible. We would also like further information as to how such a ratings system will work, including how it will incorporate specific consideration of sensory loss. For example, when a person with sight loss and/or their family or carers are making a choice of care home, it will be important for them to know how accessible the physical environment of a care home will be for an individual with sight loss.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

RNIB Cymru broadly supports the provisions in Part 1 of the Bill on the regulation of local authority social services. We believe that

routine reviews of local authority performance will be instrumental in raising standards of social care commissioning.

It is vital that outcomes for service users are considered in reviews of social services performance, but for this to be meaningful it must be based on the outcomes that matter to individual service users. We would like further clarity about how outcomes will be assessed and measured in practice before we can comment further.

We welcome the new duty to report on local markets. We believe that this will offer the opportunity to ensure that local markets are capable of meeting the social care needs of the population they serve, and in planning services to meet future demand. We note that CSSIW's Annual Report for 2013-14 (13) identifies that based on the current provision, there won't be enough nursing or residential beds by 2025. The Bill must ensure that when such information is available, it is acted on, to prevent a future crisis in social care provision.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

RNIB Cymru is supportive of provisions in part 1 of the Bill to develop market oversight of the social care sector. We would hope that this will support greater stability in the sector and avoid unexpected and unplanned service closures. Even where service closures are unavoidable, we would hope that such information would help to anticipate and mitigate the impact on those people who are using the services. In particular, moving to a new care home can be a source of huge anxiety. For someone with sight loss there is the additional challenge of orientating yourself in an entirely new and unfamiliar environment; this difficulty would be further compounded for someone who has dementia as well as sight loss. People need to have confidence that when they make a choice about their social care, that there will be stability and continuity in the services they are accessing, and that they will not suddenly be left without support.

The Older People's Commissioner's review of residential care (2014) has identified that there is a lack of clear national understanding of what the future need for residential and nursing care will be, nor an understanding of how acuity levels within care homes are likely to further change as a result of wider changes in the model of health and social care within Wales, and the potential for further development of other models that combine housing and care, such as extra care, has not been explored. This means that there is a lack of effective forward planning, and action to ensure, the future supply of appropriate, high quality care home places in Wales with the appropriate numbers of specialist staff required. RNIB Cymru would hope that the development of market oversight would assist in forward planning of services and workforce planning.

However, as we have already stressed, RNIB Cymru believes the social care sector is underfunded. Market oversight and annual reporting alone will not solve this problem. There needs to be significant additional investment to ensure a viable social care system capable of meeting the needs of citizens in Wales.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

RNIB Cymru believes that Social Care Wales has the potential to be an effective means of driving up standards in social care and ensuring the social care workforce has necessary skills and understanding to deliver excellent care. We would urge that this includes consideration of how best to equip the social care workforce with an awareness of sensory loss. However we also have some concerns that there may be conflicts of interest for Social Care Wales – for example, the functions of regulation and of promoting improvement must be separated.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

RNIB Cymru believes the scope of current workforce regulation does require changes to reflect available care and support services that people with sight loss may access. Currently there are various services, such as sheltered accommodation, day centres and day support services, which are not covered by regulation. These gaps in the regulatory system must be addressed in order to minimise risk and ensure high quality care and support that promotes the wellbeing of blind and partially sighted service users.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

RNIB Cymru notes that the provisions for cooperation and joint working make no reference to health or UK regulators of members of the social care workforce. Where services are being provided by integrated teams, as is increasingly the case, there may be good reason for these bodies to be cooperating and working together in order to protect the wellbeing of service users. We would welcome further discussion of this point.

Further information

For further information, please contact Tess Saunders, Policy and Campaigns Officer.

T. [REDACTED]

E. [REDACTED]

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Barnardo's Cymru – RISC 29 / Tystiolaeth gan Barnardo's Cymru – RISC 29



Title: Regulation and Inspection of Social Care (Wales) Bill

From: Dr Sam Clutton, Assistant Director, Policy

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Tel:



Address: Barnardo's Cymru Policy and Research Unit
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1. Information and working context of Barnardo's Cymru

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 85 diverse services across Wales, working in partnership with 18 of the 22 local authorities. In 2013-14 we worked with in the region of 8,300 children, young people and families directly and a further almost 22,000 through less direct work; including open groups and outreach work. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation and young people's substance misuse services.

Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they

are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

Barnardo's registered Charity Nos. 216250 and SCO37605
Rhifau Cofrestru'r elusen Barnardo's 216250 a SCO37605

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- We agree that legislation is needed to address the new requirements of and social care practice resulting from the Social Services and Wellbeing (Wales) Act.
- We welcome the policy intent of the Bill as the basis to secure quality care and support for vulnerable children and young people in Wales and believe that the introduction of two regulations- one of which will focus on the well-being of individuals related directly to the well-being outcomes contained in the National Outcomes Framework will potentially strengthen arrangements to hold providers accountable on the basis of the experiences of children and young people themselves.
- However, careful consideration is needed of the mechanisms through which, in practice the ambition to 'put the citizen at the centre' will be realised for children and young people.
- The Social Services and Wellbeing (Wales) Act requires that those carrying out functions under the Act demonstrate due regard to Part 1 of the United Nations Convention on the Rights of the Child (UNCRC). There are no provisions within the Bill for the scrutiny or regulation of services against the duty to demonstrate due regard to the UNCRC.

2. What are the potential barriers to implementing the provisions of the Bill and does the Bill adequately take account of them?

- The Bill is heavily biased towards statutory and independent sector providers and more consideration of application with regard to the third sector is required. We would suggest that direct further

consultation is required with the third sector and we would be happy to contribute to these discussions to ensure that the proposed legislation is fit for purpose across sectors.

- More consideration of the degree to which the policy intent of the Bill can be practically realised as applied to the case of children and young people is needed.

3. Do you think there are any issues relating to equality of protection for different groups of service users with the current provisions in the Bill?

- While we do not necessarily believe that the protection of children is jeopardised or that there is inequity in provision for children within the Bill we can identify issues related to the implementation of the Bill that may mean that the policy intent cannot be practically realised without causing children and young people emotional distress.
- For example a child is placed by a local authority in foster placement. The decision about which foster placement this should be is made by an authority on the basis of the placements that are available to them (in-house, or commissioned from the third or independent sector) and suitability of the placement to meet the needs of that child. In a scenario of a child in a foster placement receiving a copy of an annual report about their foster placement providing agency which raised concerns that child will be unable to 'take their business elsewhere' – that decision is outside their control. They would need measures in place such as access to an advocate, IRO etc to speak on their behalf with their placing authority. They may be happy in their foster placement but become aware that the provider agency is not doing well and may be deregistered. While this is an unlikely scenario what measures would be put in place to ensure that the child is able to: understand their right to know; exercise their right to know/access information such as annual reports; get support to understand what the information means; exercise their right to move to a new placement is they have concerns about the placement provider with whom they have been placed? Without adequate support the impact of information could be potentially detrimental to their feelings of stability and to their emotional well-being.

4. Do you think there are any major omissions from the Bill or are there any elements that you believe should be strengthened?

- We believe that there needs to be further consideration of application in relation to the third sector. For example para 3.73 in relation to Responsible Individuals the list provided includes:

'owner, partner, member of company's board or senior official in the local authority'. Further clarity is needed in relation to who such an individual might be in the context of a voluntary organisation. Technically as applied to Barnardo's this might mean that the CEO who oversees Barnardo's UK or a member of the organisations Corporate Management Board would be responsible because of our registration with the Charity Commission and our corporate structure as a UK organisation. However the Director of Barnardo's Cymru or a member of the Senior Management team in Wales might be a more appropriate person. Greater clarity is needed. This does not mean that we are against the introduction of a provision to introduce a statutory Responsible Individual requirement.

- Barnardo's Cymru is currently registered as an adoption agency (at the UK level and registered in England), as a fostering provider, for domiciliary, full day care, sessional day care, crèche, and home based support. We are not clear what the future arrangements for the registration and regulation of our services not covered by the Bill will be?

5. Do you think that any unintended consequences will arise from the Bill?

- We do not object to the proposal to introduce a service based model of regulation. However the implications of this for us as an organisation providing regulated services in Wales is unclear. Currently because of the way in which we are registered as a UK charity our adoption work in Wales is regulated in England and inspected by Ofsted. At the same time our fostering services are registered in Wales and regulated by CSSIW. We are unclear on the interpretation of the Bill proposals as set out in the Explanatory Memorandum. Would the changes proposed mean that both our adoption and fostering services would be registered and regulated in England or that they would both be registered and regulated in Wales in the future. As currently worded we are unclear and the proposals could be interpreted as leading to either outcome.

6. What are your views on the provisions of Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging the public, and powers to introduce inspection quality ratings and to charge fees.

- These issues are dealt with largely in our answers to earlier questions.
- We have raised questions about the implications of the move to a service based model and the impact this might have on us as a UK registered charity operating in Wales as Barnardo's Cymru (question 5 response).

- We have raised issues about the need for additional consideration of how the provisions of the Bill in relation to engaging the public can be realised and delivered in a way that meets the best interests of the child (question 3 response). The same considerations would have to be given in relation to powers to introduce 'quality ratings'. The Children's Commissioner for Wales raised concerns about the impact that the traffic lighting of schools had on the well-being of children attending schools rated as needing considerable improvement. What would be the impact of a child receiving information that they had been placed with a foster placement provider with a low quality rating? This is not to say that failing service provision should not be identified, challenged and dealt with. However in reality while this information is important for commissioners etc a child will not be in a position to demand that they receive a new placement with a provider with a higher quality rating. There would have to be a process of support and a response to a poor quality rating that assured a child that their wellbeing was important and that they were not to be left in a placement with a provider who had received a poor quality rating.
- We share the concerns set out in para 3.101 in relation to the introduction of registration fees. The demands of a new social care system as introduced through the Social Services and Wellbeing (Wales) Act at a time of constrained public funding already present a challenge for the statutory sector and for the voluntary sector in terms of commissioning demands of 'more for less'. Additional financial demands on the system at this time could potentially put further strain on systems in a way that could undermine the policy intent of the Bill.

7. What are your views on the Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

- We welcome provisions for consideration of outcomes for service users in reviews of social services performance related directly to the wellbeing statement and national outcome framework.
- We have set out elsewhere the challenges of public involvement for children and young people and adequate consideration must be given to the measures needed to ensure that this policy intent is realised in a meaningful way for children and young people.
- What is the relationship between the duty to undertake a population well-being assessment to inform social care commissioning under Part 2 of the Social Services and Wellbeing (Wales) Act and the duty to report on local markets for social

care services? It would be useful to set out the relationship between these two processes.

8. What are your views on the provisions of Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- We routinely supply information on the financial and corporate sustainability of our organisation as part of commissioning processes and with regard to due diligence processes. It would be useful to ensure that the requirements of the Bill do not duplicate current processes but rather provide a framework to consolidate information which is already required by commissioners.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- The reconfiguration and extension of functions of the Care Council of Wales as Social Care Wales offers the opportunity for a joined up approach to social care improvement and support for practice development.
- However clear governance arrangements to support transparency will be needed to ensure that as workforce regulator and social care improvement agency Social Care Wales is able to maintain an independent position to that of Welsh Government. There should also be consideration of clear lines of accountability and strong working relationships with independent bodies such as the Children's Commissioner for Wales.
- We are unclear whether the remit of Social Care Wales in terms of social care improvement will extend beyond the remit of regulated professions to the wider social care workforce?
- We would seek assurance that social care improvement programmes take full account of the need to include the voluntary sector social care workforce in opportunities for training and practice development.

10. What are your views on the provisions in Part 3-8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- We support measures to support a high quality social care workforce but we do not believe that there is a need to extend registration to new categories of staff. The power to extend

registration would require proper consultation with all social care worker employers and any extension would need to be introduced over a reasonable time scale.

- We support the introduction of prohibition orders to ensure that children and young people are safeguarded.
- We would welcome further details on the ways in which the regulation of education and training for social care workers will operate. All our staff and volunteers receive mandatory training in safeguarding and child protection, equality and diversity and confidentiality and data protection. Additional training offers on issues such as recording, specialist areas of practice and evidenced interventions are also provided. Will the workforce regulator be required to assess the quality and standard of the training we offer to our staff or will we be required to ensure that staff attend training accredited or assured by the workforce regulator? If the role of Social Care Wales includes the inspection and approval of courses for the registered workforce will this power extend to the inspection and approval of education and training for the non-registered social care workforce as a result of the power to regulate the education and training of the 'social care workforce' – is this the wider social care workforce?
- We would seek assurance that grants and access to education and training to support the social care workforce will be made available to voluntary sector providers as well as the statutory sector.



Consultation Response

Regulation and Inspection of Social Care (Wales) Bill: Stage 1

April 2015

Introduction

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the consultation on the future of Regulation and Inspection of Care and Support in Wales.

Headline Issues

With a background of recent scandals in the provision of health and social care, we believe that there is a need for a robust regulation and inspection framework for social care in Wales. It is essential that this is built around the service user and able to challenge organisational cultures that are not delivering the desired outcomes for the individual. Standards relating to quality and dignity should provide a clear marker of what we expect with regard to the provision of care to vulnerable older people.

With regard to this Bill, and its ability to provide this framework, we have particular concerns about:

- The failure to extend registration of social care workforce groups to include domiciliary care workers and care workers employed in providing adult residential care. In a recent (February 2015) survey question by ICM on behalf of Age Cymru, 92% of the 1000 respondents believed that domiciliary care workers should be registered
- A potential conflict of interest in the role and remit of Social Care Wales (SCW) – protection of the public should be paramount and we have doubts as to whether SCW can be both a regulator and an improvement/training agency
- A lack of clarity in the terminology used both within this Bill and in terms of read-across to definitions contained within the Social Services and Well-being (Wales) Act 2014 (SSWA)

- A lack of recognition of carers throughout this Bill, which should recognise and reflect the position that they are accorded by the SSWA

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1. The protection of vulnerable older people who are in need of care and support, and their carers who need support, is vitally important. It therefore follows that the regulation and inspection system that carries out this role must be robust and fit for purpose. The Explanatory Memorandum demonstrates that there are good grounds why the current situation creates complexity and loopholes that could reasonably be avoided through the use of legislation, as well as the importance of ensuring quality services are delivered. It also recognises that there is a need to learn from serious incidents that have taken place in both health and social care in recent years. Many of these cases involved vulnerable older people. It is essential that we, as a society, provide proper and appropriate protection. On this basis, we welcome the introduction of the Bill.
- 1.2. It is not always clear from the Bill how its objectives will be achieved. In part, this derives from the situation where regulation and inspection focuses upon the activities of organisations delivering services whereas the new ethos of social service delivery, as set out in the SSWA is person-centred. The Bill needs to ensure that the desired outcomes of the person in need of care and support and the carer in need of support are not lost as a result.
- 1.3. There is an inequity in Human Rights protection for people who self-fund their care. Currently all residential care services provided or arranged by local authorities in Great Britain are covered by the Human Rights Act (HRA). Previously, a loophole existed which meant that care home services provided by private and third sector organisations under a contract to the local authority were not considered to fall within the scope of the HRA. Following a sustained campaign this loophole was closed by section 145 of the Health and Social Care Act 2008. However, care home residents who are eligible for care but who, due to means testing, have to arrange and pay for their own care (so-called self-funders) lack the full protection of the Act. We note the position that amendment of the HRA and its interpretation lies outside the powers of the National Assembly for Wales but we remain concerned about levels of human rights protection for people who self-fund their care services.
- 1.4. We hear from our local Age Cymru partners, a frustration at the lack of supervision of the work carried out by care workers in the community, and perhaps more importantly, the lack of time care workers have with each client. We believe that a task-based, rather than outcomes-based, approach to care plans and commissioning has resulted in poor practices in some areas of Wales. Many of our local Age Cymru partners are very concerned about the current quality of domiciliary care in their area. Increasing numbers of older people are reporting that their domiciliary care packages are being cut to 15-20 minute calls.
- 1.5. For example Age Cymru Swansea Bay report that clients are making choices between going to the toilet and getting something to eat, particularly as at

least 5 minutes of the call time is taken by completing admin and call monitoring. Another example was an older person having to have cold baths as there is not enough time to wait for the boiler to heat the water in a 20 minute call. This is clearly unacceptable and it is crucial that urgent improvements are made to the quality of care to maintain dignity. We would like to see outcomes-based commissioning across Wales and an end to 15 minute care visits as standard practice. Consideration should be given to including the type and cost of social care being commissioned in the local market stability reports, or the local authority annual report, as the commissioning process undoubtedly impacts upon the level and quality of care that is able to be delivered.

- 1.6. We are concerned that there is a lack of recognition of carers in the Bill as it currently stands. The SSWA is clear on the need to provide support to carers, effectively acknowledging the vital role that they play in providing care to their loved ones. It is therefore essential that this Bill reflects the significance attached to carers in that Act. As the submission by the Wales Carers Alliance demonstrates, this could often be done through quite small amendments on the face of the Bill. Carers should be included, for example, through their involvement in the inspection of service providers.
- 1.7. With regard to regulation of the workforce, we are concerned that there is a lack of clarity in some Parts of the Bill as to the way in which its provisions relate to different groups of the workforce, some of whom are registered with the regulator, some of whom are regulated with other regulators and some of whom are not registered individually. We would welcome clarity to enable easy identification of which provisions relate to which workforce groups. Whilst in places this is provided by the Welsh Government statement of policy intent previously submitted to the Committee, it is not always reflected on the face of the Bill. It is essential that it should be clear throughout when the remit of the Bill relates to all social care workers and when it relates only to those regulated by SCW.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1. A significant barrier to the effective operation of this scheme in practice would be the continued lack of funding within the social care sector as a whole. Whilst we recognise that efforts have been made to protect social services' budgets in Wales, further investment is needed if we are to provide quality person-centred care to the most vulnerable in our society.
- 2.2. A qualified, well-supported social care workforce is also essential in delivering such care. Currently, social care workers are often not regarded highly despite the vital nature of the work that they do. We welcome moves to provide support through the training-related role of SCW. However, it is not clear that it will benefit those key staff, such as domiciliary care workers, who provide what is often intimate personal care to vulnerable people in their own homes.
- 2.3. There is a lack of clarity relating to the reach and remit of SCW as it would be constituted in this Bill. In part this relates to its joint role as both the regulator and the improvement agency for the workforce. There is a potential for a conflict of interest to emerge here and it is essential that protection of the public through the workforce role is paramount. There is also a lack of clarity

in some sections where its remit appears to cover the whole social care workforce, even though some of these are covered by other regulatory bodies such as the Health and Care Professions Council (HCPC). In order for the framework to operate effectively whilst avoiding fragmentation and duplication, it needs to be absolutely clear at every point where its remit covers the whole social care workforce and where it covers only those who are registered with it in its role as regulator.

2.4. As the Explanatory Memorandum rightly recognises, there is a clear need to ensure that there is consistency and accuracy in the reports produced by inspectors and regulatory staff. Whilst subjective impressions are inevitable, there is also a need for objective criteria to ensure reports are consistent and build public confidence in the system. The reports also need to be written in a way that is both accessible and meaningful to the public. However, establishing objective criteria that can be applied to a person-centred social services ethos which should encourage growing variation and flexibility in terms of the services being delivered may prove to be a challenge.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1. We are concerned by the intention of the Bill to see compulsory registration for social care staff working in residential homes for children and young people, but not for social care staff working in residential homes for adults, many of whom will be older people. The inference is that different levels of protection are being provided to vulnerable groups as a consequence of these different expectations with regard to registration. However, the recent scandals referenced as a learning point for this Bill revolved around the provision of adult social care, most often care for older people. This suggests that this vulnerable group is in need of equal levels of protection which the Bill as it stands would not provide.

3.2. As noted above, the primary function of Social Care Wales should be the protection of service users.

3.3. Age Cymru also believes that the Bill should require social care services to include in their annual report how they are meeting their requirements under the Equality Act.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

4.1. The Bill could reasonably be strengthened in ways that both acknowledge and encourage more integrated working. There are issues around cooperation between regulators which would benefit from further clarification, but also useful scope for encouraging integration with regard to conducting inspections and workforce development that is being under-exploited at the moment. This would allow further strengthening of the system, as well as possible opportunities for streamlining, that would help to prevent fragmentation and duplication.

5. Do you think that any unintended consequences will arise from the Bill?

5.1. There are concerns around the definition of care as it is currently laid out in the Bill, especially when it is read across with definitions provided in the SSWA. It is our belief that the definition laid out in the Bill does not take

sufficient account of the importance of relationships and the need for quality interaction. Relationships between social care workers and those in need of care and support will inevitably shape the views of the latter in terms of whether they consider their desired outcomes are being met by the service provided. A focus on physical tasks detracts from this important element.

- 5.2. There is a question mark over whether definitions in this Bill that differ from those used in the SSWA may create different legal expectations, and thereby cause confusion among service providers about the expectations they have to meet.
- 5.3. A number of the service providers who will have to produce an annual return will be small organisations, often operating in the third sector. Where possible, the annual return of third sector organisations should align with reporting responsibilities that already exist through their status of charities.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example, moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

- 6.1. The SSWA intends to introduce person-centred care which may result in a more varied and flexible landscape of service provision than currently exists. It may be challenging to capture this.
- 6.2. We welcome the commitment to engaging with the public. We would like to see greater clarity in terms of the channels to be used for engagement, and the extent of the engagement to be undertaken. This is one of those points at which it would be useful to reference carers to ensure their involvement in the regulation and inspection processes. It is important to involve service users and their families in the design of the process; ask what matters most to them and what they want to see included in the range of reports that will flow from this framework.
- 6.3. We would like to see greater inclusion of lay inspectors (with experience of using services) as part of the inspection team, with a role in unannounced inspections and an equal voice in decision-making. Inspection teams must also include professionals with an understanding or experience of the care and/or support service being provided.
- 6.4. We welcome the introduction of an inspection quality ratings system, which should allow the public to compare the quality and safety of services. The current lack of differentiation makes it very difficult for people using services to effectively compare and judge quality of services. We have heard from people in Wales that choosing a care home can be a difficult process and that CSSIW reports are not very helpful in the process and also vary hugely in the quality of reporting and content. A ratings system would also help to foster a culture in which service providers are encouraged to aim higher rather than simply comply with requirements. Properly done, this system has the potential to allow those in need of care and support, and their loved ones, to make better informed choices about services.
- 6.5. In some areas, inspection quality ratings may also serve to highlight limited choice or availability, especially where the available services are receiving less good ratings. It would be useful to see this element considered under either the market oversight provision or the population needs assessment of the SSWA. It is essential that any such information is presented in ways that

are easily accessible to all. In view of the types of decision that may be influenced by such ratings, it is essential that information covers issues such as service capability to accommodate sensory loss, cognitive impairment and other issues which may affect the decision made by an older person and their loved ones regarding choice of service provision.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services

7.1. We strongly support the requirement for local authorities to undertake a risk assessment about continuity of service to help to prevent provider failure. We have been calling for stronger regulations to ensure that inspected care homes can prove that they are financially viable and reduce consequent threats to the safety and wellbeing of residents.

7.2. As highlighted above, if services become more flexible and varied in response to the shift towards person-centred care, this may be difficult to capture. Nevertheless, it is entirely appropriate that the ability of services to help achieve the desired outcomes of the individual be taken into account as part of reviewing performance.

7.3. Again, there could be mention in here of the need to involve carers as (well as) service users.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

8.1. We welcome the intention of these provisions. It is clear from the current situation that insufficient thought has been given to addressing levels of demand that are likely to arise in coming years, especially with regard to the need for services to cope with a growing number of older people with complex conditions. Market oversight should be used to provide an evidence base to make the argument for investment to address these challenges.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1. As highlighted above, we feel that the Bill currently lacks clarity on when references being made to social care workers relate only to those registered with SCW and when provisions relate to the entire workforce.

9.2. We are concerned that there is the potential for a conflict of interest between the role of Social Care Wales as a workforce regulator and its role as an improvement and training agency. Protecting the public is of vital importance and should be clearly separated from any other roles under its remit.

10. What are your views on the provisions in Parts 4-8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- 10.1. We are deeply concerned by the decision taken not to extend the registration of workforce groups to include domiciliary care staff. It is currently the case that domiciliary care workers are significantly less regulated than other groups of professionals, such as security workers and gas fitters and in a recent survey question by ICM on behalf of Age Cymru, 92% of the 1000 respondents believed that domiciliary care workers should be registered. Extending registration to this group would provide better protection on safeguarding grounds by preventing people deemed unsuitable by one care provider being able to get a job at another provider.
- 10.2. We believe that full registration is needed in order to provide a strong level of protection for vulnerable older people. We note that the Bill contains provisions for the introduction of a 'negative register' (via the use of prohibition orders) at a future point in time for those categories of social care workers not directly registered with Social Care Wales (or presumably any other regulator). However, we are not convinced that this offers a sufficiently strong level of protection to the most vulnerable people in our society.
- 10.3. Whilst it is true that we have not seen a scandal in the domiciliary care sector on the scale of those that have been uncovered in both residential care and healthcare settings in recent years, the risk exists as a consequence of the fact there is inevitably less opportunity to provide supervision and oversight to a care worker operating alone in the privacy of someone's own home. The lack of oversight, when coupled with a high turnover within the work force, is viewed as a significant factor exacerbating threats to the human rights of older people¹. We believe that there is a strong case for the registration of social care workers providing personal care in the homes of vulnerable, and often frail, older people.
- 10.4. Registering individual staff members who provide domiciliary care can also be used to enhance the status of their profession as well as ensuring that there is adequate protection for people receiving those services. In line with the comments made in our response to Question 3, we also believe that social care workers employed within adult residential care should also be registered, otherwise current legislative provisions appear to provide different levels of protection for groups of vulnerable people.
- 10.5. As the Explanatory Memorandum demonstrates, uptake of the voluntary registration scheme had been very limited. It is therefore reasonable to remove it as it was not serving to enhance public confidence in the system.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

- 11.1. We would like to see this part of the Bill used to encourage and promote greater cooperation between SCW and other regulatory bodies such as the HCPC.
- 11.2. We also believe there is room for improving service delivery and minimising duplication by encouraging cooperation to establish mutual recognition of equivalent (or even superior) qualifications to ensure that highly competent and qualified staff do not have to re-take qualifications (sometimes at a lower level than those they hold) before being able to take up a post in social care. This makes no sense from the point of view of workforce

¹ I Koehler (2014): *Key to care. Report of the Burstow Commission on the future of the home care workforce:* p20

development, or in terms of improving integration and joint working between related sectors.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

12.1. In as far as we are able to distinguish, the balance would appear to be reasonable but it is difficult to comment more fully at this stage.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

13.1. With regard to the financial implications of the Bill, we do not believe that we are in a position to make informed comment. We note, however, that a number of the projections are based upon assumptions concerning the size of the workforce that could be open to challenge. We also note that it is often anticipated in the Explanatory Memorandum that no costs will accrue from the changes made other than transition costs and are concerned that this may be an overly optimistic underlying assumption.

14. Are there any other comments you wish to make about specific sections of the Bill?

14.1. We are concerned in the lack of consistency in definitions and terminology, both within the Bill itself and also between this Bill and the Social Services and Well-being (Wales) Act 2014. In order for the Bill to be able to achieve its objectives, we need to achieve clarity in the use of language and definitions.

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[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Hywel Dda University Health Board – RISC 31 / Tystiolaeth gan Fwrdd Iechyd Prifysgol Hywel Dda – RISC 31

Brief Description on the Role of our Organisation

Hywel Dda University Local Health Board provides healthcare services to a total population of around 372,320 throughout Carmarthenshire (178,119), Ceredigion (78,200) and Pembrokeshire (116,001). It provides Acute, Primary, Community, Mental Health and Learning Disabilities services via General and Community Hospitals, Health Centres, GPs, Dentists, Pharmacists and Optometrists and other sites.

Consultation Questions and Responses

To help the Health and Social Care Committee in its consideration of the Regulation and Inspection of Social Care (Wales) Bill, the Committee would welcome your views on any of the following questions on which you feel able to comment.

General

1. Do you think the Bill as drafted will deliver the stated **aims** (to secure well-being for citizens and to improve the quality of care and support in Wales) **and objectives** set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?
 1. The Bill alludes to the fact of the disparity between England and Wales with regard to the regulatory regimes which means that there could be services in Wales that are unregulated. There is also some disparity with regard to the EU Directives. The legal changes have not been updated since Welsh Devolution and to the Government of Wales Act. The University Health Board therefore supports the view of a coherent Welsh statute and supports the move to a more effective legal Framework which will potentially reduce duplication and help streamline the rules and regulations.
2. What are the potential **barriers** to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?
 2. The Bill has an emphasis towards Social Care and the implications for those services. However there is a high percentage of care that is commissioned through Health Services and this needs to be recognised and the regulation of care in social care needs to be similarly replicated to the care provided through the NHS. Particularly the care packages for patients in their own homes and also the care that is commissioned in Nursing Homes. If there was enhanced regulation of care in the community. This would mean a significant increase in the resource to support this. The expertise of those providing the

care is not always of level that is appropriate and recruitment and retention of staff is sometimes difficult. More rigour in the regulations would improve standards and care for people both in Nursing Homes and in the community but having the appropriate resource to support care in the sector maybe difficult to find without further investment.

3. Do you think there are any issues relating to **equality** in protection for different groups of service users with the current provisions in the Bill?
 3. The intention to improve public engagement; the enhancement of the regulations, the introduction of quality ratings and an emphasis on outcomes over a broader spectrum of services can only help to ensure equity and equality for the individual.
4. Do you think there are any major **omissions** from the Bill or are there any elements you believe should be strengthened?
 4. There is a real emphasis in the Bill towards Social Services, the Bill should have more of a focus on Health Services as the NHS commission a significant amount of care in the sector.
5. Do you think that any unintended consequences will arise from the Bill?
 5. If all Services are regulated in the same way then this should not create inequalities for the public. The consequence of not may create unintentional disparity between services.

Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the **regulation of social care services**?

For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

 6. Inspection Quality Ratings are an excellent move to ensure that regulations consider quality which currently may not be the case. However the quality ratings need to be measuring the appropriate areas and need to be risk averse in certain areas. With regards to fees this depends on the levels that are charged.
7. What are your views on the provisions in Part 1 of the Bill for the **regulation of local authority social services**?

For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

 7. Have an outcomes based approach for service users in reviews of social service users is excellent and provides equality for all users. Increased public involvement is also helpful but it depends how this is managed. Focus groups

and talking and listening to what the majority rather than what the minority have to say will be very useful. Considering local markets is also a step forward. In some areas there is over provision and in others under provision of services and considering the local market provision can only help the inconsistencies in services.

8. What are your views on the provisions in Part 1 of the Bill for the development of **market oversight of the social care sector**?
For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.
8. Having an oversight of the financial and corporate sustainability will be very useful. But expertise in this field may have to be sought as this will be over and above core skills of regulatory bodies and if service lead extra resources / workforce will have to be sought to undertake this form of monitoring. However it is step in the right direction.
9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the **Care Council for Wales** as Social Care Wales and extend its remit?
9. The University Health Board does not have an opinion. However extending the remit will be useful and may create greater rigour.
10. What are your views on the provisions in Parts 4 - 8 of the Bill for **workforce regulation**?
For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.
10. Extending registration to further categories of staff may create confusion, therefore this is supported. The removal of voluntary registration introduction of prohibition orders the University Health Board supports.
11. What are your views on the provisions in Part 9 of the Bill for **co-operation and joint working by regulatory bodies**?
11. Cooperation and Joint working can only be a good thing to pool resources and create consistency for the regulatory bodies is supported.

Delegated powers

The Bill contains powers for Welsh Ministers to make Regulations and issue guidance, and for Social Care Wales to make Rules.

12. In your view does the Bill contain a reasonable balance between what is included on the **face of the Bill** and what is left to **subordinate legislation and guidance**?
12. The University Health Board supports the view that Welsh Ministers make regulations and issue guidance whilst Social Care Wales **and NHS make rules**.

Financial implications

13. What are your views on the **financial implications** of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

13. The University Health Board would just like to support the view that the Bill should be cost effective but provide the assurance that there is enhanced regulation in the system.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

14. Nothing further to add.

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[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Age Alliance Wales – RISC 32 / Tystiolaeth gan Gynghrair Henoed Cymru – RISC 32

Age Alliance Wales response to Health and Social Care Committee consultation on the Regulation and Inspection (Wales) Bill

April 2015

Age Alliance Wales

Age Alliance Wales (AAW) is an alliance of 19 national voluntary organisations committed to working together to develop the legislative, policy and resource frameworks that will improve the lives of older people. Collectively AAW member organisations possess service development and service delivery knowledge **and provide extensive direct support to older people across Wales**. The majority of organisations also act at a strategic as well as an operational level and many are membership based.

The following 19 organisations represent Age Alliance Wales: Action on Hearing Loss Cymru; Age Connects; Age Cymru; Alzheimer's Society Wales; Arthritis Care in Wales; The British Red Cross in Wales; Care & Repair Cymru; Carers Wales; Contact the Elderly; Carers Trust; Cruse Cymru; CSV-RSVP Wales; Deafblind Cymru; Disability Wales; NIACE Cymru; PRIME Cymru; RNIB Cymru; Royal Voluntary Service; The Stroke Association Wales.

4. Consultation questions

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of

care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

Age Alliance Wales (AAW) supports the aims of the Bill and the general principles behind it, however in order to achieve these aims we believe the Bill lacks sufficient reference to the needs of the individual.

We are also concerned that the Bill does not consider the impact of current changes in the way that social care is being delivered to older people in Wales. For example, as the impact of public sector cuts increases dependence on voluntary and private sectors to delivering social care services, clarity is needed on how the quality of such services will be monitored and how people receiving these services will be safeguarded.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

AAW would like to draw attention to the following barriers:

- Workers in adult care homes not required to register with Social Care Wales (see Q3).
- Lack of investment in the social care sector and the impact of public sector spending cuts.
- The lack of adequate and relevant training for inspectors and the regulatory workforce.
- The low status of social care workforce – low pay, poor working conditions and a lack of training and career progression means that many care homes and domiciliary care providers struggle to retain staff and to provide high quality service.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The Bill lacks any reference to the need to ensure that people with protected characteristics receive high quality care and equality of protection. Age Alliance Wales believes that ensuring that the social care workforce is competent to work with people from a range of backgrounds and with varying levels of need, is key if equality of protection for all is to be achieved. Failure to do so will prevent the Bill from achieving its ambition to secure well-being for citizens and to improve the quality of care and support in Wales. It is also vital that staff carrying out service inspections are able to communicate with service users from a range of backgrounds and with varying levels of need. Section 31, paragraph 6, states that inspectors will be authorised to speak with any person accommodated or receiving care in private. The inability to communicate with certain groups of service users will mean that their experiences are not included in inspection reports and any resulting recommendations will fail to address their needs.

Age Alliance Wales believes that equalities training should be provided to the social care workforce that includes dignity and respect principles, attitudes and values, empathy, equality and human rights, and challenging negative stereotypes.

Age Alliance Wales is concerned that workers in adult care homes are not currently required to register with Social Care Wales. This is in direct contrast to residential child care workers who are legally obliged to register. Age Alliance Wales fails to understand why older people receiving care and support at home or in residential settings are not afforded the same level of protection as children and would request that the Bill addresses this point. Recent reports from Southern Cross, Mid Staffs and Operation Jasmine focus on the abuse and neglect of older people and demonstrate that current legislation is not succeeding in protecting all vulnerable older people.

Age Alliance Wales is seriously concerned by the lack of regard for making reasonable adjustments to meet the needs of residents' with sight loss or hearing loss. We believe that inspection of care homes must include consideration of the accessibility of the environment and also the extent to which care homes are able to

deliver person centred care by catering for people from different cultures religions or sexual orientation.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

Age Alliance believes that the Bill should include a requirement for equality and diversity training for social care staff. (See above).

We also believe that Bill should require social care services to include in their annual report how they are meeting their requirements under the Equality Act.

5. Do you think that any unintended consequences will arise from the Bill?

There is a lack of continuity in language and the definition of terms between the Bill and the Social Services Act. Age Alliance Wales would expect definitions to correlate and is particularly concerned that the definition of care in the Bill focuses on the completion of physical tasks and does not include reference to well-being or the importance of social interaction.

Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

Age Alliance Wales is supportive of the provisions set out in Part 1 of the Bill, including the move to service based regulatory provision and powers to introduce inspection quality ratings.

We also welcome the move towards greater engagement with the public but want to stress the importance of ensuring that all information is made available in a range of accessible formats and languages. Information should be made available on how services will cater for people with sensory loss, dementia, different cultures and religions and sexual orientation.

Age Alliance Wales is concerned that the Bill makes no note of the importance of engaging with the family and carers of service users. Views should be gathered from all parties involved with the care and well-being of service users. Effective equality and diversity training will be key in ensuring staff are equipped to achieve this.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

Age Alliance Wales supports the provisions in Part 1 of the Bill on the regulation of local authority social services.

We support the duty to report on local markets for social care services as this should ensure that services are better suited for people from a diverse range of backgrounds and varying levels of need.

Working with service users to identify how to achieve personal outcomes is vital if the Bill is to achieve its aim of securing well-being for citizens and improving the quality of care and support in Wales. Once again we believe the Bill could be strengthened by making note of the range of agencies likely to be involved in supporting people to achieve their outcomes.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

Age Alliance Wales supports the provisions and the move towards better monitoring of financial and corporate sustainability.

A national market stability report would ensure that the future needs of all older people requiring care and support are planned for. It could also be used to ensure that different groups of older people are made aware of services.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

Age Alliance Wales agrees that it is sensible to extend the remit of Social Care Wales in order to increase its ability to improve the quality of training and standard of social care in Wales. However, we do not believe it is sensible to allow this body to have joint responsibility for enforcing training standards and providing training. AAW request further information on how this arrangement would work in the absence of an independent body to monitor the quality of training.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

Members of Age Alliance Wales have expressed different opinions on whether registration should be extended to include domiciliary care staff and consequently we are unable to provide a united view. We would value the opportunity to be part of a wider discussion on this point.

Are there any other comments you wish to make about specific sections of the Bill?

Age Alliance Wales was led to believe that the Bill would include reference to the current trend for allowing domiciliary workers to

carry out 15 minute visits to service users. We are therefore disappointed that this issue has not been addressed.

Further information

For further information, please contact Rachel Lewis, Age Alliance Wales Manager.

T. [REDACTED]
E. [REDACTED]



Multiple Sclerosis Society
Wales

A response from the Multiple Sclerosis Society Cymru

About Multiple Sclerosis and the MS Society

Multiple Sclerosis is the most common disabling neurological disorder affecting young people in the UK with more than 85,000 affected by the condition. We estimate that over 3,800 people are affected in Wales. It is a disease of the central nervous system. MS is unpredictable and can cause a wide variety of symptoms such as loss of mobility, pain, fatigue, vision problems, numbness, loss of balance, depression and cognitive problems. The disease may progress steadily or involve periods of active disease followed by periods of remission.

The MS Society is the UK-wide charity dedicated to supporting people who have MS, as well as providing help to those people's families, friends, carers and colleagues. A significant number of our trustees, staff and volunteers either have MS or a personal connection with MS.

The Society provides care and support through services which include a national information and helpline service, publications, a website that receives more than 40,000 visitors each month, welfare grants, funding research, funding MS specialist nurses and delivering respite care.

We are a democratic organisation with over 44,000 members. Our network of 340 branches delivers local services to people with MS across the UK.

Response

- 1.0 MS Society Cymru is very supportive of the Welsh Government's proposals to regulate the social care workforce in Wales. Hundreds of thousands of people receive some form of social care performed by workers with very little formal training caused by a system where competing care companies seek to undercut rival companies with lower overheads and cheaper staff. This has led to the development of an unmanaged social care market consisting of

social care services which are unsustainable and unable to deliver high quality care.

- 1.1 The current system, where the most vulnerable in society can be cared for by people with little or no training, needs to end. People living with MS who use care agencies often complain of a “conveyor belt” of care staff, where it is rare to see the same person more than once, and where often staff have taken the job, whilst they look for other opportunities. The MS Society conducted a series of focus groups with people with MS, and continuity of care was an issue consistently raised. People with MS told us:

‘I mainly have the same carers but sometimes they introduce new ones – I need more notice of this change. You are letting people into your home.’

‘If you need care then the last thing you want is to be telling people how to care for you every day.’ Many people with MS are not given the opportunity to build any sort of relationship between themselves and the staff commissioned to provide their care.

- 1.2 MS Society Cymru surveyed its members to ask what measures they thought would help to protect adults in care as part of formulating the response to this consultation. 75% of people surveyed thought that better training for social care staff was the number one priority, 32% thought that more social care staff were needed and only 27% thought that new structures and institutions were needed[×]. Training and education is therefore a top priority for people living with MS.

As a result we strongly welcome that the Bill states that Social Care Wales may make rules requiring registered persons (‘social care workers’) to undertake further training and continued professional development.¹ However we would like to add that we would welcome the Bill to include the role that voluntary and community sector organisations can play in continued professional development.

- 1.3 We welcome that Bill aims to reform the regulatory regime for care and support services to include a new service based model of regulation, provisions to monitor the operation of the care market, provisions to improve public engagement, and powers to introduce inspection quality ratings.² The registration and greater professionalisation of this sector would have a positive effect on the standards of care received. For example we would hope that that greater inspection would for example end inappropriately short homecare visit commissioned by services providers. Greater regulation will also ensure that services providers work to develop high quality and sustainable services.

[×] Respondents were allowed to vote for multiple options

¹ National Assembly for Wales (2015) *Bill Summary The Regulation and Inspection of Social Care (Wales) Bill*. Available at <http://www.assembly.wales/Research%20Documents/15-014%20Social%20Care%20Bill/15-014.pdf> p.11

² *Ibid.*, p.4

However, it is likely that this will have a negative impact on costs. The process of undercutting solely on price would not be possible if staff had to meet standards and be fully trained, and it would be likely that both administrative costs and wages would rise. In fact the Regulatory Impact Assessment sets out that cost over the first five years of the Bill will be around £9 million, this includes transitional costs of £3.3 million, with a part of this cost falling on service providers.³ We strongly advocate that all is done to ensure that this extra cost is not passed onto the service users. This added cost would be inappropriate and would act as an added barrier to accessing high quality social care services.

- 1.4 We agree that the Bill will bring about significant benefits if working conditions, wages and work satisfaction increase due to professionalisation, then there is a greater chance that people will proactively choose to become personal assistants as a long term career. This would improve the continuity of care that is often lacking and allow personal assistants to build up knowledge and experience of certain conditions and individuals, which would further improve the service user experience.
- 1.5 We would welcome the Bill advocating ways that social care professionals can share skills and knowledge developed. We would also welcome the Bill setting out a commitment to ensure that social care workers are able to benefit from the skills and knowledge of voluntary and community sector organisations. For example, through encouraging voluntary sector organisations and service providers to develop networks in which training and information on common conditions, common care needs, common support needs could be easily shared.
- 1.6 Finally MS Society Cymru hopes that the professionalisation of the social care workforce will have a positive effect on the working conditions of personal assistants and afford them with appropriate protection.

As part of the social care constitution for Wales MS Society Cymru and Leonard Cheshire proposed a series of responsibilities that service users had to their personal assistants as well as responsibilities that social care staff has to the service user.

The responsibilities to social care proposed were:

- You should always treat staff and personal assistants with respect, honesty and dignity. Follow the principle of “Do unto others as you would have them do unto you.”
- You have an obligation to be honest about your care needs when you are being assessed. If you are overly modest and do not explain your requirements, a local authority will not be able to provide support.

³ Ibid., p.15-16

- You should keep anyone involved with your care updated about your needs. If your condition changes or improves, then you should report this honestly.
- You should educate people who are caring for you about your specific condition or needs. It is unlikely that the individual who you are employing or the person assigned by an agency or your local authority will know as much about your condition as you do.
- You and those charged with your support should make sure that any care plan you agree to is designed to help you make sustainable and positive improvements in your life towards the goal of full and active citizenship. You should do your very best to keep to any care plan or package you agree to.
- You should give feedback to your local authority or care agency on staff matters and service provision, especially where you think that things can be improved. This would benefit you and other people receiving a similar service.
- You should keep appointments or cancel with due notice.
- You should seek to make your home a safe working environment for anyone coming into care for you. If you receive support from an agency to clean your home, it is you or your family's responsibility to make sure they leave your home safe.⁴

Whilst the responsibilities of social care staff proposed were:

- Staff will treat you with honesty, dignity and respect throughout your dealings with them.
- Staff have a duty to help you achieve the goals you have identified as important in your life.
- Staff and personal assistants will treat you as an individual with your own personal challenges and aspirations, not as a disability, impairment or condition.
- Staff will recognise that you are the expert on your own life and the support you need, and listen to your thoughts and opinions.
- Staff will be well informed about your needs, and knowledgeable about your condition and what it means for the support you need.
- Staff have a duty to provide you, or your chosen representatives, with simple, clear, and accessible information about the support they are providing you.
- Staff have a duty to inform you in advance of any likely changes in appointments, any changes to personnel, or any other arrangements that

⁴ Leonard Cheshire Disability and MS Society Cymru (2010) *'A social care constitution for Wales,'* p14-15

might affect you.

- Staff have a duty to protect your rights and promote your interests, and those of any unpaid carers.
- Staff have a duty to strive to establish and maintain your trust and confidence and that of unpaid carers.
- Staff have a duty to promote your independence.
- Staff have a duty to assist people in taking control of their lives, but where people need support or representation they also have a duty to make sure that the right system of support is in place.⁵

MS Society Cymru would like the Welsh Government to consider these rights and responsibilities when consulting on regulations under this section.

⁵ Leonard Cheshire Disability and MS Society Cymru (2010) *'A social care constitution for Wales,'* p18-19

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Hawliau - RISC 34 / Tystiolaeth gan Hawliau - RISC 34

Response to Consultation on Regulation and Inspection of Social Care (Wales) Bill RISCWB By The Health and Social Care Committee, National Assembly for Wales.

1 This response focuses on some specific issues within the context of the Bill rather than responding to individual consultation questions.

2 Values

Much of the draft legislation is process driven which whilst helpful also separates out the different stakeholders from the process. There is much to be proud of in Public Services in Wales. However I would argue that much of the poorer practice (in Wales and the UK) stems from unresolved value conflicts or professionals using poor values framework, which are harmful. As there is much policy and practice change currently it may be helpful to explore a suggestion within the Williams Commission that a cross sector public service values set is developed which is used to drive much of the current proposed changes. We are yet to develop Key Performance Indicators to measure values and their impact upon Public services in Wales. We should not lose the opportunity that the Bill provides to do so. As a start we could develop more creative approaches to interviewing for posts as some organisations are now beginning to use values based interviewing with clear benefits for service users.

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3 Exploring the role of values in public services is especially important as public services not only have to deal with the legislative changes but also demographic, financial and resource changes and the impact of social media to mention only a few of the changes they face. Perhaps the greatest challenge facing them is greater public expectations of what public services do and do not do. A clearer value framework would therefore help to drive the systemic changes, which are needed within public services in Wales. Issues such as 15-minute domiciliary care visits, poor terms and conditions (including zero hours contracts) for some residential and domiciliary staff and non-reporting of abuse would not have arisen if a clear values framework were embedded within and across all public services. Whilst there are definitional issues around what public services are, for the purpose of this submission I define them as any organisation delivering public services whether statutory or from the Third or Private sector. The narrow definition of “partner” as used within part 9 of the Social Services and Well Being (Wales) Act 2014 SSWBWA could impact negatively on parts of the Public Services.

4 Partnership Working

There are many positive examples of partnership working across Wales. There are also the less good as well. Whilst SSWBWA attempts to address partnership-working deficits where they exist it does it by putting it on a statutory footing. Which of course whilst being important to legal positivists does not address the softer issues of why some partnerships are ‘great’ and others are ‘poor’. Whilst an outcomes framework will attempt to address some of this I would suggest that we need to formally evaluate the effectiveness of partnerships, which deliver against the duties of the SSWBWA. There are lots of practice examples around Safeguarding where these models do exist however they need to be part of the formal impact and outcomes measurement framework introduced by the Bill and building upon SSWBWA.

5 Workforce

We do not have a fully individually regulated workforce within the Social Care Sector in Wales. Many workers who work with vulnerable citizens are outside the regulated workforce. We should take the opportunity, which exist under RISCWB to fully include all staff (temporary, permanent and agency) that work within the Social Care Workforce. An acceptance of a two-tier workforce some of whom are regulated and some who are not demeans our commitment to be ‘An age friendly Wales’ amongst other things. In my view whether this lack of regulation is caused by ignorance or structural ageism (as many unregulated staff work with older people) is a problem, which needs to be addressed. Whilst I realise that payment rates for residential care workers is outside the remit of this committee paying a living wage would begin to address the staffing challenges and help to bring stability to the sector.

6 Anecdotally I am aware that the automatic choices for job offers from job centres to the unemployed are Call Centres, Bar Work and Residential Care Work. This assumes that anyone can do care work which is obviously not true. The Bill therefore offers the opportunity to support that workforce and improve their terms and conditions, which we know will impact positively upon the care they provide. The recent review by the Older Peoples Commissioner into Residential Care for Older People, Historical Abuse Allegations, Operation Jasmine and the Winterbourne Review show us what happens when 'care' goes wrong. We should therefore use this Bill to ensure that all of those reports recommendations are included on the guidance to support the bill as it is developed. Sometimes we do not learn from history and the bill is an opportunity to do that.

7 In the way the workforce is structured there seems to be some rigid barriers between organisations and settings. It is often the case that the Inspectorate is made up of permanent workers who have been there a long time who often will have some distance between their most recent practice experiences. If some of these boundaries could be changed and secondments were available between various parts of the workforce inevitably there would be a greater understanding of the Inspected and Inspectorate various roles and challenges. Talking to colleagues within agencies there seems to be very much a 'Them and Us ' mentality rather than a belief that all of us are there 'to serve the people of Wales '. Culturally this is important, as whilst we do not want a weak inspection system we also want to focus on well being as defined by the individual ensuring that protection is robustly inspected. Whilst I know there have been lots of work to develop the use of Lay Inspectors etc. this work could be further developed.

8 Whilst much of the Bill focuses on process and of course explores culture of Inspection their needs to be further exploration of the cultural issues impacting upon the Social care sector in Wales and how these are addressed. It is time for a positive media strategy for social care rather than the reactive news stories we tend to see at the moment. Having come from the Third Sector I am often surprised how colleagues within statutory services focus upon a reactive media strategy rather than a proactive media strategy. The Inspection process as a good news story could be used to begin this process in Wales. Whilst there are some challenges there is also much to celebrate.

9 New Service Models

As the act beds in boundaries between professional will change and it could be argued disappear in some cases. Whilst the 'can and can only' test will ensure a focus for individual professional the focus on Prevention (Section 15) and Information Advice and Assistance (Section 17) within SSWBWA offer real potential for doing

things differently and in creative and exciting ways. As I said earlier the Bill is very process driven which I would argue does not allow or support professional to take reasonable risks. I am interested in how Health and Safety has been used within organisations to be unsupportive to staff and service users. There really therefore needs to be a debate with service users, service providers, regulators and other stakeholders about how regulation and inspection responds to individual often reasonable requests which are turned down on the grounds of risk. It should be clear that this is not risk relating to protection but risk relating to process

10 I know from talking to individual professionals and within organisations how frustrating the risk averse culture is in 2015. The Bill therefore when it issues Codes of practice etc. needs to address this. This is especially important, as Public Services will be based upon SSWBWA and other legislation delivering new services in new ways. This will be what people need for their well being and not slotting what people need into the services we provide. Included in this development should be the significant work needed to support commissioning to deliver according to the principles of the SSWBWA and not many of its current process driven models.

11 Equality

There is still concern that the Medical Model of Disability is embedded within the SSWBWA rather than the Social Model of Disability. If this remains the case and of course Part 2 Regulations and Codes of Practice are still to be debated by the NAFW then the inspection regime may need to take cognizance of this. A robust inspection regime taking account of the International Convention for Disabled People would address this deficit within the SSWBWA.

12 Whilst the EIA for the Bill does explore Gender it could be argued that the Bill from a regulation perspective needs to explore in greater detail than it does. The gendered impact of social care both from the perspective of those receiving services and those providing them. The workforce in Wales is now attracting a range of Migrant Workers. Often their training in their home countries has been different to UK based training and they will have different expectations of the role of social care and how it is provided. Whilst it is not a major issue, it might be helpful to explore the impact upon the workforce of migration, as there could be positive lessons for the workforce in exploring these issues in more detail. This is especially important, as they have worked in their home countries using different models of service delivery.

13 Co Production

Co production of service delivery is at the heart of the expectations of SSWBWA. This in my view building on the points made in paragraph 9 as some of the principles behind the act will need to be inspected in a new way. They will have to be at the

pace of the service user and approaches such as Kafka and Open Space facilitation approaches will need to be within the Inspectors toolkit. Whilst there has been much work done on the Childrens Participation agenda the demise of Funky Dragon will not help support the expectations of the act in doing things differently. Within the Childrens sector it might be helpful to open up dialogue with organisations such as Children in Wales and Voices from Care about how this agenda should be supported in terms of positive changes to the Inspection process.

14 For adults there is a far wider range of stakeholder groups representing a range of issues and of course Participation Cymru and a range of organisations will have a role in this. I am not convinced that all of the workforce broadly has a clear view of A) what this principle means B) what impact it will have in practice and C) how it is to be evaluated. The market shaping aspects of the bill especially as it relates to Section 16 of SSWBWA needs to be explored further. This is especially so in terms of Governance and Risk for Third Sector, Social Enterprises, Co Operatives and User Led Groups. We could see for example Local Authorities or other Commissioners handing over significant liabilities in for example TUPE to small providers. This could have unintended outcomes which could contract the social care market rather than develop it.

15 Structure of the Bill

The Bill appears to be structured into sub parts with much of it being more appropriate to being in regulation rather on the face of the act. As it appears at Stage 1 it is often driven by process rather than principle.

In conclusion it seems to be that an exciting opportunity exists to do things in new ways whilst keeping much of 'what works' currently. The resource implications and training implications (single professional and multi professional) need to be addressed. This will ensure that the bill supports the significant aspirations of SSWBWA and empowers the workforce to deliver social care in an integrated, thoughtful and considered way. Whilst the act and the bill will not address workload as they bed in they will change fundamentally how social care is defined and delivered in Wales.

Mike Lewis
Hawliau Consultancy

24th April 2015

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Cardiff and Vale of Glamorgan Community Health Council – RISC 35 /
Tystiolaeth gan Gyngor Iechyd Cymuned Caerdydd a Bro Morgannwg – RISC 35



Cyngor Iechyd Cymuned Caerdydd a Bro Morgannwg
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Cardiff and Vale of Glamorgan Community Health Council
Third Floor
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24th April 2015

Committee Clerk
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Dear Sir/Madam

Re: Call for Evidence on the General Principles of the Regulation and Inspection of the Social Care (Wales) Bill Consultation

Thank you for offering the Members of the Cardiff and Vale of Glamorgan CHC the opportunity of commenting on the above Consultation. The following are our response to the questions raised in Annex A:

General

Cadeirydd / Chair: Mrs Lesley Jones MSc, Cert.Ed. CQSW
Prif Swyddog / Chief Officer: Mr Stephen Allen MSc: MIHM
Pack Page 220

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Ebost/Email: [REDACTED]
www.communityhealthcouncils.org.uk/cardiffandvale
www.facebook.com/CAVOG.CHC

- 1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?**

The Bill does meet some of the aims, but not all. We welcome the improvement in administration, regulation of service providers and strategic thinking on market stability.

We do not feel however that there is adequate description on how service users can be supported when there are problems with service provision.

The timescale of 14 days following identification of a problem seems adequate but what happens during an emergency i.e. immediate closure of a Nursing Home?

- 2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?**

There is no mention of the Mental Capacity Act and Risk Assessment. Not mentioning these may mean that aspects of care may be overlooked (33 – sub-section 6).

The charging for policy documents could be prohibitive for the public.

There is no mention of the Disability Discrimination Act within section 106 (2).

- 3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provision in the Bill?**

The Bill does not take into account equality of provision to those service users with Spiritual Needs/Mental Health Needs/Learning Disabilities or Sensory Impairment.

These groups may be disadvantaged and special provision should be provided to ensure that people with limited capacity have adequate support from an advocate from an appropriate agency to support them during the consultation process.

- 4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?**

There is no clarity regarding Investigation of Complaints against Social Workers. The Bill does not make it clear to whom to refer regarding Fitness to Practice.

There is no mention of Social Services and or an employer in the disciplinary process of the Social Worker.

There is no mention how visiting Social Workers will be checked and monitored from Europe by private employers.

There is no mention of Wales within Part 2 – Section 35 on page 125.

5. Do you think that any unintended consequences will arise from the Bill?

Responsibility for payment of registration if not paid for by the employer could possibly result in the employment of insufficiently qualified workers.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

There must be specific criteria for arriving at a rating whereby an appeal can be made.

There is ambiguity around charging fees for reports and we feel that a charge should not be made.

7. What are your views in the provisions in Part 1 of the Bill for the regulation of local authority services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report in local markets for social care services.

Despite the offence of providing false or misleading information, there is a danger that the collection of the service user views by the service provider could lead to misinterpretation or abuse. This is particularly the case when the service users have reduced capacity. It would be preferable to have an advocate who is independent of the providers to undertake this task.

Under point 149d – There should be an addition for the consideration of outcomes for service users in accessible formats.

We welcome the new duty to report on local markets. There is a great deal about regulating in-house Social Services provision but less so about maintaining and regulating out-sourced services e.g. domiciliary care.

8. **What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.**

We welcome the development of market oversight of the Social Care Sector.

If you are assessing financial and corporate sustainability of service providers at what level will this be set? Should there be minimum financial requirements for the provision of social care services.

9. **What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?**

We have no comment to make in relation to the name change.

10. **What are your views on the provisions in Part 4 – 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary regulation, and the introduction of prohibition orders.**

We would be in favour of extending registration to new categories without reference to other perceived constraints as it links to meeting defined standards of competency and accountability.

Under Point 116 1(e) it is not clear how adverse physical or mental health can be reconciled with the requirements of the Disability Discrimination Act.

11. **What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?**

We welcome co-operation and joint working by regulatory bodies, but there is no mention of the Welsh Ambulance Services NHS Trust.

Delegated Powers

12. In your view does the Bill contain a reasonable balance between what is included in the face of the Bill and what is left to subordinate legislation and guidance?

No comment.

13. What are your views on the financial implication of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

While there are no additional ongoing costs to providers and the CSSIW for the changes, it is noted that there will be additional transitional costs to the service providers for amending the data collection tools. This will have the biggest impact on small service providers.

14. Are there any other comments you wish to make about specific sections of the Bill?

More clarity is required between Welsh Ministers and Social Services in the Bill.

We welcome the move to provide better and more comprehensive information on the quality of social care services which will inform service users, their carers and their families on what is available to them, but we are concerned that the quality of information should be accurate. In this regard, we also welcome the Post Implementation Review to monitor the effectiveness of the new regulatory approach.

Will the guidance be specific about the qualification requirements for the different categories of workers?

P.45 – Advice and Assistance – Will details be provided on grants advice or other assistance in Section 68 (1).

Mrs Jill Shelton
Mrs Alison Walker
CHC Members

National Assembly for Wales / Cynulliad Cenedlaethol Cymru

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Evidence from Shared Lives Plus – RISC 36 / Tystiolaeth gan Shared Lives Plus – RISC 36

Shared Lives Plus response to the: 'Regulation and Inspection of Social Care (Wales) Bill' consultation Health and Social Care Committee

Our View

Shared Lives Plus members are supportive of the general principles and aim of the 'Regulation and Inspection of Social Care (Wales) Bill'. We welcome an approach which moves regulation beyond compliance with minimum standards and provides a greater focus on the quality of services and the impact which they have on people receiving them.

However, in supporting the Bill we ask that the work of Shared Lives carers is strongly considered when developing a new approach to inspection of services and that any changes do not have a detrimental effect on the valuable work of Shared Lives carers in Wales.

We believe that this is critical because:

1. The approaches already demonstrated by Shared Lives closely match many of the aims of the Social Services and Well-being Act 2014, as well as the Regulation & Inspection of Social Care (Wales) Bill
 - We offer an innovative, flexible and highly citizen-centred type of support
 - The person receiving support is carefully matched with a Shared Lives carer they wish to live with, and they jointly make decisions about the support provided
 - Arrangements are individually negotiated and designed, providing a much more personalised form of support
2. Shared Lives delivers substantial savings when compared to other forms of care
 - Shared Lives arrangements not only deliver better outcomes for people needing care, but do so at a saving of up to 60% for people with learning disabilities, 10% for older people and 30% for people with mental health problems
 - In addition to these savings, people in Shared Lives arrangements often have lower usage of community and emergency health care services.
3. Shared Lives schemes consistently outperform other forms of care in quality measures
 - All Shared Lives schemes in Wales exceed National Minimum Standards.
 - In Scotland, where more detailed data on quality of care is already available, 94.5% of Shared Lives schemes achieve good to excellent, compared to 81.7% of care homes
4. Shared Lives is a well-established and growing service
 - There are already over 600 Shared Lives Carers and around 800 people benefitting from Shared Lives arrangements across Wales. These numbers continue to grow year on year,

and it is essential that the Regulation & Inspection of Social Care (Wales) Bill supports this continued rise in citizen-centred service delivery

Who are Shared Lives Plus?

Shared Lives Plus is a registered charity and the national body supporting and representing Shared Lives carers and schemes across Wales and the wider UK.

As Shared Lives carers are self-employed they don't have a large employer to represent their interests or to make the case for the expansion of Shared Lives. This is the function of Shared Lives Plus and we undertake many projects across the UK as part of this role.

Within Wales we provide a voice for over 64% of Shared Lives carers (402/628) and 10 Shared Lives schemes covering all of the local authority areas – the first country in the UK to extend so extensively. Shared Lives Wales is the Welsh Committee for Shared Lives Plus working with the Welsh Assembly Government and national organisations in Wales to develop and promote Shared Lives (also known as Adult Placement). We work to ensure that a full understanding of the Shared Lives carer role influences the appropriate inspection of Shared Lives provision. The results have been largely successful in the 10 or so years since the introduction of regulations for Adult Placements (2004) Wales.

We are keen that this success continues for our growing membership base, and the people that benefit from the service in Wales.

What is Shared Lives?

In Shared Lives, everyone gets to contribute to real relationships and the goal is ordinary family life.

Shared Lives is a citizen focused proven alternative to home care and care homes for disabled adults and older people. It is a regulated service under Adult Placement regulations, with minimum standards enforced by government inspectors. Shared Lives carers are recruited, vetted, trained and supported by local Shared Lives schemes, who have to be registered with the government's care regulator.

Shared Lives carers are self-employed individuals (often former foster carers or care workers) who welcome people needing care into their own homes as family members. In Shared Lives, a Shared Lives carer and someone who needs support get to know each other and, if they both feel that they will be able to form a long-term bond, they share family and community life. These relationships can be lifelong. Shared Lives carers often say, "She/he is just one of the family."

Shared Lives is used by people with learning disabilities, people with mental health problems, older people, care leavers, disabled children becoming young adults, parents with learning disabilities and their children, people who misuse substances and (ex-)offenders. 76% of Shared Lives beneficiaries have learning disabilities and 12% have mental health problems.

People who use Shared Lives have often lived in many different institutions, and some have been considered too "challenging" to live in an ordinary household, but many find, for the first time, a sense of belonging with the Shared Lives carer. The main feature that distinguishes Shared Lives from other kinds of support is that,

whatever the service provided by the Shared Lives Carer, the person being supported has the opportunity to

share the Carer's family life and be part of their social networks. They will go to family events like weddings with the Shared Lives carer and get to know the Shared Lives carers' friends and neighbours. The relationships that develop are committed and consistent and highly valued by both the person receiving the services and the Shared Lives Carers.

Shared Lives carers are paid a modest amount to cover some of their time and expenses, but they are not paid by the hour and they do huge amounts without being paid: there is no "clocking on and clocking off". Shared Lives arrangements not only deliver better outcomes for people needing care, but do so at a saving of up to 60% for people with learning disabilities, 10% for older people and 30% for people with mental health problems. When people labelled 'challenging' have moved from care homes or 'assessment and referral units' into Shared Lives households, annual savings of up to £50,000 per person have been realised. The average saving is £13,000 per person.

Shared Lives Schemes provide a range of services to vulnerable and disabled adults that includes:

- Long term accommodation and support
- Short breaks
- Day time support
- Rehabilitative or intermediate support

Shared Lives carers and their families are at the heart of the schemes that we represent. They are fully involved in decisions about their lives, their support and the scheme's future. Matching between Shared Lives carers and people who use Shared Lives is central to the referral process and is a fair and transparent system. Shared Lives carers are never placed under pressure to accept matches, and people who use Shared Lives have a strong sense of belonging within their household, community and relationships.

Shared Lives carers, scheme workers and social workers have clearly defined roles and work together positively to help each individual plan and review their goals and support. As Shared Lives Plus we encourage schemes to recognise and respect Shared Lives carers as colleagues and allow them to play an active role in developing scheme policies.

Where possible we also encourage peer learning and support through carer groups, allowing Shared Lives carers to meet up, learn from each other and to influence the development of the scheme. Shared Lives carers are encouraged and supported to take part in Shared Lives Plus at both a regional and national level, including active participation within the Welsh Committee who helped to create this response.

Thank you

Shared Lives Plus are delighted at the opportunity to respond to this important consultation. We would welcome further opportunities to support the Health and Social Care Committee in their consideration of the Bill, including the forthcoming oral evidence session where we could provide a useful perspective as an innovative and proven citizen-centred care service.

Yours Sincerely,

Colin Gabriel Batten

Wales Development Officer
Shared Lives Plus

Regulation and Inspection Bill consultation

Your name: Cathrin Manning

Organisation (if applicable): British Red Cross

Email / telephone number: [REDACTED] / [REDACTED]

Your address: Red Cross House, North Wales Business Park, Cae Eithin,
Abergele LL22 8LJ

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 The British Red Cross welcome the intended aims of the Bill. Protecting the well-being of citizens by ensuring the delivery of good quality services through a robust regulatory and inspection system is and should be driving social care provision in Wales. We agree that changes to social care demand and delivery and current loopholes in regulation, which risk undermining the well-being of citizens, need to be addressed through legislation. We feel that the Bill does seek to resolve this.
- 1.2 We feel unable to definitively agree that the Bill will meet each objective based on the detail on the face of the Bill. We will be able to better reflect on this question when the regulations and standards underpinning the Bill are developed.
- 1.3 We are concerned that the Bill risks not meeting its objectives by not requiring the registration of domiciliary care workers and removing the availability of voluntary registration. This creates a gap where the training, competence, and performance of non-registered domiciliary workers, responsible for supporting vulnerable older people in their own homes, will

in future not be monitored by a regulating body. To require the registration of domiciliary managers but not their staff contradicts the aim of protecting the well-being of citizens and potentially weakens the step-change improvement agenda and development of the workforce.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

5. Do you think that any unintended consequences will arise from the Bill?

5.1 As already voiced in our response to question one (1.3), we are concerned by the decision not to extend registration to domiciliary care workers and removing the option of voluntary registration. We believe this will result in a large cohort of workers delivering care to vulnerable older people without their competence or training being regulated to ensure the well-being of people in receipt of those services.

Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 The Red Cross welcomes the provisions of a service-based model of regulation and engaging with the public.

6.2 We welcome the provision within the Bill to introduce quality ratings. We feel that quality ratings would help to ensure transparency and improve citizens' ability to make informed decisions about their care. Quality ratings will require clear communication to ensure that their meaning is properly understood and correctly interpreted by citizens.

6.3 In consideration of registration fees, we agree that before introduction there should be a consultative process. Whilst we support the intentions of the registration fees, careful consideration must be afforded to ensure that they do not deter organisations from delivering registered services and reduce the range and choice for citizens.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

8.1 Whilst we welcome the provisions to develop market oversight, sustainability of services sometimes depends on the funding terms of statutory sector commissioners. Often third sector commissioned services are funded year by year, full-cost recovery is not always achieved and services are subsidised by charitable funds. We would welcome the use of assessments of financial sustainability to encourage statutory sector commissioners to award longer term funding.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

10. What are your views on the provisions in Parts 4 – 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

10.1 As previously stated, we are concerned with the proposals not to extend registration to new categories of staff, particularly domiciliary care workers. This is exacerbated by the removal of voluntary registration. Currently, although domiciliary care workers are not required to register, the option of voluntary registration enables services to reassure individuals, their families and carers, and commissioners that staff are properly trained and competent to undertake their care role. By only requiring the domiciliary care manager to be registered, and not the workers delivering the care in the individual's home,

there is a risk to the individual's well-being and potential for a lack of confidence in the quality of the service.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

Delegated powers

The Bill contains powers for Welsh Ministers to make Regulations and issue guidance, and for Social Care Wales to make Rules.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

12.1 The face of the Bill seems to make provision for the subordinate legislation and guidance required to deliver the aims and objectives. However, it is difficult to comment on the balance without knowing the content of the subordinate legislation and guidance.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?



Comments from Public Health Wales on the Regulation and Inspection of Social Care (Wales) Bill April 2015

Introduction

Public Health Wales are grateful for the opportunity to comment on the above Bill.

As requested we have used Annex A format and the questions listed to respond to the consultation document.

Consultation Questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

The content of the Bill identifies a number of key changes which will support the wellbeing of citizens and the improvement of the quality of care and support provided in Wales. Consideration might need to be given to the use of “secure” as the Bill sets out actions and changes that will help support the wellbeing of citizens but will not be able to secure it.

Depending on the outcomes and impact of the Bill, legislation may need to be considered at a later date.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

There are a number of potential barriers to implementing the provisions of the Bill. The initial barrier is the cost (as set out under the financial implications of the Bill) which the public and service users might see as prohibitive. The potential for increased bureaucracy, with the reform of the regulatory regimes and the renaming of an organisation, is another barrier. Finally there could be a reticence from providers and also the workforce in relation to the implementation and application of increased regulation, as they potential could view this as unnecessary.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The Explanatory Memorandum contains a number of impact assessments which should consider the issues of equality. However, specific consideration should be given to those vulnerable members of society such as those with learning disabilities, children and vulnerable adults. The use of advocacy services could help to address this issue.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

We do not think that there are any major omissions in the Bill.

5. Do you think that any unintended consequences will arise from the Bill?

Due to an increase in regulation there could potentially be a knock on effect in relation to the number of providers available. Some providers may feel that the level of regulation is too much and choose to cease trading.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

The general objectives of Part 1 of the Bill ie to protect, promote and main the safety and wellbeing of people set out are to be applauded. The provision for the use of quality ratings in relation to the quality of care and support provided by a service provider, can be seen as positive as potentially the use of ratings can raise standards across the sectors.

We support the intent to engage and involve the public. The provision to have the power to charge fees would appear sensible to include although, depending on the level of fees, this may have a detrimental effect on some providers.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

The increased public involvement is particularly welcome and special steps to include the use of advocacy services should ensure that the views of all service users (especially those who have special needs) can have an impact on the regulation of social care services. It is also positive that there is a requirement on local authorities to produce an annual report which will include a focus on outcomes for service users.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of national market stability report.

In view of the recent history with certain service providers where they have become unable to sustain a service this provision is particularly welcomed. This provision should have a positive effect on service users if it provides a more stable market provision.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

While we have no particular objections to this proposal, any benefits of the proposed change should be considered in relation to the associated cost.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

The professionalisation of the workforce in the social care sector can only be beneficial. There is a need to ensure that staff from domiciliary care services which originate from English based agencies (and which are

currently unregulated in Wales) will be added to the list of those who should be regulated if as stated there is a proposal not to extend registration to new categories of staff. Such currently unregulated staff provide intimate care to our most vulnerable people within their own homes.

We would welcome the proposed prohibition orders intended to remove unsuitable persons from working in the social care sector.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

The need for all regulatory bodies to cooperate and work together is necessary and welcomed.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

The content of the Bill appears to contain a reasonable balance.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

The financial implications of the Bill are considered in detail under each section of the Bill and also under various groups. The costs are significant and whilst it can be presumed that the public would want improved regulation of the social care sector many may view the cost as prohibitive. The document also contains a number of statements which specify that not all costs have been quantifiable; so potentially the final cost might be significantly higher than already calculated.

14. Are there any other comments you wish to make about specific sections of the Bill?

Joint inspections and integration of standards between Health and Social care are essential. The appropriate sharing of information in relation to risks associated with care environments and staff providing care is also key to the safety and well-being of citizens requiring care.

Purpose:	Mamillan's response to the call for written evidence on the general principles of the Regulation & Inspection of Social Care (Wales) Bill
Contact:	Matthew Kennedy, Policy Officer (Wales) [REDACTED] Tel: [REDACTED]
Date created:	24 April 2015

1. Introduction

Macmillan Wales welcomes this opportunity to provide written evidence on the general principles of the Regulation & Inspection of Social Care (Wales) Bill. We believe that a change to the regulation and inspection regime is timely considering:

- The substantial and whole system change brought about through the Social Services & Wellbeing (Wales) Act and the need to ensure that implementation, consistently across the health and social care system is achieved.
- The nature of the incidents brought to the fore through respective enquiries in Wales & England reflecting negligence and poor care.
- The need to ensure that people are put in the driving seat of the services they receive, and that vitally, they have a key role to play in the regulation and inspection function in partnership with the respective bodies.

Although Macmillan services do not fall directly under the remit of the Bill, as an organisation working closely with people affected by cancer, we have a strong desire to ensure care and support services are able to provide the level of services potentially required by patients through their treatment and beyond. We have made the following general comments and suggestions on the Bill as it is currently drafted.

2. The Changing Story of Cancer

As the diagnosis and treatment of cancer is becoming ever more effective, many more people are living longer with and beyond cancer. There are currently 130,000 people are living with cancer in the Wales – a number set to double by 2030.

As the nature of cancer care and treatments changes, so do the needs of people who are affected by it – and the range of health and social care professionals and

services required to help meet those growing needs. This increase in the cancer population will have significant implications for both health and social care and will challenge existing models of cancer care. It is imperative that action is taken to ensure that care is holistic with non clinical needs routinely considered and covers social, financial, emotional, practical, psychological, spiritual and information needs. People need care beyond the clinical to enable them to live as well as possible and to become partners in their care enabling them to self manage as far as possible.

People who decades ago would have died shortly after diagnosis will increasingly survive for longer. 1 in 4 people will be living with the consequences and many will be living with an incurable cancer, remission and relapse. More focus is needed on this period of survivorship to improve quality of life, support patients to live well, as many more will be living with cancer, or the consequences of cancer as a long term condition.

3. Implications for Social Care in Wales

With instances of cancer diagnosis, and cancer survival both increasing it is vital that services are able to meet increasing demand for care and support. We know that, following treatment people affected by cancer can often face a cliff edge after their hospital treatment there is a lack of awareness about and uptake of services that are able to provide the care to help them maintain independence and positive progress. Publicised in 2013, produced in partnership between Macmillan and the Welsh Government, the Wales Cancer Experience Survey (CPES) provides a rich source of information relevant to this Bill. The CPES highlighted that there is overwhelming evidence that having a Clinical Nurse Specialist as a Key Worker enhances the delivery of cohesive care and provides an overall more positive experience for patients and their families throughout and beyond their treatment.

The CPES revealed that in a considerable amount of cases, patients were not able to access the care/help they required following treatment. Patients with a specialist cancer nurse, for example, as their key worker experienced a higher rate of access to additional services. But for those without, only 40% of patients were able to access the care/help they required. In addition the CPES revealed that older people, particularly those in the 75+ age group were far less likely to have received information about care/help available to them.

The regulation and inspection regime must and should take account of how effective the links between the health and social care workforce is. If needs are not met in a holistic way throughout an individual's cancer experience, we are concerned that this will result in increasing poor health, isolation and a reduction in wellbeing. It is disappointing therefore that the Bill only accounts for co-operation in relation to social workers. Joint working by regulatory bodies, should at its very minimum, encompass the NHS.

In its present drafting the Bill does not reflect a desirable person centred approach to the provision of care services. The Social Services & Wellbeing (Wales) Bill achieved a strong focus on preventative and person centred services, we believe that much of the narrative and language should be echoed in this Bill to ensure consistency.

With increasing financial and demand related challenges, we must continue to strive to look at innovative social care models that enhance care and support to meet increasing demand. We are keen to ensure that the Bill allows flexibility to capture these services in a way that maintains a desirable level of safeguarding along with ensuring the autonomy of services to develop in an innovative way. We welcome the provision for Local Authorities to hold an oversight of the social care market to ensure planning and service gaps are readily identified. We suggest that additional detail is require to properly highlight the role of the third sector and social enterprises in this respect, as has previously been done under functions in the Social Services & Wellbeing (Wales) Act. We feel that the knowledge, insight and expertise held within the third sector should be fully valued and recognised through provisions in the Bill.

4. Conclusion

Macmillan Cancer Support welcome the move toward re-shaping how regulation and inspection of social care operates in Wales. As a member of the Wales Carers Alliance and the Welsh Reablement Alliance we fully endorse and support the responses put forward by both respective alliances.

We hope you find the above narrative and information useful in shaping the next phase of the Bill process, if you would like any further information, or would like to discuss any of this response in more detail, please contact Matthew Kennedy (Policy Officer, Wales): [REDACTED]

National Assembly for Wales / Cynulliad Cenedlaethol
Cymru

[Health and Social Care Committee / Y Pwyllgor Iechyd a
Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil
Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Alzheimer's Society - RISC 40 / Tystiolaeth
gan Gymdeithas Alzheimer's - RISC 40

Alzheimer's
Society

Leading the
fight against
dementia

Alzheimer's Society

Regulation and Inspection of Social Care (Wales) Bill

24 April 2015

Consultation Response

Alzheimer's Society

Alzheimer's Society is the UK's leading support and research charity for people with dementia, their families and carers. We provide information and support to people with any form of dementia and their carers through our publications, National Dementia Helpline, website and more than 2,000 local services. We campaign for better quality of life for people with dementia and greater understanding of dementia. We also fund an innovative programme of medical and social research into the cause, cure and prevention of dementia and the care people receive.

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

Alzheimer's Society agrees that there is a need for legislation to achieve the stated aims and believes that the Bill is a step in the right direction towards achieving these aims. However, we feel that the Bill could have been more ambitious and gone further in meeting several of the identified objectives.

In particular, we have concerns that the Bill does not live up to the objective 'to place the citizen at the heart of the system.' The Bill as drafted focusses on the activities of organisations and not on the needs of the individual who requires support. In order to meet the objective of placing the citizen at the heart of the system, more emphasis on the individual will be necessary in the final version of the Bill or in the regulations.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

Alzheimer's Society believes that the Bill does not adequately take account of the following three barriers.

- Lack of investment in the social care sector and the impact of public sector spending cuts.
- Ambiguity over the reach and remit of Social Care Wales. More detail on this is provided in our response to question 9.
- Domiciliary care workers and workers in adult care homes should be required to register with Social Care Wales. More detail on this is provided in our response to question 3.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

People with dementia are core users of care and support services and it is vital that regulation and inspection places the needs of people with dementia at its heart. However, the Bill as currently drafted does not adequately protect people with dementia who are living in adult care homes or who receive domiciliary care. This is because, in contrast to residential child care workers, domiciliary care workers and workers in adult care homes are not currently required to register with Social Care Wales. Recent reports from Southern Cross, Mid Staffs and Operation Jasmine focus on the abuse and neglect of older people and demonstrate that current legislation is not succeeding in protecting all vulnerable older people and the Bill does not currently go far enough in improving the situation.

Alzheimer's Society also has concerns about the provision for inspectors to speak in private with any person accommodated or receiving care as part of their service inspections. However, there is no indication as to how inspectors will engage with people who may have communication difficulties as a result of their dementia. Neither is there any indication that it will be possible for inspectors to speak to family carers of those receiving care. If inspectors are not able to communicate with people with dementia and their carers then this reduces the likelihood that recommendations made by inspection reports will meet their needs. Alzheimer's Society therefore recommends that provision is made for inspectors to also speak in private with family carers and that all inspectors receive appropriate training in how to engage with people with dementia.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

Alzheimer's Society is concerned that the Bill does not go far enough to facilitate integration in inspections. The Social Services and Wellbeing Act will encourage greater integration in Wales, but this does not seem to be a major emphasis within the Regulation and Inspection Bill. It would be helpful if the Bill spelt out more clearly what the expectations were for cooperation and integration in inspections and improvement work. More detail about this is given in our response to question 11.

There also needs to be a greater recognition in the Bill of services for carers. Social care services have a role in promoting the wellbeing of carers as well as the people they are caring for. However, the Bill focuses on those in need of care and support to the detriment of carers. The Bill could be strengthened by adding references to the needs of carers of those with care and support needs.

5. Do you think that any unintended consequences will arise from the Bill?

Alzheimer's Society is extremely concerned about definition of care as relating to 'the day to day physical tasks and needs of the person cared for' and the 'mental processes related to those tasks'. This places the focus on task and time rather than the quality of the interaction and could have the unintended consequence of reducing the quality of care that is routinely provided. Relationships and the quality of human interaction, including the involvement of a carer, are vital elements in safeguarding and in providing high quality care services.

This definition of care could also create confusion as it conflicts with the much wider range of well-being outcomes included in the Social Services and Wellbeing Act. The legislative frameworks need to be consistent with each other and the broader definition included in the Social Services and Wellbeing Bill is the more likely of the two to incentivise better quality care.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

Alzheimer's Society is mostly supportive of the provisions set out in Part 1 of the Bill, including the move to service based regulatory provision and powers to introduce inspection quality ratings.

With regard to the inspection quality ratings, we would reiterate the caveats expressed in our previous consultation response. Any framework must be based on assessments which are meaningful to service users. In particular, judgements must focus on quality of life for service users as well as the quality of care they receive. Alzheimer's Society's Low expectations report found that nearly three quarters (74%) of family members said they would recommend their loved one's home to others, however only 41% said the quality of life of the person with dementia was good. This indicates a significant failing of aspiration about the quality of life that people with dementia in care homes can lead.

Furthermore, given the sensitivities around quality judgements and the potential for judgements to impact on the business viability of providers, it is vital that there is clear accountability around how judgements are made. The Society would also reiterate the need for regulatory staff to understand the needs of service users and recognise excellence in dementia care if quality judgements are to be accurate and trusted.

Alzheimer's Society would also request clarification on some of the detail regarding the service based model of regulation. For example, it is unclear whether 'regulated activity' is the same as 'regulated services'. The definition of regulated services in schedule 1 of the Bill appears limited when compared to the apparent breadth of social care services within the Social Services and Well-being (Wales) Act. Terminology will need to be clearly defined and used consistently. Alzheimer's Society would therefore appreciate clarification on

how services will be included in inspections if they don't fit the definitions provided in Schedule 1.

Furthermore, Alzheimer's Society understands that at present a single inspector carries out inspections. We suggest that the use of a small team of inspectors, thus allowing for validation of findings, might be a good model to promote through this Bill.

Finally, Alzheimer's Society welcomes the move towards greater engagement with the public which is stated in Part 1 of the Bill. However, we would appreciate more clarity about how this public engagement will be made accessible to people with dementia and their carers.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

Alzheimer's Society supports the provisions in Part 1 of the Bill on the regulation of local authority social services. We particularly welcome the inclusion of assessments of 'sufficiency of provision of care and support' within the proposed duty on local authorities to produce local market stability reports. Many services across Wales are finding themselves under increasing market pressure with services being commissioned on cost rather than quality. We hope that the new duty will encourage services that are better suited for people from a diverse range of backgrounds and with varying levels of need.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

Alzheimer's Society welcomes the move towards improved monitoring of financial and corporate sustainability. We hope that the national market stability report will make it more likely that future needs of people with dementia will be planned for and met.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

To some degree, Alzheimer's Society supports the extended remit of Social Care Wales as this should better equip it to improve the quality of training and the standards of social care in Wales. However, we do have some significant concerns about the proposals as currently drafted. These concerns include:

- Potential for conflict of interest in placing so many roles in one organisation

- Ambiguity over Social Care Wales' role in relation to those parts of the social care workforce regulated by other bodies
- Missed opportunity for greater integration

Alzheimer's Society believes that there is potential for a significant conflict of interest in placing so many roles in one organisation. We are particularly concerned about the tensions between Social Care Wales' regulatory function and its role in promoting and developing services as this could make it harder to have the honest discussion of issues that may be necessary prior to the need for regulatory sanctions. Furthermore, in terms of workforce development, it is impractical to expect Social Care Wales to have responsibility both for enforcing training standards and for providing training.

Alzheimer's Society would therefore welcome further information about how it is intended that these tensions will be balanced. We would emphasise that protecting service users should be the primary function of Social Care Wales and that functions relating to the promotion of any professional group should be secondary and separate. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider.

Alzheimer's Society is also concerned about potential ambiguity over Social Care Wales' proposed role in relation to the whole social care workforce, including those regulated by other bodies. Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of Social Care Wales as a regulator. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators and to provide clarity about the overlap with existing regulator functions. Definitions of social care workers also need to be clearer at various points in the Bill. While definitions could relate to the whole social care workforce when Social Care Wales is acting in its role as an improvement, education and support agency, there are several instances when it can only refer to those who are registered with and regulated by Social Care Wales and this needs to be stated far more clearly.

This ambiguity also means that there is a missed opportunity for clarification of relationships between different regulatory and inspection regimes. Practitioners registered with and regulated by other regulatory bodies will remain under the jurisdiction of those regulators. Without clarity about the relationship between these regulatory systems there is a potential for multiple regulation which could lead both to confusion about accountabilities and also to onerous regulation and inspection requirements. This seems like a missed opportunity for streamlining and for improving integration in health and social care.

Given the policy direction of greater integration, Alzheimer's Society is also surprised that there is no reference to co-operation in relation to the education and training aspect of Social Care Wales' role. We are aware that the current lack of cross recognition of qualifications between health and social care can

create barriers to more effective integration. It seems that the Bill as currently drafted is a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks etc. This is also relevant to our response to question 11.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

Alzheimer's Society welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title. This should go some way towards maintaining the safety and wellbeing of people with dementia who receive services. However, action in this area needs to go further than is currently being proposed..

Workforce regulation should be proportionate to risk and, as mentioned in our response to question 3, Alzheimer's Society believes that residential and domiciliary care staff supported older people should also be required to register with Social Care Wales. While we welcome the fact that the Bill includes the possibility of registering these staff in the future, we believe that registration should take place as a matter of urgency. The purpose of the regulatory system should be to minimise risk to vulnerable people and the lack of registration indicates that these vulnerable services users who are older are not being protected in the same way as younger service users.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

Given the greater integration expected by the Social Services and Wellbeing Act, Alzheimer's Society is surprised that there isn't more emphasis on cooperation in the Bill as currently drafted. For example, there is no reference to the potential for joint or integrated inspections with other organisations with regulatory functions. Could this lack of mention in the Bill actually prevent integrated inspections taking place and what would that mean for the integration agenda?

Some services will be inspected by several different organisations such as local authorities, CSSIW and HIW and this Bill could have represented an opportunity to streamline this system. We are therefore disappointed that Part 9 does not go further in promoting cooperative working between Social Care Wales and other regulatory bodies.

Furthermore, the Bill could have offered an ideal opportunity to allow for integrated workforce planning and career frameworks for the whole social care workforce. A framework which recognised qualifications across the sector would enable joint appointments and the movement of staff between health and social care without duplication for qualifications. In order for this to be possible, recognition needs to be given to the fact that workforce

development for some professions within the social care sector may also the responsibility of organisations other than Social Care Wales.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

Alzheimer's Society is not able to comment on this at this stage as there is little indication of what may be included in the subordinate legislation.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

Alzheimer's Society is concerned that the current significant underfunding of the social care sector is not being addressed.

14. Are there any other comments you wish to make about specific sections of the Bill?

The language used in this Bill is not always consistent with the language used in the Social Services and Wellbeing Act. Alzheimer's Society is concerned that this may need to confusion if continuity of language is not achieved.

For more information, please contact:

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill](#) / [Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Independent Consultative Group – RISC 41 / Tystiolaeth gan Grwp Ymgynghori Annibynnol – RISC 41

WEST WALES ADULT PLACEMENT SCHEME (WWAPS)

Consultative Group feedback 15th April 2015 on the Regulation and Inspection of Social Care (Wales) Bill.

N.B. The WWAPS consultative group is an elected body of Adult Placement (Shared Lives) carers and nominated service users. The group is relatively independent of the organisation/WWAPS, it has an independent chair and its own terms of reference.

Drawn from the notes of the ‘feedback’ meeting the group provides the following comments and in relation to Adult Placement services only.

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

“The new bill will have little effect on Inspection and Regulation if it does not recognise and promote good practise. The group considered how without being able to understand the relevant service model being regulated fully, acknowledging and supporting positive outcomes for people will remain disconnected from the inspection of service providers.

The inspection process may become shortened and more quality and outcome based.”

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

“The ability to engage with people who both provide and receive Adult Placement services without them being treated as part of the ‘regulated body’ was considered a challenge. The group did not want Adult Placement carers or their homes to become the focus of the any inspectors in the future but would welcome having an opportunity to have a voice and have their say. “

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

“not discussed”

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

“In relation to adult Placement it was not clear how consultation would take place with AP Carers and service users. The group reiterated that they did not feel it to be beneficial to directly inspect AP Carer homes, this was not clear nor was there any reference to how consultation could take place if AP Carers wanted to have their say.”

5. Do you think that any unintended consequences will arise from the Bill?

“not discussed”

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

“In general the group thought it positive to have some sort of measure and illustration of quality, how this should be done was not agreed upon. There was however general agreement that consultation should be broader than it perhaps is now to include those people who both directly and indirectly receive AP services”

Charges were not discussed

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service

users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

“not discussed”

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

“not discussed”

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

“not discussed”

10. What are your views on the provisions in Parts 4 – 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

“not discussed”

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

“not discussed”

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

“not discussed”

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

“not discussed”

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

The following was discussed:

“That lay people are a part of the inspection process. This may be less intimidated for AP Carers and Service Users. However, they would need to have experience in the care sector.”

Regulation and Inspection of Social Care (Wales) Bill Stage 1

Response to consultation by:

Professor Dame June Clark DBE PhD RN FRCN FAAN FLSW

Professor Emeritus, Swansea University

████████████████████; tel: ████████████████████

General

1. The Bill and its Explanatory Memorandum are so long and complicated that it is difficult for a concerned individual such as myself, or even for a relevant organisation, to identify issues of particular importance which are deeply embedded in the Bill. The fact that this is difficult at this stage suggests that front-end staff (eg the managers and staff of care homes) will find it difficult or impossible to ensure that they are complying with all its detailed provisions, and this may lead to excessive bureaucracy, challenges and appeals which may in turn detract from its actual implementation. My comments are therefore limited to a small number of the provisions which seem to me to be of particular importance.
2. At a time when there seems to be universal consensus in favour of better co-operation and integration of health and social services – especially from the service user’s point of view – the bill is unnecessarily divisive, especially in some of its language. While the definition of a “care home service” to include both residential and nursing homes is very welcome, the definition of “care” as “day to day physical tasks and needs of the person cared for” is far too narrow; for example this definition takes no account of the psycho-social aspects of care which are absolutely fundamental. The absence of a definition of “social care” is significant. Rather than continuing the sterile debate about distinctions between “health care” and “social care” and between “personal care” and “nursing care” we should now focus on “care and support” as a unified phenomenon. I remember the response to the investigation of the government’s Clinical Standards Advisory Group on Community Services for Elderly People (in which I was involved) way back in 1990:

“It seems to be easier to continue with local bickering about who should pay for care rather than take the risk of implementing a national standards framework and costing mechanism”.

Our report was instrumental in achieving the establishment of the Royal Commission on Long Term Care (of which I was a member) a year later, which carefully avoided the distinction between health and social care (which could be defined only as services provided by a particular agency) and carefully defined the three dimensions of care as “board and lodge”, “indirect support services” and “personal care” and distinguished between them. More than twenty years later the problems persist - promoted, I believe, more by the professional protectionism of the health and social work professions than by concern for the people they are supposed to be serving.

For these reasons I simply do not understand, and certainly do not support the proposal to rename the Care Council for Wales as Social Care Wales, nor the definitions (and therefore the provisions) for “social care workers”, which would, for example, exclude the hundreds of nurses working in nursing homes.

3. This quarrelling, along with the shortage of money and inadequate training of the workforce, constitutes the major barrier to implementing the provisions of the bill and preventing it from achieving its stated aims (which of course I support)
4. I support the re-orientation of the system from process to outcomes, the greater involvement of lay inspectors, and a quality rating system which is valid, reliable, and simple enough to be useful to people choosing a home for themselves or others. But however worthy the aims of the bill, and however rigorous the processes for regulation and inspection, improving the care depends on follow-up and implementation of the inspection’s recommendations for improvement. On this the bill appears to be silent. There are many reports of failure by the service providers to implement recommendations, infrequency of follow-up inspections, and lack of appropriate sanctions or incentives to ensure implementation.

The social care workforce (Part 4)

I have a particular interest in this Part. My concern is that “care and support” should be provided to vulnerable people by carers who have the appropriate type and level of knowledge and skill. It is now widely recognised that “care and support” is a multidisciplinary enterprise. Similarly, inspection teams must be multidisciplinary.

The following is the definition of social work approved by the IFSW General Meeting and the IASSW General Assembly in July 2014:

“Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.

Here is the internationally recognised definition of nursing:

"The unique function of the nurse is to assist the individual, sick or well, in the performance of those activities contributing to health or its recovery (or to peaceful death) that he would perform unaided if he had the necessary strength, will or knowledge"

My concern is that, as these definitions show, there is nothing in the knowledge base of social work that enables social workers or other social carers, without further training, to prescribe or to assess the quality of personal care, which, as the definition of nursing specifies, is part of nursing. Social workers cannot be expected to understand things such as the interaction between nutrition and pressure sores or the timing of diuretics and urinary incontinence. Staff of care homes, including residential care homes require access to nursing knowledge; so do inspection teams.

The Royal Commission on Long Term Care carefully defined “personal care” and explained why the issues of confidentiality and intimacy inherent in touching a person’s body distinguished it from other types of “care” and required that people who

provided it must be properly regulated. It follows that I support proposals for the training, regulation, and registration of all care workers.

I confirm that I am willing if required to supplement these notes by oral evidence.

June Clark DBE PhD RN FRCN FAAN FLSW, Professor Emeritus, Swansea University
April 2015

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Carers Trust Wales – RISC 43 / Tystiolaeth gan
Ymddiriedolaeth Gofalwyr Cymru – RISC 43

Carers Trust Wales response to National Assembly for Wales' call for evidence on Regulation and Inspection of Social Care (Wales) Bill

23 April 2015

Overview

- (i) Carers Trust Wales recognises the need for the Regulation and Inspection of Social Care (Wales) Bill
- (ii) We would welcome a greater recognition throughout the Bill and associated documents of carers, including a greater emphasis on carer involvement in the regulation and inspection of services, and a recognition that some social care will be provided as a result of a support plan for a carer.
- (iii) We welcome the duty on local authorities to produce reports on the provision of social care in their areas and hope these reports will be able to highlight and promote service provision/providers that meet the needs of carers
- (iv) We are **deeply concerned** about the intention to introduce partial cost recovery for regulatory activity by charging fees, including fees for services to register. We feel this will have a disproportionate impact on small third sector services. We believe that the introduction of fees would disproportionately impact quality-focused, small, third sector services who are already operating in difficult and constrained economic climate.

Carers Trust is a registered charity in England and Wales (1145181) and in Scotland (SC042870). Registered as a company limited by guarantee in England and Wales No. 7697170. Registered office: 32–36 Loman Street, London SE1 0EH.

Mae Ymddiriedolaeth y Gofalwyr yn elusen gofrestredig yng Nghymru a Lloegr (1145181) ag yn yr Alban (SC042870). Cwmni cyfyngedig trwy warant, cofrestrwyd yng Nghymru a Lloegr rhif 7697170. Swyddfa Gofrestredig: 32–36 Stryd Loman, Llundain SE1 0EH.

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- (v) We believe there is ambiguity over Social Care Wales' proposed role in relation to the wider social care workforce beyond those who would be registered to and regulated by Social Care Wales
- (vi) We are concerned about the way the Bill defines 'care' as being physical tasks and the mental processes associated with those physical tasks. We feel this downplays the importance of human interaction and relationships, including involvement of the carer, in delivering effective, quality care.
- (vii) We feel that the Bill could have been more ambitious and gone further in promoting integrated and joined up approach to inspections, workforce development and education
- (viii) In its current form, we feel it is not immediately clear how the Bill relates to the social care workforce as a whole. Similarly, at a number of points in the Bill it is not immediately clear which groups are being referred to when the Bill refers to the 'social care workforce'.
- (ix) These changes to the regulation and inspection of services must be reflected in the contract or tenders offered by social services across Wales – commissioners cannot simply keep pushing for the best price as there is an inherent cost in providing quality services – staff training, monitoring, investment in staff development etc. that we have historically borne despite the financial demands of contracting regimes.

About Carers Trust Wales

Carers Trust Wales welcomes the opportunity to respond to the National Assembly for Wales' call for evidence on the Regulation and Inspection of Social Care (Wales) Bill. Carers Trust is a new charity which was formed by the merger of The Princess Royal Trust for Carers and Crossroads Care in April 2012.

Carers Trust Wales works across Wales to improve support, services and recognition for the 370,000 carers in Wales living with the challenges of caring unpaid for a family member or friend who is ill, frail, disabled or has mental health or addiction problems. With our Network Partners, who are local service providers across Wales, we aim to ensure that information, advice and practical support are available to all carers.

Our strategic aims are to

- Raise the profile of carers and the caring role
- Support the growth and development of solutions for carers

Carers Trust

- Influence society to improve carers' lives
- Work with local partners to develop a strong network

Together with our network partners, we provide access to desperately-needed breaks, information and advice, education, training and employment opportunities – working with 20,000 carers a year in Wales. Our network partners benefit from the provision of grants, advice documents and reports to improve carers' services. We give carers and young carers avenues to speak to someone and make their voices heard, offline via our carers' services and young carers' schemes and online via our interactive websites.

Our vision is a world where the role and contribution of unpaid carers is recognised and they have access to the quality support and services they need to live their own lives.

We provide support, information, advice and services for the millions of people caring at home for a family member or friend. Our Network Partners reach carers of all ages and with a range of responsibilities, in their local communities. From helping carers to access local services, to making their views heard by opinion formers and professionals, together we help carers to connect with everyone and everything that can make a difference to their lives.

With carers' needs, choices and voices at the heart of everything we do, we strive to ensure that the enormous contribution they make to society and to those they care for is fully recognised, appreciated and valued.

Response

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 Carers Trust Wales feels that there is a need for legislation to achieve these aims. We recognise the need to incorporate well-being in response to the Social Services and Well-being (Wales) Act 2014 and to promote the involvement of citizens to help improve and assure quality (p. 10). We also recognise the need to learn from the serious incidents that have taken place across the UK in respect to safeguarding vulnerable citizens.

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1.2 We also believe that this Bill could help move social care in Wales towards the stated aims. We welcome the proposed duty on local authorities to produce local market stability reports, and we welcome that such reports would include assessment of 'sufficiency of provision of care and support'. Many of our network partners across Wales, which are charities focused on supporting carers, are finding themselves under increasing market pressure with services being commissioned on cost rather than quality.

1.3 We believe that the local market stability reports could help promote and secure these services and in doing so protect carers' wellbeing. 96% of care in the community is delivered by carers, saving social services and the NHS in Wales a significant amount of expenditure, preventing hospitalisations and supporting faster transfers of care.

1.4 To support them in their caring responsibilities, carers require quality social care that includes longer visits. A '15-minute call' does not provide carers with a break, and evidence demonstrates how vital good care and support are in ensuring a carer is able to continue in their caring role. A 2011 report found that spending more on breaks, training, information and emotional support for carers could significantly reduce the overall spending on care by local authorities¹.

1.5 As such, Carers Trust Wales would want local market stability reports to take into account the type of social care being commissioned and at what cost the social care is being commissioned.

1.6 We also believe that the local market stability reports should also make it clear how the social care providers being commissioned in the area is constituted – for example, what proportion of providers are in the third sector.

1.6 Carers Trust Wales would also like to see the involvement of carers in the inspection of service providers strengthened. For example, one way to do this would be to amend section 33, subsection 3 (f) as follows:

- (i) interview in private any person accommodated or receiving care and support at the place who consents to be interviewed.
- (j) interview in private the carer of any person receiving care and support at the place who consents to be interviewed

¹ Conochie, G (2011) *Supporting Carers: The Case for Change*; London: The Princess Royal Trust for Carers and Crossroads Care.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

2.1 Carers Trust Wales believes that some of the potential barriers to implementing the Bill include:

- Ambiguity over the reach and remit of Social Care Wales in relation to the whole social care workforce, including those regulated by other bodies
- Potential conflicts of interest within Social Care Wales. Social Care Wales would have a number of different functions and roles. For example, as well as being responsible for protecting the public, Social Care Wales would also be responsible for the workforce development of social care workers.
- Difficulties in managing transition for service providers, including allowing enough time to raise awareness and support the implementation of changes to registration, regulation and reporting
- Difficulties in clearly and successfully communicating the changes, and what the changes mean in practical terms, to those with care and support needs and, where relevant, their carers

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 There are different expectations for registration of adult and children's workforces which may cause different levels of protection for vulnerable people.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

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4.1 Carers Trust Wales would welcome a greater recognition of the role social care plays in providing breaks to carers. Services, inspections and regulation are discussed across the Bill in relation to those in need of care and support but not their carers. Often, social care is safeguarding and promoting the well-being of both the person with care and support needs *and* the carer. Sections 39, 70 and 55 could all include additional reference to carers of those with care and support needs.

4.2 The Bill does not appear to encourage integration in inspections, workforce development and education, and in improvement agendas. Part 9 of the Bill does highlight co-operation between regulatory bodies stating that such bodies must 'co-operate with each other... if they think that such co-operation...will have a positive effect'. But the relevant bodies listed in part 9 do not include other professional regulatory bodies such as HCPC.

4.3 To fully involve people in the regulation and inspection of services, we continue to believe that the introduction of 'lay inspectors' would help improve regulated services in Wales as well as helping to protect and promote the well-being of people in Wales. We would welcome clarity on any intention to make provision for 'lay inspectors' in either the regulations or codes of practice associated with the Bill.

5. Do you think that any unintended consequences will arise from the Bill?

5.1 Carers Trust Wales is concerned by the definition of 'care' in the Bill in section 3. This definition defines 'care' as relating to 'the day to day physical tasks and needs of the person cared for' and the 'mental processed related to those task'. We feel that this definition does not place a sufficient emphasis on the relationships and quality human interaction inherent to providing a good standard of social care.

5.2 The policy intention to charge for the registration of services (and for there to be fees for other parts of the regulatory system) could have a disproportionate impact on the small third-sector services which other parts of Welsh Government policy are attempting to encourage. Currently small third sector services aimed at supporting carers are operating in an increasingly difficult financial environment. This is the result of the increasingly lower price at which local authorities are commissioning care.

5.3 Our network partners work hard to provide quality social care that delivers for the individual with care and support needs *and* the carer. By placing additional charges on these small third sector services, services that are for the most part funded by

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local authorities, and to a lesser extent local health boards, it is making it increasingly likely that small third sector services will be put at risk.

5.4 Many service providers in Wales, particularly those with a carer-focus such as our network partners, are third sector organisations. As such, care should be taken that the new responsibilities on service providers to provide an annual return align wherever possible with their existing reporting responsibilities as charities to avoid unnecessary duplication of effort, particularly among smaller, less-resourced, third-sector organisations.

5.5 Carers Trust Wales believes that an unintended consequence of the local market reports could be that initial market reports find that local markets are insufficient to meet the needs of citizens. In such a case, there would be a need for increased public sector investment in areas of the social care 'market'.

Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?

For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 Carers Trust Wales welcomes greater engagement with the public in Part 1 in relation to the regulation of social care services. However, we do not feel it is sufficiently clear in what ways or to what extent the public will be involved in the regulation of social care services in the Bill.

6.2 We would also want to see greater reference to involving carers specifically across the Bill. Carers are often experts in the care that those they care for require, but the involvement of carers directly in the current regulatory and inspection environment is inconsistent. Similarly, currently the involvement of carers in social care by service providers is not consistent across all service providers.

6.3 There are many opportunities to reference carers in the Bill including in section 33 (as outlined above). We welcome that the Statement of Policy Intent makes it

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clear that in regulations under Section 26 (1) carers will be involved in how providers work with service users to define and agree well-being outcomes that are personal to the service user. We feel that it is important that this involvement is clear and further emphasised. Social care may be arranged as a result of a support plan put in place by a local authority for the *carer*, the purpose of which is to enable the *carer* to meet their well-being outcomes. As such, it is important that the social care services in this context delivers for the carer's well-being outcomes also.

6.4 Carers Trust Wales welcomes the power and intention to introduce quality judgement ratings although with the usual caveats that such a system must not produce a 'league table' and must be developed carefully and in partnership with stakeholders. Many carer-focused services across Wales, including our network partners, already participate voluntarily in externally assessed quality awards, and as such would welcome an opportunity to gain national recognition for their existing commitment to quality.

6.5 As outlined in our response to the previous question, we are concerned that the introduction of fees for the registration of services would have a disproportionate impact on small third sector services which are largely funded by local authorities and prioritise quality, including those focused on supporting carers.

6.6 We are also unclear on whether there is an intention to charge for other costs of regulation including receiving inspection reports. We would welcome clarity on this and, again, strongly feel that such fees would be a disproportionate burden on small third sector providers.

7. What are your views on the provisions in Part 1 of the Bill for the Regulation of local authority social services?

For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 To reiterate our earlier points – we feel it is important that the Bill makes reference to involving carers specifically. For example, in section 55 the annual reports produced by local authorities could include detail on how they involved carers in how their social services functions were exercised.

7.2 We welcome the introduction of the new duty to report on local markets for social care services for the reasons outlined in our response to question 1 – if executed correctly, such reports should help promote quality social care that delivers for

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carers, as well as shine a light on the increasingly difficult environment that carer-focused services are currently operating in.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability

8.1 Carers Trust Wales welcomes the development of market oversight of the social care sector but feel it is important that great care be taken in developing the regulations that determine whether a provider falls under the regime.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1 Carers Trust Wales has some concerns over the breadth of Social Care Wales objectives as laid out in section 67 and how they relate to its regulatory role. The definition in section 78 of a social care worker is broad and encompasses workers from a range of professions regulated by other professional bodies. We would welcome clarity over which aspects of Social Care Wales' responsibilities relate to only those staff that are regulated and/or registered with Social Care Wales and which responsibilities relate to the whole social care workforce.

9.2 As outlined earlier in this response, Carers Trust Wales is concerned of potential conflicts of interest arising between Social Care Wales' functions – for example, Social Care Wales' regulatory functions in relation to fitness to practice and Social Care Wales' role in continuing professional development and the approval of courses.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation?

For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

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11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

As outlined in previous responses, we welcome the provisions in part 9. However, we are disappointed that Part 9 does not go further in encouraged and promoting co-operative working between Social Care Wales and other professional regulatory bodies such as HCPC.

23 April 2015

CONTACT

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Policy and Public Affairs Manager, Carers Trust Wales
Tel: [REDACTED]

Consultation on the Regulation and Inspection of Social Care (Wales) Bill: Stage 1



1. Leonard Cheshire Disability is very grateful to have the opportunity to respond to the Health and Social Care Committee's consultation on the general principles of the Regulation and Inspection of Social Care (Wales) Bill.

About Leonard Cheshire Disability

2. At Leonard Cheshire Disability we work for a society in which everyone is equally valued. We believe that disabled people should have the freedom to live their lives the way they choose - with the opportunity and support to live independently, to contribute economically and to participate fully in society.
3. We are one of the UK's largest voluntary sector providers of services for disabled people with over 250 services across the UK including care homes, care homes with nursing and homecare services. We aim to maximise personal choice and independence for people with disabilities and all of our services are designed to meet the needs and priorities of the people who use them.
4. As an active member of both Alliances we have contributed to the Social Care and Wellbeing Alliance Wales (SCWAW) and Welsh Reablement Alliance (WRA) joint response to the Committee's consultation.
 - SCWAW seeks to identify and address issues affecting social care and wellbeing and their impact on people in Wales.
 - WRA campaigns to promote the benefits of consistent, effective, integrated services which enable people to maximise their ability to live as independently as possible.
5. This response focuses on specific areas in which Leonard Cheshire Disability has expertise and knowledge, both as the UK's largest voluntary sector provider of social care services to disabled people and as a leading disability campaigning charity, and is intended to supplement the joint response.
6. We wish to highlight two important issues which are not adequately addressed in the existing Bill 'flying' 15 minute care visits and local authority commissioning arrangements. As always, our starting point in response to any consultation on adult social care is to ensure that the proposals will improve the safety and quality of care and support services for disabled people.

15 minute care

7. Leonard Cheshire Disability has previously highlighted the scandal of 15 minute care in our report [‘Ending 15 minute care’](#).
8. The report revealed the shocking number of disabled and older people who were left being forced to choose between having a cup of tea and going to the loo as a result of ‘flying’ 15-minute care visits.
9. As part of the report, we asked 2025 adults in Great Britain how long it took them to make a cup of tea, prepare a meal, go to the toilet, get dressed, wash themselves and make the bed - all activities that some disabled people and care workers are asked to squeeze into 15 minutes - on an average day. Not only were none of the adults able to complete all of the activities in 15-minutes, but also the average time taken to complete all of them was at least 40 minutes.¹ Quite simply, 15 minute care creates impossible choices, for disabled people and carer workers alike.
10. Further, despite guidance in the Care Act in England ruling out 15-minute visits for personal care, there has been no decrease in their use across the UK. In October 2014, 71% of local authority across England, Wales and Northern Ireland were still commissioning 15-minute visits.²
11. We are therefore grateful to the Assembly for previously amending the Social Services and Well-being (Wales) Act 2014, such that it states that a “local authority must satisfy itself that any visits to the person’s home for that purpose are of sufficient length to provide the person with the care and support required to meet the needs in question.”³
12. We are also grateful to the Committee for raising the issue of 15 minute care with the Minister, in its scrutiny to date of the general principles of the Regulation and Inspection of Social Care (Wales) Bill. We note the Minister’s response that:

“one of the standards that we will require through section 26(4) is ... [to]... require local authorities, through a standard, to achieve what the 2014 Act requires of them, and the inspector will then inspect against their success in that. One of the things I will think about during the passage of the Bill is whether a similar obligation ought to be put on private providers of domiciliary support services, because I think that might tighten the relationship between what we ask providers to do and how they will be inspected and held to account for it through this Bill.”⁴
13. While we welcome the Minister’s comments, the only way to ensure that no disabled people are forced to endure the scandal of 15-minute ‘flying’ care is to rule them out in law. The Regulation and Inspection of Social Care (Wales)

¹ Leonard Cheshire Disability, Ending 15 Minute Care, Page 7

² Based on responses from 125 local authorities to FOI research from Leonard Cheshire Disability

³ Section 34(3) of the Social Services and Well-being (Wales) Act 2014.

⁴ Record of Proceedings, National Assembly for Wales, Health and Social Care Committee, 25 March 2015, Paragraph 112

Bill is the perfect place to enshrine minimum standards of care for disabled people, and to ensure that the positive vision of social care set out in the Social Services and Well-being (Wales) Act 2014 is delivered on the ground.

Local Authority Commissioning

14. We note that there is currently no specific reference in the Bill to commissioning standards. Over recent years, the proportion of social care services provided ‘in house’ by local authorities has significantly declined, meaning that commissioning is now a vital part of social care provision all across Wales. As such, it is vital that commissioning is undertaken with the needs of disabled and older people in mind, and that regulation makes clear the necessity of getting commissioning right.

15. We would like to see this Bill include provision to ensure that:

- Local authorities do not seek to pass on budget cuts or unrealistic savings to social care providers, such that they are not able to pay their staff at a reasonable rate (it is our view that all care workers should be paid at least the Living Wage);
- Outcome focused commissioning is promoted, to ensure that disabled and older people have the support they need to achieve the outcomes they want; and
- Appropriate data is collected and shared, as required, such that if councils are commissioning inappropriate services (such as 15-minute visits for personal care) then this is immediately evident from the collected information.

16. Commissioning is a central part of the current social care landscape, and as such, it is absolutely vital that this Bill provides local authorities with the support they need to get it right.

Conclusion

17. We are grateful to the Committee for raising the unacceptability of 15-minute ‘flying’ care visits with the Minister already. Nevertheless, we would welcome amendments to the Bill to explicitly end the use of 15 minute care visits as routine practice, and to set minimum standards for commissioning on a nationwide basis.

Rhian Stangroom-Teel
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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill](#) /
[Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Older People's Commissioner for Wales – RISC 45 / Tystiolaeth gan Gomisiynydd Pobl Hyn Cymru- RISC 45

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David Rees AM
Chair, Health & Social Care Committee
Legislation Office
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CF99 1NA

28th April 2015

Dear Chair,

Re: Consultation on the Regulation & Inspection of Social Care (Wales) Bill

Thank you for the opportunity to provide initial written evidence to the Health and Social Care Committee on the general principles of the Regulation and Inspection of Social Care (Wales) Bill.

As Commissioner, I have a statutory function, as set out within the Commissioner for Older People (Wales) Act 2006 and the Commissioner for Older People in Wales Regulations 2007, to keep under review the adequacy and effectiveness of the law affecting the interests of older people in Wales.

Due to the importance of changes to social care to older people and the subsequent importance of ensuring the regulation and inspection

framework that surrounds social care effectively addresses the issues raised by older people, I am submitting this evidence as a discharge of this function.

As outlined in my Framework for Action 2013-17, which sets out my priorities as Commissioner, I have a wide interest in the quality of health and social care and the impact this has on the lives of older people. I have a particular interest in care homes following my legal Review¹ into the quality of life and care of older people living in care homes in Wales and this is reflected in my attached detailed comments.

Regulation and inspection of social care matters to older people, and has a clear impact on their experiences of and within the 'system', the quality and impact of care and support they receive, and their overall quality of life. However, they do not talk about it in this context. Instead, they tell me:

- 1. It is very difficult to judge the quality of care and support received or planned because of a lack of meaningful, accessible and understandable information. It can often feel like navigating through a maze of different reports that can be opaque and inconsistent. This makes it difficult for individuals to make decisions that are appropriate for them and to raise concerns and complaints.**

“Finding a suitable care home for my husband was the most soul destroying thing I have ever had to do. The information you were given was not always what you were presented with when you visited the place. Hoping that you had made a good choice was not clear until you had moved in.” **Family member**

- 2. Action is not taken quickly enough to remedy poor care. Poor care is tolerated and no-one seems to be held to account when it goes wrong.**

“I’ve raised this time and time again and nothing is ever done.”
Family member

¹ Older People’s Commissioner for Wales, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes, 2014

3. Staff don't have the skills to meet the needs of people or see the individual. Too often the importance of how things are done is overlooked.

"They had no training. I asked and the only training they had received was health and safety and manual handling, they had no idea of how to meet a resident's needs, particularly with dementia."

Family member

Care Home managers and providers also tell me that their experience of the regulation and inspection system of social care is that they feel there are often differing requirements placed upon them between commissioners and regulatory bodies. Care home managers of residential and nursing care homes stated very clearly throughout my Care Home Review² that there is often very little support available to them when they are struggling to provide acceptable care or when they want to change their approach.

From my perspective as Commissioner, there is much in the intent behind the Bill that I welcome:

- **Accountability of care providers** for the quality of care and support provided and the outcomes secured is vital. Those owning care homes as well as those recognised as responsible individuals should be accountable and I welcome the intent in the Bill to progress accountability. However, there are specific omissions and areas for improvement that I expand upon in my attached response. Accountability must also be extended to owners of services and 'fitness to own' should be included within the Bill. Accountability must also be accompanied by potential sanctions and I welcome the proposed indictable offence of failing to comply with any requirement posed by inspectors.
- **More effective powers for the regulator to act quickly and decisively where care is deemed to be 'beyond repair'**. Whilst this is welcomed, there is an important issue that needs to be further explored of how 'beyond repair' is determined and if there will ever be circumstances in which exemptions or exceptions are made.

² Older People's Commissioner for Wales, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes, 2014

This goes to the heart of what we are prepared to tolerate and for how long, which was a central message arising from my Care Home Review. The underpinning regulations and codes need to be clear on this, as well as the criteria against which a judgment to act quickly is made, which should be open, transparent and in the public domain.

- **Embedding wellbeing in the regulatory system.** My Care Home Review found that too often there is a focus on the functional aspects of care, with a reliance on a task-based approach. Whilst I welcome the intent to fully embed wellbeing outcomes at the heart of the inspection process, alongside care and support standards, the standards relating to all care and support provided must be aligned to overall quality of life and wellbeing and there must be a consistent approach to this throughout the system, in particular between regulators and commissioners. I would expect to see close alignment between the wellbeing outcomes proposed in the National Outcomes Framework for Social Services and the key aspects of quality of life in my Care Home Review (see Appendix B). I would also expect these outcomes to be reflected strongly in provider annual returns.
- **Better information about the quality of care delivered** is often something that older people tell me they want to see improved. I strongly welcome greater openness and transparency and I expect social care to mirror the approach adopted by health through the production of Annual Quality Statements. Reporting must include information on both the quality of care received and the overall quality of life and outcomes that have been secured through the provision of care and support. The indicators used to measure this must be meaningful, understandable and relevant to older people. Again, I am explicit in my Care Home Review what this should include.
- **Market stability** is a very significant issue. Recent events within Wales have demonstrated the impact that the withdrawal or closure of a provider can have on the individuals who relied on that care and support as well as on the wider social care system. I was very

clear in my Care Home Review about this and Requirement for Action 7.1 sets out that I expect to see a national plan to ensure the future supply of high quality care homes. I therefore welcome the duty to publish a National Market Stability report. However, this must be strengthened through inclusion within the Bill of a subsequent duty on Ministers to act to ensure that action takes place to secure a sustainable, high quality provider base. There should be a requirement on commissioners to incentivise provision of high quality services to enter and remain in the market within Wales and to remove from the market those that consistently provide poor and unacceptable care. It is my view that poor care should not be tolerated because there is no alternative and quality must sit at the heart of market stability. Whilst I welcome the focus on the financial viability of providers, this in and of itself is not sufficient to provide a high quality base.

- **Social Care Wales.** A key issue is how to ensure that people working within the sector have the right skills, know what is expected of them and that those consistently providing poor care are excluded from working within the sector. I welcome the extended powers for the social workforce regulator, but the Bill provides insufficient detail in relation to this. Social Care Wales must have the legal power to lay down national mandatory standards in relation to those working in the social care workforce, ranging from recruitment to assessment of performance. The Bill, as it currently stands, does not extend workforce registration to any additional groups of social care workers. This does not reflect the level of vulnerability of older people in care homes and leads to a lack of parity with other vulnerable groups.

Whilst there is much to be welcomed in the Bill, its intent must be translated into practice so that it has a positive impact on older people and addresses, in a way that can be evaluated, the three key critiques identified at the beginning of this letter. My view is that the Bill in its current drafting, does not sufficiently make the link back to clear outcomes that would have relevance to older people other than in a broader generic sense e.g. greater openness and transparency.

A detailed commentary on the proposed Bill is attached. I would also raise a number of general observations:

I was cognisant of the development of the Bill and as a result my Requirements for Action, identified through my Care Home Review, were written in such a way so that they could be lifted into the Bill and easily reflected within this legislation. To a certain extent this is the case but not to the extent that I wish to see. This is in part because of a lack of detail on the face of the Bill, but I would like greater assurance that my Requirements for Action will be actioned through regulations and supplementary codes of practice if they are not included on the face of the Bill.

It is crucial that the Bill remains focused, as the initial Framework for Sustainable Social Services did, on the impact it will have on the lives of people. Furthermore, a major omission from the Bill is reference to the UN Principles for Older Persons and the need for the regulation and inspection regime to be underpinned by a human rights-based approach. As Commissioner, I want to see due regard for the UN Principles on the face of the Bill to ensure consistency with the intent within the Social Services and Wellbeing (Wales) Act 2014 of delivering strong voice and real control for people and to ensure that the rights of people using services, and the rights of their carers, are upheld.

I have strongly welcomed the Welsh Government's commitment to an integrated approach to health and social care and it is therefore difficult to understand why this does not extend to the Regulation and Inspection of Social Care (Wales) Bill, something that restricts its ability to deliver systemic assurance about the quality of care and meaningful outcomes for older people in Wales, in particular in relation to the care of older people living in nursing homes or the health needs of older people living in residential care homes.

It is crucially important not to forget the outcomes that older people want and expect to see. It is my view that, notwithstanding the desire not to crowd the face of the Bill, too much of this intent is currently left to regulations. This could result in legislation that suits the system rather than what individuals need and have a right to. It is essential that it remains a Bill about people.

As the independent voice of older people in Wales, my interest will lie in how the intent of the Bill is made real for older people. There are a number of significant areas outlined in my response and I will pay close attention to how these are translated into practice. I will also track the progress of the secondary legislation as it is developed.

I look forward to giving further evidence to the Committee to support the Bill's progress through the detailed scrutiny process.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Sarah Rochira

Older People's Commissioner for Wales

C.C. Helen Finlayson, Clerk – Health & Social Care Committee

Appendix A – Feedback from older people, family members and the Commissioner’s social care rapporteurs

- 1. It is very difficult to judge the quality of care and support received or planned because of a lack of meaningful, accessible and understandable information. It can often feel like navigating through a maze of different reports that can be opaque and inconsistent. This makes it difficult for individuals to make decisions that are appropriate for them and to raise concerns and complaints.**

“We were not given any help, just told to find a nursing home”

“The most difficult decision I have ever made (and distressing for both of us) in my life”.

“Someone advising me what a good care home looked and felt like may have stopped me leaving Mum in a home that had staff more focussed on their staff meetings than on active residents having any stimulating conversation or being treated with respect. I've (or rather Mum) learned the hard way that a 5* hotel environment is not often a 5* care environment”.

“I was surprised at the lack of meaningful and accessible information. There was a lot of practical info i.e. the number of beds, but it’s disappointing that there are so few indicators of quality of care and quality of life within a care home setting.”

- 2. Action is not taken quickly enough to remedy poor care. Poor care is tolerated and no-one seems to be held to account when it goes wrong.**

“My mother’s teeth were left to rot in her mouth.”

“For me, she is safe but her life is sad. At least she is not abused.”

“Visiting in the afternoons I often had to ask staff to change my mother’s pad as she was leaking. The difficulty getting her from her room to downstairs meant that she did not get her pad changed before

lunch nor even immediately after. The result was always embarrassing, distressing and humiliating to her.”

“You are powerless.”

“We want to make sure that people are held to account, but it’s a long slog for justice and a heavy load we are carrying.”

“I wrote 3 different letters about various incidents and never had an outcome I was happy with”

3. Staff don’t have the skills to meet the needs of people or see the individual. Too often the importance of how things are done is overlooked. I have been clear through my Care Home Review,³ about the importance of an incentivised and professional social care workforce

“I feel like my grandfather is talked down to. I very much think he is ‘still in there’ despite not being able to talk. He is a bright man and I wish he was treated like it.”

“A care home is as good as its staff”

“They had no training. I asked and the only training they had received was health and safety and manual handling, they had no idea of how to meet a resident’s needs, particularly with dementia.”

“It is evident that the majority of those working in care home settings genuinely want to do a meaningful job and give the people they are working with a good quality of life - many of them have hidden wings on their backs. The problem is that often they are not supported within the environment in which they work and appropriate training is not the norm”.

³ Older People’s Commissioner for Wales, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes, 2014

Appendix B – Definition of ‘Quality of Life’ and the domains that should be used in relation to ‘Quality of Life’

- Older people tell me that their lives have value, meaning and purpose when they:
 - Feel safe and are listened to, valued and respected;
 - Are able to get the help they need, when they need it, in the way they want it;
 - Live in a place which suits them and their lives;
 - Are able to do the things that matter to them
- Requirement for Action 6.1 of the Care Home Review outlines the following domains that should be used in relation to quality of life.

At present, there is an inconsistent and geographically variable focus on quality of life within commissioning, which is too often seen as a functional task-based process. Although there is action being taken at a local level in Wales to better recognise quality of life and the Welsh Government has published a new Social Services National Outcomes Framework, this has yet to translate into a consistent and systematic approach to the commissioning, regulation and inspection of care that has quality of life at its heart and is reflected in the way that commissioning, regulation and inspection are implemented.

There are competing and inconsistent demands upon providers, both in relation to standards and reporting, as well as an inconsistent approach to joined-up working, information sharing and the use of information to better evaluate quality of life and care.

Requirement for Action 6.1 states:

A single outcomes framework of quality of life and care, and standard specification, is developed for use by all bodies involved in the regulation, provision and commissioning, and inspection of care homes and should flow through to become a defining standard within the future Regulation and Inspection Act. It must include references to the following:

1. *Independence and autonomy*
2. *Control over daily life*
3. *Rights, relationships and positive interactions*
4. *Ambitions (to fulfil, maintain, learn and improve skills)*
5. *Physical health and emotional wellbeing (to maintain and improve)*
6. *Safety and security (freedom from discrimination and harassment)*
7. *Dignity and respect*
8. *Protection from financial abuse*
9. *Receipt of high quality services*



Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Response from the Older People's Commissioner for Wales

to the

**National Assembly for Wales, Health and Social
Care Committee consultation on the
Regulation and Inspection of Social Care (Wales)
Bill**

April 2015

For more information regarding this response please contact:

Older People's Commissioner for Wales,
Cambrian Buildings,
Mount Stuart Square,
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About the Commissioner

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales, standing up and speaking out on their behalf. She works to ensure that those who are vulnerable and at risk are kept safe and ensures that all older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services they need. The Commissioner's work is driven by what older people say matters most to them and their voices are at the heart of all that she does. The Commissioner works to make Wales a good place to grow older - not just for some but for everyone.

The Older People's Commissioner:

- Promotes awareness of the rights and interests of older people in Wales.
- Challenges discrimination against older people in Wales.
- Encourages best practice in the treatment of older people in Wales.
- Reviews the law affecting the interests of older people in Wales.

Regulation and Inspection of Social Care (Wales) Bill

The Older People's Commissioner for Wales has a statutory duty, as set out within the Commissioner for Older People (Wales) Act 2006 and The Commissioner for Older People in Wales Regulations 2007 to keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales. As outlined by her Framework for Action 2013-17, the Commissioner has a wide interest in the quality of social care and the impact this has on the lives of older people.

Regulation and inspection of social care matters to older people, and has a clear impact on their experiences of the 'system' and their quality of life. However, they do not talk about it in this context. The Commissioner's critique of the Regulation and Inspection of Social Care (Wales) Bill addresses the concerns raised by older people and those delivering services, as outlined in her accompanying letter.

However, the Commissioner takes a particular interest in care homes following her legal Review into the quality of life and care of older people living in care homes in Wales. Due to the importance of the regulation and inspection framework that surrounds social care, and the need to raise the concerns of older people and whether the Bill makes sufficient provision to fully address them, the Commissioner is submitting this evidence as a discharge of this function.

Executive Summary / Questions from Committee

- 1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?**

Whilst there is much to be welcomed in the Bill, its intent must be translated into practice so that it has a positive impact on older people. The Commissioner's view is that the Bill in its current drafting does not sufficiently make the link back to clear outcomes that would have relevance to older people other than in a broader generic sense e.g. greater openness and transparency. Significantly more detail is required for an assessment to be made and for the Commissioner to provide any real assurances in relation to this question.

Please see the detailed response which provides further information on the Commissioner's views on whether the specific sections of the proposed Bill meets its stated aims.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

The proposed Bill focuses exclusively upon social care and there is little integration with the regulation and inspection of health. There are no duties placed on health boards to ensure quality of healthcare outcomes in complex care cases and it is the Commissioner's view that this is a major omission from the Bill and will severely limit the impact of the Bill.

Additionally, the lack of lay assessors within the inspection process means that people's voices won't be heard, something that would not only weaken inspection processes, but would also undermine the intent of the Social Services and Wellbeing (Wales) Act 2014.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

It is the Commissioner's view that the Bill's failure to extend workforce registration to domiciliary and residential care staff puts older people at a disparity with other vulnerable groups. As registration is currently applied

to those working with children, the Commissioner does not see a valid reason as to why registration should not also be used to protect vulnerable older people.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

Whilst the Commissioner welcomes much of the Bill, there are a number of areas that need to be strengthened:

- The definition 'care' focuses too heavily on physical activities
- Overview of providers' sustainability should be extended
- There must be an action plan to set out how the National Market Stability Report will be taken forward
- The voices of service users must be reflected within annual returns from service providers and within annual reports from local authorities on their social services functions
- Lay assessors must be part of the inspection process
- Public bodies must be accountable for poor commissioning practices
- Training on the Code of Practice on the standards expected of all staff must be mandatory

Additionally, it is the Commissioner's view that there are a number of omissions from the Bill:

- An integrated approach between health and social care
- 'Fitness to own' a regulated service
- Workforce registration does not extend to domiciliary and residential care workers

5. Do you think that any unintended consequences will arise from the Bill?

It is the Commissioner's view that the Welsh Government's intent to deliver an integrated approach to health and social care will be hindered through a lack of integration between the inspection regime for health and social care.

Changes to the structure of local government in Wales and the development of other legislation, such as the Wellbeing of Future Generations (Wales) Act 2015 need to be taken into account in order to mitigate against any unintended consequences in the delivery of the Bill's intent.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

The Commissioner welcome's the intent to provider better information through the duty on providers to submit an annual return. The annual returns need to clearly link to the wellbeing outcomes contained within the National Outcomes Framework and also reflect the Commissioner's Requirements for Action, which were published as part of her Care Homes Review report, A Place to Call Home?⁴.

It is the Commissioner's view that the Bill must set out what must be covered in the annual returns and that this should not be left solely to the regulations that will underpin the Bill. Additionally, the annual reports should be published within 1 month of the inspection report and the regulator must also provide a view on the report's accuracy. The Commissioner is also concerned that the Bill currently doesn't contain any reference to the need for the views of people using a service to be included in the annual report.

The Commissioner welcomes the to power in the Bill to introduce inspection quality ratings as this will help improve openness and transparency, enabling people to make more informed choices about the care and support they receive. Ratings must, however, reflect both wellbeing and service quality indicators and these must be defined and reported on in a way that reflects the issues that matter to older people.

⁴ Older People's Commissioner for Wales, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes, 2014

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

It is essential to ensure that in any review of social service performance, outcomes for the service users' perspective of care and support received and not the perspective of system quality assurance is captured.

The regulations that underpin the information contained within local authority annual reports and the regulations in relation to the review and investigation of local authority inspection processes must be subject to the super-affirmative procedure to ensure appropriate scrutiny.

Additionally, the regulations prescribing the content of the local market stability reports must also be subject to super-affirmative procedure as they will need to align with the regulations that set out the content of the National market Stability report and must therefore be subject to appropriate scrutiny.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

The Commissioner welcomes the duty on local authorities to assess the financial sustainability of larger providers. However, it is the Commissioner's view that this should be extended to include, at the very minimum, those providers delivering services in areas where market analysis shows that there is no alternative provision should they become unsustainable.

The Commissioner welcomes the duty to introduce a National Market Stability Assessment and the regulations specifying the content of this report must reflect the Requirement for Actions outlined in her Care Home Review.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The Commissioner welcomes the proposed extension to the remit of the workforce regulator. This provides an opportunity to drive transformation and improve social care practice for all practitioners and the Commissioner expects SCW's role in providing advice and assistance to reflect Requirement for Action 5.6 of her Care Home Review, which relates to the creation of a national improvement service.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

Equality of workforce registration is needed across all sectors working with vulnerable people. It is the Commissioner's view that registration of the social care workforce should be extended to domiciliary and residential care workers. This needs to also be accompanied by a fully enforceable Code of Practice on the standards expected of all social care workers with training on the Code mandatory for all staff.

11. What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

As stated in the Commissioner's Care Home Review, it is absolutely essential for bodies to work together to deliver quality of life outcomes for older people and ensure that they are safeguarded from harm.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

The Commissioner's view is that too much of the intent of the Bill is currently left to regulations. Regulations are not subject to the same degree of scrutiny by the National Assembly for Wales and this could result

in legislation that suits the system rather than what individuals need and have a right to.

Additionally, the insertions into the Social Service and Wellbeing (Wales) Act 2014 in relation to local authority social service must be subject to the super-affirmative procedure.

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

As outlined by her Care Home Review in Requirement for Action 6.3, the Commissioner is concerned that the Impact Assessment in relation to increasing citizen involvement does not cost the use of lay assessors in the inspection process or refer to the role of CHC in this. Whilst it is of course right to properly evaluate the financial implications of legislation, it is important to not forget the cost of poor care both to the individual, commissioners and the reputation of public bodies.

14. Are there any other comments you wish to make about specific sections of the Bill?

Please see detailed response.

Analysis of the Sections of the Bill

Definition of Care

The Commissioner is concerned that the definition of 'care' on the face of the Bill focusses too heavily on the physical activities associated with the delivery of care. Good care is not just about feeling safe or having basic physical needs met, essential as these are, it is also about having the best quality of life, in whatever way a person defines this. Within the current system, there is

**Section 3 –
Other key
terms**

no formal way to recognise or reinforce crucial values such as compassion, friendship and kindness, self-determination, choice and control. These values are key to quality of life and must be placed at the heart of what is defined as 'care' as they will ensure that older people are supported as individuals rather than a homogenous group, and will challenge the depersonalised and objectified approach of task based care that not only disempowers individuals but can all too easily lead to undignified care, emotional neglect and abuse.

An integrated approach to regulation and inspection

In the Commissioner's Review into the quality of life and care of older people living in care homes in Wales, it was clear that many older people receive both health and social care services within residential and nursing settings and that the boundaries are often blurred from both the service user's and the wider health and social care system's perspective. This is a major omission from the Bill. The Review found that there are inconsistencies, and gaps in the health and social care systems, both in the way that older people experience the services and how they're monitored – such as the inspection and regulation of health care services within a care home setting. For example, assumptions are made about the competencies of nurses in nursing care homes which inhibit health boards from taking a proactive approach to ensure that people have access to nursing with specialist skills i.e. diabetic nurses as well as basic primary care e.g. dental services. Without oversight from Healthcare Inspectorate Wales (HIW) these issues may continue to impact on the quality of older people's lives because of a lack of independent assurance from a healthcare perspective.

Not currently in Bill

This issue must be addressed and the Bill must place a duty on both HIW and CSSIW to carry out and publish joint inspections. This will ensure that they work together to speak with one voice on overall wellbeing and the quality of health, social care and support.

This is a serious omission from the Bill and an issue identified in the Commissioner's Care Home Review outlined by Requirement for Action 6.5. HIW do not currently inspect the standard of health care delivery within care homes as it falls outside of their remit and this means that there is not appropriate and effective scrutiny of the delivery of healthcare in nursing care homes. The Commissioner holds the view that CSSIW is best placed to be the lead inspector in relation to nursing homes given the overriding importance of quality of life.

Market Stability

When large providers fail the impact is felt dramatically by individuals. However there is also an impact on the statutory sector, who at short notice may have to find alternative care and support for significant numbers of very vulnerable people. When small or single care homes close, the difficulties faced by the statutory body may not be as significant, particularly in less rural areas, but the impact on the individual in the home can be just as devastating. This can also be the case in when there is a change in home care provider, impacting on the familiarity of staff delivering intimate care.

The Regulation and Inspection of Social Care Bill should protect the individual while also ensuring the accountability of the system. 'Due diligence' should therefore apply to all large providers and, to manage risk,

Sections 58-62 – Market Oversight

(Part 1, Chapter 7)

s.58(1) Regs – criteria for determining whether section 60 applies

s.58(4) Regs – extend of application of s.60

those providing services in areas where market analysis shows that there is no alternative provision. The regulations under Section 58 need to apply to all providers of care and support services.

s.60(6) Regs –
information to
assess
financial
sustainability

Additionally, the regulations under Section 60 should specify information in relation to a person's 'fitness to own' a care and support service, allowing for the request of information such as whether an owner has had previous care and support services in their ownership fail in the past.

s.62(3) Regs –
national market
stability report

National market stability report

The Commissioner welcomes the duty to publish a National Market Stability Report. However, it is vital for the report to make recommendations as to how the preferred provider base/market will be delivered and for there to be a duty on Welsh Ministers to present their action plan to the National Assembly for Wales on when and how they will meet the recommendations.

The underpinning regulations that will set out the content of the National Market Stability Report must also reflect Requirements for Action 5.1, 5.8, 7.1 and 7.2, as set out in the Commissioner's Care Home Review, so that the report covers the following information:

- a. The availability of skilled and competent Care Home Managers, including the impact of vacancy levels on older people's quality of life and care*
- b. A national demographic projection of need, including anticipated trends in and changes to the type of provision required as a result of increasing acuity and dependency*
- c. A clear statement on the preferred type of provider base/market*
- d. A national analysis of the barriers to market entry*

- e. A clear statement on investment to grow social enterprises and co-operative social care sectors, particularly in areas with a low provider base*
- f. A clear action plan to deliver the preferred provider base/market*
- g. The current and future level of nursing required within the residential and nursing care sector, including the care for older people living with mental health problems, cognitive decline and dementia.*

Additionally, the regulations prescribing the content of the local market stability reports must also be subject to the super-affirmative procedure as they will need to align with the regulations that set out the content for the National market Stability report and must, therefore be subject to the appropriate scrutiny.

Annual Return

The Commissioner strongly welcomes the proposal that all providers must submit an annual return to the service regulator and that it will be published by the regulator along with their service inspection report. The Commissioner also strongly welcomes the proposals for these reports to clearly link to the wellbeing outcomes contained within the National Outcomes Framework.

However, this will not be sufficient unless:

1. These are published within 1 month of the inspection report being undertaken to ensure that they are an accurate reflection of the quality of care provided;
2. The regulator provides a view on accuracy of the report. If they do not do this, it will not be possible to challenge the new indictable offence of false descriptions or false statements.

Section 8 – Annual Return (Part 1, Chapter 2)

s.8 (2) Regs –
info within an
annual return

3. These reports must be required to contain information in line with Requirement for Action 5.5, 6.2 and 6.10 of the Commissioner's statutory review, A place to Call Home?, which include:
 - a) Number of dementia champions⁵
 - b) How on-going feedback from older people has been used to drive continues improvement;
 - c) Quality of life of older people in relation to the delivery of care and support;
 - d) Staff levels, turnover, skills, investment in training and use of agency staff; and,
 - e) Number of POVA referrals, complaints and improvement notices, including full details on improvement action

4. The Annual Return has relevance to the service user. The Commissioner is concerned that there doesn't appear to be any reference in the Bill that the service user must be involved in the production of these reports or that they should be written in an accessible format and in plain language for use by the public. The development of the format for the annual reports must be tested with current users or residents of care homes and their families.

The Commissioner is clear that the face of the Bill should set out what **must** be covered in the Annual Returns, what **may** not be covered, albeit in outline, and the way in which these returns must be developed. The Annual Return must have relevance to the service user as intended, and the principle of providing better information about the quality of care delivered must therefore not be left solely to regulations.

⁵ Dementia Champion defined in Appendix B

5. The wellbeing outcomes developed have relevance to older people. The Commissioner welcomes the proposed requirement that Annual Returns must make reference to wellbeing outcomes. She is clear, however, of the need for consistency and that these must be the same wellbeing outcomes outlined in the National Outcomes Framework for Social Services⁶, as set out in Requirement for Action 6.1 of her Care Home Review.

It is the Commissioner's view that the regulations on Annual Returns must also reflect Requirements for Action 5.5, 6.2 and 6.10 in her Care Home Review so that Annual Returns cover the following information:

- a. Number of dementia champions⁷
- b. How on-going feedback from older people has been used to drive continuous improvement
- c. Quality of life of older people in relation to the delivery of care and support
- d. Staff levels, turnover, skills, investment in training and use of agency staff
- e. Number of POVA referrals, complaints and improvement notices, including full details on improvement action

Outcomes-based Approach

The Commissioner is a strong supporter of the National Outcomes Framework that underpins the Social Services & Well-being (Wales) Act 2014 and welcomes the fact that this will apply to all providers of care and support

Section 26 – Regulations about regulated services (Part 1, Chapter 2)

⁶ The national outcomes framework for people who need care and support and cares who need support, 2014-15

⁷ Dementia Champion defined in Appendix B

services.

The Commissioner also welcomes the replacement of Regulations and National Minimum Standards for Adult Services with regulations in relation to wellbeing and operational practice. For consistency, the regulations in relation to wellbeing should be the same as, or closely aligned to the, National Outcomes Framework otherwise the current criticism of an inconsistent approach by different agencies will continue, albeit in a different way.

In relation to residential care, the Commissioner expects the two sets of regulations and the underpinning Code of **Guidance** to address Requirement for Action 6.1 of her Care Home Review, which states that:

A single outcomes framework of quality of life and care, and standard specification, is developed for use by all bodies involved in the regulation, provision and commissioning, and inspection of care homes and should flow through to become a defining standard within the future Regulation and Inspection Act. It must include references to the following:

- 1) Independence and autonomy*
- 2) Control over daily life*
- 3) Rights, relationships and positive interactions*
- 4) Ambitions (to fulfil, maintain, learn and improve skills)*
- 5) Physical health and emotional wellbeing (to maintain and improve)*
- 6) Safety and security (freedom from discrimination and harassment)*
- 7) Dignity and respect*
- 8) Protection from financial abuse*
- 9) Receipt of high quality services*

In addition, the Commissioner expects, in line with Requirements for Action 1.1 and 1.3 of her Care Home

s. 26(1) Regs – requirements on service providers (wellbeing and operational practice)

Review, that these standards and underpinning codes of service guidance make specific reference to the following:

- a) *The full involvement of an older person to ensure that have effective voice, including advocacy support where necessary;*
- b) *Ensuring an older person's personal history, social and cultural interests, occupation, achievements, likes, dislikes and aspirations are understood and reflected in their future life. This must include meeting the diverse needs of older people who are Lesbian, Gay, Bisexual or Trans, those who are Black, Asian or Minority Ethnic and those with or without religion of belief;*
- c) *Meeting the emotional needs of older people to ensure they feel safe, valued, respected, cared for and cared about;*
- d) *Meeting the communication needs of people living with dementia and/or sensory loss;*
- e) *The needs of Welsh language speakers and those for whom English is not their first language;*
- f) *Active steps are taken to encourage be-friending schemes to support and retain existing friendships.*

Commissioning

The Bill does not make specific reference to the commissioning function of local authorities. This is a significant omission from the Bill as both residential and domiciliary care commissioning in Wales is currently inconsistent and variable in respect of its focus on balance between cost and quality. Quality of care, and quality of life, of those receiving a service must be put at the forefront of all commissioning decisions, in both residential and domiciliary care commissioning. Whilst the Commissioner recognises the challenging environment in which public services operate, cost should never be the primary driver behind commissioning decisions. This was

No specific
Section

highlighted as a particular issue in the Commissioner's Care Home Review, as was the negative impact that commissioning without a focus of quality of life outcomes has upon the individual.

The Bill should place a duty on local authorities and health boards to commission against quality of life outcomes, as identified by the Care Home Review Requirement for Action 6.1, through the following domains:

- a. Independence and autonomy*
- b. Control over daily life*
- c. Rights, relationships and positive interactions*
- d. Ambitions (to fulfil, maintain, learn and improve skills)*
- e. Physical health and emotional wellbeing (to maintain and improve)*
- f. Safety and security (freedom from discrimination and harassment)*
- g. Dignity and respect*
- h. Protection from financial abuse*
- i. Receipt of high quality services*

The Bill should place a duty on directors of local authority social services, and their health equivalents, to ensure that commissioning of health and social care is against the single quality of life outcomes framework that is used by all bodies which are involved in the regulation, commissioning, inspection of care provision. This framework aligns with the National Outcomes framework in the Social Services and Wellbeing (Wales) Act 2014, but provides the further detail necessary to prevent failures within the commissioning process that time and again lead to unacceptable levels of care, including emotional neglect, and inconsistent and conflicting requirements on care providers.

This will ensure that local authorities commissioning places for individuals in care homes will not only lay out service specifications and ensure that the care package can be delivered within their fee structure, but will also actively seek on-going assurances that an older person is safe, well cared for and has a good quality of life.

Service Inspections

The Commissioner recognises that a quality rating approach has limitations, particularly where improvements are being implemented. However, she is a strong advocate for the openness and transparency agenda and the importance of clear and meaningful information as a tool to help people make decisions that are appropriate to their needs and to safeguard themselves.

The quality ratings adopted must reflect both wellbeing and service quality indicators and these must be defined and reported on in way that reflect the issues that matter to older people. Again, for consistency in relation to residential care, this should include the issues identified in the Commissioner's Care Home Review, which is clearly laid out in Requirement for Action 1.1:

A national approach to care planning in care homes should be developed and implemented across Wales. This must support:

- *The full involvement of the older person to ensure they have an effective voice, including advocacy support where necessary. This may include independent advocacy or advocacy under the Mental Capacity Act.*
- *Ensuring the older person's personal history, social and cultural interests, occupation, achievements, likes, dislikes and aspirations are understood and reflected in their future life. This must include*

Sections 31-35 – Information and Inspections (Part 1, Chapter 3)

Section 39 – Engagement with the public (Part 1, Chapter 4)

s.32(3) Regs – service inspections

s.32(4) Code – service inspection (manner in which they are carried out)

s.35(1) Regs – inspection

meeting the diverse needs of older people who are lesbian, gay, bisexual or trans, those who are Black, Asian or minority ethnic and those with or without religion or belief. ratings

- *Meeting the emotional needs of older people to ensure they feel safe, valued, respected, cared for and cared about.*
- *Meeting the communication needs of people living with dementia and/or sensory loss.*
- *The needs of Welsh language speakers and those for whom English is not their first language.*
- *Entitlements to healthcare and assessment for, and referral to, healthcare services.*
- *Individual rights versus risk management.*
- *Multidisciplinary assessment (across Health Boards, Local Authorities and including specialist third sector organisations) and specialist clinical assessment.*

The Commissioner is concerned that the Bill does not build in a requirement for the use of lay inspectors within the inspection process, having made clear in her Care Home Review that the benefit of doing so far outweighs the cost associated with the system and the cost to an individual in respect of poor care. Given the use of lay assessors in other parts of the UK as experts by experience and the commitment from Community Health Councils to play an active role in listening to the voices of service users and ensuring the quality of healthcare provision from a lay perspective, it is disappointing that this is absent from the Bill. The Commissioner has clearly outlined in her Requirement for Action 6.3 that: *Lay assessors are used, on an on-going basis, as a formal and significant part of the inspection process.*

The Commissioner welcomes the proposal for a Code of Practice in relation to inspection as a general principle alongside relevant qualification requirements but cautions that these should not exclude those with significant experience or lay assessors. The Code of Practice must make clear the issues to be focussed on, which should be consistent with the regulations in respect of wellbeing, and standards of care and support, but also allow for free comment to ensure that people are able to feed in their experiences during the inspection process. Service users must include, in particular for those whose voices are weakest, family members, carers (not paid) and independent advocates (where people do not have someone to speak out on their behalf). The Code of Practice must make clear the principles of effective listening and ensure that the needs of older people across the breadth of protected characteristics are heard, including older people living with dementia and/or sensory loss.

It is also the Commissioner's view that the Code of Practice should place a requirement upon the inspection process to seek the views of the social care workforce. In addition, the formation of the view on the quality of care and support and the overall wellbeing of people receiving care and support should take into account the view of commissioners to ensure that the inspection report upon which the public place value, is clearly triangulated against all known sources of opinion about the care and support provided and the impact upon the individual's wellbeing.

Improving Standards (Social Care Wales)

The Commissioner welcomes the creation of Social Care Wales (SCW) and the extension of its remit. Evidence

received as part of her Care Home Review suggested that the Care Council for Wales does not currently have the powers necessary to drive the relentless and systematic cultural change needed to be a strong champion for the development and professionalisation of the social care workforce.

The Commissioner expects SCW's role in providing advice and assistance to care and support providers to comply with Requirement for Action 5.6 of her Care Home Review and the principles contained within this, which include:

- a) Identifying significant and/or on-going risk factors concerning quality of life or care provided and potential breaches of human rights;*
- b) The skills of experienced practitioners (such as Care Home Managers) are used to provide intensive and transformational support to drive up the standards of quality of life and care for residents as well as prevent and mitigate future safeguarding risk;*
- c) The development of a range of resources and training materials to assist services with improvement*

Whilst the Commissioner welcomes the duty on SCW to provide information on its work and to engage with the public, the face of the Bill must be clear that this must be ongoing and meaningful engagement that hears the voices and experiences of older people, including those living with dementia or a sensory loss, as well as the diverse voices of the social care workforce. The Commissioner's best practice principles around engagement are outlined in Appendix A.

Whilst the intent to create a body that can provide practical support is welcomed, without significant

resourcing the impact of this will be limited and insufficient to extend the impact of best practice and remedy the poor care that exists. It must be remembered that alongside the huge detrimental impact of poor care to an individual, there is also a cost to the public purse.

It is the Commissioner's view that the National Improvement Services, as outlined in Requirement for Action 5.6, should be funded by Social Care Wales. Support for a National Improvement Service has been received from local authorities, health boards and independent care providers. Funding for Social Care Wales and a national improvement service to drive up the standards of care will be fundamental to its overall success, ensuring that resources of commissioning teams are not unduly diverted.

The provision within the Bill to introduce specific powers for regulators to cooperate and jointly exercise their functions is welcome. Careful consideration needs to be given to confidentiality in order not to deter providers from self-referring, but this will need to be balanced with a duty to report where issues are particularly serious. Notwithstanding this, there should be a clear duty on public bodies to share information and jointly exercise their functions when safeguarding concerns are raised. This should raise awareness of what constitutes poor care, ensuring that poor practice is challenged and that everyone is empowered to report it.

However, in order to ensure that older people are treated with dignity and respect, and to avoid potential human rights breaches, the Commissioner has required CSSIW to take action in line with Requirement for Action 1.5 to develop and publish an explicit list of 'never events' that clearly outline practice that must stop immediately. These 'never events' must be defined in regulations and

used by public bodies to identify and report poor care.

Workforce Registration & Training

A key issue is how to ensure that people working within the sector have the right skills, know what is expected of them and that those providing poor care are excluded from working within the system.

At present there are only mechanisms in place for social workers, temporary EU workers and managers of registered services and this excludes very significant numbers of people, including those working in residential and domiciliary care as paid carers

It is important to recognise that while workers may not enter these sectors with the intention to abuse, or provide poor care, there are clearly individuals who, by virtue of the circumstances they find themselves in or other reasons, should not be working within the sector. The Commissioner's interest lies in the most impactful way of ensuring that older people are adequately safeguarded and protected through preventing people from working in the sector if they do not have the right skills or abilities to provide quality care.

Older people receiving social care and support are in a position of potential vulnerability and it is incumbent on society to ensure that the level of protection and safeguards reflects this. It should therefore have equity to the care of children in residential care homes as older people with complex care issues, dementia or fluctuating capacity are equally dependent on the people who care for them to ensure that their human rights are upheld and

**Section 79 –
The Register**
(Part 4)

**Section 83 –
“Appropriately
qualified”**
(Part 4)

**Section 111 –
Codes of
practice** (Part
5)

that they are able to live without fear. There is evidence that our own fear of ageing prevents us from acknowledging this, but an ageist attitude of denial and inequality should not be the standard that we set in legislation.

The Bill as it currently stands does not extend registration to other groups of workers within social care which are regulated, it simply makes provision for a possible extension in the future. This is not sufficient in respect of domiciliary and residential social care.

There is, at present, no mechanism to ensure that those who are unfit to work in the unregulated social care workforce are excluded from working within these sectors. Whilst it is recognised that there may be financial implications to extending workforce registration and a risk that a requirement to register could build additional time into the recruitment process, the cost of unacceptable care outweighs this, in both the cost to individual and the cost to the public purse. The quality of life of individuals receiving social care services should always be placed before logistical barriers to changing the system.

Given the particularly weak mandatory baseline for training of paid carers in care homes, it is even more important that those who are not fit to work in the sector are not able to work in the sector.

It is the Commissioner's view that regulation of the residential and domiciliary care workforce must be addressed as an urgent priority. There are a number of examples of employment within other sectors where staff are subject to a registration process, such as childminders or those working in the private security industry (bouncers).

It is the Commissioner's view that a Code of Practice on the standards expected of all social care workers is not sufficient. The evidence from her commissioned research into Whistleblowing in Wales⁸ makes clear that, staff rarely refer back to codes of practice and as a result, poor care often goes unchallenged. In addition, the Bill provides no information about what would happen if a breach of this Code of Practice is proven, the process by which such a challenge would be made and the consequences of a serious breach (such as its link with preventing a person from working in the sector i.e. prohibition orders).

As such, it is the Commissioner's view that this will have little impact, in particular when poor care has been on-going for a period of time. This is further weakened by the lack of duty to report any breach of the Code of Practice. This is not to say that a code of practice does not have a place in respect of outlining what is acceptable and what is unacceptable, but in and of itself it will not reduce poor care.

Codes of practice should be closely aligned to codes of behaviour and the Commissioner's view is that regulation would be the best way forward (see section on regulations), but if prohibition orders are to be used instead of regulation in relation to domiciliary and residential care, they must link to the Code of Practice. Without this, the Code is simply a set of expectations that are not linked to fitness to work within the sector.

The Code of Practice must make reference to Human Rights and the UN Principles and SCW must consult on

⁸ Whistleblowing in Wales – a report by Public Concern at Work for the Older People's Commissioner for Wales, February 2012

the Code. The Code needs to clearly set out the expectation on the workforce, so that they are aware that their job is to work with and empower individuals to live the best quality of life possible, ensuring that issues around capacity and risk assessment do not impede the right of an individual to make decisions, even if this could mean taking risks.

It is the Commissioner's view that a better way to drive up quality of care would be through strengthening the mandatory training requirements on the entire workforce and ensuring that those who are not fit to practice can be identified and excluded from the sector. Training in relation to the Code of Practice must be mandatory on providers so that they are compelled to train all staff in relation to the Code.

One of the most effective ways to drive up quality of care is through the use of detailed recruitment competencies, strengthened induction training, and on-going continuous professional development (CPD). As set out in the Commissioner's Care Home Review in Requirements for Action 2.3 and 5.3, 'appropriately qualified' covers the following training requirements:

- a) Staff understand and can minimise the risk factors associated with falls*
- b) Staff understand the balance of risk management against the concept of quality of life*
- c) Staff undertake basic dementia training with Care Home Managers undertaking further dementia training on an ongoing basis as part of their skills and competency development*
- d) The rights and entitlements of older people*
- e) Care, compassion, kindness, dignity and respect.*

The Commissioner would expect the Bill to give powers to SCW to mandate this into the social care system.

Accountability: Registered Individual

The Commissioner welcomes the intention to strengthen corporate accountability and the range of duties that the Registered Individual (RI) will be accountable for. The detail of secondary legislation that will sit underneath these intentions is crucial to its success and there will need to be wide engagement with relevant partners in its development. However, there are a number of questions as to how this intent will translate into practice and what real difference would it make where poor care has taken place. For example, what is stopping another member of the Board from becoming the RI? Whilst this may remove the individual it will not change the culture at the top. Similarly, where an individual owner is a RI, who would replace them if they needed to be removed?

Accountability must also be accompanied by potential sanctions and the Commissioner welcomes the proposed indictable offence of failing to comply with any requirement posed by an inspector. This should sit with the RI and inspectors need to be resourced to be able to enact this. Further clarity is needed on the links to the criminal justice system.

Owners can put pressure on the RI, so it is therefore important that the Bill makes provision for regulations on 'fitness to own' a service, an area that is currently omitted from the Bill. This should be on the face of the Bill to send a strong and clear message about what is acceptable in Wales. The Commissioner holds the view that where a person has owned a care home that has closed because of significant poor care, they should be

Section 19 – Responsible Individual (Part 1, Chapter 2)

s.19(4) Regs – prescribing fitness to be an RI

s.27 (1) Regs – duties imposed on RI

prevented from owning a care home in the future. This must be reflected in regulations, together with the requirement for an owner to demonstrate financial acumen to manage business.

The regulations that set out the duties that the RI will be accountable for and the regulations that that will prescribe 'fitness to practise' will be vital in ensuring that the intent of the Bill is translated into practice. The Commissioner will take a close interest in this as, for example, one of the duties that the RI must be accountable for is ensuring the financial and corporate health of the service.

Accountability: Fitness to practise

Whilst the Bill outlines the criteria for when 'fitness to practise' is impaired, the Commissioner is concerned that there is no definition of 'deficient performance' on the face of the Bill. Ensuring high standards in the workforce is a driving principle of the Bill and should therefore not be specified in regulations.

Additionally, 'fitness to practise' should not just be judged on the evidence of negatives, it should also include positives.

Section 116 – Fitness to practise (Part 6, Chapter 1)

s.116 (6) Regs – Grounds of impairment of fitness to practise

Accountability: Offences

The Commissioner welcomes the proposed creation of two additional offences in relation to the submission of annual returns and a failure to display a registration certificate, as well as the flexibility for current offences to be treated as indictable offences. It is important to note however the Commissioner's view on the insufficiency of the criminal

Section 41-54 – Offences (Part 1, Chapter 5)

law at a UK level, particularly in relation to proving intent in cases of wilful neglect and the current lack of corporate responsibility.

This is a debate that the Welsh Government should engage with in relation to the Criminal Justice and Courts Bill, the Commissioner is happy to provide a separate paper on this issue as whilst it is non-devolved, it has clear reference to people using social care.

Local authority social services: Annual Reports

Whilst accountability for the quality of care provided sits with the providers of care, local authority social services, as commissioners of care, carry a level of accountability both in respect of commissioned support and the duties placed upon them under the Human Rights Act 1998. It is therefore right and proper that they report annually upon their work. At present they are required to publish an annual report on the delivery of their social service functions and the Commissioner welcomes the requirements under the Bill for this report to be scrutinised by the National Assembly for Wales. This is an important step in terms of scrutiny of the performance of social services across Wales. However, this will only be a step forward if the regulations that outline what will be included in these reports identify the right issues to report upon.

As this will be subject to a negative resolution due to the enactment of this being through an amendment to the Social Services & Wellbeing (Wales) Act 2014, there will be no opportunity for these requirements to be amended by Assembly Members, with the only option available being to cancel the regulations. It is therefore the Commissioner's view that the regulations containing the information that local authorities should report on should be subject to super-affirmative procedure. This would

Section 55 – Reports by local authorities and general duty of the Welsh Ministers
(Part 1, Chapter 6)

Sections 56 – Reviews, investigations and inspections
(Part 1, Chapter 6)

s.55(3) – Regs to prescribe the form of the annual report

allow for debate on the initial proposals as well as the redraft following consultation. It is also the view of the Commissioner that the Chief Inspector of Social Services should provide a clear narrative in respect of each report as to whether she considers the work of the local authority to be acceptable, as well as an overview of the quality of provision of social care across Wales.

In respect of what should be included within the regulations on reporting requirements, the Commissioner sees no reason why the issues identified in her Care Home Review in Requirement for Action 6.7 should not be included:

Annual Quality Statements are published by the Director of Social Services in respect of the quality of life and care of older people living in commissioned and Local Authority run care homes. This should include:

- a) the availability of independent advocacy in care homes*
- b) quality of life and care of older people, including specific reference to older people living with dementia and/or sensory loss*
- c) how the human rights of older people are upheld in care homes across the local authority the views of older people, advocates and lay assessors about the quality of life and care provided in care homes*
- d) geographic location of care homes*

Annual Report from CSSIW (Chief Inspector's Report)

The Commissioner welcomes the intent from CSSIW to extend the use of independent visitors to provide additional perspectives on social care and support services.

The Bill states that the Annual Report from CSSIW may also contain any other information that Welsh Ministers think appropriate. The Commissioner expects the Chief Inspector's report to also include a commentary on the quality of life of older people in care homes, in line with Requirement for Action 6.9, the Bill must state that the report must reflect:

- a) The availability of independent advocacy*
- b) Quality of life and care of older people, including specific reference to older people living with dementia and/or sensory loss*
- c) How the human rights of older people are upheld*
- d) The views of older people, advocates and lay assessors about the quality of life and care provided*

Whilst the Commissioner welcomes the duty on CSSIW to engage with the public when producing their report for the Chief Inspector, the face of the Bill must be clearer that this must be ongoing and meaningful engagement that hears the voices and experiences of older people, including those living with dementia and/or a sensory loss. The Commissioner's best practice principles around engagement are outlined in Appendix A.

Appendix A – Best practice engagement principles

Engagement with older people in Wales Engagement

‘The ongoing involvement of older people, their forums/networks and statutory and voluntary sector organisations that represent their interests, through informal consultation or discussion.’ Engagement is a two-way process that involves active listening. It should be meaningful and the

Local Authority should be seen to be interacting with older people, encouraging their participation, adopting an inclusive approach and demonstrating a willingness to change as a result of learning through engagement.

Practical Engagement

- Local Authorities should engage with a broad range of older people on an on-going basis. This can be achieved through organisations that represent older people, but Local Authorities should also find

ways to engage with individuals who do not attend the immediately obvious groups. Local Authorities should consider where older people are and where they go in the course of their daily lives. Older people should not be thought of as a group apart from the rest of the community. With their knowledge and experience, older people are well placed to gauge the importance and effectiveness of community services.

- Local Authorities should recognise that many older people remain active through continued working, childcare, caring commitments or volunteering and therefore often have little time to voice their concerns and priorities regarding community services. Older people have constraints on their time in the same way that younger people do.
- Local Authorities should also consider those older people who are not so visible in everyday life: it is essential that they are not excluded from engagement on community services.
- Local Authorities should ensure that they include people whose voices are seldom heard. There are also specific requirements under the Equality Act 2010 that Local Authorities must comply with in respect of engagement with people with protected characteristics.
- Local Authorities should use a variety of methods for engagement e.g. public gatherings, face to face meetings, correspondence by letter or email, telephone conversations, intermediaries or advocates where necessary. Venues and information should be accessible for all.
- Invitations to engage should be open and lead to an on-going relationship with older people, rather than be linked to one standalone issue. If an older person identifies a barrier to engagement, then Local Authorities should make genuine efforts to eliminate that barrier
- Engagement should take place at a point when older people will be given a genuine opportunity to contribute their thoughts, voice their

concerns and influence decision-makers. Consideration should also be given to how local forums and individuals that represent older people, such as Older People's Champions, Strategy for Older People Coordinators, and 50+ Forums, can feed into the engagement and consultation process.

- Local Authorities should tell older people how their thoughts and opinions have helped shape proposals for consultation.
- Local Authorities should have particular regard to Principle 7 of the United Nations Principles for Older Persons, which states that older people should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their wellbeing. The provision of community services, in one form or another, is therefore crucial in this regard.

Appendix B – Dementia Champion definition

What does the Commissioner mean by a Dementia Champion?

A dementia champion is a vehicle for promoting care home ownership of good practice in the quality of life and care of older people living with dementia in care homes.

The Commissioner's review found that where individuals or teams were supported to understand, engage and champion the rights and lived experiences of people with dementia: that residents were happier, 'challenging' behaviour reduced and staff reported higher levels of satisfaction in their work. Most importantly, these homes were found to deliver great outcomes for all residents.

The Commissioner is not wedded to a specific way of implementing a dementia champion or programme within care homes but she will want to see what action you have or will take to ensure the delivery and ongoing improvement of quality of life and care outcomes for older people living with dementia and emotional frailty . This could be through the support of an external or internal change programme or supporting a nominated, enthusiastic and motivated individual who you will empower to drive organisational change, be a model of good practice and challenge poor care outcomes.

Appendix C – Older People’s Commissioner for Wales, Care Home Review: Requirements for Action

Key Conclusion 1: Too many older people living in care homes quickly become institutionalised. Their personal identity and individuality rapidly diminishes and they have a lack of choice and control over their lives.

Link to Welsh Government policy and legislative areas: National Outcomes Framework for the Social Services and Wellbeing Act 2014, Declaration of the Rights of Older People in Wales, A Framework for Delivering Integrated Health and Social Care for Older People with Complex Needs, Integrated Assessment, Planning and Review Arrangements for Older People.

Required Action	Outcome	Impact of not doing	By whom /By when
<p>1.2 A national approach to care planning in care homes should be developed and implemented across Wales. This must support:</p> <ul style="list-style-type: none"> The full involvement of the older person to ensure they have an effective voice, including advocacy support where necessary. This may include independent advocacy or 	<p>Older people receive information, advice and practical and emotional support in order for them to settle into their new home beginning as soon as a decision to move into a care home is made (Action 1.1, 1.2).</p> <p>Older people’s physical, emotional and communication needs are</p>	<p>Older people are unable to settle into their new home, which has a detrimental impact upon their health and wellbeing.</p> <p>The individual needs, wishes and aspirations of older people are not recognised or understood and as a result their ability to do the things that matter to them is significantly undermined, as is</p>	<p>Welsh Government November 2015</p>

<p>advocacy under the Mental Capacity Act.</p> <ul style="list-style-type: none"> • Ensuring the older person's personal history, social and cultural interests, occupation, achievements, likes, dislikes and aspirations are understood and reflected in their future life. This must include meeting the diverse needs of older people who are lesbian, gay, bisexual or trans, those who are Black, Asian or minority ethnic and those with or without religion or belief. • Transitional support once a decision has been made to move to a care home to ensure that the care planning process begins prior to moving into the care home. • Meeting the emotional needs of older people to ensure they feel safe, valued, respected, 	<p>fully understood, as are the issues that matter most to them, and these are reflected in the services, support and care that they receive.</p> <p>Older people have real control over and choice in their day-to-day lives and are able to do the things that matter to them, including staying in touch with friends and family and their local community.</p>	<p>their quality of life and mental wellbeing.</p> <p>Older people are unable to communicate effectively, which leads to an increased risk of isolation, withdrawal and emotional neglect.</p> <p>Older people are denied their rights to self-determination, autonomy and control over their lives.</p>	
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<p>cared for and cared about.</p> <ul style="list-style-type: none"> • Meeting the communication needs of people living with dementia and/or sensory loss. • The needs of Welsh language speakers and those for whom English is not their first language. • Entitlements to healthcare and assessment for and referral to healthcare services. • Individual rights versus risk management. • Multidisciplinary assessment (across Health Boards, Local Authorities and including specialist third sector organisations) and specialist clinical assessment. <p>This guidance should clearly align to the new National Outcomes Framework, which underpins the</p>			
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<p>Social Services and Wellbeing (Wales) Act 2014.</p> <p>National reporting of the quality of care plans and care planning against the national guidance and against the intended outcomes of the national Outcomes Framework should be undertaken annually (see action 6.10).</p>			
<p>1.2 All older people, or their advocates, receive a standard 'Welcome Pack' upon arrival in a care home that states how the care home manager and owner will ensure that their needs are met, their rights are upheld and they have the best possible quality of life. The Welcome Pack will make explicit reference to:</p> <ul style="list-style-type: none"> • How the care home manager will support the resident as they move into their new home. • Standard information about their human rights in line with the Welsh Declaration 	<p>Older people are aware of their rights and entitlements, and what to expect from the home.</p> <p>Older people are clear about how they can raise concerns and receive support to do so.</p>	<p>Older people are unaware of the support that should be available to them while making the transition into their new home, which can lead to low expectations and a lack of accountability for providers.</p> <p>Older people are at risk of neglect and abuse as they are unaware of who to speak to should they need help in making a complaint or need support to stand up for their rights.</p> <p>Older people are at risk of not receiving that to which they</p>	<p>Welsh Government & Care Home Providers March 2016</p>

<p>of the Rights of Older People.*</p> <ul style="list-style-type: none"> • A Statement of Entitlement to health care support.* • Support to sustain and promote independence, continence, mobility and physical and emotional wellbeing. • Ensuring their communication needs are met, including people with sensory loss. • Maintaining friendship and social contact. • Support to help them maintain their independence and to continue to be able to do the things that matter to them. • The development and maintenance of their care and support plan and 		<p>are entitled to, leading to an undermining of their health, wellbeing and quality of life.</p>	
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<p>what will be included in it.*</p> <ul style="list-style-type: none"> • Ensuring a culture of dignity and respect and choice and control over day-to-day life. • The skills and training of staff. • Their right to independent advocacy and how to raise concerns. * <p>(The areas marked with * should be standard in format to ensure consistency across Wales)</p>			
<p>1.3 Specialist care home continence support should be available to all care homes to support best practice in continence care, underpinned by clear national guidelines for the use of continence aids and dignity.</p>	<p>Older people are supported to maintain their continence and independent use of the toilet and have their privacy, dignity and respect accorded to them at all times (Action 1.1, 1.3, 1.5).</p>		<p>Welsh Government Guidance April 2015 Health Boards Implementation December 2015</p>
<p>1.4 National good practice guidance should be developed and implemented in relation to mealtimes and the dining experience, including</p>	<p>Mealtimes are a social and dignified experience with older people offered real choice and variety, both in</p>	<p>Older people do not enjoy mealtimes, are at increased risk of malnutrition and ill health through a lack of</p>	<p>Welsh Government April 2015</p>

for those living with dementia.	respect of what they eat and when they eat (Action 1.1, 1.4).	support at mealtimes and miss out on meaningful and important social interaction. The dignity of older people is significantly undermined.	
1.5 An explicit list of 'never events' should be developed and published that clearly outlines practice that must stop immediately. The list should include use of language, personal care and hygiene, and breaches of human rights.	Older people are treated with dignity and respect and language that dehumanises them is not used and is recognised as a form of abuse (Action 1.1, 1.3, 1.4, 1.5, 4.6).	Unacceptable practice continues and goes unchallenged.	CSSIW March 2015
1.6 Older people are offered independent advocacy in the following circumstances: <ul style="list-style-type: none"> • when an older person is at risk of, or experiencing, physical, emotional, financial or sexual abuse. • when a care home is closing or an older person is moving because their care needs have changed. • when an older person needs support to help 	Older people living in care homes that are closing, as well as older people that are at risk of or are experiencing physical, emotional, sexual or financial abuse, have access to independent or non-instructed advocacy.	Older people are unable to secure their rights or have their concerns addressed, which places them at increased risk of harm. An increased risk of adult practice reviews and civil litigation.	Local Authorities & Care Home Providers & Health Boards April 2015

<p>them leave hospital.</p> <p>For those with fluctuating capacity or communication difficulties, this should be non-instructed advocacy.</p> <p>When a care home is in escalating concerns, residents must have access to non-instructed advocacy.</p>			
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Key Conclusion 2: Too often, care homes are seen as places of irreversible decline and too many older people are unable to access specialist services and support that would help them sustain or regain their quality of life.

Link to Welsh Government policy and legislative areas: Social Services and Wellbeing (Wales) Act and National Outcomes Framework , Sustainable Social Services: A Framework for Action, Together for Health – Stroke Delivery Plan 2012-16

Required Action	Outcome	Impact of not doing	By whom /By when
2.1 A National Plan for physical health and mental wellbeing promotion and improvement in care homes is developed and implemented. This draws together wider health promotion priorities, as well as particular risk factors linked to care homes, such as loneliness	Older people benefit from a national and systematic approach to health promotion that enables them to sustain and improve their physical health and mental	Older people are at increased risk of falls and ill health. Older people’s physical and mental health will decline more quickly than it needs to and they have an earlier need for more specialist care.	Lead Welsh Government March 2016

and isolation, falls, depression, a loss of physical dexterity and mobility.	wellbeing.	An increase in workload and pressure for the care home workforce. An increase in referrals to NHS services, as well as earlier and longer hospital admissions for older people.	
2.2 Older people in care homes have access to specialist services and, where appropriate, multidisciplinary care that is designed to support rehabilitation after a period of ill health.	Older people receive full support, following a period of significant ill health, for example following a fall, or stroke, to enable them to maximise their independence and quality of life.	Older people have reduced mobility, increased frailty and loss of independence, with an increased risk, due to immobility of significant health problems, such as pressure ulcers, pneumonia and deteriorating mental health.	Health Boards and Local Authorities in partnership July 2015
2.3 A National Falls Prevention Programme for care homes is developed and implemented. This should include: <ul style="list-style-type: none"> • Enabling people to stay active in a safe way • Up-skilling all care home staff in understanding and minimising the risk factors associated with falls • The balance of risk 	Older people's risk of falling is minimised, without their rights to choice and control over their own lives and their ability to do the things that matter to them being undermined.	Older people are at an increased risk of falls leading to reduced mobility, increased frailty and loss of independence, with an increased risk, due to immobility of significant health problems, such as pressure ulcers, pneumonia and deteriorating mental health. Significant financial impact on	Welsh Government November 2015

<p>management against the concept of quality of life and the human rights of older people, to ensure that risk-averse action taken by care staff does not lead to restrictive care.</p> <p>National reporting on falls in care homes is undertaken on an annual basis (see action 6.8).</p>		<p>the NHS due to increased admissions.</p>	
<p>2.4 The development and publication of national best practice guidance about the care home environment and aids to daily living, such as hearing loops and noise management, with which all new homes and refurbishments should comply.</p> <p>This guidance should also include mandatory small changes that can be made to care homes and outdoor spaces to enable older people with sensory loss and/or dementia to maximise their independence and quality of life.</p>	<p>The environment of all care homes, internally and externally, is accessible and dementia and sensory loss supportive.</p>	<p>Older people are unable to move around the care home safely and independently or do the things that they enjoy.</p> <p>Older people struggle to communicate with each other and staff, leading to isolation and withdrawal.</p>	<p>Welsh Government July 2015</p>

Key Conclusion 4: Some of the most basic health care needs of older people living in care homes are not properly recognised or responded to.

Link to Welsh Government policy and legislative areas: Fundamentals of care, National Service Framework for Older People, Together for Health: a Five Year Vision for NHS Wales, Setting The Direction, Together for Health: Eye Health Care Delivery Plan for Wales 2013-2018, NHS Wales Delivery Framework 2013-14 and Future Plans, Rural Health Plan – Improving Integrated Service Delivery across Wales, Together for Health: A National Oral Health Plan for Wales 2013- 18, National Outcomes Framework for the Social Services and Wellbeing (Wales) Act 2014.

Required Action	Outcome	Impact of not doing	By whom /By when
<p>4.1 A clear National Statement of Entitlement to primary and specialist healthcare for older people in care homes is developed and made available to older people, including:</p> <ul style="list-style-type: none"> • Access to regular eye health, sight and hearing checks • Dietetic advice and support • Access to podiatry and dentistry services 	<p>There is a consistent approach across Wales to the provision of accessible primary and specialist health care services to older people living in care homes and older people’s healthcare needs are met (Action 4.1, 4.2, 4.5).</p> <p>Older people in nursing care homes have access to specialist nursing services,</p>	<p>Older people are unable to see or hear properly, undermining their ability to communicate and their independence, placing them at greater risk of isolation and falls, emotional withdrawal and poor mental health (Action 4.1, 4.2, 4.3).</p> <p>Older people in nursing homes have preventable physical</p>	<p>Lead Welsh Government March 2015</p>

<ul style="list-style-type: none"> • Access to specialist nursing services • GP access and medicines support • Specialist mental health support • Health promotion and reablement support <p>This must cover both residential and nursing care.</p> <p>Care home providers ensure older people receive information about their healthcare entitlements as part of their 'Welcome Pack' (see action 1.2).</p>	<p>such as diabetic care, tissue viability, pain management and palliative care (Action 4.1, 4.2).</p> <p>Older people are supported to maintain their sight and hearing, through regular eye health, sight and hearing checks (Action 4.1, 4.2, 4.3).</p> <p>Older people are able to, or supported to, maintain their oral health and retain their teeth (Action 4.1, 4.2, 4.3).</p> <p>Older people have full access to dietetic support to prevent or eliminate malnourishment and to support the management of health conditions (Action 4.1, 4.2, 4.3).</p>	<p>health conditions, unnecessary pain and their overall wellbeing is undermined through on-going poor management of chronic health conditions.</p> <p>Older people lose their teeth unnecessarily and are unable to eat the foods they prefer; individuals' specific dietary needs are not met, which can lead to malnutrition and undermines their overall health.</p> <p>An increase in workload and pressure for the care home workforce.</p> <p>An increase in hospital admissions due to falls and a lack of primary care support to maintain independence.</p> <p>A failure to deliver on the Social Services National Outcomes Framework and the Fundamentals of Care for older people in residential and</p>	
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		nursing care homes.	
<p>4.2 A formal agreement is developed and implemented between the care home and local primary care and specialist services based on the Statement of Entitlement. This should include:</p> <ul style="list-style-type: none"> • Referral pathways, including open access • Waiting times • Referral and discharge information • Advice and information to support the on-going care of the older person in the home • Access to specialist services for older people in nursing homes, in line with the Fundamentals of Care Guidance. 			<p>Health Boards & Care Home Providers April 2015</p>

4.3 Care staff are provided with information, advice and, where appropriate, training to ensure they understand and identify the health needs of older people as well as when and how to make a referral.	Care staff understand the health needs of older people, and when and how to access primary care and specialist services (Action 4.3, 5.4).		Health Boards November 2015
4.4 Upon arrival at a care home, older people receive medication reviews by a clinically qualified professional, with regular medicine reviews undertaken in line with published best practice.	Older people receive appropriate medication and the risks associated with polypharmacy are understood and managed.	Older people are at risk of potentially dangerous interactions between multiple medications.	Health Boards Begin April 2015
4.5 Community Health Councils implement a rolling programme of spot checks in residential and nursing care homes to report on compliance with the National Statement of Entitlement and Fundamentals of Care.	Older people are able to challenge, or have challenged on their behalf, failures in meeting their entitlements.	Older people living in care homes are denied access to an independent health watchdog and there is no independent challenge to failures to meet healthcare entitlements.	Welsh Government November 2015

Key Conclusion 5: The vital importance of the role and contribution of the care home workforce is not sufficiently recognised. There is insufficient investment in the sector and a lack of support for the care home workforce.

Link to Welsh Government policy and legislative areas: Social Care Workforce Development Programme,

Sustainable Social Services for Wales: A Framework for Action, Social Services and Wellbeing Act, National Outcomes Framework, Integrated Assessment, Planning and Review Arrangements for Older People.

Required Action	Outcome	Impact of not doing	By whom /By when
<p>5.1. A national recruitment and leadership programme is developed and implemented to recruit and train future Care Home Managers with the right skills and competencies. The programme should include accredited continuous professional development for current and future care home managers and should support them to be leaders of practice and champions of a positive care home culture.</p> <p>Annual national reporting on the availability of skilled and competent Care Home Managers in care homes across Wales, including the impact of vacancy levels upon older people's quality of life and care.</p>	<p>Care homes have permanent managers who are able to create an enabling and respectful care culture and support paid carers to enable older people to experience the best possible quality of life.</p>	<p>Care homes are without or share managers and care homes are without leadership or overview.</p> <p>Managers do not have the skills, competencies or support required to ensure the delivery of safe and high quality care.</p> <p>An increased risk of unacceptable quality of life and care for older people.</p> <p>There is a lack of information available to support workforce planning.</p> <p>There is a lack of opportunity for the professional development of Care Home Managers.</p>	<p>Care Council for Wales April 2016</p>
<p>5.2 The development and implementation of a national</p>	<p>Older people are cared for by care staff and managers</p>	<p>A lack of time and skills places pressure on care staff</p>	<p>Welsh Government</p>

<p>standard acuity tool to include guidelines on staffing levels and skills required to meet both the physical and emotional needs of older people.</p>	<p>who are trained to understand and meet their physical and emotional needs, including the needs of people with dementia and sensory loss, and who have the competencies needed to provide dignified and compassionate care.</p>	<p>that impacts upon the quality of life of older people and leads to a focus on task-based care, which increases the risk of potential emotional neglect.</p>	<p>& Care Home Providers April 2016</p>
<p>5.3 A standard set of mandatory skills and value based competencies are developed and implemented, on a national basis, for the recruitment of care staff in care homes.</p>	<p>Older people receive compassionate and dignified care that responds to them as an individual (Action 5.3, 5.4, 5.5).</p>	<p>Older people are cared for by people who do not understand and are not able to meet their needs (Action 5.3, 5.4, 5.5).</p>	<p>Care Council for Wales & Care Home Providers From September 2015</p>
<p>5.4 A national mandatory induction and on-going training programme for care staff is developed and implemented. This should be developed within a values framework and should include:</p> <ul style="list-style-type: none"> • The physical and emotional needs of older people, including older people living 		<p>Older people receive care and support from care staff who do not have the skills, values or competencies to work in care homes, which can place older people at risk of harm and/or emotional neglect.</p> <p>Poor practice goes unchallenged due to a lack of</p>	<p>Care Council for Wales December 2015</p>

<p>with dementia.</p> <ul style="list-style-type: none"> • Adult safeguarding, emotional neglect and 'never events'. • How to raise concerns. • Good communication and alternative methods of communication for those living with dementia and/or sensory loss. • Supporting without disabling. • The rights and entitlements of older people. <p>Care, compassion, kindness, dignity and respect.</p>		<p>appropriate training and a lack of support for those who want to raise concerns.</p> <p>An increase in workload and pressure on care staff.</p>	
<p>5.5 All care homes must have at least one member of staff who is a dementia champion.</p>			<p>Care Home Providers September 2015</p>
<p>5.6 A National Improvement Service is established to improve care homes where Local Authorities, Health Boards and CSSIW have identified significant and/or on-going</p>	<p>Care homes that want and need to improve the quality of life and care of older people have access to specialist advice, resources</p>	<p>Older people live in care homes where poor practice continues, their quality of life is poor and they are at risk of</p>	<p>Welsh Government Lead in partnership with Local</p>

<p>risk factors concerning the quality of life or care provided to residents and/or potential breaches of their human rights.</p> <p>The national improvement team should utilise the skills of experienced Care Home Managers, as well as other practitioners, to provide intensive and transformational support to drive up the standards of quality of life and care for residents as well as to prevent and mitigate future safeguarding risks.</p> <p>This service should also develop a range of resources and training materials to assist care homes that wish to improve in self-development and on-going improvement.</p>	<p>and support that leads to improved care and reduced risk.</p>	<p>emotional abuse and neglect.</p> <p>The resources of commissioning teams are diverted to supporting failing care homes.</p> <p>An increase in workload and pressure for care staff.</p>	<p>Authorities, Health Boards, Care Home Providers</p> <p>September 2016</p>
<p>5.7 The Regulation and Inspection Bill should strengthen the regulatory framework for care staff to ensure that a robust regulation of the care home workforce is implemented for the protection of older people.</p>	<p>Older people are safeguarded from those who should not work within the sector.</p>	<p>Older people receive care and support from care staff who do not have the skills, values or competencies to work in care homes, placing older people at risk of harm and emotional neglect.</p> <p>Vetting and barring</p>	<p>Welsh Government</p> <p>April 2018</p>

		procedures to prevent employment of unsuitable staff provide only partial protection for older people living in care homes.	
5.8 A cost-benefit analysis is undertaken into the terms and conditions of care staff. This analysis should include the impact of the introduction of a living wage and/or standard employment benefits, such as holiday pay, contracted hours and enhancements.	The true value of delivering care is recognised and understood.	There is a restricted recruitment pool due to continued difficulties in recruiting people with the right skills, values and competencies.	Welsh Government January 2016

Key Conclusion 6: Commissioning, inspection and regulation systems are inconsistent, lack integration, openness and transparency, and do not formally recognise the importance of quality of life

Link to Welsh Government policy and legislative areas: Sustainable Social Services for Wales: A Framework for Action, Social Services and Wellbeing Act, National Outcomes Framework

Required Action	Outcome	Impact of not doing	By whom /By when
6.1 A single outcomes framework of quality of life and care, and standard specification, is developed for use by all bodies involved in the	Quality of life sits consistently at the heart of the delivery, regulation, commissioning and	There are unacceptable variations in the standards set for the care of older people, an inconsistent focus on	Welsh Government April 2015

<p>regulation, provision and commissioning, and inspection of care homes and should flow through to become a defining standard within the future Regulation and Inspection Act. It must include references to the following*:</p> <ol style="list-style-type: none"> 1. Independence and autonomy 2. Control over daily life 3. Rights, relationships and positive interactions 4. Ambitions (to fulfil, maintain, learn and improve skills) 5. Physical health and emotional wellbeing (to maintain and improve) 6. Safety and security (freedom from discrimination and harassment) 7. Dignity and respect 8. Protection from financial abuse 9. Receipt of high quality services <p>*Source: Flintshire Outcomes Framework</p>	<p>inspection of residential and nursing care homes.</p>	<p>quality of life and inconsistent and conflicting requirements upon providers.</p>	
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<p>6.2 Care home providers, commissioners and CSSIW should develop informal and systematic ways in which to ensure they better understand the quality of life of older people, through listening to them directly (outside of formal complaints) and ensuring issues they raise are acted upon.</p> <p>Annual reporting should be undertaken of how on-going feedback from older people has been used to drive continuous improvement (see action 6.10).</p>	<p>Commissioners, providers and inspectors have a thorough understanding of the day-to-day quality of life of older people living in care homes (Action 6.2, 6.3).</p> <p>Older people's views about their care and quality of life are captured and shared on a regular basis and used to drive continuous improvement (Action 6.2, 6.3).</p>	<p>Issues are not addressed before they become significant, impactful and costly to remedy (Action 6.2, 6.3).</p> <p>Opportunities to make small changes that can make a significant difference to quality of life and care are missed.</p> <p>Safeguarding issues are not identified at an early stage.</p> <p>Older people feel ignored, powerless and unable to influence issues that affect their lives.</p>	<p>Care Home Providers & Local Authorities & Health Boards & CSSIW</p> <p>April 2015</p>
<p>6.3 Lay assessors are used, on an on- going basis, as a formal and significant part of the inspection process.</p>			<p>CSSIW</p> <p>April 2015</p>
<p>6.4 An integrated system of health and social care inspection must be developed and implemented to provide effective scrutiny in respect of the quality of life and healthcare of older people in nursing homes.</p>	<p>The quality of life and healthcare of older people living in nursing homes is assessed in an effective way with clear and joined up annual reporting (Action 6.4, 6.5, 6.6).</p>	<p>Poor practice is not identified and older people are placed at increased risk of harm or do not receive that to which they are entitled (Action 6.4, 6.5, 6.6).</p>	<p>Welsh Government lead (Action 6.4, 6.5, 6.6)</p> <p>December 2015</p>
<p>6.5 Annual integrated reports should</p>			

be published between inspectorates that provide an assessment of quality of life and care of older people in individual nursing homes.			
6.6 An annual report on the quality of clinical care of older people in nursing homes in Wales should be published, in line with Fundamentals of Care.			
<p>6.7 Annual Quality Statements are published by the Director of Social Services in respect of the quality of life and care of older people living in commissioned and Local Authority run care homes. This should include:</p> <ul style="list-style-type: none"> • the availability of independent advocacy in care homes • quality of life and care of older people, including specific reference to older people living • with dementia and/or sensory loss • how the human rights of older people are upheld in care 	<p>Older people have access to relevant and meaningful information about the quality of life and care provided</p> <p>by or within individual care homes and there is greater openness and transparency in respect of the quality of care homes across Wales and the care they provide (Action 6.7, 6.8, 6.9, 6.10).</p>	<p>A lack of transparency undermines older people's ability to make appropriate decisions, undermines wider public confidence and acts as a barrier to systemic change.</p>	<p>Local Authorities - Outline AQS September 2015</p>

<p>homes across the Local Authority</p> <ul style="list-style-type: none"> • the views of older people, advocates and lay assessors about the quality of life and care • provided in care homes • geographic location of care homes <p>Further details of reporting requirements should be included as part of the Regulation and Inspection Bill.</p>			
<p>6.8 Health Boards include the following information relating to the quality of life and care of older people in residential and nursing care homes in their existing Annual Quality Statements:</p> <ul style="list-style-type: none"> • the inappropriate use of anti- • psychotics • access to mental health and wellbeing support 			<p>Health Boards September 2015</p>

<ul style="list-style-type: none"> • number of falls • access to falls prevention • access to reablement services • support to maintain sight and hearing <p>Further areas for inclusion to be developed as part of the AQS guidance published annually.</p>			
<p>6.9 The Chief Inspector of Social Services publishes, as part of her Annual Report, information about the quality of life and care of older people in care homes, which includes the following:</p> <ul style="list-style-type: none"> • the quality of life of older people in care homes who are bed- bound • the quality of life of older people in care homes living with dementia • the quality of life of older people in care homes living 			<p>CSSIW Annual Report</p>

<p>with sensory loss</p> <ul style="list-style-type: none"> • the implementation of care plans in older people's care homes • the accuracy of external statements from independent providers • how the human rights of older people are upheld in care homes across Wales 			
<p>6.10 Care home providers report annually on the delivery of quality of life and care for older people. This will include:</p> <ul style="list-style-type: none"> • Quality of life of older people against the Standard Quality Framework and Supporting Specification. • Levels and skills of staff including staff turnover, use of agency staff and investment in training • Number of POVA referrals, 			<p>Care Home Providers December 2015</p>

<p>complaints and improvement notices, including full details on improvement action when a home is in escalating concerns.</p>			
<p>6.11 A national, competency based, training programme for commissioners is developed, to ensure that they understand and reflect in their commissioning the needs of older people living in care homes, including the needs of people living with dementia.</p>	<p>Older people are placed in care homes that can meet their needs by commissioners who understand the complexities of delivering care and are able to challenge providers about unacceptable care of older people.</p>	<p>Older people are placed in care homes that are unable to meet their needs. Commissioners are unable to challenge poor practice.</p>	<p>Care Council for Wales December 2015</p>



Regulation and Inspection of Social Care (Wales) Bill: Stage 1

April 2015

My Home Life Cymru (MHLC)

The response from Age Cymru to the Bill consultation encapsulates the points that are within the My Home Life agenda. Therefore, this paper will not add to the Age Cymru response but will offer some background information on the MHLC programme in relation to the Bill.

Since its beginning in late 2008, MHLC has been working to influence policy and practice in Wales in regard to the quality of life of those living, dying, visiting and working in care homes for older people in Wales.

As well as working with care providers, MHLC has sought to work at all levels and with all stakeholders to influence policy and practice. In regard to the content of the Bill, this work includes:

- Producing a Regional Quality Framework for the Western Bay Collaboration for use across the region with care homes
- Being a member of CSSIW's Quality Judgement Framework Development Group
- Advising CSSIW on its 'Independent Visitors' pilot scheme
- Being a member of various sub groups of Welsh Assembly Government's Care Homes Group

John Moore

My Home Life Cymru

28 April 2015

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from British Association of Social Workers Cymru – RISC 47 /
Tystiolaeth gan Cymdeithas Gweithwyr Cymdeithasol Prydain Cymru – RISC 47



Consultation on the Regulation and Inspection of Social Care (Wales) Bill: Stage 1

From BASW Cymru (The British Association of Social Workers in Wales)

Introduction

BASW Cymru is the only professional association to represent social workers in Wales. We work independently and collaboratively to promote the highest possible standards in relation to our Code of Ethics (a statement of ethical values and principles that govern our organisation). These values and principles underpin the Code of Practice for Social Care Workers – by which all social workers must be legally registered through the Care Council for Wales. We work very collaboratively with other organisations where our aims coincide. This includes other professional bodies, third sector and associated national and local government bodies e.g. the Health & Social Care Policy Officers Group in Wales, the Social Care and Wellbeing Alliance Wales, the Welsh Reablement Alliance, the Association of Directors of Social Services in Wales (ADSS Cymru), the Care Council for Wales, etc.

BASW Cymru is a membership organisation that is independently funded – mainly through subscriptions and royalties associated with our publications. The strength of our membership in Wales has grown rapidly over the last 4 years i.e. over 60%, and our current total of members is in excess of 1,300. BASW Cymru supports and promotes partnership working but believes that the best outcomes for the vulnerable people we served can be achieved through the utilisation and acknowledgement of the specific professional expertise whilst working alongside service users and their carers.

The association welcomes the aims of the Bill to compliment those of the Social Services and Well-being (Wales) Act. In addition to this, BASW Cymru generally supports the opportunity to improve on current provisions to ensure cohesive and comprehensive regulation, registration and inspection of social care provisions in Wales, whilst having some clear views about what could have/can be included.

Headline issues

- A fundamental function of regulation and inspection is the reduction in both risk to, and breaches of, individuals' human rights. BASW Cymru is concerned that a requirement of due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People and the United Nations Principles for Older Persons is not explicit on the face of the Bill as it is in Section 7 of the Social Services and Well-being (Wales) Act.
- BASW Cymru has some concern that the opportunity to regulate local authorities appears to have been overlooked. We are concerned that the quality of management support and the professional standards will be inadequate to meet the demands and expectations in relation to the Social Services and Well-being (Wales) Act. Further to this, we believe this will undermine and potentially jeopardize the desired outcomes for vulnerable people and their carers.
- BASW Cymru has some concern that the Bill is not taking the opportunity to address the required symbiosis of different regulation and inspection regimes that exist within the wider provision of social care services.
- We believe that there could be a more coherent use of language both within this Bill and across legislation but, in particular, with the Social Services and Well-being (Wales) Act.
- We would wish to seek clarity around the potential regulation of care and support services that may be provided to individuals as part of a preventative service. Our concerns in particular are around the status of reablement services and whether these, as preventative services, will also be subject to regulation.

Response to questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. This protection is not only vital at times of risk but where there is the potential of risk. The regulatory system in place to provide that protection needs to be robust. It appears from the Explanatory Memorandum that there is a need for the legislation. In particular, paragraph 3.9 identifies the growing potential for complexity and loopholes if new legislation is not provided.
- 1.2 BASW Cymru notes that the long title of the Bill says regulation of persons, not services, and lists certain specific service types, whereas the aims of the Bill in the explanatory notes (P298; policy background 4) are listed as objectives in Section 3 paragraph 3.15 Explanatory Memorandum.
- 1.3 BASW Cymru welcomes the aim as stated in section 3; however, it is not always explicit how the Bill will achieve the objectives. For example, it would appear that the person to be placed at the heart of the system will become

clearer through regulations because the Bill, as drafted, focuses on the activities of organisations.

- 1.4 The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other relevant regulatory bodies in Wales and the UK. This includes regulators of members of the social care workforce already regulated by other, often UK-wide, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies.
- 1.5 Achievement of the aim/objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the Explanatory Memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. In fact, this is social work and managers of services with a potential to add other groups at a future date. There is no clarity regarding the regulation of employers of social workers/social care workers. We are of the view that unless there is parity of individual and corporate responsibility, there will continue to be cost-cutting and output driven directives that will place all the responsibility on individual professionals when the best outcomes are achieved in a culture of partnership responsibility for outcomes.
- 1.6 BASW Cymru is clear that the Bill will not achieve its aims unless human rights are a fundamental and explicit principle. The association is concerned that the government appears reluctant to accept its role and responsibility as described in the Vienna Declaration and programme of action; Article 1 - *'Human Rights and fundamental freedoms are the birth right of all human beings; their protection and promotion is the first responsibility of Governments'*.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 BASW Cymru believes that the aims of the Bill are at the risk of being undermined as a result of a lack of clarity in relation to the regulation of commissioners and for employers of social workers/social care workers. We are also of the opinion that a significant barrier is the lack of reference to human rights. Additionally, the lack of due regard to international instruments is a potential barrier.
- 2.2 BASW Cymru would welcome amendments that clarify the relationship between different regulatory and inspection regimes. Without this, we believe that inconsistency might occur within a provision where the possibility of multiple regulation exists. Situations where multiple regulations might occur could also lead to onerous regulation and inspection burdens for services and individuals. The Bill retains the current model of regulation of the service by one body and regulation of the workforce within that service by another body. There is potential for confusion between the separate accountabilities and a possible missed opportunity for streamlining. This could benefit outcomes for

individuals through removing barriers that impede the use of social workers from other countries within the UK.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 BASW Cymru is concerned that the potential for some divergence of protection thresholds between regulated services and registered workforces for children or adults exists. Members of the alliances highlighted that the Equality and Human Rights Commission review of home care services in England found that people with sight loss were involved in some of the most disturbing examples of poor treatment.
- 3.2 This concern may be addressed through subordinate legislation (Codes of Practice) or developing codes of conduct and registration criteria. However, it does highlight the need to be active in reducing conditions that might increase vulnerability.
- 3.3 We also have concerns that the Bill does not extend to services purchased through Direct Payments and the Independent Living Fund.
- 3.4 We believe that there should be a more integrated approach to inspection – particularly where there are services which incorporate health and social care functions e.g. between CSSIW and HIW. This would potentially ensure a more consistent approach. Furthermore, BASW Cymru calls on the validation of inspections of social work services e.g. ensuring caseload management is appropriate to professional training and experience, ensuring staff are properly supported and managed, etc.
- 3.5 BASW Cymru believes that the primary function of Social Care Wales must be the protection of service users and their experiences of receiving regulated services. Any function which relates to promotion of any professional group should be secondary and separate. Social Care Wales is funded by Welsh Government and does not have the independence or expertise to speak on behalf of social workers. There is a potential conflict of interest between the role of regulator and that of promoting and encouraging improvement. However, they may be instrumental in co-ordinating the development of the profession through their role in regulating training and development in conjunction with partners – including BASW Cymru as the professional body.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 The Social Services and Well-being (Wales) Act will transform services and drive greater integration. BASW Cymru would question whether this Bill, as tabled, contributes to that direction. It would be helpful if the Bill explicitly spelt out the expectation and powers to co-operate, jointly act, or to delegate function for integrated infrastructure in, for example, inspections, workforce

development, education and improvement agendas. This relates to our comments at question 11.

- 4.2 BASW Cymru, as part of the Social Care and Wellbeing Alliance Wales and the Welsh REablement Alliance, campaigned for the inclusion of a section on appeals for users of care and support in the Social Services and Well-being (Wales) Act. We would suggest further consideration of an amendment to that Act through this Bill in relation to appeals on Local Authority decisions for individuals, which would contribute greatly to the protection of people using services, their active involvement in service provision and the promotion of effective and efficient services whether regulated or not. Amending the Act in this way should also create greater parity between individuals and social care workers, as workers have the right to appeal decisions about them under this Bill. The alliances would like to bring to your attention section 72 (Part 1) of the [Care Act 2014](#) which addresses appeals for individual users in England.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 BASW Cymru is concerned that the definition of care in Part1; Chapter1; 3(1)(a) solely references physical tasks. While 3(a)(ii) identifies the 'mental' processes related to those tasks; as it stands, it appears to push a focus on task and time rather than quality of the interaction. The definition appears to be very different to the expectation and thrust of the Social Services and Well-being (Wales) Act and does not support the intention to put the citizen at the centre of their services.
- 5.2 Relationships and the quality of human interaction is a vital element in safeguarding and providing high quality care services, as many recent reports and investigations, such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be very different to the clear expectation of the Social Services and Well-being (Wales) Act where care and support is required to meet a much wider range of well-being outcomes.
- 5.3 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Well-being (Wales) Act which allows for a wide range and mix of services to provide care and support. BASW Cymru is not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering or providing services. Both legislative frameworks need to be strongly complementary and consistent with each other.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

- 6.1 BASW Cymru welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered, the inspection and regulation of service providers and the creation of a Responsible Individual.

- 6.2 It is not clear whether ‘regulated activity’, section 171, is the same as ‘regulated services’ (Chapter 2; s6). The definition of regulated services in schedule 1 of the Bill appears limited when compared to the apparent breadth of social care services within the Social Services and Well-being (Wales) Act e.g. this does not appear to include commissioning services. Terminology will need to be clearly defined and used consistently.
- 6.3 The meaning of well-being in section 2 of the Social Services and Well-being (Wales) Act offers the opportunity and promotes the need to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility across the social care workforce beyond regulated services while maintaining and ensuring the safeguarding imperative.
- 6.4 It is not clear how the inspection regime will involve and engage with persons in receipt of care and support. It would be helpful to include a duty to report on how citizens, people and the public have been engaged in the inspection regime. Section 33(3) (i) gives power to the inspectorate to interview persons in receipt of care and support. However, there is no similar power to interview carers or people in need of care and support.

7 What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

- 7.1 BASW Cymru welcomes the intention to consider outcomes for individuals in reviews of social services and increased public involvement.
- 7.2 Section 55: insertion to the Social Services and Well-being (Wales) Act, section 144B, presumes that services will be easily definable. It will be more challenging to summarise individualised and person-centred interventions than report on the number and location of residential places or domiciliary care agencies. It will be important that the reporting duty does not become so onerous that vital frontline activity is compromised.
- 7.3 One aim of the Bill is to clarify and reduce complexity; however, complex, dual regulation of practitioners or the loss of a multi professional workforce may not deliver the intended outcomes. For example, in section 57, the insertion to the Social Services and Well-being (Wales) Act relating to looked after children: Regulations under section 94A (3) can prevent a person working if they are not registered under section 79 of the Regulation and Inspection of Social Care (Wales) Act (registration of social care workers). This presumes any registered staff are registered with Social Care Wales rather than registered with other regulators.

8 What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example,

assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

8.1 BASW Cymru welcomes the intention of this. It is important to recognise that the unforeseen can always arise; this activity needs to be proportionate to the other demands of activity for local authorities.

9 What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1 The objective, section 67 (1) for Social Care Wales, does not limit the protection, promotion and maintenance of the safety and well-being of the public to social care matters alone. This should be stated explicitly. This responsibility can only relate to the services and practitioners registered with and regulated by Social Care Wales: however, in section 67(2) the functions do not appear to directly relate to this objective: this section includes all social care workers and a responsibility to maintain high standards.

9.2 Practitioners registered with and regulated by other regulatory bodies, such as occupational therapists and nurses, will remain under the jurisdiction of those regulators. It is not clear how this covers staff who are not regulated at all as individuals, but who work in regulated services. Are the Responsible Individual and Registered Manager accountable for these staff? What is the balance of accountability between individuals and service quality and how will this work in practice?

9.3 BASW Cymru suggest that the Bill should be very clear what references to social care workers means:

- a. Those who are registered/regulated and thus affected by parts of the Bill relating to the role of Social Care Wales as a protector of the public (social workers and managers) or,
- b. The whole workforce when Social Care Wales is acting as an improvement, education and support agency (all social care workers).

9.4 The wider development roles of Social Care Wales, Part 5, for all registered social care workers are sometimes beyond the remit of public protection. In healthcare many of these are done through the Workforce Education Development Service or by other regulators. Clarity is needed on the groups that Social Care Wales will include in this work. For example, how will occupational therapists be supported in their practice in social care, even though they are not the responsibility of Social Care Wales in its regulatory role? How will the different responsibilities be separated? How will other professionals (such as physiotherapists, speech and language therapists and dietitians) working in integrated health and social care be supported within a social care context? Will Social Care Wales have responsibilities here? There is a missed opportunity here for improving integration in health and social care.

9.5 BASW Cymru considers that there is potential for conflict of interest in placing so many roles in one body. Specifically, we are concerned with the potential

conflict of interest between regulating social care services and promoting and developing a service, with the possibility that this might inhibit honest and frank discussion of issues arising that could be prevented prior to the need for regulatory sanctions. The function of protecting the public should be paramount and separate to other roles.

- 9.6 Through the inclusion of a duty of due regard to human rights' instruments, BASW Cymru would expect the functions of Social Care Wales described in Part 5 to reflect human rights' principles.
- 9.7 Protecting the public is a significantly different role from those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that **“Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved”**(p2). This work came out of the Shipman Inquiry and the Foster review. The proposal for Social Care Wales should be examined against these principles for regulation.
- 9.8 The role of Social Care Wales needs to be enhanced and extended to fully realise its role as the sector skills council. This should involve responsibility for upskilling and training all social care workers, as well as workers in health and more widely who contribute to care and support provision.

10 What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- 10.1 The description of a social care worker, section 78, includes a far wider group than those considered registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Clarity is needed on how, or if, Social Care Wales is responsible for those.
- 10.2 Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of Social Care Wales as a regulator. For example, section 78(3)(b) would include occupational therapists. Any regulations made under section 78(2) will need to be clear of any overlap with existing regulator functions. The sections immediately after section 78 refer to the register and continue to refer to issues relating to registered groups, even though “social care workers” are not registered groups. This could usefully be made more explicit to help the Bill achieve its intent and ensure that implementation is effective.
- 10.3 Section 83(b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers

and registered managers. Section 83(b)(i) requires completion of a course approved by Social Care Wales under section 113 – which cross refers to section 79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by Social Care Wales but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved. This would helpfully include an expectation that qualifications required by other regulators or employers are recognised when staff move around the sector. It seems inefficient that public money pays for a qualification when working in one sector and then pays for another qualification with similar outcomes but a different title if they move to another part of the sector.

- 10.4 Also in Section 83, we are concerned that potential dual registration of social workers with other UK countries may deter social workers in working in Wales and consequently have an adverse effect on meeting the needs of service users and their carers.
- 10.5 Section 110 sub section (1) omits to state those staff who are employed as 'pseudo social workers' i.e. those staff who are paid at a lower rate without the training, expertise and experience who are given a different title but expected to undertake tasks and roles for which qualified social workers are trained to do.
- 10.6 BASW Cymru suggest that Part 5 (Social Care workers: standards of conduct, education etc.) is also unclear as to which workforce groups are included and which are not. For example, section 111(1)(a) refers to standards of conduct and practice for "social care workers". It is unclear if and how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. Section 111(3) refers to codes for social workers when working as Approved Mental Health Practitioners. However three other professions can be Approved Mental Health Practitioners. BASW Cymru would suggest that the same codes of conduct have to apply to every Approved Mental Health Practitioners regardless of their initial professional background or professional regulator. Furthermore, we are concerned in that SCW's role to produce a Code of Practice for Employers of Social Care Workers that is not regulated (as it isn't at present).
- 10.7 BASW Cymru support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus what are the requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or joint working with other regulators, such as the Health and Care Professions Council or the Nursing and Midwifery Council, and other employers, such as NHS Wales (supported by Workforce Education Development Service), and the improvement functions of Public Health Wales.
- 10.8 It is unclear what remit over fitness to practice, Part 6, Social Care Wales has other than for registered groups (social workers and registered managers). Section 116(5) appears to acknowledge this is only for workers registered with Social Care Wales. BASW Cymru suggests that this part should not be titled

to imply it means all social care workers throughout the social care workforce. The reference to the Health and Care Professions Council in section 116(4) is assumed to refer to social workers registered in England and misses the opportunity to consider staff registered in Wales. Section 117 refers to a “registered person”: is this only a person registered with Social Care Wales? What about a person registered with another registering body? There is also a lack of recognition that causes of concerns about fitness to practice to registered persons may be partially or totally due to instructing them to disregard parts of the Code of Practice for Social Care Workers or their own professional codes e.g. the Code of Ethics for social workers.

- 10.9 Although we accept that it is not possible to comment on future developments, BASW Cymru is aware that it is the Government’s intention to include advocacy as a regulated service at some time in the future. Consequently, we would recommend early consideration of integrated regulatory processes for advocacy required through different legislations, such as the Social Services and Well-being (Wales) Act and the Mental Health (Wales) Measure.
- 10.10 BASW Cymru is also concerned that there is no reference or mention of referral of employers to the Care and Social Services Inspectorate for Wales (CSSIW) in relation to their failure to support an individual to comply with the Code of Practice for Social Care Workers or the employers failure to adhere to the Code of Practice for Employers of Social Care Workers.

11 What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

- 11.1 Whilst BASW Cymru is pleased that this refers to co-operation in relation to social workers, there needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. Section 174 identifies the regulatory bodies as Welsh Ministers and Social Care Wales. It is disappointing there is no reference to co-operation and joint working with the Health and Care Professions Council, the Nursing and Midwifery Council and other regulators. BASW Cymru considers this might be a missed opportunity to deliver increases of efficiency in regulation.
- 11.2 BASW Cymru is disappointed that there is no reference to co-operation in relation to the wider roles of Social Care Wales given both the policy direction for, and reliance on, greater integration for the delivery of the change desired from the Social Services and Well-being (Wales) Act. For example, workforce development and education commissioning for occupational therapists, nurses and others is undertaken by the Workforce Education Development Service. There seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval and integrated career frameworks for the whole social care workforce. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to ‘redo’ similar qualifications to named recognised qualifications by one part of the sector.

12 In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 The balance appears to be right given what is on the face of the Bill. However, without greater indications of what subordinate legislation might be, it is difficult to comment fully at this stage.

Financial implications

13 What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

- 13.1 BASW Cymru feels ill equipped to pass informed comment on this. However, we have some concerns with the frequency that it is suggested in these parts that there will be no cost incurred with these changes other than those associated with transitional arrangements.
- 13.2 BASW Cymru recognises that the effects of significant underfunding of the social care sector will not be solved by market oversight and annual reports.

14 Are there any other comments you wish to make about specific sections of the Bill?

- 14.1 BASW Cymru has some concerns in relation to section 33(3): powers of the Inspector. For example, Inspectors have the power to talk to service users in private, but not carers.
- 14.2 The Inspector may ... “assess the well-being of any person accommodated or receiving care and support there” (section 33(3)(a)). Does this constitute a professional assessment which meets the requirements of the assessment regulations for the Social Services and Well-being (Wales) Act? If so, will this person be expected to hold the qualifications and registration of that professional such as a Nurse, Occupational Therapist or Social Worker and include consideration of the well-being outcomes? If not, and this is intended to mean a more general consideration of the situation of the person, it may be more useful to use different language given the meanings of well-being already present in two pieces of legislation.
- 14.3 Language: BASW Cymru considers that the language used in this Bill is inconsistent, using different words for the same concepts or groups and is not always consistent with that of the Social Services and Well-being (Wales) Act.
- 14.5 BASW Cymru suggests that the Bill will be clearer and achieve its aims more effectively if clarity is achieved in the use of language and definitions.

Conclusion

BASW Cymru welcomes the intention and aim of the Bill to protect the public and ensure a streamlined and effective regulatory system. Many sections appear to continue the Care Standards Act (2000) and the association feels that the Bill could

go further in driving improvements for people by enabling greater integration and more streamlined regulation for integrated services.

Robin Moulster
Country Manager
BASW Cymru



April 2015

Mr David Rees AM
Chair, Health & Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Date: 24 April 2015
Our ref: HVT/2314/fgb
Page: 1 of 2

Dear Chair

THE REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL: CONSULTATION ON GENERAL PRINCIPLES

Thank you for the invitation to the Wales Audit Office to provide evidence to the Committee on the general principles of the Regulation and Inspection of Social Care (Wales) Bill. I am responding as Auditor General since the issues raised are primarily ones that relate to my functions as the auditor of the Welsh public sector.

You will know that the Wales Audit Office has been established as a statutory board and that, since 1 April 2014, it has been responsible for employing staff, procuring services, and providing other resources to enable me to exercise my functions as Auditor General.

As Auditor General I audit the accounts of the Welsh Government, its sponsored and related public bodies, and National Health Service bodies and local government bodies in Wales.

As well as auditing accounts, I also have the functions of undertaking examinations of economy, efficiency and effectiveness in the use of resources, and other study, assessment and inspection functions. In the context of the Bill, it is of particular relevance that I undertake studies for improving economy, efficiency and effectiveness in the discharge of functions of local authorities, which include social services (studies under section 41 of Public Audit (Wales) Act 2004).

It is perhaps appropriate that in responding to your consultation I focus on issues that are relevant to the exercise of the Auditor General's functions, rather than commenting more broadly on the policy merits of the Bill. I have not, therefore, sought to respond to all your consultation questions, but, as set out in the annex, have tried to focus on relevant questions. These chiefly concern the financial implications of the Bill and wider efficiency and good governance in the conduct of public business.

Given the interests of the Public Accounts Committee and the Finance Committee, I am copying this response to Darren Millar AM and Jocelyn Davies AM.

Yours sincerely



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

enc Annex: Response of the Auditor General for Wales to the Health and Social Care Committee consultation on the general principles of the Regulation and Inspection of Social Care (Wales) Bill

*cc Mr Darren Millar AM, Chair Public Accounts Committee
Ms Jocelyn Davies AM, Chair, Finance Committee*

RESPONSE OF THE AUDITOR GENERAL FOR WALES TO THE HEALTH AND SOCIAL CARE COMMITTEE CONSULTATION ON THE GENERAL PRINCIPLES OF THE REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL

Q4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

Omission of access rights for Social Care Wales

1. Clause 69 of the Bill effectively transfers the function of undertaking studies for improving economy, efficiency and effectiveness (in the discharge by local authorities of their social services functions¹) from the Welsh Ministers to Social Care Wales. (The clause also broadens that function so that it addresses economy, efficiency and effectiveness in the provision of a care and support service, i.e. it is not confined to local authority social services.) The Bill does not, however, transfer or otherwise provide Social Care Wales with the attendant access rights for undertaking such studies. This omission may impede Social Care Wales in undertaking studies.

Omission of duty on Social Care Wales to publish reports

2. The Bill also does not transfer the duty to publish reports of such studies. It appears that the publication of studies can still be achieved by Social Care Wales using its supplementary powers under paragraph 9 of Schedule 2 to the Bill, and I expect that Social Care Wales will choose to publish its reports. I am not sure, however, whether the Assembly is aware that Social Care Wales would have the option of not publishing reports of its studies (as the Welsh Ministers are currently required to), and whether the Assembly is content with such a situation.

Omission of duty on Social Care Wales to pursue value for money in exercising its functions

3. In repealing section 54 of the Care Standards Act 2000, clause 66 of the Bill repeals the general duty (in paragraph 4 of Schedule 1 to that Act) on the Care Council for Wales to carry out its functions economically, efficiently and effectively. The Bill does not, however, re-enact that duty so that it applies to Social Care Wales. While I expect the new organisation will in practice continue to pursue economy, efficiency and effectiveness, the repeal may send an unhelpful message.

¹ This study function is currently contained in section 95 of the Health and Social Care (Community Health and Standards) Act 2003.

Q5. Do you think that any unintended consequences will arise from the Bill?

Cost increases following improvements in quality driven by judgement ratings

4. Page 169 of the Explanatory Memorandum sets out risks arising from the introduction of quality judgement ratings under clause 35 of the Bill. One point that is not mentioned, however, is that increased quality may lead to increased costs to service-users and, where care is publicly-funded, to the public purse. Increased cost in return for increased quality may often be justified, but the possibility should nevertheless be recognised.

Potential undermining of proper regulation of service providers arising from use of penalty charges

5. Clause 51 of the Bill provides for the Welsh Ministers to impose penalty notices on service providers for such failings as omission to submit an annual return, with amounts up to two and a half times level 4 on the standard scale (I believe that at the time of writing this would be up to £6,125). The amounts of penalties are to be set by Welsh Ministers in regulations. In the case of an offending service provider convicted in court any fine (under clause 50 of the Bill) would be paid into the UK Consolidated Fund, as is normally the case with fines, but a payment of a penalty under clause 51 would be surrendered to the Welsh Consolidated Fund because of section 120 of the Government of Wales Act 2006.
6. As accessing funds from the Welsh Consolidated Fund requires the approval of one legislature rather than two, and is therefore more straightforward than accessing funds from the UK Consolidated Fund, it is possible that concerns may arise that penalties under clause 51 could exert undue influence on enforcement practice. The proper regulation of service providers could be undermined if there were a perception that the frequency with which penalties were imposed and the level at which they were set had implications for the funding position of the Welsh Ministers. This risk might be addressed by very careful drafting and scrutiny of the penalty regulations.

Impediments to Social Care Wales studies of economy, efficiency and effectiveness

7. The omissions mentioned under question 4 above may be, and may lead to, unintended consequences in terms of Social Care Wales undertaking studies of economy, efficiency and effectiveness.

Q9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

8. Please see answer to Question 4.

Q13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

9. It is not appropriate for me to comment on the financial implications of the Bill in terms of policy merits. I do, however, consider that it is appropriate to give views on the clarity of the financial implications.

10. The Explanatory Memorandum (see Table 42 on page 279 and Table 43 on page 283) appears to indicate that the net additional cost of the Bill in terms of transitional costs plus additional ongoing costs of the preferred options for five years (less savings in that period) will be some £9 million. Of that amount, some £3.4 million is one-off transition costs, suggesting ongoing additional net costs of £1.1 a year. The largest single item of ongoing expenditure arising from the Bill appears to be £1.5 million a year for quality ratings.
11. However, I have concerns that Table 42 does not give a clear view of costs, and that it may contain some significant errors, in particular:
 - a. on page 281 the table appears to double count savings in respect of “due diligence of key service providers”—for the years 2017-18 to 2020-21, rather than recording the cost to service users of supplier exit as zero (i.e. prevented), the table shows negative costs of £92,300 in each year (though only three years appear to have been added together), which is the equivalent of service users not only avoiding costs of £92,300 a year but also being paid that amount each year. Taken together with the cost of producing national statements, the result appears to be an understatement of the cash cost of Chapter 7 of Part 1 of the Bill by £276,900;
 - b. paragraph 7.466 (with footnote 74) indicates that the savings in respect of “due diligence of key service providers” is based on a monetised valuation of the well-being effect of “an orderly resolution to a care provider failure”. “An orderly resolution” may not be the correct event to take into account, but in any case the point that is not made clear in Table 42 is that the £92,300 figure on page 281 is not cash savings, but a valuation of a benefit. There is nothing wrong with providing monetised valuations of benefits, but I consider it potentially misleading for such benefits to be mixed in the middle of a table of cash figures;
 - c. similar to (a) above, Table 42 appears to contain errors that lead to the overstatement of savings in respect of discontinuing voluntary registration by some £60,000.
12. The mixing of monetised benefits with cash costs appears to me to make the Explanatory Memorandum fall short of the requirement of Standing Order 26.2(vi) that the Explanatory Memorandum must:

set out the best estimates of:

 - (a) *the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;*
 - (b) *the timescales over which such costs would be expected to arise.*

13. There are also other matters that I consider make it hard to obtain a fair view of the costs of the Bill:
 - a. the presentation of the costs of the Bill solely by inclusion in a lengthy options analysis (173 pages) makes it hard to readily identify the make-up of various costs without confusion with options other than the Bill;
 - b. the summary tables of costs (Table 42 and Table 43) are 166 pages into the regulatory impact assessment, rather than being presented at the beginning.
14. I have not considered in detail the accuracy of individual cost estimates, and cannot therefore comment on them in that respect.
15. As far as I can tell, there is no specific rationale for providing costs of the Bill in terms of transitional costs plus additional ongoing costs of the preferred options for five years (less any savings in the period). There is no indication that the Bill is to have a five-year life-span, so the five-year figure is in a sense arbitrary. It is, however, consistent with other recent Welsh Government Regulatory Impact Assessments contained in Explanatory Memoranda.
16. I note that some of these points are matters that I have previously raised in my December 2014 report *Review of the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill*. Key points raised in that report included:
 - a. the need for a clear summary of costs;
 - b. consideration of the appropriate time-period over which to analyse costs;
 - c. strengthening arrangements for the development and internal review of impact assessments.
17. As the Welsh Government presented the current Bill's Explanatory Memorandum in February 2015, I am not sure whether the Welsh Government has had sufficient opportunity to consider my report.

Q14. Are there any other comments you wish to make about specific sections of the Bill?

Co-operation in respect of value for money studies

18. Paragraph 41 of Schedule 3 to the Bill amends section 41 of the Public Audit (Wales) Act 2004 so as to require the Auditor General and Social Care Wales to co-operate with each other in respect of their relevant value for money study functions (i.e. functions under section 41 of the 2004 Act and clause 69 of the Bill). In practice, the Auditor General would in any case seek to engage in sensible co-ordination, but nevertheless this is an appropriate provision. It reflects equivalent existing provision in section 41 of the 2004 Act, and is conducive to ensuring that the Auditor General and Social Care Wales avoid overlapping work or unintended gaps in work. I am grateful that the Welsh Government liaised with WAO staff regarding this provision.

19. Paragraphs 21 to 23 of Schedule 3 to the Bill also amend sections 41 and 42 of the Public Audit (Wales) Act 2004. In this case, the amendment includes a requirement on the Auditor General and the Welsh Ministers to co-operate with each other in respect of the Welsh Ministers' re-enacted² function of reviewing studies and research by others, which is to be inserted as section 149A of the Health and Social Well-being (Wales) Act 2014 by clause 56 of the Bill. This is in addition to a requirement to co-operate in respect of the re-enacted³ (but augmented) Welsh Ministers' function of undertaking reviews of local authority social services. I understand that, regrettably, the Welsh Government did not liaise with WAO staff regarding the additional co-operation requirement imposed on the Auditor General in respect of reviews of studies and research. However, as far as I can tell, the Welsh Ministers (CSSIW) have not undertaken any such reviews under the existing power. Instead, CSSIW review relevant research in the course of undertaking other reviews and studies (e.g., section 95 of the 2003 Act). If this pattern of activity continues, the additional requirement will not have significant practical consequences. The pattern of activity does, however, also raise the question whether re-enactment is necessary, especially as section 60 of the Government of Wales Act 2006 gives the Welsh Ministers wide-ranging powers to undertake activities for the promotion of well-being.
20. I am also concerned at the potential circularity of the situation and its implications for audit independence. The new section 149A power to review "studies and research undertaken by others" provides for the Welsh Ministers to review of "the methods used in such studies [by others]...and...the validity of conclusions drawn." This appears to provide a power for the Welsh Ministers to call into question the methods and conclusions of the Auditor General and others, including Social Care Wales, and to lay reports to that effect before the Assembly.
21. I gather that the original provision in the Health and Social Care (Community Health and Standards) Act 2003, from which the new section derives, was not necessarily intended to be used in that way, and that seems to have been borne out in practice. As the Explanatory Note for the original provision says, "This section enables the CSCI to evaluate work carried out by other bodies, such as academic institutions." Nevertheless, the provision potentially undermines audit independence.

Value for money and the new section 149D "General considerations" to be inserted by clause 56

22. The new section 149D "General considerations" to be inserted by clause 56 of the Bill into the Social Services and Well-being (Wales) Act 2014 includes (in subsection (d)) in its list of matters that the Welsh Ministers must have regard to in undertaking reviews, "the economy and efficiency of their [local authority] provision and their value for money". This formulation is somewhat confused and circular. Value for money is the short description of economy, efficiency and

² The existing provision is in section 93 of the Health and Social Care (Community Health and Standards) Act 2003.

³ The existing provision is in section 94 of the Health and Social Care (Community Health and Standards) Act 2003.

effectiveness (see, for example, Part 2 of the Public Finance and Accountability (Scotland) Act 2000), so the phrase in section 149D(d) is akin to “apples, oranges and fruit”.

Social Care Wales Accounting Officer and Accounts Directions

23. Paragraph 15(2) of Schedule 2 to the Bill sets out that the accounting officer of Social Care Wales is to have the responsibilities specified in a direction by the Welsh Ministers. Similarly, paragraph 16(2) sets out that Social Care Wales’ accounts must comply with any directions given by the Welsh Ministers. In order to help ensure consistency of approach across the public sector, it is desirable that these provisions provide for directions by the Welsh Ministers with the consent of Treasury.